IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

DEMEI OBAK, AISAMERAEL SAMESEL, YUKIWO ETPISON, SKILANG ODAOL, ALFONSO SEKLII, HATSUICHI NGIRCHOMLEI, LESLIE ADACHI, and PAUL SIMANG,

Appellants/Cross-Appellees,

v.

KALISTUS NGIRTURONG, FRED ANDRES, JOEY UEKI, REBLUUD MARINO RECHESENGEL, JASON TECHUR TIMULCH, JOSHUA NGIRAKLANG, and BESECHEL KIUELUUL,

Appellees/Cross-Appellants.

Cite as: 2017 Palau 11
Civil Appeal No. 16-001
Appeal from Civil Action No. 15-049

Decided: March 8, 2017

Counsel for Appellants/Cross-Appellees.....Moses Y. Uludong
Counsel for Appellees/Cross-Appellants.....Johnson Toribiong

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

Appeal from the Trial Division, the Honorable R. Ashby Pate, Associate Justice, presiding.

OPINION

RECHUCHER, Justice:

[¶ 1] This is a dispute between two factions of the Aimeliik State Public Lands Authority ("AIMSPLA") board regarding who has a right to sit on the board, and therefore which faction holds a majority of seats on the board. There are three issues contested by the parties: (1) the constitutionality of the AIMSPLA board member appointment process, (2) who is the proper holder of the Chief Title Rengulbai, and therefore entitled to occupy the Rengulbai's seat on the AIMSPLA board, and (3) who is the proper holder of the Chief Title Secharraimul, and therefore entitled to occupy the Secharraimul's seat

on the AIMSPLA board. The Trial Division held that (1) the AIMSPLA appointment process is constitutional; (2) the Chief Title Rengulbai (and its corresponding seat on the board) is currently vacant; and (3) Hatsuichi Ngirchomlei holds the Chief Title Secharraimul. We affirm.

BACKGROUND

[¶ 2] The AIMSPLA board is composed of thirteen members, six of which are from the Aimeliik Council of Chiefs, including one for the holder of the Chief Title Rengulbai of Ngerkeai Hamlet, the chief male title of Uchelkeyukl Clan and one for the holder of the Chief Title Secharraimul of Imul Hamlet, the chief male title of Trei Clan.[1] The remaining seven members are politically appointed; four by the Speaker of the Aimeliik State Legislature, and three by the Governor of Aimeliik. Prior to 2015, Appellants/Cross-Appellees ("Appellants") held a majority of seats on the AIMSPLA board and were therefore able to appoint its officers and direct AIMSPLA's activities. On April 13, 2015, Appellants were sent a notice stating that Appellees/Cross-Appellants ("Cross-Appellants"), all of whom now claimed to be members of the AIMSPLA board, were calling a meeting of the board at which they would reorganize the presiding officers of AIMSPLA. Cross-Appellants claimed they now held seven of AIMSPLA's thirteen seats because Cross-Appellant Kalistus Ngirturong now occupied the Rengulbai's seat (previously held by Appellant Yukiwo Etpison) and Cross-Appellant Fred Andres held the Secharraimul's seat (also claimed by Appellant Hatsuichi Ngirchomlei).

[¶ 3] Appellants then filed this lawsuit seeking injunctive relief to prevent Cross-Appellants from reorganizing AIMSPLA's board or taking action on behalf of AIMSPLA, and declaratory relief that Cross-Appellants Ngirturong and Andres were not entitled to sit on the AIMSPLA board. In response, Cross-Appellants argued that the four Appellants who had been appointed by the Speaker of the Aimeliik State Legislature were also not entitled to sit on

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[1] The spelling of the Clan's name varies throughout the appellate record. Uchelkeyukl Clan is also spelled Uchelkiukl Clan; Trei Clan is also spelled Terei Clan. The Court has opted to use the spelling used in the Trial Division's Opinion.

the AIMSPLA board because their appointment violated the Aimeliik state constitution. Both parties agreed to maintain the status quo until the court ruled on the various requests for declaratory relief, mooting Appellant's request for injunctive relief. After a trial on the constitutionality of the current AIMSPLA board appointment process and the proper holders of the two chief titles in question, the Trial Division held that the appointment process is constitutional, no one is currently Rengulbai, and Hatsuichi Ngirchomlei is Secharraimul. Both parties appeal those portions of the judgment which are contrary to their preferred outcome.

