

IN THE  
SUPREME COURT OF THE REPUBLIC OF PALAU  
APPELLATE DIVISION

FILED  
2019 SEP -9 AM 12:30

**MAGDALENA IMETUKER, PAULA KUMANGAI, and  
EREONG REMELIIK,**  
*Appellants,*  
**v.**  
**KED CLAN/LINEAGE, TAKESHI ITO, DIRRUCHEI  
TEMENGIL, and UCHULARAK TKEL,**  
*Appellees.*

SUPREME COURT  
OF THE  
REPUBLIC OF PALAU

Cite as: 2019 Palau 30  
Civil Appeal No. 18-042  
Appeal from Civil Action No. 15-007

Decided: September 9, 2019

Counsel for Appellants ..... Johnson Toribiong  
Counsel for Appellees..... J. Uduch Sengebau Senior

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice  
DANIEL R. FOLEY, Associate Justice  
ALEXANDRO C. CASTRO, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice,  
presiding.

**OPINION<sup>1</sup>**

PER CURIAM:

[¶1] This appeal arises out of the Trial Division’s decision and judgment in favor of Appellees Ked Clan/Lineage, Takeshi Ito, Dirrucheï Temengil, and Uchularak Tkel. Appellants Magdalena Imetuker, Paula Kumangai, and Ereong Remeliik seek reversal of the finding that they do not have authority over the property known as Bangkur, as well as factual findings that there is no Arbedul ra Bangkur title under Ked Clan and that Bangkur is the residential and burial site for descendents of Toluk and Iketebeluu.

<sup>1</sup> Although Appellant requests oral argument, we resolve this matter on the briefs pursuant to ROP. R. App. P. 34(a).

[¶2] For the following reasons, we **VACATE** the Trial Division's judgment and **REMAND** for further proceedings consistent with this opinion.

### **FACTS AND PROCEDURAL BACKGROUND**

[¶3] The land known as Bangkur consists of 1,668 square meters and is located in Ngerutoi Village in Ngardmau State. A 1994 Determination of Ownership and a 1997 Certificate of Title for Bangkur were issued to Ked Clan, of which the Trial Division took judicial notice.

[¶4] In November 2014, Kuiroy Arurang, Appellants' brother, was buried on Bangkur. In January 2016, Lorenzo Temol, Appellants' nephew, was buried on the property, as well. Both burials took place without the consent of Appellees, who claimed to have authority over the property.

[¶5] Appellees assert that the land was acquired by a member of the lineage of Toluk and Iketebeluu, of which they are strong senior members, and has always been used or lived on by lineage members. They argue that Appellants are not members of the lineage, have never lived on the land, and do not have any authority over its use or disposition.

[¶6] On January 30, 2015, Appellees filed the lower court action and sought a temporary and preliminary injunction to stop the burial of Lorenzo Temol and for the removal of Kuiroy Arurang. On February 4, 2015, the Trial Division ordered the burial of Lorenzo Temol to take place and Kuiroy Arurang to remain buried until a decision was reached by the court.

[¶7] Trial took place in April 2018, after which the Trial Division found that the parties are closely related and are all (apart from Defendant John K. Rechucher, who is not party to this appeal) *ochell* members of Ked Clan. All parties to the appeal (except Appellee Uchularak Tkel) can trace their line of ancestry to a common female ancestor, Ngebad, who was an original member of Ked Clan. Appellee Dirruchei Temengil was found to be a senior *ourrot* of Ked Clan.

[¶8] The Trial Division concluded that Bangkur, though listed as property of Ked Clan, became Clan property through the lineage of Toluk and Iketebeluu and has always been under the authority of lineage members. The

court also found that the land is the residential and burial site for the descendents of Toluk and Iketebeluu and that individuals who are not members of the lineage must obtain permission from lineage members to be buried on the land. Because Appellants were found to be members of the Clan but not lineage, the Trial Division found that they have no authority over Bangkur.

