

Arbedul v. Diaz, 9 ROP 218 (Tr. Div. 1989)
ESPANGEL ESEBEI ARBEDUL,
representing himself as Chief Espangel and Omrekongel Clan,
Plaintiff,

v.

NICHOLAS S. DIAZ, JOHN C. GIBBONS, YUTAKA M. GIBBONS, as Ibedul of Koror
State, and
KOROR STATE,
Defendants.

CIVIL ACTION NO. 98-88

Supreme Court, Trial Division
Republic of Palau

Decided: March 16, 1989

[1] **Custom:** Alienating Land; Title Holders

A clan has no control over the title and property of another clan.

[2] **Custom:** Alienating Land; Title Holders

Each clan decides who bears the clan's titles and each clan controls its own property.

[3] **Custom:** Clan Membership

Deaths and funerals of title holders of a clan are vital functions by which one's contributions to the clan are measured.

[4] **Custom:** Clan Membership

Burial at a clan's platform is an indicia of rank within a clan.

[5] **Custom:** Title Holders

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The procedure for the removal of a male title holder of a clan is controlled by customary law.

[6] **Custom:** Clan Membership

The members of any clan have rank: the true *ochell* descendants are the strongest members of a clan, followed in descending order of authority by *ulechell* members, adoptive members, and finally, drift members.

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[7] **Custom:** Title Holders

The female member of the clan holding the most senior title has the authority to appoint the male title bearer of the clan, usually after consulting the *ourrot* of the clan.

[8] **Custom:** Title Holders

After the male title bearer of the clan has been appointed, the appointment is announced to the council of chiefs for that body's acceptance.

[9] **Custom:** Title Holders

It is the principal female title bearer who has the authority to initiate the removal of the male title holder with the approval of the senior *ourrot*.

[10] **Custom:** Title Holders

The removal of a title from a bearer has to be for good cause.

[11] **Custom:** Alienating Land

The administration and disposition of a clan's property is primarily a private matter in which the clan is entitled to exercise wide discretion.

ARTHUR NGIRAKLSONG, Associate Justice:

The basic issue in this case is whether the title Espangel was removed from Esebei Arbedul in March 1987. The second issue, which becomes important if Esebei Arbedul was removed as Espangel, is whether Nicholas Diaz has been duly installed as the new Espangel. The final issue, again related with the first issue, is the administration of Omrekongel Clan's property.

It is the decision of this court that Esebei Arbedul has not been removed as Espangel. He has been and still is the bearer of title Espangel. First, the important senior title female members of the Omrekongel Clan did not agree to the attempted removal of Esebei Arbedul as Espangel. Second, defendant Nicholas Diaz and his mother, Sechedui Diaz, and all those who sought to remove the title from Esebei are weak members or not members of Omrekongel Clan.

Omrekongel Clan is the highest ranking clan in Ngerkebesang. Espangel is the highest ranking male title of Omrekongel and the female highest ranking title is Uodelchad. Within the Omrekongel Clan are lineages Ngeluul, Tberbor and Irbai. Irbai, however, is said to go through Tberbor to become a lineage of Omrekongel Clan. Irbai is akin to a sublineage of Tberbor.

Ngeluul is the lineage where Espangels come from. When no one is available to become Espangel in Ngeluul Lineage, then the senior title females look for Espangel from Tberbor

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Lineage and when no one is available to become Espangel from Ngeluul and Tberbor, the search goes to Ngermengiau Lineage of the Ikelau Clan in Koror.

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These are some of the men who held the title Espangel. Semerek, Blas el Teruich a dial (both before German occupation of Palau), Uchellas, Ngiraberrek, Ngcheed Ngiraberenges, Ewatel (Japanese occupation), Maidesil (U.S. Administration) Isims (brother of the plaintiff) and Melimarang. From these *Rubaks*, Maidesil came from the lineage of Ngermengiau. The rest came from either Ngeluul or Tberbor Lineage of Omrekongel Clan. Esebei Arbedul comes from Ngeluul Lineage.

Defendant Diaz's witness Bedal Rubasch testified that Nguochel Blitang and Obekebok were from Irbai Lineage and they became Espangel. Ucheriang Mechol, older sister of Bedal, testified that neither Blitang nor Obekebok became Espangel. They indeed were from Irbai and when then Espangel Ewatel had a feud with his sister and left to Ngerbeched, Blitang and Obekebok fought for the title and neither got it. Maidesil from Ngermengiau became Espangel. Obekebok, who was Ucheriang's grandfather, told Ucheriang. (Testimony of Ucheriang Mechol.)