The Appointment Process for AIMSPLA Board Members

[¶ 4] Prior to 2010, politically appointed AIMSPLA board members were appointed by the Governor and approved by the Legislature in a manner which all parties agree complied with Aimeliik's Constitution. However, in late 2007 Leilani Ngirturong-Reklai was elected governor of Aimeliik, and due to political acrimony, none of her appointees to AIMSPLA were confirmed by the legislature. In response to this deadlock, the Legislature amended the appointment process in 2010 by passing ASPL No. 9-11 over the Governor's veto. ASPL No. 9-11 expanded the number of political appointees from five to seven and changed the appointment process so that three members of the AIMSPLA board were unilaterally appointed by the Governor (without any action by the Legislature) and four members of the board were unilaterally appointed by the Speaker of the Legislature (without any action by the Governor). ASPL No. 9-11 was subsequently amended by ASPL No. 9-14, the current version of the law, which has the same appointment process.

Claimants for the Chief Title Rengulbai

[¶ 5] All parties agree that Appellant Yukiwo Etpison bore the Chief Title Rengulbai prior to December 2014. He was appointed by the Ourrot (senior strong women) of Uchelkeyukl Clan, accepted by the Ngerkeai Council of Chiefs, and maintained his seat in various Councils of Chiefs and on the AIMSPLA board for many years. However, when Etpison voted to approve a contentious golf course lease on AIMSPLA land, five Ourrot of Uchelkeyukl Clan purported to remove the title from Etpison, and wrote letters to various traditional councils and boards in December 2014 informing them that the

Ourrot of Uchelkeyukl Clan were removing the Chief Title Rengulbai from Etpison for bringing shame upon the clan. These five Ourrot included Ereong Ngiratmab, Etpison's sister and bearer of title Dirrengulbai, the chief female title of Uchelkeyukl Clan. These women subsequently appointed Kalistus Ngirturong as Rengulbai, who held his blengur (confirmation feast) on March 15, 2015. However, the Ngerkeai Council of Chiefs refused to remove Etpison, and also refused to accept Ngirturong. At trial, Appellant argued that Etpison was still Rengulbai because the Dirrengulbai's attempt to remove him was ineffective, while Cross-Appellants claimed that Ngirturong should be Rengulbai because the Ngerkeai Council of Chiefs would have accepted them had they not been under the mistaken belief that Rengulbai's removal was ineffective.

Claimants for the Chief Title Secharraimul

[¶ 6] In March 2000, Justice Miller decided *Asanuma v. Blesam*, Civil Action 98-215 (Tr. Div. March 9, 2000) a declaratory judgment suit over who were the Dilsecharraimul (chief female title) and Secharraimul (chief male title) of Trei Clan. The Dilsecharraimul title was claimed by Oritechereng Ngirchomlei and Ucherriang Blesam and the Secharraimul title was claimed by Masami Asanuma and Becheserrak Tmilchol. The Trial Division held that Ngirchomlei and Asanuma held these titles, despite the fact that neither were ochell members of Trei clan, because the supporters of Blesam and Tmilchol did not show that they had greater authority than Ngirchomlei. Blesam and Tmilchol did not appeal.