### STANDARD OF REVIEW

[¶9] This Court has delineated the appellate standards of review:

A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. *Salvador v. Renguul*, 2016 Palau 14 ¶ 7. Matters of law we decide *de novo*. *Id.* at 4. We review findings of fact for clear error. *Id.* Exercises of discretion are reviewed for abuse of that discretion. *Id.*

*Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4 (internal citations omitted).

[¶10] A lower court's determinations of customary law are reviewed *de novo*. *Beouch v. Sasao*, 20 ROP 41, 50 (2013).<sup>2</sup> The Trial Division's finding that "different lineages within a clan have a say over their own properties or properties brought in by members of that lineage" will be reviewed under this standard.

[¶11] The Trial Division's findings of fact concerning the male chief title holder will be reviewed for clear error. When reviewing findings of fact under the clear error standard, we view the record in the light most favorable to the Trial Division's judgment, and the factual determinations of the lower court "will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this court is left with a definite and firm conviction that a mistake has been made." *Rengulbai v. Baules*, 2017 Palau 25 ¶ 5 (internal citations omitted). "The weighing and evaluating of testimony is precisely the job of the trial

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<sup>2</sup> We held that *Beouch* should be applied prospectively. As this case was filed in 2015, after our decision in *Beouch*, we look to that case for the appropriate standard of review.

judge, who is best situated to make such credibility determinations.” *Ngermengiau Lineage v. Estate of Isaol*, 20 ROP 68, 71 (2013). “A party seeking to set aside a credibility determination must establish extraordinary circumstances for doing so.” *Smengesong Lineage v. Rechebei*, 2017 Palau 30 ¶ 5 (citing *Eklbai Clan v. Koror State Pub. Lands Auth.*, 22 ROP 139, 141 (2015)).

## ANALYSIS

### I. Authority over Bangkur

[¶12] A *de novo* review of the Trial Division’s findings on this issue requires a determination of the existing custom based on case law.

[¶13] It is a long-settled doctrine of traditional law that clan land is under the authority of the clan and transfers or disposition of land must be approved by the strong senior members of the clan. *See, e.g., Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 47 (2006) (“[I]t is ‘widely known’ that Palauan custom requires the consent of all senior strong members of a lineage to alienate lineage land.”); *Ramarui v. Eteet Clan*, 13 ROP 7, 9 (2005) (judicial notice taken of the principle that the “consent of all senior strong members is necessary for a conveyance of clan land”); *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 44 n.8 (1998) (indicating that case law establishing the custom goes back to the Trust Territory, quoting *Gibbons v. Bismark*, 1 TTR 372 (1958)); *Ngiraloi v. Faustino*, 6 ROP Intrm. 259, 260 (1997) (“According to Palauan land tenure law, lineage land may not be sold without the consent of the senior strong members of the lineage.”); *Ngiradilubch v. Nabeyama*, 3 ROP Intrm. 101, 105 (1992) (noting the custom that if a chief who holds title to land loses his title as chief, the land reverts to clan or lineage ownership and the strong senior members of the clan or lineage must give their consent to alienate the land).

[¶14] Various witnesses testified at trial that the land known as Bangkur was acquired by a member of the lineage of Toluk and Iketebelee. The land came before the Land Claims Hearing Office in 1994, which issued a Determination of Ownership to “Ked Clan/Arbedul (Chief) of Bangkur” in fee simple. An identical Certificate of Title was issued in 1997.

[¶15] The Trial Division acknowledged that Bangkur is listed as property of Ked Clan, based on the Determination of Ownership and Certificate of Title. It concluded, however, that Bangkur “became Clan property through a lineage” and that, based on the testimony of expert witness Floriano Felix, “the different lineages within a clan have a say over their own properties or properties brought in by members of that lineage.” Decision 8. Expert testimony was also given that if property is personally owned by an individual, “it is for his children,” and not for the children of his relatives. Tr. 551:8–9. Bangkur, however, is not personal property. It was adjudicated and determined to be owned by Ked Clan.