Tberbor Lineage is where Uodelchads come from. When no one is available to become Uodelchad, the search goes to Ngeluul. And when no one is available to become Uodelchad from both Tberbor and Ngeluul, then they look for someone from Ngermengiau to become Uodelchad. (Testimony of Esebei Arbedul.)

Ourrot of Omrekongel who have held the title Uodelchad are Sorch, great grandmother of the plaintiff, Dirreou, natural mother of the plaintiff, Lalii, first cousin of the plaintiff, Ucheliei, Techab and Mechelins, mother of Isebong, now the Uodelchad.

Mechelins was Uodelchad during the Japanese occupation. She adopted Isebong and they lived at Tberbor. Isebong became Uodelchad when Ucheliei died. Esebei Arbedul as Espangel prepared food and a feast was had and Isebong became Uodelchad and has been for almost ten years. (Uncontradicted testimony of Isebong Uodelchad.)

Nicholas Diaz, Boisek, Santos and Bedal testified that Sechedui is now Uodelchad. (Nicholas Diaz is a son of Sechedui and Boisek is a maternal uncle of Sechedui.) Sechedui herself was asked three times by defendant Nicholas Diaz's counsel if she was the bearer of the Uodelchad title. Sechedui said "no", despite the desperate attempt of Mr. Cushnie to have her say she is Uodelchad. She also said she bears no female title of Omrekongel Clan. Sechedui should know if she bears any title or not. Defendant's Exhibit F purports to be a letter written by Sechedui to the Ngara-Ngermeseksikt informing that body that Omrekongel Clan has designated Nicholas Diaz to be Espangel. The letter was supposedly signed "Uodelchad Sechedui." See also Defendant's Exhibits B and H. Sechedui does not know how to read or write Palauan or English. She even had a hard time identifying what was supposed to be her signature in some of the documents presented to her in court.

The court finds without a doubt that Isebong has been Uodelchad for the last 10 years and

is still the bearer of the title Uodelchad.

Irbai is the third lineage of Omrekongel Clan. The highest male title is Tbekriu. Bedal was Tbekriu. Esebei Arbedul stated that Bedal did something wrong and so he took the title Tbekriu from him and bestowed it upon Ucheriang, who is Bedal's 1221 older sister and the bearer of the highest female title of Irbai, Diltbekriu. Bedal claimed that Espangel has no authority to take the title from him. What is not in dispute, however, is that Ucheriang is Diltbekriu, the female highest title in Irbai.

Sechedui testified that she and her family come from Ibuuch Lineage of Omrekongel Clan and that shows their strong position within the clan. It appears that no one knows anything about Ibuuch Lineage of Omrekongel, except Sechedui. No witness from either side testified to the existence of Ibuuch Lineage of Omrekongel. Boisek, maternal uncle of Sechedui, testified that Ibuuch is not a lineage of Omrekongel Clan.

Boisek, however, testified that he and presumably Sechedui come from Omrekongel Lineage of Omrekongel Clan. No one seems to know of the existence of Omrekongel Lineage within Omrekongel Clan. The claim is not corroborated by any testimony presented and was contradicted by the testimony of Ucheriang Mechol.

Defendant Nicholas Diaz testified that his ancestors came from the lineage of first, Ulechetong, then Ngedengir and Ngeruchoi Lineages which place them in a strong position within Omrekongel Clan. Diaz stated that the people who taught him about his ancestral background are Boisek, Sechedui and Melimarang. Yet, Boisek, Sechedui and Melimarang did not mention anything about Ulechetong, Ngedengir and Ngeruchoi. Sechedui, called as a surrebuttal witness, must have sensed that her son Nicholas' testimony was standing all by itself. She attempted to rescue her son by saying that they originated from Ulechetong, Ngedengir and Ngeruchoi Lineages that preceded Ngeluul Lineage.

The court finds that the three lineages of Omrekongel clan are Ngeluul, Tberbor and Irbai.

[1] It is established by testimony that Eluil and Tiabed Clans are not related to Omrekongel Clan, but the members of these clans may be related. It is further established by uncontradicted testimony of Esebei Arbedul that a clan has no control over the title and property of another clan. [Assessor.]

[2] The male highest title of Eluil Clan is Rengiil ra Eluil. The male highest title of Tiabed is Rechebei ra Tiabed. The senior female title holders of Omrekongel Clan cannot appoint Rechebei ra Tiabed or Rengiil ra Eluil. Each clan decides who bears the clan's titles. Each clan controls its property.

