

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

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

BESECHEL KIULUUL and ILONG UDUI,
Appellants,
v.
AUGUSTA RENGIL and NATHAN YUJI,
Appellees.

Cite as: 2024 Palau 17
Civil Appeal No. 23-036
Appeal from Civ. Action No. 13-018

Decided: June 4, 2024

Counsel for Appellant Ebil Y. Matsutaro
Counsel for Appellee Johnson Toribiong

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
JOHN K. RECHUCHER, Associate Justice
FRED M. ISAACS, Associate Justice

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

OPINION¹

PER CURIAM:

[¶ 1] This case is currently on its fourth trip up the appellate ladder. We remanded the matter to the Trial Division for the third time on March 22, 2023, and both parties now appeal the Trial Division’s latest decision. The underlying dispute concerns the rightful bearers of the Elilai Clan’s titles. In our prior remand order, we directed the Trial Division to consider four questions through which it would provide adequate reasoning for its prior findings and decision.

¹ Although Appellants and Appellees all request oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

Because the parties, who each claim the titles, presented two conflicting ancestral histories, we asked the Trial Division to determine which ancestral history was more credible.

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

BACKGROUND

[¶ 3] We briefly summarize the procedural history and factual background of this case, while relying on our prior opinions to provide a more complete overview of the background. *See Kiuluul v. Elilai Clan*, 2017 Palau 14; *Kiuluul v. Rengiil*, 2022 Palau 3; *Kiuluul et al., v. Elilai Clan*, 2023 Palau 11.

[¶ 4] On March 8, 2013, Wilhelm Rengiil and Alberta Rechirei filed a complaint asking the Trial Division to declare that they held, respectively, the male chief title *Melachelbeluu* and the female chief title *Obaklubil* of Elilai Clan of Aimeliik. Besechel Kiuluul and Ngesenges Nakamura counterclaimed, alleging that they were the proper title holders of the Clan's male and female titles. Over the next decade of litigation, Wilhelm Rengiil and Alberta Rechirei would be replaced by Augusta Rengiil and Nathan Yuji in claiming the chief titles, while Ngesenges Nakamura would be replaced by Ilong Udui in claiming the female title. The parties are closely related and trace their membership in Elilai Clan back to the same man, Melachelbeluu, who lived alone in Ngchemiangel Hamlet. The parties agree that Melachelbeluu was the head of Elilai Clan. Nonetheless, the parties have different explanations for their connection to Melachelbeluu.

[¶ 5] According to Kiuluul and Udui (hereinafter referred to as the Mausei faction), their membership in Elilai Clan is through Melachelbeluu and his wife, a woman named Mausei. Mausei had a daughter, Dirusong, whom she brought into her marriage with Melachelbeluu. When Mausei married Melachelbeluu, he had neither children nor relatives. The couple had two children together, whom they named after the Clan titles, Melachelbeluu and Obaklubil, because they were the last remaining Clan members. When Melachelbeluu (senior) died, Mausei inherited the property and titles of the clan by virtue of her marriage. The Mausei faction assert that they descend from Dirusong and Obaklubil, respectively.

[¶ 6] Rengiil and Yuji (hereinafter, “the Etor faction”) assert that Melachelbeluu (senior) married a woman named Etor at a time when there were no other Clan members alive, and that they descend from this marriage. They maintain that the Clan was *ngemed chad*², and that as descendants of Etor, they are the senior members of Elilai Clan. The Etor faction presented several conflicting family histories. During the second trial, they traced their connection to Elilai Clan through a great ancestor who first landed in Aimeliik, named the area of Ngchemiangel, and became the first Melachelbeluu. However, the Etor faction also presented a family tree which does not trace their ancestry through Etor’s marriage to Melachelbeluu.³

[¶ 7] This case was remanded three times. Upon our first remand, we clarified our case law on the justiciability of title disputes, as well as the standard applicable to such actions seeking declaratory judgment. *See Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 10-15 [hereinafter *Kiuluul I*]. On our second remand, we held that the trial court’s finding that both parties are *ulechell* was contradictory, because both ancestral narratives presented could not be true, and we stated that the finding that the parties have equal strength in the Clan did not provide sufficient clarity or specificity to allow for meaningful appellate review. *Kiuluul v. Rengiil*, 2022 Palau 3 ¶ 18-20 [hereinafter *Kiuluul II*]. We then set out a specific list of questions the court should settle on remand:

- (1) Which presented ancestral history, if any, does the court find credible? And on what basis does it make this finding?
- (2) If the court maintains the finding that both parties are *ulechell*, then how does the court reconcile this finding with the conflicting ancestral narratives?
- (3) If the court maintains the finding that the parties are of “equal strength” in the Clan, then what is the specific basis for this finding? Is this senior strength? If so, what evidence does the court rely upon in making this finding?
- (4) Who are the ourrot members or members who have

² Also sometimes spelled *nguemed a chad*. this term signifies that members of a Clan have died out.

