IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

ROBAT DEMEI and NGEDIKES GIBBONS,
Appellants/Cross-Appellees,
v.
MARY HIROKO SUGIYAMA, BONICACIO EBERDONG, UODELCHAD INES SANTOS, DIRCHOLSUCHEL MARY THING, and KEKEREI EL TECHEDIB TIMOTHY NGIRDIMAU,[1]
Appellees/Cross-Appellants.

Cite as: 2021 Palau 2
Civil Appeal No. 19-019
Appeal from Civil Action No. 18-077

Argued: November 2, 2020
Decided: January 14, 2021

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

BEFORE: GREGORY DOLIN, Associate Justice
KATHERINE A. MARAMAN, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Trial Division, the Honorable Oldiais Ngiraikelau, Presiding Justice, presiding.

OPINION

MARAMAN, Associate Justice:

[¶ 1] This matter arose after Ngeribkal Clan prevailed in its return of public lands claim against Koror State Public Lands Authority ("KSPLA")[2]

[1] Because certain clan titles, and therefore the ability to bring suit on behalf of the clan, are disputed in this case, we have altered the caption to remove Ngeribkal Clan and all disputed clan titles. *See Etpison v. Obichang*, 2020 Palau 8 n.1.

[2] The land returned to the Clan is referred to as *Bkulatiull* and is located in Ngerbeched.

and Appellant Robat Demei, acting as the Clan's chief, began entering into new leases with individuals who were up until that point KSPLA's tenants, some of whom are not Clan members. The parties dispute whether Demei had the authority to enter into these leases. The trial court concluded that although a clan's chief has authority to manage land within the clan, in order to alienate property (including by lease) in favor of non-clan members, the consent of all senior strong members is required. The trial court further concluded that because such consent was not obtained in the present case, none of the litigants had the authority to unilaterally enter into the leases. Finally, the trial court held that Demei holds the Clan's male chief title but that none of the parties demonstrated that she holds the female chief title. Because we discern no error in the trial court's factual findings or application of the law, we **AFFIRM**.

BACKGROUND

[¶ 2] We here sketch the basic factual background and provide some additional details as necessary in the analysis below. Ngeribkal Clan has three lineages started by three sisters, Ewalech, Saulwai, and Kiklang. The highest male title is *Ngiribkal* and the highest female title is *Dirribkal*. It is undisputed that Rengulbai Ngirdimau was *Ngiribkal* at the time the Clan filed its return of public lands claim. The last uncontested *Dirribkal* was a woman named Tolilang, who passed away in 2013. It is also undisputed that individuals on both sides of this dispute are *ochell* members of Ngeribkal Clan. In addition, the trial court specifically found, and the parties do not challenge, that there are senior strong members on both sides: Appellants Demei and Ngedikes Gibbons, and Appellees Mary Hiroko Sugiyama and Ines Santos.

[¶ 3] Appellees sought a declaratory judgment that, among other things, (1) Demei and Gibbons have no authority to negotiate or execute the leases; (2) Appellee Bonicacio Eberdong is *Ngiribkal*; and (3) Sugiyama is *Dirribkal*. Appellants counterclaimed seeking a mirror image declaration that (1) Demei is *Ngiribkal*; (2) Gibbons is *Dirribkal*; and (3) Eberdong and Sugiyama have no authority to enter into the leases. In their closing argument at trial, Appellees urged the court to refrain from deciding the title disputes and instead to base its judgment as to Sugiyama's authority to administer the land on the fact that she was chosen by the then-*Ngiribkal* to represent the Clan in court during its return of public lands claim. According to Appellees, this appointment is binding on the other Clan members, and the authority to

administer the successfully reclaimed land was inherent in her appointment, especially in light of the fact that she spent considerable time and personal resources in the reclamation process.

