**IN THE**
**SUPREME COURT OF THE REPUBLIC OF PALAU**
**APPELLATE DIVISION**

FILED

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| VERONICA OMELAU,<br><br>Appellant,<br><br>v.<br><br>RISONG SAITO,<br><br>Appellee. | CIVIL APPEAL NO. 11-040<br>Civil Action No. 11-059<br><br>**OPINION** |

Decided: September 18, 2012

Counsel for Appellant: Moses Uludong
Counsel for Appellee: Salvador Remoket

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; and KATHERINE A. MARAMAN, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

Veronica Kotaro Omelau appeals the Trial Division's decision allowing Appellee Risong Saito to dispose of three parcels of land in Ngeschar State, which are part of the estate of Omelau's husband. Because the Trial Division did not clearly err in its fact-finding concerning custom, we affirm.

## I. BACKGROUND

Edison Omelau ("Edison"), Omelau's husband, died intestate on March 21, 2009. Edison inherited the disputed parcels of land from his father. He did not purchase them for value. Edison was survived by his wife and three children. Saito is Edison's adoptive paternal aunt.

Saito claimed the three parcels of Edison's property, and the trial court held a hearing on the matter. According to the expert testimony of Wataru Elbelau, because Edison inherited the land from his father, his father's relatives should be permitted to dispose of the land. The Trial Division credited Elbelau's testimony and awarded the land to Saito.

## II. STANDARD OF REVIEW

Customary matters are factual in nature. We will not set aside the Trial Division's findings unless we are "left with a definite and firm conviction that an error has been made." *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000). We will affirm the Trial Division as long as the "findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion." *Id.* We review conclusions of law de novo. *Wong v. Obichang*, 16 ROP 209, 212 (2009).

## III. ANALYSIS

Omelau levels two arguments on appeal. First, she contends that the Trial Division "erred in its finding that decedent died without issue." When an owner of land held in fee simple dies without issue or a will, or the land owned was not purchased for value, "the land in question shall be disposed of in accordance with the desires of the

immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death."[1] 25 PNC § 301(b). Section 301(b), although it uses the word "or," has been interpreted to apply only when someone dies without issue or a will *and* the land owned was not purchased for value. *Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33, 36 (2008). If these criteria are met and the appropriate lineage comes forward, § 301(b) applies, and the land goes to the lineage. *See Koror State Pub. Lands Auth. v. Ngirmang*, 15 ROP 29, 33 (2006) (holding that a lineage meeting the statutory requirements must exist and come forward). If a person dies with issue and was a bona fide purchaser for value, then 25 PNC § 301(a) applies, and the land goes to the decedent's eldest child in the absence of a will stating otherwise. Otherwise, if neither § 301(a) nor (b) is applicable, a court will award property based on custom. *See Ngirmang*, 14 ROP at 33.

Appellant seems to be under the impression that the Trial Division concluded that Edison died "without issue" and thereafter applied § 301(b). This is simply a misreading of the court's decision. The court not only acknowledged that Edison was survived by three children; it also stated that he "did not die without issue." Because neither § 301(a) nor (b) applied, the Trial Division properly concluded that the land should be disposed of on the basis of custom.

Omelau's second argument is that "the court erred in finding that [Saito] is the closes[t] relative" of Edison. Again, this contention appears to miss the Trial Division's point. The court never made a finding that Saito was more closely related to Edison than

[1] We apply the statute that was in force at the time of Edison's death.

his wife and three children. Instead, the court stated that Saito was "the closest surviving relative of Decedent *and his father*." (Emphasis added). Because Edison inherited the land from his father, the court determined, based the testimony of Elbelau, that Saito had authority, as Edison's paternal aunt, to determine how the lands should be distributed. Absent some citation to the record explaining how the court's conclusion lacks any support, Appellant's second argument fails. *See Kerradel*, 8 ROP Intrm. at 105.

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## IV. CONCLUSION

For the foregoing reasons, we **AFFIRM.**

So ORDERED this 18th day of September, 2012.

ARTHUR NGIRAKLSONG
Chief Justice

LOURDES F. MATERNE
Associate Justice

KATHERINE A. MARAMAN
Part-Time Associate Justice