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IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

2023 OCT 23 AM 10:30

SUPREME COURT
OF THE
REPUBLIC OF PALAU

**BRENDA NGIRMERIL, AUGUSTA RENGIL, and
EUGENE TERMETEET,**
Appellants,
v.
**TEREKIEU CLAN, rep. by BUIK TECHERUR RICHARD
RECHIREI,**
Appellee.

Cite as: 2023 Palau 21
Civil Appeal No. 23-014
Appeal from Civil Action No. 17-179

Decided: October 23, 2023

Counsel for Appellants C. Quay Polloi
Counsel for Appellee Vameline Singeo

BEFORE: JOHN K. RECHUCHER, Associate Justice, presiding
FRED M. ISAACS, Associate Justice
KEVIN BENNARDO, Associate Justice

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

OPINION¹

PER CURIAM:

[¶ 1] This appeal involves a dispute over which members of Appellee Terekieu Clan had the authority to distribute funds generated from the rent of Clan land. Appellants Brenda Ngirmeril (“Ngirmeril”), Augusta Rengil (“Rengil”) and Eugene Termeteet argue that the Trial Division’s Judgment and

¹ The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. See ROP R. App. P. 34(a).

Decision on Remand violated their due process right to notice and disregarded the appellate mandate.

[¶ 2] For the reasons set forth below, we **VACATE** and **REMAND**.

BACKGROUND

[¶ 3] This appeal involves a dispute over the rental proceeds from lands located at Iyebukel Hamlet in Koror State owned by Terekieu Clan. These lands are Cadastral Lot Nos. 123 B 07, 123 B 08, 123 B 10, 064 B 04, and 064 B 03. The following facts were already detailed in our previous appellate opinion in this same case, *Terekieu Clan v. Ngirmeriil*, 2019 Palau 37.

[¶ 4] Terekieu Clan, represented by Richard Rihart Rechirei (“Rechirei”) brought suit against Ngirmeriil and Rengiil, arguing that all the senior strong members of the Clan should have been part of the decision-making process regarding Clan funds, and that Appellants improperly used some of the funds for their personal benefit and the benefit of Elilai Clan. Appellants countered that, because Ngirmeriil holds the highest female title of Terekieu Clan, and she and her sister Rengiil are the strongest members of the Clan, they had the authority to dispose of the funds without consulting other Clan members.

[¶ 5] In Terekieu Clan, the highest female title is *Uodelchad ra Terekieu*, and this title is undisputedly held by Ngirmeriil. The highest male titleholder of the clan is known as *Tucherur re Terekieu*. The *Tucherur* was Wilhelm Rengiil, but he passed away in May of 2017, after the events at issue but before the trial court’s first decision in this case. The title *Buik Tucherur* means “the messenger of the *Tucherur*,” and its holder is the next in line to become *Tucherur*. Richard Rihart Rechirei (“Rechirei”) is reportedly the current holder of the title.

[¶ 6] On July 26, 2018, the trial court issued judgment in favor of Appellants, finding that under custom, a female title bearer along with the male title bearer has the authority over clan funds, and that therefore, Ngirmeriil had the authority to expend Clan funds as she wished. On November 11, 2019, we remanded the trial court’s decision for further proceedings. We held that under our precedent, the distribution of assets should be determined by consensus

among the senior strong members of the Clan. *Terekieu Clan*, 2019 Palau at ¶ 11. We remanded the case for further proceedings consistent with this opinion.

[¶ 7] Upon remand, the trial court first issued an order for supplemental briefing on December 1, 2021. It appears that counsel for Appellants, Mr. Polloi, was never served with the order for supplemental briefing. Accordingly, Appellants did not respond to the order.

[¶ 8] On March 24, 2022, the trial court issued a decision on remand in which it determined that Appellants' failure to file a response allowed the trial court to deem the matter confessed under ROP R. Civ. P. 7(c)(1).² Decision on remand, *Terekieu Clan v. Ngirmeriil et al.*, Civil Action No. 17-179, at 1 (Tr. Div. Mar. 24, 2022) (hereinafter "Decision on Remand"). The trial court stated that accordingly, it adopted the facts laid out in Appellee's additional briefing. The trial court also made findings based on the evidence at trial: it found that *Buik Techerur* Richard Rechirei, Siang Rengiil Yuji, Kelebil Techur Shiprit, Ngirur Umang, Brenda Rengiil Ngirmeriil, and Augusta Rengiil were senior strong members of the Terekieu Clan; and that their consent was not obtained before the distribution of the Clan assets.

