

*Estate of Rudimch v. Kayangel State Gov't*, 9 ROP 275 (Tr. Div. 2001)

**ESTATE OF ISIDORO RUDIMCH,  
represented by Mark Rudimch,  
Plaintiff,**

v.

**KAYANGEL STATE GOVERNMENT,  
Defendant.**

CIVIL ACTION NO. 00-162

Supreme Court, Trial Division  
Republic of Palau

Decided: January 31, 2002

[1] **Deeds:** Recording

Palau's recording statute, 39 PNC § 402, mandates that in order for a transfer of land ownership to be valid against a subsequent purchaser, the transfer must be recorded.

[2] **Property:** Alienating Land

One cannot convey what one does not own.

[3] **Deeds:** Recording

An instrument is not "duly recorded" unless an entry is made in the recording books.

[4] **Property:** Alienating Land; **Land Registration:** Certificate of Title

Even though public policy favors the finality of land titles to promote certainty and to preclude endless litigation, the buyer holding a certificate of title will not prevail when the seller had no interest in the land to convey to the buyer.

[5] **Deeds:** Validity

Challenges to the validity of a deed are more **1276** properly raised by parties to the deed, rather than by a non-party.

Counsel for Plaintiff: Oldiais Ngiraikelau

Counsel for Defendant: John K. Rechucher

KATHLEEN M. SALII, Associate Justice:

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This action commenced when the Estate of Isidoro Rudimch (“the Estate”), represented by Mark Rudimch, filed suit seeking a declaration that the Estate is the owner of a parcel of land located in Kayangel State, commonly known as Melos and identified as Tochi Daichio Lot No. 42, Lot No. 003 G 09, containing an area of 3,268 square meters.

After hearing the testimony at trial, examining the other evidence adduced by the parties and hearing the arguments of counsel, the Court, pursuant to Rule 52 of the Rules of Civil Procedure, makes the following findings of fact and conclusions of law.

### **Facts**

Melos is a parcel of land located in Dilong, Kayangel State. On May 12, 1988, the former Land Claims Hearing Office (“LCHO”) issued Determination of Ownership No. 01-24-88 in which it declared Gideon Ngirarikel Ediloi the fee simple owner of Melos. On September 5, 1990, a Deed of Sale (“1990 Deed”) was executed between Ediloi and Decedent Isidoro Rudimch (“Decedent”) pursuant to which the Decedent purchased Melos. The 1990 Deed was recorded with the Clerk of Courts on the same day in Book 25, page 578, and a copy of this 1990 Deed was admitted into evidence as the Estate’s Exhibit 1.

At the trial held on January 17, 2002, Decedent’s son Dean Rudimch (“Rudimch”) testified that on December 1, 1998, he was sent by his father to register the 1990 Deed with the Land Court and to request the issuance of a Certificate of Title based on this Deed. At this time the Decedent learned that a Certificate of Title for Melos had been issued on January 26, 1996, in favor of Defendant Kayangel State Government (“Kayangel State”).

Rudimch also explained at trial the usual manner in which his father purchased property. He recalled that a prospective seller would come see Decedent either at his house or at one of the stores owned by Decedent, Sure Save, where the Decedent and the prospective seller would discuss the terms of the sale of property. Once the parties agreed on the terms and the document of conveyance was signed, that document would be taken to the Clerk of Courts to be recorded, then brought back to Decedent either at his house or at the store. Once the duly-recorded document was brought to Decedent and the grantor, the purchase price would be paid. Yet, although Rudimch testified that this was the general procedure, Rudimch conceded that he was not, in fact, the person who brought the 1990 Deed to the Clerk of Courts to record the transfer. He also admitted that, to date, no evidence of payment of the purchase price has been located.