[¶ 4] On August 9, 2019, the trial court concluded, in its Findings of Fact and Conclusions of Law, that Demei is the male titleholder. However, the court also concluded that, as a matter of customary law, Demei cannot grant leases or use rights to non-clan members without the consent of the senior strong members of the Clan. Because the trial court found that Appellees include such members, it held that leases entered into by Demei are invalid. Next, the trial court held that there was insufficient evidence to conclude that either Gibbons or Sugiyama is the Clan's female titleholder, and therefore the court declined to enter judgment in favor of either party on this issue. Finally, the court rejected Sugiyama's argument that she had the authority to enter into the leases on the basis of her prior representation of the Clan in the return of public lands process.

[¶ 5] Both sides timely appealed. Appellants object to the finding that there is insufficient evidence that Gibbons is the female titleholder, whereas Appellees challenge the finding that Demei is the male titleholder, the finding of insufficient evidence to establish that Sugiyama is the female titleholder, and the trial court's conclusion that Sugiyama's representation of the Clan in the return of public lands process did not vest her with the authority to administer the land following its return.

STANDARD OF REVIEW

[¶ 6] We review a trial court's legal conclusions, including its application of customary law, de novo, and its findings of fact for clear error. *Etpison v. Ngeruluobel Hamlet*, 2020 Palau 10 ¶ 16; *Beouch v. Sasao*, 20 ROP 41, 50 (2013).

DISCUSSION

[¶ 7] Appellants/Cross-Appellees argue that Demei's testimony that "when Tolilang passed away . . . Ngerair was one of those who appointed Ngedikes to be Dirribkal," Trial Tr. at 135:11-13, and Demei's identification of Ngerair as a child of Lucy Orrukem combined with evidence that Orrukem previously held the *Dirribkal* title, undermines the trial court's conclusion that "there was

a complete lack of evidence on the identity of the people who [allegedly] appointed" Gibbons to be *Dirribkal.* Findings of Fact and Conclusions of Law (Aug. 9, 2019) at 12. Although we agree with Appellants that the evidence of Gibbons' appointment as *Dirribkal* is more substantial than the trial court's decision would lead one to believe, we conclude that the trial court's statement about a lack of evidence does nothing to undermine its ultimate conclusion. It is well established "that the ourrot of all lineages of a clan must reach a consensus" regarding the appointment of the female titleholder in order for it to be valid. *Ngirmang v. Orrukem*, 3 ROP Intrm. 91, 95 (1992). In contrast, the testimony Appellants proffered at trial and point to on appeal merely establishes that one individual, who may or may not have been an *ourrot* member of the Clan at the time, participated in the appointment. Thus, although there may have been an attempt by some individuals to install Gibbons as *Dirribkal*, the evidence is insufficient to establish, by a preponderance of the evidence, that Gibbons was appointed by consensus of the *ourrot* of all three lineages of the Clan. *See Sungino v. Benhart*, 20 ROP 215, 217 (2013) ("The burden of proof . . . belongs to the individual or group seeking to establish their status within the clan."). Therefore, the trial court's misdescription of the state of the evidence was harmless. Because the "mistake did not affect the outcome, it would be senseless to vacate and remand for reconsideration." *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 253 (4th Cir. 2016); s*ee also Ngiraiwet v. Telungalek ra Emadaob*, 16 ROP 163, 165 (2009) ("Harmless errors are those that do not prejudice a particular party's case."). This Court "will not reverse a lower court decision due to an error where that error is harmless." *Ngiraiwet*, 16 ROP at 165.