[¶ 9] Upon receipt of the Decision on Remand, Appellants filed a motion to vacate, alter or amend the judgment. They argued that the Decision on Remand should be vacated because the order for supplemental briefing and the Decision on Remand had not been properly served upon Mr. Polloi. The Decision on Remand was instead served on Mr. Dengokl, who had represented Appellants at trial, but ended representation thereafter. Appellants then retained Mr. Polloi as counsel for the first appeal and the following remand. Appellants' motion also noted that the parties had been making efforts towards reconciliation and that the Decision on Remand might derail this progress.

[¶ 10] On April 1, 2022, the trial court vacated the Decision on Remand for good cause shown, and stayed further briefing pending reconciliation efforts. When mediation fell through, the trial court lifted the stay and ordered the parties to submit supplemental briefing. Appellants filed a supplemental brief

² "Failure to timely file an opposing brief or opposition authorizes the court, in its discretion, to deem the matter confessed and to enter the requested relief." ROP R. Civ. P. 7(c)(1).

on September 16, 2022, and Appellee filed a supplemental brief on October 3, 2022.

[¶ 11] On February 28, 2023, the trial court issued an Order on Remand in which it noted that it had vacated the decision to give Appellants an opportunity to file supplemental briefings and for the parties to engage in good faith mediation. Because the mediation was unsuccessful, the trial court reinstated its March 24, 2022 Decision on Remand, and stated: “Buik Techerur Richard Rechirei, Siang Rengiil Yuji, Keleblil Techur Shiprit, Ngirur Umang, Brenda Rengiil [Ngirmeriil] and Augusta Rengiil are senior strong members of Terekieu Clan.” Appellants now timely appeal this decision.

STANDARD OF REVIEW

[¶ 12] This Court has 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).

[¶ 13] We review a trial court’s conclusions regarding customary law *de novo*. *Imetuker v. Ked Clan*, 2019 Palau 30 ¶ 10. “The trial court is in the best position to hear the evidence and make credibility determinations, and status and membership in a clan are questions of fact.” *Terekieu Clan v. Ngirmeriil*, 2019 Palau 37 (quoting *Imeong v. Yobech*, 17 ROP 210, 215 (2010)). Whether a given custom has met the traditional law requirements is a mixed question of law and fact, reviewed under a *de novo* standard. *Beouch v. Sasao*, 20 ROP 41, 49-50 (2013).

[¶ 14] In addition, “[a] party claiming to be a strong senior member of a clan has the burden of proving such status by a preponderance of the evidence.” *Dokdok v. Rechelluul*, 14 ROP 116, 118 (2007).

DISCUSSION

[¶ 15] Although divided into four subheadings, Appellants raise two key arguments in support of their appeal: (1) their right to due process had been violated by reinstating the prior decision on remand, and (2) the trial court disregarded the appellate mandate by failing to address the remand instructions and failing to discuss the specific evidence at trial. We consider these arguments in turn.

I. Due Process Concerns

[¶ 16] We first turn to the issue of due process and whether the trial court abused its discretion by reinstating its prior Decision on Remand. Appellants argue that the March 24, 2022 Decision on Remand was issued in violation of their due process rights. Before our 2019 opinion, Mr. Dengokl had initially represented Appellants in front of the Trial Division. During the 2019 appeal, Mr. Polloi undertook the task of representing Appellants. On December 1, 2021, the trial court issued an order for supplemental briefing. It appears that Mr. Polloi was never served with the order for supplemental briefing.

[¶ 17] The trial court thus issued its March 24, 2022 Decision on Remand. This Decision first stated that the trial court deemed the matter confessed based on Appellants' failure to respond, and that it accordingly adopted the facts laid out in Terekieu Clan's additional briefings. The trial court noted that these findings were also based on the evidence presented at trial. The trial court specifically stated the names of several individuals which it determined to be senior strong members of Terekieu Clan, and that these individuals did not consent before the distribution of Clan assets.

[¶ 18] Appellants filed a motion requesting that the Decision on Remand be vacated because of the failed service of process. Shortly thereafter, the trial court vacated the Decision on Remand and subsequently ordered further briefing. After receiving supplemental briefs from both parties, the trial court issued a February 28, 2023 judgment in favor of Appellee Terekieu Clan for the reasons stated in the March 24, 2022 Decision on Remand.