Testimony established that Sechedui Diaz was adopted by the plaintiff's mother, Dirreou. Sechedui was just a girl at the time. There is conflicting testimony as to why Dirreou adopted Sechedui.

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Esebei Arbedul testified that when he was a boy he asked his mother who was Sechedui. Dirreou said “she is my child.” Later, he learned that the reason his mother adopted Sechedui was because Sechedui was not the child of Dirraklang’s husband, Ngiratnger. (Dirraklang is Sechedui’s mother.) Sechedui’s birth caused problems in the marriage. To reconcile that marriage, money was given by Dirreou’s husband, Secharmidar, and Ngiratnger’s father, Ertong, received it. (Testimony of Esebei Arbedul.) Second, there was another child of that marriage who was afflicted with leprosy and it was thought best for Sechedui to be away.

Sechedui testified that the reason Dirreou adopted her was to give Dirreou “strength” in the Omrekongel Clan. Sechedui testified that Dirreou came to Dirraklang and § 1222 implored her to let her adopt Sechedui.

What is not in dispute is that Dirreou was a granddaughter of Sorch. Both Sorch and Dirreou became the bearer of Uodelchad. Isims and Esebei, two sons of Dirreou, became the bearer of Espangel. Their first cousin, Lalii, was Uodelchad. Melimarang was adopted by Sorch which enabled Melimarang to become Espangel. None of Sechedui’s ancestors was ever either the bearer of Espangel or Uodelchad. (See Plaintiff’s Exhibit 1, geneology chart and uncontradicted testimony.)

What is also clear to the court is that Sechedui is not claiming rank in Omrekongel Clan through her adoption by Dirreou. She is claiming to be a member of the “Ibuuch” Lineage which supposedly ranks her high up in the Omrekogel Clan.

[3] It is also clear to the court that the relationship between Dirreou and Sechedui must have gone bad. Sechedui left to Guam when she was about 20 years old, lived there for 29 years, then moved to Hawaii for 13 years. When Dirreou died, Sechedui was not there. When Isims, then Espangel and Dirreou’s natural son, died, Sechedui was not there. When Lalii, then Uodelchad and niece of Dirreou, died, Sechedui was not there. And when Dirraulechong (Dirreou’s daughter) was dying, she in entrusting properties to others gave none to Sechedui and said that Sechedui “left her mother [Dirreou] and here I am dying and she isn’t here.” [Uncontradicted testimony of Ucheliei Esebei Arbedul.] Deaths and funerals of title holders of a clan are vital functions by which one’s contributions to the clan are measured.

What is Sechedui Diaz’s lineage or clan? Sechedui herself said she is from Ibuuch Lineage of Omrekongel Clan. Boisek, her maternal uncle, said they come from Omrekongel Lineage of Omrekongel Clan. Bedal testified that Sechedui comes from Ngeluul Lineage of Omrekongel. These are all defendant Nicholas Diaz’s witnesses.

The plaintiff and his witnesses are more consistent on where Sechedui comes from. She is from Tiabed Clan. Tiabed Clan is related to Techemding Clan, but not related to Omrekongel Clan. When no one in Tiabed Clan can assume the male title of “Rechebei ra Tiabed”, they seek someone from Techemding. No such relationship exists between Tiabed and Omrekongel Clans.

Plaintiff and Isebong Uodelchad testified that Sechedui comes from Tiabed Clan.

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Ucheriang stated flatly that Sechedui is not *ourrot* of Omrekongel because she is from Tiabed through her mother. Arbedul testified that Sechedui's ancestors came to Omrekongel to "visit."

Testimony established that Sechedui's great-grandmother, Kesau, came from Peleliu and married Ngiringelals who was not only from Tiabed, but also was then "Rechebei ra Tiabed", the highest male title of that clan. (Boisek's testimony and plaintiff's Exhibit 1.) From this, nothing else was shown to establish Kesau's rank in the Omrekongel Clan. The same is true with her children, Kedei and Ibuuch. Ibuuch's children, Dirraklang, Irisong, Boisek and Omcheklang, never held any female or male title in Omrekongel Clan. There was no testimony to show exceptional contribution of Kesau and her heirs to the Omrekongel Clan.

Boisek testified that none of Sechedui's ancestors held any title in Omrekongel because they were too young. This is unlikely because if Ibuuch could have become Uodelchad, she would have after the 1223 death of Sorch. Dirreou instead, though younger than Ibuuch, became Uodelchad. Sorch died during the German occupation and Ibuuch died during the Japanese.