[¶ 8] Appellees/Cross-Appellants raise three issues on appeal. First, they argue that Sugiyama must be the female titleholder because she was appointed by women from all three lineages of the Clan.[3] The trial court agreed with the basic legal proposition that appointment of a female titleholder must involve *ourrot* from all lineages of a clan. Applying the law to the facts before it, however, the court concluded that there was insufficient evidence that Sugiyama was properly appointed. Although one woman from each lineage

[3] Before the trial court, Appellees contended that a resolution of the disputed titles was unnecessary, but, as previously described, the court rejected this argument and made a ruling regarding the disputed female title.

may have participated in the appointment, there was, in the court's view, insufficient evidence that two of them, Appellee Mary Thing and Karen Kohama, were *ourrot*.[4] Neither Thing nor Kohama testified, and Appellees' briefs do not point to anything in the record that demonstrates their services to and status in the Clan. "It is not the Court's duty to . . . scour the record for any facts to which [an] argument might apply." *Idid Clan v. Demei*, 17 ROP 221, 229 n.4 (2010). Because Appellees fail to point this Court to any evidence that Thing and Kohama were *ourrot*, we cannot hold that the trial court's finding regarding the lack of evidence on this point was clearly erroneous. *See Rudimch v. Rebluud*, 21 ROP 44, 46 (2014) ("[T]he burden of demonstrating error on the part of a lower court is on the Appellant.").

[¶ 9] Second, Appellees challenge the trial court's finding that Demei, rather than Eberdong, is *Ngiribkal*. The trial court found that Demei was properly appointed to hold the title in 2004 because the women who appointed him included the contemporaneous holder of the female title, his mother, Dirramekar. *See Kebliil ra Uchelkeyukl v. Ngiraingas*, 2018 Palau 15 ¶ 11 ("This court has previously recognized that it is the female chief title holder who ultimately chooses the male chief title holder."). Appellees' argument that Demei does not hold the title rests almost entirely on their contention that Demei improperly leased the Clan's land.[5] However, Appellees do not cite (and our own research has failed to reveal) any customary law or other basis to support the proposition that one's mishandling of clan lands has any direct effect on that individual's status as the clan's titleholder. To the contrary, once a titleholder is properly installed, customary law requirements must be met in order to remove him, even where the titleholder acts beyond his authority. *See Filibert v. Ngirmang*, 8 ROP Intrm. 273, 275-77 (2001) (discussing the procedure for removing a titleholder); *Espangel v. Diaz*, 3 ROP Intrm. 240, 246

[4] The trial court declined to rule that Thing and Kohama are not *ourrot*. The court also noted that Gibbons was clearly a senior strong member of the Clan and did not participate in the appointment.

[5] In the fact section of their brief, Appellees cite Sugiyama's testimony that Clan members never gathered to appoint Demei, but the trial court was free to credit this testimony or the conflicting testimony in favor of Appellants' position, and we will not overturn credibility determinations on appeal absent extraordinary circumstances. *See, e.g.*, *Ngermengiau Lineage v. Estate of Isaol*, 20 ROP 68, 71 (2013).

(1992) ("The removal of the title [] from appellee amounts to a deprivation of a vested right."). Accordingly, we discern no error by the trial court.

[¶ 10] Appellees also contend that the trial court should have found that Eberdong was the titleholder "because the majority of the *ourrot* representing the consensus of the lineages . . . support him." Appellees' Opening Br. at 23. However, the only individuals who claim to have appointed Eberdong are Sugiyama, Kohama, and Santos, as well as Agatha Eberdong, Demei's sister. As already discussed, there was no evidence that Kohama was an *ourrot* member of the Clan, nor do Appellees point to any such evidence regarding Agatha Eberdong. Perhaps most fundamentally, according to Appellees' own argument, Eberdong was appointed in 2015, *i.e.*, eleven years after Demei was appointed to hold the title. As there is no evidence that Demei's title was revoked, it follows that Eberdong's appointment was a legal nullity. *See Filibert*, 8 ROP Intrm. at 275-77; *Espangel*, 3 ROP Intrm. at 246. Even assuming that Eberdong's alleged appointment could, in theory, be viewed as an act that somehow removed Demei from his position, on appeal, we "may not reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *Seventh Day Adventist Mission of Palau, Inc. v. Elsau Clan*, 11 ROP 191, 195 (2004) (internal quotation marks omitted). Therefore, where, as here, "there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous." *Id.* In sum, we discern no clear error in the trial court's factual findings regarding the *Ngiribkal* title.

