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IN THE  
SUPREME COURT OF THE REPUBLIC OF PALAU  
APPELLATE DIVISION

FILED 19

2019 FEB 13 AM 11: 07

SUPREME COURT  
OF THE  
REPUBLIC OF PALAU

NGERUNGOR CLAN, Represented by  
DOUGLAS MARKUB,  
*Appellant,*  
v.  
MARGARETTE RENGUUL,  
*Appellee.*

Cite as: 2019 Palau 4  
Civil Appeal No. 18-005  
Appeal from Civil Action No. 16-056

Decided: February <sup>h</sup> 13 2019<sup>1</sup>

Counsel for Appellant..... Vameline Singeo  
Counsel for Appellee ..... Pro Se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice  
JOHN K. RECHUCHER, Associate Justice  
R. BARRIE MICHELSEN, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] This appeal arises from the Trial Division’s judgment in favor of Margarete Renguul, Appellee, determining that she is an *ochell* member of Ngerungor Clan and finding that Douglas Markub does not hold the title *bedul*. There is, it appears, an underlying dispute concerning clan titles and authority over clan land between two competing factions of Ngerungor Clan.

<sup>1</sup> The parties did not request oral argument in this appeal.

[¶ 2] The Court now **AFFIRMS** in part and **REMANDS** in part the Trial Division's decision and judgment.

### **BACKGROUND**

[¶ 3] Appellant<sup>2</sup> and Appellee both claim to be strong members of Ngerungor Clan. Appellant contends that Appellee is not a member of the clan at all. He claims that Ucheliei, through whom Appellee traces her ancestry into Ngerungor Clan, was both "adopted into Dilubech Clan" and "born into Dilubech Clan." Opening Br. 7–8. He claims that Ucheliei's mother was Mengidab and she was brought to Ngerungor from Melekeok by Rekomel, Appellant's ancestor, to care for his aunt. *Id.* at 8. Appellant further states that, when Mengidab was pregnant, Mesial, a woman from Dilubech Clan, took Mengidab to Dilubech where Mengidab gave birth to Ucheliei and passed away, leaving Ucheliei to be raised by Mesial. *Id.* He then concludes that Ucheliei is a terruoal member of Dilubech Clan with her descendants bearing titles in and performing services for Dilubech Clan.

[¶ 4] Appellant also asserts that Kalista Yamanguchi, who he claims holds the highest female title of Ngerungor Clan, *dirrucheliou*, appointed him *bedul*.

[¶ 5] Appellant further contends that Appellee's ancestor Remasech served as trustee for Ngerungor lands while Appellant's ancestor Rekomel was away in Melekeok and that Rekomel asked Remasech to take care of the land until Rekomel's children returned.

[¶ 6] Appellee, on the other hand, does not claim to be a member of Dilubech Clan, and asserts that Ucheliei is an original member of Ngerungor Clan. Ucheliei bore Ngellomes and Remasech, and Ngellomes bore Edangel, Appellant's mother. She claims that Remasech, Ucheliei's son, was in charge of Ngerungor clan lands, not as trustee for Rekomel's ancestors, but as a member of Ngerungor Clan himself.

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<sup>2</sup> Douglas Markub filed this lawsuit as representative of Ngerungor Clan. Because the challenge on appeal relates to him personally, from this point on, we refer to him as "Appellant" rather than referring to Ngerungor Clan as "Appellant."

[¶ 7] Appellant filed a trespass complaint against Appellee for burying her sister, Mariei Renguul, on the *odesongel*, a burial platform on land belonging to Ngerungor Clan. He seeks damages and the exhumation of Mariei's remains, arguing that Appellee did not have authority to bury Mariei there because he, as *bedul* with authority over clan lands, did not grant her authority to bury Mariei.

[¶ 8] The Trial Division determined that Appellant and Appellee are both members of Ngerungor Clan. It further determined that Appellant is an *ulechell* member and Appellee is an *ourrot ochell* member. Based on those factual findings, it concluded that Appellant failed to prove that he bears the *bedul* title because he was not appointed to the position by all of the *ourrot* members of Ngerungor Clan because Appellee did not approve his appointment. As such, the Trial Division determined that Appellant's claim failed because he was not *bedul* and thus, did not have authority to determine who could use clan lands.

[¶ 9] Appellant now appeals the Trial Division's decision.

#### STANDARD OF REVIEW

[¶ 10] This Court has previously and succinctly explained the appellate review standards as follows:

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. Matters of law we decide *de novo*. We review findings of fact for clear error. Exercises of discretion are reviewed for abuse of that discretion.

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

[¶ 11] The Court reviews *de novo* the Trial Division's finding that appointment to *bedul* of Ngerungor Clan requires approval of all *ourrot* members of the clan. See *Beouch v. Sasao*, 20 ROP 41, 50 (2013) ("Court will review a lower court's determination as to what the customary law in Palau is under a *de novo* standard").