[¶ 7] Masami Asanuma was Secharraimul until his death in 2005, after which three men were appointed to the Chief Title Secharraimul, each of whom held his own separate blengur. One of these men was Appellant Hatsuichi Ngirchomlei, who was appointed by his mother, Dilsecharraimul Oritechereng Ngirchomlei. The second was Cross-Appellant Fred Andres, who was appointed by his mother, Katsue Andres, along with 15 other women who purported to be Ourrot of Trei clan. Cross-Appellants submitted evidence showing that Andres was accepted by the Imul Council of Chiefs and that the Aimeliik Council of Chiefs had no objection regarding the appointment, but also stated that if another person was purportedly appointed Secharraimul then the Council of Chiefs would reject them both. The third

was Murphy Blesam who, for reasons which have not been explained by the parties, was widely treated as the Secharraimul until his death in 2014. After the death of Blesam, Ngirchomlei was reappointed Secharraimul by Dilsecharraimul Geggy Udui, daughter of Masami Asanuma, and eight other women purporting to be Ourrot of Trei Clan. Geggy Udui had become Dilsecharraimul after the death of Oritechereng Ngirchomlei in 2008. Appellants submitted evidence showing that Ngirchomlei was accepted by the Aimeliik Council of Chiefs, including Cross-Appellant Marino Rechesungel (holder of the Chief Title Rebluud), Cross-Appellant Joshua Ngiraklang (holder of the Chief Title Idolodaol), and Cross-Appellant Kalistus Ngirturong (holder of the Chief Title Secharmidal at that time). At trial, Andres claimed to be Secharraimul based on his 2005 appointment and acceptance, Ngirchomlei claimed to be Secharraimul based on both his 2005 and his 2014 appointments followed by his 2014 acceptance.

STANDARD OF REVIEW

[¶ 8] We review a lower court's conclusions of law, mixed questions of law and fact, and determinations of customary law under a de novo standard. *Beouch v. Sasao*, 20 ROP 41, 50 (2013). We review findings of fact for clear error. *Imeong v. Yobech*, 17 ROP 210, 215 (2010). Under the clear error standard, we will reverse only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record. *Id.*

DISCUSSION

I. ASPL Nos. 9-11 and 9-14 Do Not Violate the Aimeliik State Constitution.

[¶ 9] The Aimeliik State Constitution gives the Governor the power "to appoint heads of major executive positions in the government of the State of Aimeliik with the approval of the Legislature." Aimeliik Const. Art. V § 5 (b). Cross-Appellants argue that the board members of AIMSPLA are "heads of major executive positions in the government of the State of Aimeliik" and that the unilateral appointments allowed by ASPL Nos. 9-11 and 9-14 violate Article V § 5 of the Aimeliik Constitution. The Trial Division held that AIMSPLA is not a part of the Aimeliik State Government, and thus board membership is not a "major executive position" within that government.

Relying on *Koror State Pub. Lands Auth. v. Diberdii Lineage*, the Trial Division reasoned that AIMSPLA is a

> separate "legal entit[y]" created by [Aimeliik] for the express purpose of receiving land from the Palau Public Lands Authority. . . . [S]tate public lands authorities are designed not to be a part of state government, but are hybrid entities including both state and traditional representatives. Moreover, state public lands authorities derive their rights, interests, powers, responsibilities, duties, and obligations not from their respective state governments but by grant from the Palau Public Lands Authority [under 35 PNC § 215].

3 ROP Intrm 305, 308 (1993). The Trial Division noted that while state public lands authorities are no longer required by national law to have traditional representatives, Aimeliik includes both state and traditional representatives on the AIMSPLA board in the manner required by the version of 35 PNC § 215 at issue in *Diberdii Lineage*.

[¶ 10] Cross-Appellants argue that *Diberdii Lineage* is distinguishable because that case only determines that public lands authorities are not a part of a state government for the purpose of Art. X, § 5 of the Palau Constitution and that the Land Court can exercise jurisdictions over state land authorities. Cross-Appellants argue that AIMSPLA is the most important agency of Aimeliik because it administers state land, its board members are appointed by state elected officials and paid by the state, and the revenues it collects from leases of public lands are paid to the state treasury. Because it is Aimeliik's most important agency, Cross-Appellants argues that the board members who make policy for AIMSPLA must be "heads of major executive positions" in Aimeliik state government.

