

**IYAR NGIRATULMAU, Plaintiff**

**v.**

**NGIRATKAKL MEREI and KUKUMAI RUDIMECH,  
Defendants**

**Civil Action No. 495**

**Trial Division of the High Court**

**Palau District**

**October 7, 1974**

Dispute over ownership of Palauan money. The Trial Division of the High Court, Hefner, Associate Justice, held defendant's evidence more convincing than plaintiff's.

**1. Appeal and Error—De Novo Review**

The Trial Division of the High Court will not try a case over again unless it is satisfied that no other just solution of the matter is practicable.

**2. Appeal and Error—Generally**

In appeals from the District Court to the Trial Division of the High Court, the latter may review facts as well as the law, but it will make every reasonable presumption in favor of the trial court.

**3. Appeal and Error—Evidence—Weight**

Trial Division of the High Court would conclude defendant was the owner of Paluan money where the testimony for his side was more consistent and clear than that for plaintiff.

<i>Assessor:</i>	SINGICHI IKESAKES
<i>Interpreter:</i>	PETER NGIRAIBIOCHEL
<i>Reporter:</i>	SAM K. SASLAW
<i>Counsel for Plaintiff:</i>	OBODEI IYAR
<i>Counsel for Defendants:</i>	MEREI NGIRAURAKL

HEFNER, *Associate Justice*

This is an appeal by the plaintiff of the judgment in the District Court which found that Palauan money in dispute, known as *Eterenged*, was owned by maternal side of Merei Ngiraurakl's family.

The transcript in this case is quite voluminous and much of the testimony related to the history of the money. When all of the testimony and argument are condensed, the positions of the parties can be summarized as follows:

1. Plaintiff claims the money from his uncle Ngirachitei Irachel by way of trade of other Palauan money (See transcript pages 4, 8 and 16) and that the money is owned by the paternal side of the family, not the maternal line.

2. Defendant Merei claims that the money was given to him by Ngirachitei Irachel, his father. (See transcript pages 36, 37, 44, 46, 51 and 60.)

3. Defendant Kukumai presently has possession of the money due to a loan she made in 1960 to defendant Merei and the latter gave her the money as security for the loan.

Without tracing all of the prior history, it is apparent from the transcript and indeed admitted by both the plaintiff and defendant at the argument of the case, that the money in question was owned by Ngirachitei Irachel. This negates clan or lineage ownership and therefore Ngirachitel Irachel owned it individually. The question is, who acquired the money from him as under Palauan custom, the individual who owns Palauan money can dispose of it as he or she sees fit.

[1] Appeals from the District Court to the Trial Division of the High Court shall be considered on the basis of the record in the District Court and the argument at the hearing. The Trial Division of the High Court shall not try a case over again on appeal unless it is satisfied that no other just solution of the matter is practicable. Rules of Criminal Procedure, 31e (made applicable to civil cases by Rule 23, Rules of Civil Procedure).

[2] In appeals from the District Court to the Trial Division of the High Court, the latter may review facts as well as the law but it will make every reasonable presumption in favor of the trial court. *Soilo v. Trust Territory*, 2 T.T.R. 368. Since the District Court Judge observes the witnesses, he is in a better position to pass on the credibility of the witnesses. However, this Court has also read the transcript of the evidence to assure a full hearing by both parties.

Up to a point, all parties concur in the findings of fact of the District Court but it is the disposition of the money from Ngirachitei Irachel which has resulted in the conflicting testimony.

One significant factor relied upon by the District Court and this Court is the fact that the money has been in possession of defendant Merei for some time. Prior to the mortgage of the money to Kukumai in 1960, defendant states he had it for at least thirty years. Therefore, for a period of at least forty-four years the defendant has claimed control of the money. There have been long lapses of time when the plaintiff failed to object or make his claim known. In 1967 there were some meetings held with the Rubaks of Airai at which the defendant allegedly told the Rubaks that he would redeem the money from Kukumai and return for another meeting to resolve the conflict between him and the plaintiff. This has not been done and

this Court does not attribute much significance to these meetings nor does it assist in resolving this dispute.

During argument, the plaintiff argued that the money was now on the paternal side as the plaintiff paid *Chelebe-chiil* when he was not under an obligation to do so and Obkal (mother of Ngiraiwetechong who owned the money at one time) returned the Palauan money to the paternal side. The problem with this theory is that according to Palauan custom, to transfer Palauan money from the maternal line to paternal line, there must be at least equal value for the money. There is no showing that such an equal trade took place here and as a matter of fact the money in question, *Eterenged*, was more valuable than any of the other Palauan money mentioned as trade money.

[3] The testimony of the defendant and his witnesses are more consistent and clearer than that of the plaintiff and his witnesses. The District Court chose to believe that defendant acquired the money from Ngirachitei Irachel and there is more than sufficient evidence to support that finding. This Court concludes that this decision was the correct decision and affirms the District Court's Judgment with two modifications.

Since Ngirachitei Irachel owned the Palauan money, he had the right to dispose of it as he saw fit. Since it is concluded that defendant Merei now owns the money, it should be outright and with no reference to the maternal side as this could be interpreted as to some limitation on his right to deal with the money.

Secondly, the District Court attempted to spell out the rights between defendant Merei and Kukumai as far as interest is concerned. Though the Court's concern is a genuine one, it is not properly an issue to be decided. If Merei and Kukumai have a dispute as to the redemption of the money, a separate suit should be brought to resolve it.

It is therefore the Judgment of this Court that the District Court Judgment be affirmed so far as it has determined that ownership of the Palauan money known as *Eterenged* is owned by defendant Merei without limitation and that this Court makes no determination of the redemption rights of Kukumai and Merei.

Court costs shall be allowed defendants.