[¶ 12] The Trial Division’s findings of fact concerning Appellee’s *ochell* status in Ngerungor Clan are reviewed for clear error. Factual determinations “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*, 217 Palau 25 ¶ 5.

## ANALYSIS

### I. Appellant’s *Bedul* Status

[¶ 13] Appellant contends that the Trial Division erred in the legal reasoning it used to determine that he is not *bedul*. He argues that the Trial Division’s conclusion that one cannot bear a title without being appointed by all of the *ourrot* members of the clan is inconsistent with existing case law. He contends that Yamanguchi, who he claims is the oldest female title bearer of Ngerungor Clan and holds the female counterpart to the chief title, *dirrucheliou*, appointed him to bear the *bedul* title. He further argues that because Yamanguchi appointed him *bedul*, “her decision must be followed in accordance with the [decision in *Edwards v. Suzuky*, 19 ROP 187 (2012)].” Opening Br. 7.

[¶ 14] The *Edwards* case involved a dispute regarding the identity of the highest male chief title in Orakiblai Clan in Angaur State. There, one person was appointed to the title directly by the strongest senior female member of the clan and another was appointed by three *ourrot* members of the Clan, including one who thought she had power of attorney to act regarding all clan matters on behalf of the strongest senior female member.

[¶ 15] The parties in that case agreed that the appointment of the chief title position was a two-step process where the *ourrot* first select and appoint a candidate and then a *klobak* must accept the candidate by holding a *blengur*, the customary feast welcoming the candidate as the *klobak*’s friend. *Edwards*, 19 ROP at 192–93.

[¶ 16] In *Edwards*, the Trial Division determined that the candidate appointed by the strongest senior female titleholder was the proper titleholder. In reaching its decision, the Trial Division reasoned that “the

‘female title bearer is the most senior member of the clan and as such her decision must be followed.’” *Id.* at 192. It further reasoned that “the oldest ‘who happens to be the title bearer is responsible for the clan and is entrusted to make the best decision for the clan,’” and that the person appointed “to act as her proxy cannot ‘go off on her own.’” *Id.* Instead, the strongest female titleholder’s decisions “are to be respected by the *ourrot*.” *Id.* This Court determined that the Trial Division’s decision was not clearly erroneous.

[¶ 17] In this case, the Trial Division determined that one of the customs established at trial by the expert customary witness, Floriano Felix, was that one cannot bear a title without being appointed by all of the *ourrot* members of the clan. Decision 5. Relying on the expert witness’s testimony, the Trial Division determined that Appellant “did not prove that he was appointed [*bedul*] by all of the *ourrot* members of Ngerungor and consequently, he does not bear the title of Bedul.” Decision 8.

[¶ 18] Appellant has not shown why the customs of Orakiblai Clan in Angaur should be applied in this case. *See also Ngirmang v. Orrukem*, 3 ROP Intrm. 91, 95 (1992) (reversing lower court’s finding that titlebearer’s appointment by less than all *ourrot* members of all lineages of the clan was proper because, in the clan at issue, the *ourrot* members of all lineages of the clan had to reach consensus for a titlebearer’s appointment to be valid). The Court, therefore, is not inclined to apply the law in *Edwards* to the facts of this case.

[¶ 19] For us to review *de novo* the Trial Division’s finding that appointment to *bedul* of Ngerungor Clan requires approval of all *ourrot* members of the clan, we would need to rely on existing case law regarding the custom of Ngerungor Clan or examine the expert customary witness’s testimony to determine whether he testified that all *ourrot* members of the clan must reach consensus in appointing a titlebearer. The Court did not find, and the parties have not presented, any case law regarding the custom of appointing titlebearers in Ngerungor Clan. Moreover, such testimony is not available in the transcript. It appears that the portion of the transcript that addressed the custom is missing. *See* Tr. 161:18. As a result, we cannot determine whether the customary law is as the Trial Division found it to be, nor can we determine whether the Appellant preserved an objection to the



expert witness's definition of the custom. Accordingly, for the sake of fairness, we must remand the case to the Trial Division for further proceedings in which the same expert witness on custom restates his unrecorded testimony, allowing the Trial Division to consider it in issuing a new decision. If any party is still not satisfied, then it may, as the rules allow, appeal the Trial Division's new decision. The Trial Division's remand shall be limited to addressing the expert witness's testimony regarding whether all *ourrot* members of the clan must reach consensus in appointing an individual to *bedul*.

## II. Appellee's *Ochell* Status

[¶ 20] Appellant also argues that the Trial Division's finding that Ucheliei is an *ochell* member of Ngerungor Clan is clearly erroneous because "she clearly has been labeled as an *ochell* member of Dilubech Clan." Opening Br. 2. Appellant directly contradicts his own statement later in his brief when he states that "Ucheliei at best is a *terruoal* member of Dilubech Clan."<sup>3</sup> *Id.* at 8.