[¶ 11] While we agree that *Diberdii Lineage* does not dictate the outcome in this case, we find its reasoning persuasive, and hold that the Aimeliik State Public Lands Authority is not part of Aimeliik State Government because it derives its power from national law, not from the State of Aimeliik. Under Aimeliik Const. Art. V, § 1, Aimeliik's Governor is vested with "all inherent and necessary executive functions, powers and responsibilities." A "head of [a] major executive position" in the State of Aimeliik is one who is exercising executive power, and because all executive power is vested with the

governor, we hold that a position must exercise power delegated by the Governor to be the heads of a major executive position under Aimeliik Const. Art. V § 5 (b). AIMSPLA's power is derived not from the Governor, but from a delegation of power by the Palau Public Lands Authority under 35 PNC § 215. In other words, if AIMSPLA did not exist, the function played by its board would be exercised by the board of the Palau Public Lands Authority, not by the Governor. Therefore, the AIMSPLA board members are not heads of major executive positions because they are not exercising executive functions of the State of Aimeliik, and the process of their appointment need not comply with Aimeliik Const. Art. V § 5 (b).

II. The Parties' Failure to Brief Issues of Customary Law.

[¶ 12] We set forth the legal standard for resolving legal disputes concerning questions of customary law in *Beouch v. Sasao*, 20 ROP 41 (2013). Under this standard, Appellate Division rulings on customary law are binding on future courts, absent evidence that custom has changed, or that there are local variations in those customs. *Id.* at 46; *Rengiil v. Ongos*, 22 ROP 48, 54 n.7 (2015). For issues that have not been addressed by the Appellate Division, *Beouch* instructs the parties to present evidence as to whether:

> (1) the custom is engaged [in] 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. Whether a given custom has met these requirements is a mixed question of law and fact, but "whether a custom is or is not binding law is a pure determination of law." *Id.* at 49.

[¶ 13] The Supreme Court is entrusted by the Palauan Constitution with "the duty to say what the law is," and that duty applies to constitutional, statutory and customary law. *Id.* at 48-49 (quoting *Obeketang v. Sato*, 13 ROP 192, 198 (2006)). Such affirmative pronouncements are the bedrock upon which our common law system is built, allowing individuals to conform their behavior to the law and ensuring consistent application of the law across cases. However "[i]t is not the Court's duty . . . to conduct legal research for the parties" and "appellate courts generally should not address legal issues

that the parties have not developed through proper briefing." *Idid Clan v. Demei*, 17 ROP 221, 229 n.4 (2010) (internal citations and quotations omitted). "The premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before then." *Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 50 n.10 (2006) (quoting *Carducci v. Regan*, 714 F.2d 171, 177 (D.C. Cir. 1983)). If customary legal questions are not properly briefed by the parties then we will not decide them.

[¶ 14] Despite the fact that two of the three issues in this case involve disputes of customary law, the parties have completely failed to address our customary law standard. They have not even included a single citation to *Beouch* in their briefing. This failure is particularly disappointing since the Trial Division spent more than six pages of its opinion admonishing the parties for filing pleadings that did not set forth the customary legal theories underlying their claims and for their general failure to adduce and argue their evidence under *Beouch's* legal standard. And this admonishment came after the Trial Division's repeated admonishments before and during trial for the parties to address *Beouch* in their arguments and produce evidence to comport with *Beouch*'s legal requirements. The Trial Division closed its admonishment by stating that in customary law cases

> the parties must do far, far more in terms of appropriate legal research and writing than what has been done here. Customary law—and determination of the proper holder of chief titles—is touchy enough even when the complex and mixed issues of law and fact are briefed exceptionally. For this Court to declare the holders of chiefly titles based solely on the expert testimony before it—without any reference to the guidelines of *Beouch* or common law authority—is simply to invite legal error which this Court is loathe to make.

Trial Division Opinion at 21 (internal citations and quotations omitted).