[4] None of Sechedui's ancestors is buried at Ngeluul's platform. This is an indicia of rank within a clan. Bedal testified that none of Sechedui's ancestors was buried in Ngeluul's platform because it was prohibited by all the foreign governments. Yet, plaintiff's ancestors are buried at Ngeluul's platform and they died during the foreign occupation of Palau. They are Sorch, Koyar and Dirreour.

ATTEMPT TO REMOVE ESPANGEL TITLE FROM ESEBEI ARBEDUL

Bedal, Santos Ikhluk, Sechedui and Nicholas Diaz testified that the first meeting was held in March of 1987. The purpose of the meeting was to discuss the clan's land that had been allegedly sold by Esebei Arbedul. Those who attended the first meeting were: Ngirongor, a/k/a Melimarang Remoket, Telael, Dibech, Meklechel, Bedal, Sechedui, Santos and Boisek. The group sent Santos to call on Esebei Arbedul to come to the meeting. Esebei Arbedul said he was busy. The same group met again shortly thereafter with Baidong as an additional attendant. Nicholas Diaz and Santos were sent again to get Esebei to come to the meeting. Esebei said he was busy and that as Espangel, those who want to see him should come to wherever he may reside, however humble his abode may be. Esebei was quoted as saying that he is the strongest member of the clan living today.

When Diaz and Santos reported the result of their meeting with Esebei to the group, the following events took place. Diaz testified that Ngirongor stated that "we take the title Espangel from Arbedul now that he has refused to come. If Arbedul did something wrong, we can forgive him because he is the oldest and he can continue to bear the title. But since he refused to come, we now take the title Espangel from Arbedul." Diaz further testified that thereupon, "Ngirongor bestowed the title Uodelchad on Sechedui and no one objected. And Sechedui and Meklechel in turn appointed me as Espangel." Diaz testified that thereafter the group went to see Esebei Arbedul to "inform him of the decisions that had been made." At Esebei's house, Diaz testified that her mother Sechedui said to Arbedul "we take the title Espangel from you and Uodelchad from Isebong. You are not the only members of the clan."

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Sechedui testified that when the group went to Esebei's house, she said that they had come to discuss the clan's property. Esebei, according to Sechedui, said that the land belonged to him personally. Sechedui then said, "now, I take the title Espangel from you." (Sechedui and Diaz's testimonies are uncontradicted.)

Defendant Diaz's Exhibit D is an undated statement declaring that the positions for Espangel and Uodelchad are vacant. Subsequent to this, Nicholas Diaz had his installation dinner and acceptance by the Council of Chiefs.

[5] The procedure for removal of a male title holder of a clan is controlled by customary law.

[6] In any clan, members have rank. "The true Ochell descendants are the strongest members of a clan followed in the order of authority by ulechell members, by adoptive members and finally, members by drifting or sometimes called through the floor some other way." *Irisong v. Iderrech*, 4 TTR 459 (1969).

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[7, 8] The most senior title female member of the clan has the authority to appoint the male title bearer of the clan. *Irisong*, 4 TTR at 467; Assessor Moses Mekoll. The principal female title holder usually consults the *ourrot* of the clan, before she appoints the male title bearer. After the appointment has been made, it is announced to the Council of Chiefs for that body's acceptance. (Assessor Mokoll.)

[9, 10] By the same token, it is the principal female title bearer who has the authority to initiate the removal of the male title holder with the approval of the senior *ourrot*. They have the authority to remove Espangel. (Assessor Mekoll.) The removal of a title from a bearer has to be on good cause. *Uodelchad v. Iechad*, Civil Case No. 172-86.

In applying the customary law on removal of a title to this case, it is undisputed that the principal female title holder is the 88 years old Isebong. It is undisputed that Uodelchad did not and has not agreed to the removal of Espangel title from Esebei.

Ucheriang Mechol, 66 years old, is the Diltbekriu of Irbai lineage. That is the highest female title of this lineage. Like Uodelchad Isebong, Diltbekriu did not and has not agreed to the removal of the title Espangel from Esebei.

Isebong and Ucheriang are the two most senior female and principal title holders of the Clan of Omrekongel and they are opposed to the removal of the title Espangel from Esebei.

Rose from Ngermengiau and Kubarii from Tberbor are the other two *ourrot* who are opposed to the removal of Arbedul as Espangel.

