

Edward v. Antipas, 7 ROP Intrm. 50 (1998)
**LORENZO EDWARD, representing the heirs of Lalou
and the ochell members of Ngeudel Clan,
Appellant,**

v.

**JIRO LAFRED ANTIPAS, et al.,
Appellees.**

CIVIL APPEAL NO. 33-96
Civil Action No. 99-95

Supreme Court, Appellate Division
Republic of Palau

Argued: March 23, 1998

Decided: April 20, 1998

Counsel for Appellant: Johnson Toribiong, Esq.

Counsel for Appellees: Carlos H. Salii, Esq.

BEFORE: JEFFREY L. BEATTIE, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; and ALEX R. MUNSON, Part-time Associate Justice.

BEATTIE, Justice:

This case is round three of a bout between members of two lineages of the Ngeudel Clan concerning the manner of distribution of Angaur Mining Trust Fund (AMTF) payments received by the clan.

In *Lalou v. Aliang*, 1 TTR 94 (Tr. Div. 1954) (*Lalou I*), the court held that the descendants of Lalou's mother (hereinafter called Lalou Lineage) were members of the Ngeudel Clan and were entitled to share in the AMTF payments received by the clan even though they were not residents of Angaur.

151 In *Lalou v. Aliang*, 1 TTR 290 (Tr. Div. 1955) (*Lalou II*), the court ordered Aliang, the male title bearer of the clan, to make specific payments to the Lalou Lineage and stated that:

So far as continuing payments out of future receipts or income of the clan are concerned, the judgment of the court . . . is subject to change by the court at any time on a showing of such a substantial change of conditions that it is fair that the distribution ordered be changed

1 TTR at 294-295.

The payments to the Lalou Lineage were altered somewhat in *Marbou v. Aliang*, Civ. Action No. 133 (Nov. 17, 1960), where the court ordered that:

Until further order of the court, the defendants Aliang and Takisang or their successors in office, shall promptly pay to the plaintiff Marbou, or his successor, as the acting head of the lineage consisting of those members of the clan who are descendants from the plaintiff's mother, ten percent (10%) of each annual payment received for the Ngeudel Clan from the [AMTF].

In 1995, when the final payment of the principal amount in the AMTF was scheduled to be made to the clans of Angaur, appellant, who is the son of Lalou's daughter, filed this action as the representative of the children of Lalou and her sisters. They are part of the "lineage consisting of those members of the clan who are descendants from [Marbou and Lalou's] mother." *Marbou*, supra. In his complaint, appellant sought a declaration that he and the children of Lalou and her sisters are ochell members of the clan and that they have full authority to decide how the clan's AMTF income is distributed. The appellees filed an answer denying that appellant or other members of the Lalou Lineage were members of Ngeudel Clan.

The parties each filed a motion for summary judgment. Appellant's motion argued that *Lalou I* and *Lalou II* had determined that the Lalou Lineage members were ochell members of Ngeudel Clan and that the parties were bound by the previous decisions. The trial court granted appellant's motion, concluding that the holding in *Lalou I* that "Lalou, Marbou and Ngiramechelbang (who are children of the same mother), are members of the Ngeudel Clan in the female line", 1 TTR at 96, was binding on the parties under the principles of collateral estoppel.

In appellees' motion, they argued that if the previous litigation was binding on that issue, it was also binding on the issue of how the AMTF payments should be distributed, so that the appellant should get ten percent and the appellees ninety percent of the final payment from the AMTF. The trial court noted that *Lalou II* and *Marbou* provided that the 10%-90% sharing ratio was subject to modification upon a showing of a substantial change of conditions that rendered it fair to change it. Thus, the trial court deferred action on appellees' motion until appellant had an opportunity to show that a substantial change of conditions had occurred. After appellant submitted the list of factors which he felt amounted to a substantial change of conditions, the trial court granted the 152 appellees' motion for summary judgment, concluding that the factors identified by appellant did not amount to a substantial change of conditions. Appellant then filed this appeal.

We note at the outset that appellant does not argue that he is not bound by *Lalou I*, *Lalou II* and *Marbou* or that disposition of the case by way of summary judgment instead of trial was procedurally improper. Appellants contend that the trial court erred in two ways. First, that it did not follow Palauan custom when it refused to allow the Lalou Lineage to decide how to distribute the AMTF payment to the clan. Second, that it erred in holding that the appellant failed to demonstrate a substantial change of condition so as to free appellant from the effects of

Lalou II and *Marbou*.

Appellant's contention that the manner of distribution of AMTF payments received by the clan violates Palauan custom is an argument that should have been addressed to the *Lalou II* court and the *Marbou* court and pressed on an appeal of those cases if necessary. It was the *Lalou II* case that determined the process, later modified somewhat by *Marbou*, for distributing the AMTF revenue within the clan. In the instant case, the trial court was not called upon to apply custom--it found that the previous court decisions were binding on the parties, and the appellant not only did not dispute that proposition, but he relied upon it in obtaining summary judgment on the issue of membership in the clan.

In support of the argument that a substantial change of conditions occurred which rendered unfair the previous determination of a 90%-10% split of AMTF receipts, appellant cited several factors to the trial court. One factor was that appellant and the people he represents are ochell members of the clan. This is not a change because *Lalou I* recognized that Lalou and those she represented were ochell members of the clan.

Another factor is that appellees are descendants of an ulechell member. But their ancestry, too, has not changed since *Lalou I* and *Lalou II*. The next factor cited is that the number of clan members appellant represents exceeds the number that appellee represents. This is no change, considering the fact that in *Lalou II* the court noted that the Lalou Lineage had twice as many members as Aliang. See *Lalou II* 1 TTR at 295. Another factor is that none of the Aliang Lineage resides on Ngeudel Clan land or relies on it for subsistence. This is as it was during *Lalou I* and *Lalou II* – the land is uninhabitable due to mining, and the reason for the AMTF payment was to compensate the clan for the loss of its land.

Appellants also point out that the Lalou Lineage has not been given many of the annual AMTF payments to which it was entitled. The trial court noted that the claim for these payments was not part of this case according to the complaint. Also, it is not a change of circumstances in that the Lalou Lineage has similar complaints in *Lalou I* and *Lalou II*. Finally, appellant cited several factors relating to events that took place before 1955 and regarding the history of the clan's split, with some members residing in Angaur and some in Peleliu. This is clearly not a change in the circumstances that existed when the *Lalou I* and *Lalou II* decisions were handed down.¹

¹ For the first time on appeal, appellant argues that the fact that the AMTF payment here at issue deals with the principal of the fund and the payments in *Lalou* dealt with the interest. Even were we to consider this argument, it would be to no avail because, as *Lalou II* makes clear, it covered both "income" and the "future receipts" from the AMTF. 1 TTR at 294-295.

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¶53 Appellant had the burden of proving that a substantial change of conditions occurred since *Lalou I* and *Lalou II* in order to prevail. As the foregoing analysis shows, we hold that the trial court did not err in concluding that appellant failed to meet his burden.

Accordingly, the decision of the trial court is AFFIRMED.