[¶ 15] Both sides on appeal now claim the Trial Division made errors of customary law, and each asks us to reverse certain aspects of the Trial Division's decision and issue an order that their claimant is the rightful holder of each chief title. However, the burden of demonstrating error on the part of

a lower court rests squarely on the appellant. *Suzuky v. Gulibert*, 20 ROP 19, 22 (2012). The parties' briefing of customary law issues on appeal consists largely of assertions of counsel which are either entirely unsupported or accompanied only by citations to inapplicable case law. Since none of the customary law issues argued by the parties have been properly briefed, we hold that the parties have generally failed to meet their burden of showing legal error on the part of the Trial Division, and we will not disturb its customary law holdings.

III. No One Currently Holds the Chief Title Rengulbai.

[¶ 16] In December 2014, five Ourrot of Uchelkeyukl Clan, including the Dirrengulbai purported to remove the Chief Title Rengulbai from Yukiwo Etpison for bringing shame upon the clan. The Trial Division held that this process was akin to a recall, which was within the Dirrengulbai's power to do, and that Etpison had waived any procedural rights he may have had under customary law by refusing the Dirrengulbai's invitation to meet and discuss the matter. These five Ourrot then appointed Kalistus Ngirturong to become Rengulbai. The Trial Division held that this appointment was valid, even though it was not endorsed by all of Uchelkeyukl Clan's Ourrot, based on the general agreement of all customary law experts who testified at trial that the chief female title bearer possesses the dominant voice in the appointment process, and that she alone can make the decision to appoint a male title bearer, even if her choice is in tension with the wishes of other Ourrot.

[¶ 17] The Klobak was dissatisfied with the decision to remove Etpison, and demanded to know the reason for his removal, which the Ourrot refused to provide. Appellants argued to the Trial Division, but do not argue on appeal, that the Ourrot's removal of Etpison was ineffective because they did not provide a reason. The Trial Division held that the removal was effective because a reason is not required when the chief is recalled by the Dirrengulbai, it is only required when the Klobak removes a chief for cause. However, the chiefs also refused to accept Kalistus Ngirturong as their friend and seat him in the Klobak. The Trial Division held that Etpison no longer bore the Chief Title Rengulbai because he was validly removed, but that Ngirturong was not validly confirmed as his replacement, leaving the Chief Title Rengulbai vacant.

[¶ 18] On appeal, Appellants only argument is that the process used by the five Ourrot to remove Etpison from his seat was invalid because these five women were only from one of the three lineages of Uchelkeyukl Clan. The only authority cited by Appellants is *Ngirmang v. Orrukem*, a case in which the Appellate Division overturned a Trial Division declaratory judgment regarding the proper holder of the chief *female title* of Ikelau Clan. 3 ROP Intrm. 91 (1992). The *Ngirmang* court reversed the Trial Division's decision, in part, because to appoint a female titleholder, "the ourrot of all lineages of a clan must reach a consensus about such an appointment in order for it to be valid," and ourrot from only two of the clan's three lineages participated in the meeting at which appellee was appointed. *Id.* at 95. In other words, this case stands for the proposition that "a clan's *female title bearer* is selected by all the ourrot of each lineage." *Id.* at 95 (emphasis added). It does not say whether the ourrot of each lineage of a clan must also be involved in the *selection* of the chief *male title bearer*, and it also says nothing about the *removal* of title bearers, so it is not inconsistent with the Trial Division's holding that the chief female title bearer possesses the dominant voice in the appointment and removal of male title bearers.[2]

[¶ 19] Cross-Appellants argue that the Trial Division should have deemed Ngirturong's appointment "approved by the Ngarkeai because their lack of acceptance was based on the mistaken belief that [Yukiwo Etpison] may not be removed until they were made aware of his misconduct." They argue, without citation to any legal authority, that it is necessary for the court to make this holding because "[t]he Palauan customary process can no longer resolve this title dispute as it has become acrimonious." Aimeliik State Const. Art. III, § 2 provides that "[t]he Aimeliik State Council of Chiefs shall