Evence Beches testified that he knew both Ediloi, a relative of his, and Decedent, a former colleague of his at the Olbiil Era Kelulau and his former employer. Beches explained that on September 5, 1990, Ediloi came to his house with a document he described as the original of Plaintiff’s Exhibit 2. Exhibit 2 is the same document as Exhibit 1, *i.e.*, the 1990 Deed, except that, in addition to the signatures of Ediloi and Decedent, it includes Beches’ signature as a witness as **¶277** well as a December 1, 1998 stamp of the Registrar of the Land Court. Beches vividly recalled the circumstances under which he learned of the 1990 Deed. He testified that, at one time, Melos was the property of his and Ediloi’s family but then the family agreed that it

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would belong to Ediloï individually. He was disappointed to learn that Ediloï had sold Melos to Decedent because it would be more difficult in the future for the family to recover the land from a third party. He further testified that in 1990, he accompanied Ediloï to Sure Save, where Decedent was waiting. At the request of Decedent, he signed the 1990 Deed as a witness to the transaction. In addition, Beches remembered that in 1995 or 1996, while he was the Delegate for Kayangel State, he became aware of Kayangel State's intent to purchase Melos from Ediloï, and that he urged Kayangel State's Governor, Harris Kambalang, to check the title to the property because he was under the impression that Melos had been sold to Decedent. Nonetheless, during cross-examination, Beches conceded that he did not witness the Decedent pay \$20,000 consideration for the purchase of Melos as recited in the 1990 Deed.

Governor Kambalang also testified at trial. Governor Kambalang recalled that at some point in 1995 or 1996, Ediloï approached Kayangel State looking to sell Melos. According to the Governor, Kayangel State purchased the property and commenced construction of a basketball court and a power plant. To his recollection, neither he nor anyone representing Kayangel State conducted a title search or made any effort to verify ownership of the property before purchasing it. Instead, Governor Kambalang conceded that Kayangel State simply relied on Ediloï's representations that he owned the property and had authority to convey it. The Governor did not remember speaking to Beches about the property nor did he recall Beches telling him to verify whether Melos had already been sold to Decedent.

On January 19, 1996, Ediloï signed a deed of sale ("1996 Deed"), purporting to convey Melos to Kayangel State. The 1996 Deed was filed at the Clerk of Courts and registered with the LCHO on the same date. Based on this 1996 Deed, the LCHO issued a Certificate of Title for Melos on January 26, 1996.

### **Discussion**

[1] This matter is before the Court because the Certificate of Title for Melos was issued in the name of Kayangel State, the subsequent purchaser of the property, rather than Decedent. Palau's recording statute, 39 PNC § 402 mandates that in order for a transfer of land ownership to be valid against a subsequent purchaser, the transfer must be recorded. Here, Kayangel State purportedly obtained title to Melos from Ediloï in 1996, six years after Decedent purchased the property from Ediloï and recorded the transaction. However, as discussed below, because the Court finds that Decedent purchased Melos from Ediloï and duly recorded his deed in 1990, the subsequent conveyance of Melos by Ediloï in 1996 was null and void.

Decedent's 1990 Deed recites that Ediloï received from Decedent \$20,000.00 consideration for the purchase of Melos and bears a notation from the Clerk of Courts indicating that the Deed was recorded in Book 25, page 578. The 1990 Deed also contains a December 1, 1998 stamp-file from the Registrar of the Land Court. On the other hand, Kayangel State's 1996 Deed recites that the consideration for the transfer of the land to Kayangel State Government was "concern **L278** toward to the State of Kayangel . . . ." The 1996 Deed additionally bears a notation from the Clerk of Courts indicating that it was duly filed with the Clerk of Courts on January 19, 1996 and registered with the LCHO on the same date. The 1996 Deed does not,

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however, indicate a book or page number in which the deed was recorded.

[2] First, one cannot convey what one does not own. See *Aguon v. Aguon*, 5 ROP Intrm. 122, 126 (1995). The evidence presented shows that Ediloï sold Melos to Decedent in 1990. Therefore, Defendant could not have acquired any interest in Melos through the 1996 Deed, as the Court finds that any interest Ediloï had in the property was conveyed to Decedent in 1990.