³ The trial court, in its second decision, noted that these conflicting family trees “only served to minimize the credulity of their evidence.”

achieved ourrot status with appointment powers of Elilai Clan? On what basis is this status established?

Id. at ¶ 24. Our third remand reiterated the questions from *Kiuhul II* and reminded the trial court that we could not accept the findings that both parties are *ulechell* and of equal strength. *Kiuhul et al., v. Elilai Clan*, 2023 Palau 11 ¶ 21 [hereinafter *Kiuhul III*].

[¶ 8] After that latest remand, on March 22, 2023, the Trial Division issued a Decision on November 30, 2023. The trial court stated,

After reconsidering the evidence on record, this Court finds Plaintiffs and Defendants' evidence fails to establish either party as male and female titleholders. Plaintiffs Rengiil and Yuji presented two conflicting accounts of their ties to Melachelbeluu. During the first trial, Plaintiffs claimed to descend from Melachelbeluu and Etor. During the second, they traced their lineage back to a great ancestor who became the first *Melachelbeluu*. Plaintiffs also presented inconsistent family trees that contradicted their witnesses' testimony. Neither of their narratives is persuasive because they contradict each other and lack sufficient evidentiary support. The Defendants' evidence of their ancestral history within the clan also lacks credibility given that Defendants denied familial ties to Plaintiffs. Plaintiffs and Defendants are closely related and previously worked together on customary Clan obligations. Consequently, this Court finds the evidence fails to establish either party are *ulechell*.

[¶ 9] Further Findings of Fact and Decision on Remand, *Elilai Clan v. Kiuhul et al.*, Civ. Action No. 13-018, at 4 (Tr. Div. Nov. 30, 2023). The parties all appeal this Decision.

STANDARD OF REVIEW

[¶ 10] We have delineated the appellate standards of review 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. *Salvador v. Rengul*, 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.*

[¶ 11] *Kiuhul v. Elilai Clan*, 2017 Palau 14 ¶ 4 (internal citations omitted). When reviewing findings of fact, we will reverse only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record. *See Imeong v. Yobech*, 17 ROP 210, 215 (2010). “[A] decision by a trial court [whether] to intervene in a customary matter and issue a declaratory judgment that a person holds a position of traditional leadership is a matter committed to the sound discretion of the trial court and cannot be reversed absent an abuse of that discretion.” *Filibert v. Ngirmang*, 8 ROP Intrm. 273, 276 (2001); *see also Kiuhul I*, 2017 Palau 14 ¶ 5.

DISCUSSION

[¶ 12] On remand, we may issue a mandate to the trial court, through which the trial court is vested with jurisdiction to hear the case only to the extent conferred by the dictates of the appellate court. *See* ROP R. App. P. 36, *see also 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. *Kiuhul III*, 2023 Palau at ¶ 15.

[¶ 13] In our view, the Decision on Remand is over-exacting in its interpretation of the appellate mandate. “[T]he language of an opinion is not always to be parsed as though we were dealing with language of a statute.” *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341 (1979); *see also Goldman Sachs*

Grp., Inc. v. Ark. Tchr. Ret. Sys., 594 U.S. 113, 135 (2021) (Gorsuch, J., concurring in part) (“[T]his Court [has] often said it is a mistake to parse terms in a judicial opinion with the kind of punctilious exactitude due statutory language.”). Instead, appellate opinions must be “read with a careful eye to context”. *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 373 (2023).

[¶ 14] In *Kiuluul III*, we underscored our directive to the trial court that it must choose which of the ancestral histories it finds more credible. We elaborated on precisely what the trial court had to do:

The Trial Division must adequately articulate how and why it decided between the two versions presented by Rengiil and Yuji. The Trial Division must then choose between this prevailing narrative from Rengiil and Yuji and the ancestral history presented by Nakamura and Kiuluul.

Kiuluul III, 2023 Palau at 23 n.3

[¶ 15] .Instead of complying with this mandate, the trial court seized a line from our opinion where we stated that the trial court may “choose to credit one version, or the other, or neither, but cannot combine the two views unless there is support in the record to do so”, and then proceeded to reject both parties’ claims, finding neither credible. In doing so, the trial court read this language out of context and ignored the rest of the opinion, including the mandate. As a result, the trial court failed to comply with our clear mandate and left unanswered the question of which ancestral history—Etor’s or Mausei’s faction—is more credible.

[¶ 16] In addition to the misconstruction of the appellate mandate, we take issue with the manner in which the Decision on Remand reached its conclusion. When explaining why the Mausei faction’s ancestral history lacks credibility, the trial court merely stated that they “denied familial ties” to the Etor faction and added that both parties “are closely related and previously worked together on customary Clan obligations.” The trial court pointed out that the parties “participated in Clan customs together in person and through monetary contributions. They attended and contributed to Clan members’ funerals. They received compensation for Clan properties. They legally

pursued ownership rights in Clan properties and received compensation for those properties.” The court further noted that the Mausei faction “attended Clan meetings at the home of Wilhelm Rengesuul Rengiil, brother of Plaintiff Augusta Rengiil and maternal uncle of Nathan Yuji” and “formerly recognized Rengesuul as *Melachelbeluu*.”