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[2] As noted above, the parties have failed to address the *Beouch* standards for customary law, and Appellants have also pointed to no expert testimony which supports this argument. This leaves us with insufficient information to say what the customary law of removal is. As such, we affirm the Trial Division's holding that Etpison was properly removed because Appellants have failed to show that this holding was erroneous. However, our holding is only that Appellants have failed to carry their burden to show error on the part of the Trial Court, and should not be understood as an affirmative statement of customary law which will be precedential under *Beouch*.

determine the qualification of its members in accordance with recognized custom and tradition." Under Palauan custom and tradition, a man cannot become fully recognized as a chief unless he has been duly appointed by his clan and accepted as a friend by the appropriate council of chiefs. Cross-Appellants give no customary basis for making an exception to that requirement in this case. We therefore affirm the Trial Division's holding that the Chief Title Rengulbai, and its seat on the AIMSPLA board, remains vacant, and strongly suggest that the parties cooperate to resolve this matter through custom and tradition.

IV. Hatsuichi Ngirchomlei Holds the Chief Title Secharraimul.

[¶ 20] As noted above, the two claimants to the Chief Title Secharraimul are two of the three individuals who claimed that title after the passing of Secharraimul Masami Asanuma in 2005. After the death of Murphy Blesam, who was widely treated as Secharraimul, Appellant Ngirchomlei was reappointed Secharraimul by Dilsecharraimul Geggy Udui, and eight other women of Trei Clan in 2014. Appellants also produced a 2014 document signed by the other members of the Aimeliik Counsel of Chiefs, including three of the seven Cross-Appellants in this case, accepting Ngirchomlei's appointment to the Klobak. On the basis of the 2014 appointment and acceptance, the Trial Division concluded that Ngirchomlei holds the Chief Title Secharraimul of Imul Hamlet of Aimeliik.

[¶ 21] In contrast to Ngirchomlei's 2014 appointment, the only evidence of the appointment and acceptance of Cross-Appellant Andres was from 2005. The Trial Division held that Andres' 2005 appointment was invalid because it was not done by the then current Dilsecharraimul, Oritechereng Ngirchomlei (mother of Hatsuichi Ngirchomlei, who had appointed her son, Appellant Ngirchomlei), and also found that the Klobak's acceptance of Andres in 2005 was clearly and expressly provisional, and became void by its own terms after two other individuals were also appointed Secharraimul. The Trial Division noted that Cross-Appellants had focused their arguments on undermining Ngirchomlei's 2005 appointment, which it found did not matter in light of the 2014 reappointment, and held that Cross-Appellants had not presented any evidence to bring even a *prima facie* challenge to the validity of Ngirchomlei's 2014 appointment.

[¶ 22] Cross-Appellants now argue that the Trial Division erred in holding that Ngirchomlei's 2014 appointment and acceptance were valid for two reasons: (1) the purported ochell women who appointed Fred Andres in 2005 are stronger than the admittedly non-ochell women who appointed Ngirchomlei in 2005 and 2014, and (2) Ngirchomlei has produced no evidence that he was accepted as Secharraimul by the Council of Chiefs of Imul Hamlet, since the acceptance form he submitted into evidence only shows that he was accepted as Secharraimul by the Aimeliik Counsel of Chiefs. Neither of these arguments establish that the Trial Division erred.

[¶ 23] In Palau, "clan members have the following ranks, in declining order of strength: (1) ochell members (children of female members of the lineage); (2) ulechell members (children of male members of the lineage); (3) rrodel members (children adopted through blood relations); (4) mlotechakl members (drifters who end up within the lineage with no blood relationship); and (5) terruaol (people taken up by a member of the lineage with no blood relationship)." *Estate of Rdiall v. Adelbai*, 16 ROP 135, 138 n.3 (2009). "Status and membership in a lineage are questions of fact" and are reviewed for clear error. *Imeong v. Yobech*, 17 ROP 210, 215 (2010). Under clear error review, "[t]he factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion." *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009).

