

Asanuma v. Tmilchol, 7 ROP Intrm. 261 (Tr. Div. 1998)
SECHARRAIMUL MASAMI ASANUMA
Representing himself Personally, Terei Clan and Imul Hamlet,
and DILSECHARRAIMUL ORITECHERENGNGIRCHOMLEI,
Representing herself personally, Terei Clan and Imul Hamlet,
Plaintiffs,

v.

BECHESERRAK TMILCHOL and UCHERRIANG BLESAM,
Defendants.

CIVIL ACTION NO. 98-215

Supreme Court, Trial Division
Republic of Palau

Issued: August 11, 1998

BEFORE: LARRY W. MILLER, Associate Justice.

Before the Court is defendants' motion to dismiss the complaint or, in the alternative, to amend its caption. Defendants argue that the complaint should be dismissed insofar as it purports to state claims on behalf of Terei Clan or Imul Hamlet (1) because those parties lack standing, (2) because there has been no showing that either party wants to litigate, and (3) because the individuals named may not represent them in any event. They also argue that the individual plaintiffs may not represent themselves and should not be allowed to call themselves by their claimed titles in the caption. For the reasons stated herein, the motion to dismiss is denied, and the motion to amend is granted in part.

According to the complaint, this is a dispute about the male and female titleholders of Terei Clan, the male chief of which is alleged to be the highest-ranking chief of Imul Hamlet. As to defendants' first argument, the Court agrees with plaintiffs that, if these allegations are true (which the Court assumes on this motion to dismiss), then both the Clan and the Hamlet have an interest in establishing whether the individual plaintiffs or defendants bear those titles. As to the second argument, the Court believes that if the individual plaintiffs hold the titles they claim, then it is at least arguable - as plaintiffs do argue - that they have sufficient authority themselves to commence this litigation on behalf of the Clan or the Hamlet. The question of who has authority to file claims on behalf of a clan (or, by extension, a hamlet is certainly deserving of greater attention, *see Tesei v. Belechal*, Civil Appeal No. 14-97 (July 30, 1998), slip op. at 3 n.3. But the Court would be surprised to find, and certainly will not in the context of a motion to dismiss, that the male and female chiefs of a clan do not have such authority.

Defendants' third contention is a semantic one, and is semantically correct. Although it is often phrased that way, captions that read "X, representing Y Clan", should read, if anything, "Y

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Clan, represented by X”, and the phrase “represented by X” is probably unnecessary. The Clan is the party, not its representative, and is all that need be mentioned in the caption. In the future, ¹ the fill caption, if used,² should mention only the names of the two individual plaintiffs, the Clan, and the Hamlet, and eschew any mention of representation.

Defendants’ next contention, which takes issue with the phrase “representing himself [or herself] personally”, is, frankly, frivolous. It is clear that that phrase, thought also unnecessary on the preferred view of the caption, was intended to convey simply that plaintiffs were asserting their individual interests as well as those of the Clan and the Hamlet. The Court finds it difficult to believe that defendants and their counsel reasonably understood this phrase to suggest that plaintiffs were seeking to appear both by counsel and *pro se*.

Finally, the Court knows of no rule that prevents a party from using in its caption the name of the title that is claimed and at issue in the lawsuit itself. Putting it in the caption does not make it so, and the Court does not understand plaintiffs or their counsel to intend by doing so to alter the burden of proof in this litigation. ³ If defendants find it distasteful to use the caption formulated by plaintiffs, they may - in accordance with Rule 10(a), *see* n.2 *supra* - caption their filings simply as “Asanuma, et al., Plaintiffs, v. Tmilchol, et al., Defendants.”

Defendants should file their answer within the next ten days.

¹ For the benefit of anyone reading this decision, the Court has reproduced the caption as it appears on the complaint.

² Of course, pursuant to ROP Civ. Pro. R 10(a), on all subsequent pleadings, it will be “sufficient to state the name of the first party on each side with an appropriate indication of other parties.”

³ The Court can think of one case where it ultimately disagreed with a plaintiff who did so, and amended the caption on its own when issuing its decision to avoid confusion. If appropriate, the Court will follow that same practice here.