[¶ 19] Appellants now maintain that the Decision on Remand could not be reinstated because of its due process shortfalls: the Decision relied on an

erroneous legal premise, ROP R. Civ. P. 7(c)(1), and the trial court did not address the parties' supplemental briefing.

[¶ 20] As the starting point to our analysis, we note that under ROP R. Civ. P. 81(b) (Feb. 18, 2008)³, when an attorney ceases to act for a party, such party must appoint another attorney either (1) by a written substitution of attorney; or (2) by a written designation filed and served upon the attorney ceasing to act. No such notice of substitution or written designation was filed below to notify the trial court that Mr. Polloi was now counsel of record in Mr. Dengokl's stead.

[¶ 21] Notwithstanding Appellants' failure to notify the trial court of the substitution, procedural due process requires that each claimant be granted notice and an opportunity to be heard. *Ngerketiit Lineage v. Seid*, 8 ROP Intrm. 44, 47 (1999). We have recently reiterated that "[t]he deprivation of a party's constitutional due process right to notice and an opportunity to be heard renders a court's judgment on that issue void." *Masang v. Estate of Tellei*, 2023 Palau 17 ¶ 16 (quoting *In re Idelui*, 17 ROP 300, 304 (2010)). Void judgments are legally ineffective from inception. *Id.*

[¶ 22] Therefore, while Appellants unquestionably should have filed a notice of substitution, this failure on their part does not negate the fact that they did not receive proper service and were unable to respond to the order for supplemental briefs as a result. The March 24, 2022 Decision on Remand was vitiated by these due process concerns, markedly so where the Decision deemed the matter confessed because of Appellants' failure to respond.

[¶ 23] We recognize that the Decision on Remand did not enter judgment against Appellants solely because it deemed the matter confessed under ROP R. Civ. P. 7(c)(1), but also supported its analysis by independent findings. Nevertheless, our precedent is clear that the deprivation of Appellants' due process right to notice rendered the Decision on Remand void and ineffective from inception. Accordingly, the trial court could not merely reinstate the

³ Although we cite to the Rules of Civil Procedure applicable at the time of the proceedings below, we note that this Rule was preserved in our recently amended Rules of Civil Procedure, save for some stylistic changes. *See* ROP R. Civ. P. 81(c).

Decision, even after giving the parties a fair opportunity to file additional briefs.

II. Appellate Mandate on Remand

[¶ 24] Under our recently amended Rules of Appellate Procedure, we may issue a mandate to the trial court on remand. *See* ROP R. App. P. 36. This mandate vests the trial court with jurisdiction to hear the case only to the extent conferred by the dictates of the appellate court. *See Francisco v. Ngeuch Clan*, 2022 Palau 22 ¶ 18. If a matter is remanded with specific instructions, those instructions are not subject to interpretation and must be followed exactly to ensure that the lower court's decision is in accord with the appellate court's mandate. *Tengoll v. Tbang Clan*, 11 ROP 61, 65 (2004) (citing *Litman v. Mass. Mut. Life Ins. Co.*, 825 F.2d 1506, 1511 (11th Cir. 1987)). Therefore, a lower court must strictly comply with the appellate court's mandate on remand. *See Kumangai v. Isechal*, 3 ROP Intrm. 43, 45 (1991). Crucially, an appellate court's mandate cannot be addressed piecemeal, nor should it be ignored. *Kiuluul et al., v. Elilai Clan*, 2023 Palau 11 ¶ 15.

[¶ 25] Our 2019 opinion contained several instructions to the trial court. Our paramount directive required that the trial court determine the identity of all the senior strong members of Terekieu Clan. We also noted that the record indicated some additional disputes raised by the parties that were not resolved by the trial court, such as (1) whether Rechirei had been removed from his *Buik Tucherur* title, (2) whether Clara Yuji Gates, Tina Itelbong, Williana Shiprit, Nathan Yuji, and William Shiprit are senior strong members, and (3) whether Siang Rengiil is a senior strong member.

[¶ 26] The trial court's Decision on Remand stated:

Specifically, [the trial court] finds that *Buik Tucherur* Richard Rechirei, Siang Rengiil Yuji, Kelebil Techur Shiprit, Ngirur Umang, Brenda Rengiil Ngirmeriil, and Augusta Rengiil are senior strong members of the Terekieu Clan. Further, [the trial court] finds that their consent was not obtained before the distribution of the Clan assets. As much was admitted by [Appellants] in their testimony during trial, both

[of] whom maintained that they did not seek consent as they did not think it was necessary.