[¶ 24] The Trial Division found that Cross-Appellants had failed to demonstrate that Katsue Andres, Fred Andres, or any of the other women who supported the 2005 appointment of Fred Andres, were actually ochell members of Trei Clan. In support of this finding, the Trial Division relied on the un-appealed opinion issued in *Blesam v. Asanuma*, Civil Action 98-215 (Tr. Div., March 5, 2000), as evidence showing at least as of 2000, there were no ochell members left in Trei clan. Ngis, the mother of Katsue Andres, testified in support of Oritechereng Ngirchomlei's claim to the Dilsecharraimul Title in that case but did not claim any status in Trei Clan. Upon review of the record, we also find ample testimony that Katsue Andres and the other women who signed Fred Andres' 2005 appointment had little-to-no involvement in Trei clan functions. To be sure, there was also evidence presented by Cross-Appellants which the Trial Division could have credited

to find that these individuals were ochell members of Trei Clan. However, it is not the role of the Appellate Court to "reweigh the evidence, test the credibility of the witnesses, or draw inferences from the evidence," and we hold that the Trial Division's finding in this regard was not clearly erroneous. *Orak v. Ueki*, 17 ROP 42, 46 (2009).

[¶ 25] Cross-Appellants argue that the Trial Division committed an error of customary law by holding that Dilsecharraimul Udui had attained ochell status based on the fact that she had been selected to hold Trei clan's chief female title. Like their other customary law arguments, Cross-Appellant's briefing on this point consists largely of assertions of counsel which are not properly supported by citation to legal authority or expert testimony. However, we need not and do not reach this legal question. The current rank of Dilsecharraimul Udui within Trei Clan is not relevant to the outcome of this case, all that matters is the Trial Division's factual finding that the women who appointed Fred Andres are not stronger than Dilsecharraimul Udui, which we conclude is supported by adequate evidence in the record.

[¶ 26] Cross-Appellants also argue that it is the Council of Chiefs of Imul Hamlet, and not the Aimeliik State Council of Chiefs, which has the customary authority to accept or reject an appointed Secharraimul. They therefore argue that the Trial Division erred in holding that Ngirturong was validly accepted, since the 2014 acceptance submitted by Ngirturong was from the Aimeliik State Council of Chiefs, and Ngirturong did not submit any evidence showing acceptance by the Council of Chiefs of Imul Hamlet. They also argue that the Trial Division erred in holding that Andres was only provisionally accepted as Secharraimul in 2005, since the exhibit showing the provisional acceptance by the Aimeliik State Council of Chiefs attaches an unconditional acceptance by the Council of Chiefs of Imul Hamlet. We do not entertain this argument, since it was raised for the first time in this appeal.

[¶ 27] Cross-Appellants do not identify this argument as being raised for the first time on appeal in their briefing, but we find no mention of this argument at the summary judgment hearing or trial, or in any of Cross-Appellants' written submissions to the Trial Division. "Arguments made for the first time on appeal are considered waived" except to avoid the denial of a fundamental right or in cases affecting the public interest, neither of which

apply in this case. *Sugiyama v. Airai State Pub. Lands Auth.*, 19 ROP 99, 103 (2012). This is because "the trial court must first have an opportunity to opine on, or at least consider, an issue before an appellate court has anything to review." *Ucherremasech v. Hiroichi*, 17 ROP 182, 192 (2010). Allowing Cross-Appellants to argue on appeal that Appellants presented insufficient evidence to the Trial Division of acceptance by the Council of Chiefs of Imul Hamlet would also be fundamentally unfair, since Appellants "had no reason to believe such [evidence] was necessary." *Id.* at 194. Had Cross-Appellants made this argument below, Appellants would have had an opportunity to present additional evidence in response, potentially including expert testimony, and the Trial Division would have been able to make explicit factual findings and legal conclusions based on the evidence before it which we could then review. Since Cross-Appellants did not present this argument to the trial court, we hold that it is waived.

CONCLUSION

[¶ 28] For the foregoing reasons, the Trial Division is **AFFIRMED**.

SO ORDERED, this 8th day of March, 2017.