[¶16] *Beouch* holds that four elements must be found in order for a custom to be considered traditional law: “(1) the custom is engaged voluntarily; (2) the custom is practiced uniformly; (3) the custom is followed as law; and (4) the custom has been practiced for a sufficient period of time to be deemed binding.” *Beouch*, 20 ROP at 48. The prevailing customary law is that the strong members of a clan have authority and control over clan lands. No case law exists excepting this custom. The Trial Division asserted an exception when it held that if a lineage obtained land, which then becomes clan-owned land, members of that lineage have control over the land to the exclusion of other clan members. By interpreting the expert witness’s testimony to mean that clan land that was brought in by a lineage member is under the control and authority of that lineage, the Trial Division erred in its application of customary law. It instead inserted an exception that does not meet *Beouch*’s four requirements and supplanted the established custom. Because Bangkur is owned by Ked Clan, it is under the authority and control of the proper Clan members.<sup>3</sup>

[¶17] We VACATE the Trial Division’s holding on the issue of control of Bangkur and REMAND for further findings of which members have authority over decisions regarding Clan land.

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<sup>3</sup> Both Appellants and Appellees were found to be strong members of the Clan by the Trial Division. This issue is not in dispute on appeal. The Trial Division found that Appellants, though not senior *ourrot* members of the Clan, “have some authority over clan matters such as the appointment of the chiefs of the Clan or the disposition of some Clan lands.” Decision 7–8.

## II. Title of Ked Clan

[¶18] The Trial Division found as a matter of fact that the chief title of Ked Clan is Arbedul ra Ked. It held that the title Arbedul ra Bangkur does not exist.

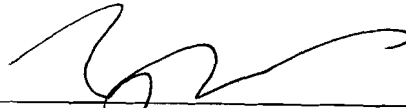
[¶19] Several witness, including members of the Clan who had lived on or near Clan land for many years, testified that they were never aware of a title called “Arbedul ra Bangkur.” The Trial Division appears to have found this testimony to be credible. The Certificate of Title, however, lists the trustee of the land as “Arbedul ra Bangkur.” The Trial Division’s Decision and Judgment offer no explanation of its finding to the contrary.

[¶20] Because judgments, including Certificates of Title, are unimpeachable and “must be declared in light of the literal meaning of the language used,” the owner and trustee listed on the Certificate of Title of Bangkur must be presumed correct, unless found to be ambiguous. *See Mikel v. Saito*, 20 ROP 95, 100 (2013) (“The unambiguous terms of a judgment, like the terms in a written contract, are to be given their usual and ordinary meaning. The determinative factor in interpreting a judgment is the intention of the court, as gathered, not from an isolated part thereof but from all parts of the judgment itself.”), citing 46 Am. Jur. 2d Judgments § 74. The Trial Division, in finding that the Certificate of Title incorrectly identifies the chief title of Ked Clan, must show why it is not clear error that an unambiguous term in a prior judgment was not fully credited. We REMAND for clarification on this issue.

## CONCLUSION

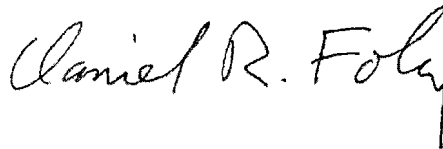
[¶21] For the foregoing reasons, we **VACATE** and **REMAND** to the Trial Division for further proceedings consistent with this opinion.

**SO ORDERED**, this 9th day of September 2019.



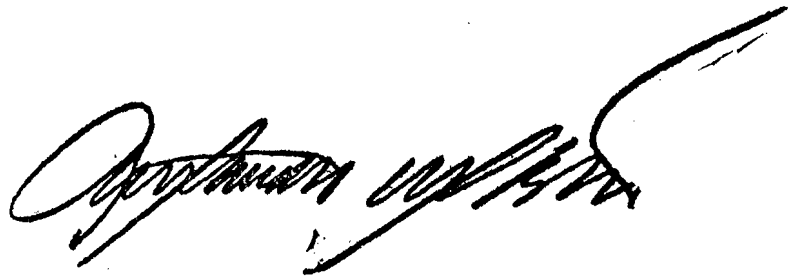
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ARTHUR NGIRAKLSONG  
Chief Justice



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DANIEL R. FOLEY  
Associate Justice



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ALEXANDRO C. CASTRO  
Associate Justice