On the other hand, the females who went with Sechedui to inform Esebei Arbedul that he is no longer Espangel are all weak female members, if they are members at all, of the Omrekongel Clan.

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Sechedui, the court finds, is from Tiabed Clan. If Sechedui was claiming status in Omrekongel through her adoption by Dirreou, that would be different. But Sechedui claimed that Dirreou adopted her to give the latter strength in Omrekongel. This claim is at odds with the overwhelming evidence to the contrary. As a member of Tiabed Clan, Sechedui has no say in the affairs of Omrekongel, much less the removal of Arbedul as Espangel.

Another female who accompanied Sechedui that evening was Dibeche. Dibeche was just a bystander. She has nothing to do with Omrekongel Clan.

Baidong was another companion of Sechedui that evening. She is a member of the clan. Her status is “Rual” or “blingelel” a Espangel. That means a former Espangel “picked” her up from Tobi atoll.

Another companion of Sechedui is Telael. Diltbekriu testified that Telael has no standing with the Omrekongel Clan. (Uncontradicted testimony.)

And finally, Meklechel is a member of the clan through her father. As such she is *ulechell* member.

The males who accompanied Sechedui were several. Their token spokesman appears to have been Melimarang Remoket. Melimarang was Espangel before Esebei. Melimarang became Espangel because he was adopted by Sorch, Esebei’s great grandmother. Sorch’s husband was Remoket and that accounts for Melimarang’s surname.

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It is the decision of this court that the title Espangel has not been removed from Esebei Arbedul Espangel. He has been and still is the bearer of Espangel title.

The senior female and principal title holders (leading *ourrot*) did not agree to the removal of the title. Second, those who attempted to remove the title from Esebei are either those without status in Omrekongel or weak members of the clan.

Having so decided, it is not necessary for this court to decide whether Nicholas Diaz was properly installed as Espangel. This issue is moot. As an *orbiter dictum*, however, the court notes that defendant Diaz may do well to research his ancestral history before he seeks the highest title of the Omrekongel Clan. This is not to say that unless you come from the background like Esebei’s, you cannot be Espangel. But when you do not, much more is required of you.

In his counterclaim, defendant Diaz asserts that he is Espangel and that Esebei Arbedul is still representing himself as Espangel and acting as such, which conduct also includes transfers of clan lands. Defendant Diaz’s second counterclaim asserts that certain individuals of Omrekongel have executed deeds to transfer certain lands to Esebei Arbedul and that such individuals have no right, title, authority or interest to alienate the clan’s land.

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What are clan's land, lineage land, and chief's land are involved questions under Palauan custom. *Adelbai v. Ngirchoteot*, 3 TTR 619; *Merar v. Ucherbuuch*, 1 TTR 359; Land Tenure Patterns at page 301; *Ngiraingas v. Isechal*, 1 ROP Intrm. 34. See, however, *Techekii v. Ngoriakl*, 2 TTR 411, where the late Ibedul Ngoriakl alienated lineage or clan's land with an opposition from a member and the court there ruled that it was proper under Palauan custom.

[11] With this court's decision on the title issue and in deference to the Palauan clan system, this court defers the issues of clan's land and its administration to the Omrekongel Clan. Administration and disposition of clan's property is "primarily a private matter . . . in which the clan is entitled to exercise a wide discretion . . ." *Lalou v. Aliang*, 1 TTR 94, 98.

KOROR STATE

The other defendant is Koror State which withheld the payment of honorarium to Esebei Arbedul when Diaz emerged claiming he was Espangel. Koror State made its position clear during a hearing for a summary judgment motion and at the beginning of the trial of this case. When it becomes clear who is the real Espangel, Koror State will make the payment of honorarium accordingly.

ASSESSOR

Moses Mekoll was appointed by this court to be the assessor for the trial of this case without objection from both counsel. At the end of the trial, the assessor and the court independently reached the same decision that the requirements of Palauan custom for removing Espangel title from Esebei were not met. The senior female and principal title holders did not decide to remove the title from Esebei and those who attempted to remove the title are either weak members or not members of the Omrekongel Clan.

CONCLUSION

Eisebei Arbedul became the bearer of Espangel in 1968. He is still the bearer of Espangel. He is indeed the oldest and the **1226** strongest living member of the Omrekongel Clan.

The attempt to remove Espangel from Esebei is ineffective. The senior female and principal title holders of the clan oppose the removal of Esebei and those for the removal are weak members, doubtful members or not members at all.