

Morei v. Ngetchuang Lineage, 5 ROP Intrm. 292 (Tr. Div. 1995)
**IN THE MATTER OF THE APPEAL OF THE
LAND CLAIMS HEARING OFFICE (LCHO)**

**TOKIE MOREI,
Appellant,**

v.

**NGETCHUANG LINEAGE, Represented by
MERUK RENGULBAI,
Appellee.**

CIVIL ACTION NO. 451-92

Supreme Court, Trial Division
Republic of Palau

Decision and order
Decided: January 13, 1995

LARRY W. MILLER, Justice:

This appeal concerns two lots located in Peleliu State known collectively as *Bombei*. The Land Claims Hearing Office awarded *Bombei* to appellee, finding that Meruk Rengulbai, whom it named as trustee, had the "right and power to administer the individual property of Mengelil", the owner of *Bombei* as listed in the Tochi Daicho. Appellant Tokie Morei, representing her brother, Minari, argues that the LCHO should have applied Palau District Code § 801 (c) to award the property to Minari as Mengelil's surviving son. The Court agrees.

The record is undisputed that *Bombei* was the individual property of Mengelil, *but see* p. 294 *infra*, and that Minari was his son. It is also undisputed that Mengelil died in 1973, after the enactment of § 801, but before its amendment in 1975 to restrict an oldest child's inheritance rights in the event of intestacy to lands acquired by decedents as *bona fide* purchasers. *See* 39 PNC §§ 102(c), (d). Thus, applied according to its plain terms § 801 as then in effect dictated that Minari should be declared the owner of *Bombei*. *Brel v. Ngiraidong*, 3 ROP Intrm. 107 (1992).

Appellee offers three arguments to avoid this conclusion. First, and most substantially, it argues that pursuant to **L293** Article V, Section 2 of the Palau Constitution,¹ this Court is bound to treat statutes and traditional laws as "equally authoritative", and that it accordingly should defer to the decisions made at Mengelil's *eldecheduch*, rather than applying § 801. Without deciding what its effect would be in the case of someone who died intestate after the adoption of

¹ "Statutes and traditional law shall be equally authoritative. In case of conflict between a statute and a traditional law, the statute shall prevail only to the extent it is not in conflict with the underlying principles of the traditional law."

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the Constitution, the Court does not believe that Article V, Section 2, should affect the disposition of property belonging to a person who died several years earlier.² It is clear that as of 1973, statutory law did prevail over traditional law. See *Brel*, 3 ROP Intrm. at 108 (noting that under the Trust Territory Code, "customary law was on a par with statutory law only to the extent it did not conflict with statutes"). As the Court sees it, while it has taken more than twenty years for the land registration process and this appeal to say so, § 801 operated immediately to transfer ownership of *Bombei* from Mengelil to Minari. Cf. *Estate of Olkeriil v. Ulechong*, 4 ROP Intrm. 43, 50 n.1 (1993) ("In our view, Jonas Olkeriil acquired his title to the property upon his father's death, and [a later court dispute over title] merely confirmed it"). To apply the Constitution to reach a potentially different result, therefore, would be in effect to divest Minari of property he had already acquired. While it may well be that certain provisions of the Constitution can and were intended to have retrospective effect, the Court has no reason to believe that the Framers intended such a result -- and the resulting upheaval -- here. Under Article XV, Section 3(b),³ if a court battle over the ownership of *Bombei* had been concluded by a judgment in Minari's favor prior to the effective date of the Constitution, that judgment would be recognized and enforced. The timing of these proceedings should not lead to any different conclusion.

¶294 Appellee's remaining arguments are more easily dealt with. Although appellee is right that the Tochi Daicho for Peleliu is not accorded the same presumption of correctness as it is with respect to other states, that fact is irrelevant here where Mr. Rengulbai acknowledged in his application for land registration and in response to questioning by the LCHO (see Tr. 9-10, 31-32) that *Bombei* was Mengelil's individual property. Indeed, the bulk of his testimony below, and his final argument here, presume that Mengelil was the owner whose purported wishes should be carried out.

Finally, appellee argues that either by *inter vivos* conveyance or oral will, control over *Bombei* was given by Mengelil to Rengulbai's father and then to Rengulbai. As to the first, Rengulbai's testimony regarding Mengelil's statements do not indicate a present intention to depart with the property, but rather a statement of his wishes in the event of his death. See Tr. 14 ("you *will* be responsible"; "all the properties *will* go to you"). As to the second, however, those statements nevertheless do not qualify as an oral will under § 801(b) that would defeat the application of § 801(c). See 39 PNC § 102(b) (requiring a statement made in the presence of three witnesses *not* taking under the will and sworn to before the Clerk of Courts).

² In light of this conclusion, the Court also need not consider appellant's contention that the evidence as to the *eldecheduch* favors Minari in any event.

³ "All rights, interests, obligations, judgments, and liabilities arising under the existing law shall remain in force and effect and shall be recognized, exercised, and enforced accordingly, subject to the provisions of this Constitution."

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For all of these reasons, the determination of the LCHO is reversed, and it is ordered to issue a certificate of title declaring *Bombei* the individual property of Minari Mengelil.