[¶ 27] Therefore, the Decision on Remand only addressed *some* of our instructions. We recognize that the parties' supplemental briefing on remand did not further argue whether Clara Yuji Gates, Tina Itelbong, Williana Shiprit, Nathan Yuji, and William Shiprit are senior strong members. Nevertheless, Appellants did not otherwise waive the argument, and it should have been addressed by the trial court. In addition, our 2019 opinion clearly requested that the trial court clarify its decision regarding Rechirei's title and whether he is a senior strong member. The trial court's Decision on Remand did not do so.

[¶ 28] Where the Decision on Remand did address our instructions, it did not provide us with a sufficient basis for review. Trial courts have a duty to provide clear written records of their findings, upon which we can perform meaningful appellate review. *Whipps v. Idesmang*, 2017 Palau 24 ¶ 37. The court's analysis "need not discuss all the evidence relied on to support its conclusion, [but] the court's decision must 'reveal an understanding analysis of the evidence, a resolution of the material issues of fact that penetrate beneath the generality of ultimate conclusions, and an application of the law to those facts.'" *Eklbai Clan v. Imeong*, 13 ROP 102, 107 (2006) (quoting *Fritz v. Blailles*, 6 ROP Intrm. 152, 153 (1997)). "[W]here a lower court has not clearly set forth the basis for its decision, remand for further elaboration is appropriate." *Ochedaruchei Clan v. Thomas*, 2020 Palau 11 ¶ 34.

[¶ 29] The Decision on Remand's analysis of the Clan members' senior strong status is too cursory and insufficient to demonstrate that the decision was based on an adequate analysis of the evidence. Our 2019 opinion specifically stated that "[i]n explaining its decision, the trial court should set forth any principles of customary law relied upon and the source of those legal principles, as well as explaining its factual findings and any credibility determinations upon which its decision is based."

[¶ 30] We can point to several elements from our case law that could have supported the trial court's Decision on Remand. To prove senior strong status, one must prove that "a combination of their ancestry and present-day involvement with the Clan's affairs makes them senior strong members of the Clan." *Obichang v. Epison*, 2021 Palau 26 ¶ 17. We have further stated that

“[s]enior strong members become so through service to the clan.” *Terekieu Clan*, 2019 Palau at ¶ 14. We specifically note the trial court’s analysis in *Isechal*, which we find to be helpful guidance:

Strong senior members are typically older people who have performed services for the clan, although there may be younger strong senior members as long as they have good knowledge of things in their clan. To determine relative strengths of strong senior members, a clan considers: participation in clan affairs, knowledge of internal clan matters, services to the clan and the clan’s village, the ability to make peace within the clan, knowledge of the history of the clan, financial contributions to the clan, and whether the member is ochell or ulechell. A clan member’s ancestors—whether they had held titles, whether they were buried on the stone platform, whether they had managed clan lands—are also relevant to strength within the clan.

Isechal v. Umerang Clan, 18 ROP 136, 141 (2011).


[¶ 31] We reiterate our previous instructions. On remand, the trial court must first determine the identity of all the senior strong members of Terekieu Clan. The trial court’s analysis must be supported with detailed findings of fact on each member’s seniority and strength. Second, the trial court must determine whether Rechirei has been removed from his *Buik Tucherur* title. Third, the trial court must determine whether Clara Yuji Gates, Tina Itelbong, Williana Shiprit, Nathan Yuji, and William Shiprit are senior strong members. We echo our earlier statement that such analysis “need not discuss all the evidence,” but with sufficient detail to explain how the trial court reached its decision.

[¶ 32] The trial court is in the best position to hear the evidence and make factual findings and credibility determinations, and as an appellate tribunal, our review is undoubtedly limited. *See Imeong v. Yobech*, 17 ROP 210, 215 (2010). We find ourselves obliged to remand rather than determine unresolved factual or customary issues on appeal.

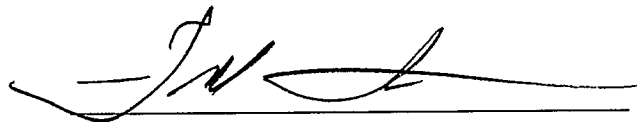
CONCLUSION

[¶ 33] We **VACATE** and **REMAND** the Trial Division's judgment.


SO ORDERED, this 23rd day of October, 2023.



JOHN K. RECHUCHER
Associate Justice, presiding



FRED M. ISAACS
Associate Justice



KEVIN BENNARDO
Associate Justice