[3] Second, the Appellate Division has previously held that “an instrument is not ‘duly recorded’ unless an entry is made in the recording books.” *Estate of Olkeriil v. Ulechong*, 4 ROP Intrm. 43, 47 (1993). In this case, the 1996 Deed does not indicate that the transfer to Kayangel State was recorded in the recording books – the notation on the deed simply states that it was filed with the Clerk of Courts. The Court has reviewed the recording book for entries dated January 19, 1996, and has not found an entry for the 1996 Deed. On the other hand, a review of Book 25, page 578 of the recording books shows an entry for the 1990 Deed. Accordingly, the 1996 Deed was not duly recorded as required by the recording statute.

Moreover, Kayangel State’s witness, Governor Kambalang, conceded that when Ediloï offered to sell the property to the State, no efforts were made by representatives of the State to verify Ediloï’s ownership of Melos. Because the 1990 Deed was duly recorded in the Recording Book at the Clerk of Courts on the date of that transaction, even a cursory title search would have disclosed the recordation of the 1990 Deed, thus putting Kayangel State on notice of the conveyance to Decedent.

[4] In deciding in favor of the Estate, the Court also rejects Kayangel State’s various arguments. Kayangel State primarily argues that because the State holds the Certificate of Title for Melos, and because the Appellate Division has previously held that public policy favors the finality of land titles “to promote certainty and to preclude endless litigation,” *Ngirasibong v. Adelbai*, 4 ROP Intrm. 95, 100 (1993), the certificate of title here in favor of Kayangel State should be considered conclusive evidence of ownership. Although that is the general rule, the Court finds that the facts as presented in this case preclude the rule’s application here. The Estate has established by a preponderance of the evidence that it purchased Melos from Ediloï by way of a 1990 Deed which was duly recorded with the Clerk of Courts on the same date. Because there is no dispute that Ediloï had the authority to convey Melos, and because Decedent duly recorded his deed as required by Palau’s recording statute, a Certificate of Title should not have been issued to Kayangel State in the first place.

[5] The Court similarly rejects Kayangel State’s next contention, that the Estate has failed to produce evidence of the payment price of \$20,000 set forth in the deed as consideration for Melos. The Court agrees with the Estate, however, that any challenges to the validity of the 1990 Deed are more properly raised by the parties to the deed, Ediloï and Decedent, and not by Kayangel State, a non-party to the 1990 Deed.

Finally, Defendant contends that the circumstances surrounding the 1990 Deed are remarkably different from the circumstances L279 surrounding the execution of the March 21, 1996 Deed under which Ediloï conveyed two additional tracts of land in Kayangel State to

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Decedent. A copy of the March 21, 1996 Warranty Deed pursuant to which Ediloï conveyed two properties in Dims, Kayangel State, to Decedent, was submitted as Plaintiff's Exhibit V. A similar copy was attached to Defendant's Exhibit K-D. Kayangel State contends that when Decedent purchased property from Ediloï in 1996, the document of conveyance was duly recorded with the Clerk of Courts and registered with the Land Court on the same date, in contrast to the registration of the 1990 deed with the LCHO eight years after it was recorded with the Clerk of Courts. This, according to Kayangel State, supports Kayangel State's argument that Decedent was aware that there was some problem with the 1990 Deed, which was not registered until eight years after the transaction took place. As discussed above, however, those arguments are ones more properly raised by parties to the deed rather than by a non-party and do not avail Kayangel State here.

### **Conclusion**

For the reasons stated above, judgment will be issued in favor of the Estate and against Kayangel State, declaring that the Estate is the owner in fee of the property known as Melos and identified as Tochi Daichio Lot No. 42, Cadastral Lot No. 003 G 09 on Cadastral Plat No. 003 G 00, containing 3,268 square meters. Judgment will also issue in favor of the Estate and against Kayangel State, declaring that the January 26, 1996 Certificate of Title issued in favor of Kayangel State is void, and instructing the Land Court to issue a new Certificate of Title for Melos in favor of the Estate.