[¶ 11] Lastly, Appellees contend that as a result of Sugiyama's appointment to represent the Clan in its return of public lands claim against KSPLA, she was conferred authority to administer the Clan's returned land. We agree with the trial court that this argument finds no support in Palauan customary law, our precedent, or the nature of Sugiyama's appointment by the then-chief of the Clan. It is well settled that "clan or lineage land is administered by the strongest male member, normally the title bearer." *Ngirudelsang v. Etibek*, 6 TTR 235, 239 (Palau Tr. Div. 1973). Although a clan can, by consensus among the senior strong members, choose to forgo traditional arrangements and select who will serve as a trustee of its land, *see, e.g.*, *Elbelau v. Beouch*, 3 ROP Intrm. 328, 331 (1993), the record is devoid of evidence that Ngeribkal Clan's custom differs from the traditional method of administering clan land, or that

it chose to deviate from its custom. We also discern no error, let alone clear error, in the trial court's factual finding that, despite Sugiyama's selection to be the Clan's "voice[,] and eyes[,] and ears," during the return of public lands process, *see* Trial Tr. at 56:19, and the undisputed fact that Sugiyama largely financed the return of lands proceeding out of her own pocket, "[s]he was only appointed to represent the clan in court and she did," Findings of Fact and Conclusions of Law at 17. Appellees have not pointed to any basis in the record or in customary law for interpreting Sugiyama's appointment more broadly. Nor do Appellees' remaining (and underdeveloped) arguments about equitable estoppel, waiver, and ratification undermine the trial court's conclusion regarding the specific and limited scope of Sugiyama's appointment.

CONCLUSION

[¶ 12] In summary, the trial court's findings that none of the litigants proved they were properly appointed *Dirribkal*, and that Demei is *Ngiribkal* but lacks authority to unilaterally lease the Clan's lands to non-clan members, are **AFFIRMED** in their entirety.[6]

[6] As we have recently noted, the parties had the right to seek declaratory relief in the Trial Division regarding their dispute over clan titles. *See Lakobong v. Blesam*, 2020 Palau 28 ¶ 7 n.3; *see also* 14 PNC § 1001 ("In a case of actual controversy within its jurisdiction, any appropriate court of the Republic, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."); *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶¶ 10-15. However, once the trial court determined that neither Demei nor Sugiyama had the authority to execute the leases on the land, the title disputes became untethered from any discrete, real-world dispute over the exercise of legal authority. Furthermore, according to the parties at oral argument, the resolution of the title disputes by the trial court or this Court will do little to quell the internecine conflicts that are roiling the Clan and its surrounding community. As we stated in *Lakobong*, the time may be ripe for this Court to reassert, as a prudential matter, its ability to decline to determine those internal clan title disputes that are not connected to specific disputes over land or an exercise of legal authority, and which cannot be satisfactorily resolved through litigation. *See* 2020 Palau 28 ¶ 7 n.3; *Matlab v. Melimarang*, 9 ROP 93, 97 (2002) (suggesting that "the issuance of declaratory relief concerning the seating of a title holder is at odds with this Court's repeated insistence that the selection of a title bearer is not the courts' responsibility"), *overruled on other grounds by Kiuluul*, 2017 Palau 14 ¶ 6.

DOLIN, Associate Justice, concurring *dubitante*:

[¶ 13] I join the Court's judgment insofar as it affirms the trial court's conclusion that neither Demei nor Sugiyama has the authority to unilaterally lease the Clan land to non-clan members. I am also constrained to say that, under the current governing caselaw, and applying the clear error standard of review, the Court's resolution of the issues regarding Clan titles is correct. However, I hesitate to fully endorse that part of the opinion because I have grown increasingly skeptical of the wisdom of this Court adjudicating intra-clan title disputes that are untethered to any dispute over land or other legal right.