[¶ 17] The trial court apparently reasoned that this denial of familial ties impacted the Mausei faction’s credibility so much as to discredit their entire ancestral history. This is, at best, a leap in logic. We have previously stated that *ochell* status within a clan typically is determined based on blood, birthright, and ancestry, rather than actions or behavior. *Imeong v. Yobech*, 17 ROP 210, 218 (2010). In other words, status is determined by the ancestral history of how a party originally came to be part of the clan. This rule is similarly applicable to *ulechell* status. See *Kiuhul III*, 2023 Palau at ¶ 21. In a very similar dispute where the main issue became the relative status of competing factions within a clan, we have established that the parties behaving as if they were closely related, without more, is insufficient to establish their status as strong clan members. See *Orak v. Ueki*, 17 ROP 42, 48-49 (2009) (finding that the trial court could not reject the parties’ ancestral history but still determine they were strong members because they behave as if they are closely related to *ochell* members.) We made clear in *Orak* that expert customary testimony was needed to establish behavior and family ties as an acceptable means of establishing clan status. *Id.* The trial court did not hear such customary testimony yet still focused on the parties’ behavior and familial ties. On the other hand, the trial court ignored the evidentiary support for each party’s ancestry—the very same evidence it previously found sufficient. Therefore, the trial court’s discussion of the evidence takes several unarticulated logical steps which warrants remand.

[¶ 18] Finally, this most recent step means that this case will have been remanded four times. The reassignment of a case is exceedingly rare and occurs only under “unusual circumstances or when required to preserve the interests of justice”. *Imetuker et al. v. Ked Clan et al.*, 2023 Palau 16 ¶ 33 (quoting *United States v. Wolf Child*, 699 F.3d 1082, 1102 (9th Cir. 2012)). To do so, we consider:

- (1) whether the original judge would reasonably be expected upon remand to have substantial

difficulty in putting out of his or her mind previously expressed views or findings determined to be erroneous or based on evidence that must be rejected,

(2) whether reassignment is advisable to preserve the appearance of justice, and

(3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving appearance of fairness.

[¶ 19] *Id.* (quoting *Manley v. Rowley*, 847 F.3d 705, 712 (9th Cir. 2017)). In addition, the repeated failure of the trial court to comply with the appellate mandate may warrant reassignment. *See United States v. Gupta*, 572 F.3d 878, 891 (11th Cir. 2009) (When a lower court judge fails or refuses to carry out the appellate court's instructions or relies on erroneous views after multiple remands, reassignment of the case may be warranted on the second or third appeal).

[¶ 20] Here, we are dealing with a fourth remand, which in and of itself, is sufficient to impel a conclusion that a reasonable person may harbor doubts about the judge's impartiality. To preserve the image of an impartial and fair judiciary, we remand this case with instructions that the case be reassigned.⁴

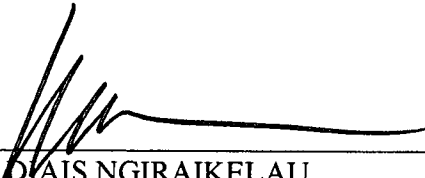
CONCLUSION

[¶ 21] We **VACATE** and **REMAND** the Trial Division's judgment with instructions that the case be reassigned to a different judge. We maintain the appellate mandate we set out in *Kiuhul II* and *Kiuhul III* asking the trial court to reach a clear and fully-reasoned decision on the issues of who are the true members of Elilai Clan and the rightful bearers of the Clan's title. In addressing the issues on remand, the trial court may choose to receive additional evidence or rely on the existing record. If the court elects not to receive additional evidence it should review the complete record and make an

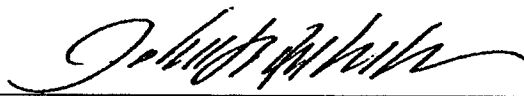
⁴ The parties each ask us to rule in their respective favor, rather than remand again, but we decline to substitute ourselves as the trier of fact. Although we would greatly welcome a way to resolve this matter once and for all, we are in no position to make findings on this issue. We therefore remand rather than determine unresolved factual or customary issues on appeal.

independent and conclusive determination as to Elilai Clan's true members and title bearers.

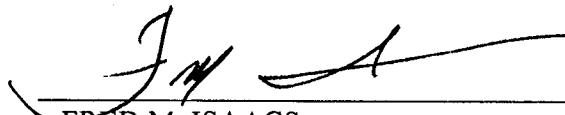
SO ORDERED, this 4th day of June 2024.



OLDVAIS NGIRAIKELAU
Chief Justice, presiding



JOHN K. RECHUCHER
Associate Justice



FRED M. ISAACS
Associate Justice