[¶ 21] The uncontested expert customary witness stated that clan members are ranked according to strength in the clan and fall into the following categories, in descending order of strength: *ochell*, *ulechell*, adopted, drifters, and *terruoal*. Tr. 167:15–168:13. *Ochell* members can trace their lineage to the clan through a matrilineal line, while *ulechell* members trace their lineage through their fathers.

[¶ 22] Either way, it is immaterial whether Appellee is a member of Dilubech Clan at all. It is possible for individuals to be members of multiple

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<sup>3</sup> To support his argument that Appellee is an *ochell* member of Dilubech Clan, Appellant relies on *Ngiramos v. Dilubech Clan*, 6 ROP Intrrm. 264, 266–67 (1997), which affirmed the Trial Division's decision that the descendants of Mesial were stronger members of Dilubech Clan than the descendants of Ucheliei. There is no finding in that case that Appellee or members of her family tree are *ochell* members of Dilubech Clan. Therefore, that case does not support Appellant's position. Appellant attached additional documents to his Opening Brief, but none establish that Appellee or members of her family are *ochell* members of Dilubech Clan. *See, e.g.*, Ex. 9 (Trial Division document in *Ngiramos*, 6 ROP 264 that does not find that Appellee or her family members are *ochell* members of Dilubech Clan); Ex. 11 (Land Claims Hearing Office adjudication that does not discuss strength of clan membership). The Court does not consider the attached Exhibit 8, as it is not a court document that can be judicially noticed.

clans and in some rare situations, even *ochell* members of multiple clans. See, e.g., *Isechal v. Umerang Clan*, 18 ROP 136, 145 (2011) (“[T]he Palauan custom that *ochell* status is typically determined by bloodlines does not negate the possibility that a person can be an *ochell* of more than one clan, particularly where those clans are *talchad*, or blood-related.”).

[¶ 23] The Trial Division determined that Appellee traced her lineage to Ngerungor Clan through Ucheliei, her great-great grandmother. Decision 6. It also determined that Ucheliei was an original member of Ngerungor. *Id.* The Trial Division explained that, while evidence was presented that Ucheliei was adopted into Dilubech Clan, there is also evidence that shows that Ucheliei “never relinquished her ties to Ngerungor.” *Id.* The Trial Division relied on evidence that Ucheliei’s son, Remasch, administered Ngerungor Clan lands, that Appellee and her relatives live in Ngeremlengui, have had continuous possession of Ngerungor lands, including the land in dispute, and have houses on the main clan land, *omsolel a blai*. *Id.* The Trial Division also noted that Edangel, Appellee’s mother, is buried at the Ngerungor Clan burial platform.

[¶ 24] Given these facts, the Trial Division determined that Appellee’s lineage stems from Ucheliei, who it determined was an original member of Ngerungor. *Id.* at 7. As a result, it found that Appellee was an *ochell* member of Ngerungor Clan because she descends from Ngerungor through her maternal line. It also determined that Appellee is an *ourrot* member because she performed customary obligations for the Clan. *Id.*

[¶ 25] Appellant essentially seeks to have this Court review the evidence it presented to the Trial Division. Although Appellant presented evidence contradicting that presented by Appellee, the Trial Division apparently found Appellee’s witnesses more credible. The trier of fact makes credibility determinations. *Oseked v. Ngiraked*, 20 ROP 181, 184 (2013) (citation omitted). “[T]he Appellate Division must give deference to the Trial Division’s assessment of the credibility of the witnesses due to the trial court’s opportunity to hear the witnesses and observe their demeanor.” *Id.* “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)).

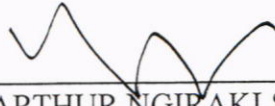
[¶ 26] As described above, the Trial Division based its decision on relevant evidence in the record from which “a reasonable trier of fact could have reached the same conclusion.” See *Rengulbai*, 2017 Palau 25 ¶ 5. As such, the Trial Division did not commit clear error in identifying Appellee as an *ourrot ochell* member of Ngerungor Clan.

#### CONCLUSION

[¶ 27] For the foregoing reasons, we **AFFIRM** the Trial Division’s decision and judgment with regard to its finding on Appellee’s *ourrot ochell* status and **REMAND** to the Trial Division the limited issue of recalling the expert witness for testimony regarding the customary law in appointing titlebearers in Ngerungor Clan.

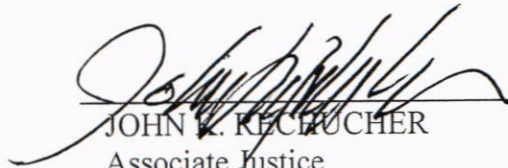


[¶ 29] SO ORDERED, this <sup>2</sup>3 day of February, 2019.



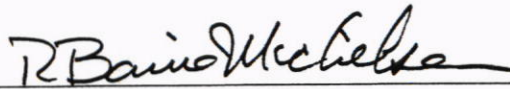
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ARTHUR NGIRAKLSONG  
Chief Justice



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JOHN K. KECKUCHER  
Associate Justice



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R. BARRIE MICHELSEN  
Associate Justice