[¶ 14] On the one hand, we have held not only that the courts have jurisdiction over customary law disputes, *see, e.g.*, *Espangel v. Diaz*, 3 ROP Intrm. 240, 245 (1992), but that to the extent we have "jurisdiction over a dispute[, we] should usually exercise it," *Koror State Legislature v. KSPLA*, 2017 Palau 28 ¶ 16. On the other hand, we have repeatedly and consistently said that "[t]he selection of a title bearer is the Clan's responsibility, not the Court's." *Lakobong v. Blesam*, 2020 Palau 28 ¶ 7 (quoting *Sato v. Ngerchelong State Assembly*, 7 ROP Intrm. 79, 81 (1998)); *see also Matlab v. Melimarang*, 9 ROP 93, 97 (2002), *overruled on other grounds by Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 6; *Filibert v. Ngirmang*, 8 ROP Intrm. 273, 276 (2001). Although these directions may seem inconsistent, upon a careful reading of our precedent, it becomes apparent that they are not. Thus, *Kiuluul* did not *require* courts to exercise jurisdiction over title disputes governed by customary law; rather, it reaffirmed that "the decision whether to entertain claims for declaratory relief is 'committed to the sound discretion of the trial court.'" 2017 Palau 14 ¶ 5 (quoting *Filibert*, 8 ROP Intrm. at 276); *see also id.* ¶ 7 ("noting that nothing in the language of [ROP] Rule [of Civil Procedure] 57 purports to create an absolute right in any party to [] a declaration[,]" but that "under its plain language, it places discretion in the trial court, creating an opportunity—not a duty—to grant relief to qualifying litigants"). Similarly, although the *Koror State Legislature* Court reversed the Trial Division's *constitutional* holding, which concluded that the Palauan Constitution, like the U.S. one, imposes a standing requirement for the court to exercise jurisdiction, 2017 Palau 28 ¶ 22, it endorsed the notion that, as a *prudential* matter, cases

over which this Court has jurisdiction may nevertheless be non-justiciable, *id.* ¶¶ 23-24. In my view, over the past several years our courts have adjudicated intra-clan disputes without sufficiently considering whether, as a prudential matter, these contests "may be inappropriate for consideration for other [than constitutional] reasons." *Id.* ¶ 23 (quoting *PCSPP v. Udui*, 22 ROP 11, 14-15 (2014)).

[¶ 15] Because "the decision whether to entertain claims for declaratory relief is 'committed to the sound discretion of the trial court,'" *Kiuluul*, 2017 Palau 14 ¶ 5 (quoting *Filibert*, 8 ROP Intrm. at 276), I cannot be sure (certainly not without the benefit of briefing and argument on the issue) that the decision to adjudicate the title disputes in the present case was erroneous. Because I cannot be certain of the error, I concur in the Court's judgment on these issues. However, because discretion merely "denotes the absence of a hard and fast rule," and must be "exercised not arbitrarily or willfully, but with regard to what is right and equitable under the circumstances and the law," *Etpison v. Obichang*, 2020 Palau 8 ¶ 40 (Dolin, J., concurring) (quoting *Langnes v. Green*, 282 U.S. 531, 541 (1931)), we should take the earliest possible opportunity to authoritatively set forth the factors that would militate for or against the exercise of jurisdiction in such disputes.

[¶ 16] At the end of the day, disputes over clan titles that are untethered to disputes over land or other legal rights are mostly disputes about the status and respect accorded to the claimant within a clan. Such respect is not conferred by judicial decree but is earned over years, if not decades, of providing services to a clan and building strong bonds within it. For this reason, though the Constitution and the Declaratory Judgment Act grant us the power to resolve such intra-clan disputes, in my view this power should be exercised rarely and gingerly. *Cf. Aitaro v. Koror State Gov't*, 15 ROP 175, 179 (Tr. Div. 2008) ("When title or customary disputes are resolved through traditional means, such resolutions can only strengthen traditions and customs."). I look forward to the day when the Court clarifies this area of the law and reinvigorates the prudential justiciability doctrine as it applies to "naked" title disputes.