

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

MADENGERANG TAKEO,
Appellant,
v.
HUMIKO KINGZIO,
Appellee.

Cite as: 2021 Palau 25
Civil Appeal No. 20-027
Appeal from Civil Action No. 19-036

Decided: August 31, 2021

Counsel for Appellant	Salvador Remoket
Counsel for Appellee	Raynold B. Oilouch

BEFORE: GREGORY DOLIN, Associate Justice
KATHERINE A. MARAMAN, Associate Justice
DANIEL R. FOLEY, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Presiding Justice, presiding.

OPINION¹

PER CURIAM:

[¶ 1] Madengerang Takeo appeals the judgement of the Trial Division, which held that 1) she is not a senior strong member of Lulk Lineage and 2) Plaintiff-Appellee Humiko Kingzio is a senior strong member of Lulk

¹ The parties did not request oral argument in their opening briefs as required by ROP R. App. P. 34(a). Thereafter, Appellant filed a “Motion for Oral Argument in Lieu of Reply Brief.” That motion was denied “without prejudice to the panel’s authority to schedule oral argument *sua sponte*.” Upon reviewing parties’ submissions, we have decided to resolve the present appeal on the basis of the briefs. *See id.*

Lineage and had authority to transfer the land, formerly held by the Lineage, to herself in fee simple. The appeal challenges the trial court’s factual findings. Because, having reviewed the record below, we are unable to conclude that the Trial Division’s findings of fact are clearly erroneous, we **AFFIRM**.

BACKGROUND

[¶ 2] This case arose from the parties’ disagreement as to the control of the land known alternatively as *Tekrar*, Cadastral Lot No. 020 A 05, or Tochi Daicho Lot 1811. It is undisputed that as of 1992, Lulk Lineage was confirmed by the Land Claims Hearing Office as the owner of this property with the late Telael Amalei listed as trustee.

[¶ 3] On May 16, 2017, Kingzio executed a warranty deed transferring *Tekrar* from Lulk Lineage to herself as individual owner. On June 20, 2017, Takeo, on behalf of herself and the Lulk Lineage, filed an objection to the transfer alleging that “she is one of the strong senior members of Lulk Lineage whose consent is required for the transfer of” Lulk Lineage’s real property to others. In response, nine months later, Kingzio filed suit seeking a declaration that she is a senior strong member of Lulk Lineage with authority to transfer *Tekrar* to herself, while Takeo is not a senior strong member and therefore has no standing to object to the transfer.

[¶ 4] A three-day bench trial was held on the issue of the parties’ relative strength within Lulk Lineage. In addition to their own testimony on the genealogy of their respective factions, both Kingzio and Takeo called witnesses to testify on their respective behalf. Takeo also called an expert on Palauan customary law who opined that under Palauan custom, the descendants of those progenitors “who remained [on a particular land] and who participate in custom on behalf of the lineage are the senior strong members of the lineage,” whereas descendants of those progenitors “who continued on to another settlement and whose [descendants]² return several generations later are weaker than [the descendants of] those who remained on the land.” Findings of Fact and Conclusions of Law at 9. Kingzio did not challenge this statement

² The trial court used the word “ancestors,” but that is obviously a typographical error as the Court was discussing the status of subsequent generations of those who leave the lineage’s traditional settlement.

of customary law, but instead argued that Takeo is not part of Lulk Lineage at all, and therefore cannot be a senior strong member of the Lineage.

[¶ 5] Following trial, the Trial Division issued a detailed ten-page Findings of Fact and Conclusions of Law that discussed the testimony of all the witnesses, evaluated their credibility, and ultimately concluded that the case put forth by Kingzio is more convincing than the one advanced by Takeo. Accordingly, the Trial Division concluded that Takeo is not a senior strong member of Lulk Lineage and therefore her consent is not required to transfer ownership of *Tekrar*. The court entered judgment in favor of Kingzio as prayed for in the complaint. The present appeal followed.

STANDARD OF REVIEW

[¶ 6] We review trial court’s conclusions of law (including on issues of customary law) de novo and its findings of fact for clear error. *Sungino v. Ibuuch Clan*, 2021 Palau 6 ¶ 9. “It is not the appellate panel’s duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence. Therefore, we must affirm the [trial] [c]ourt’s determination as long as the [trial] [c]ourt’s findings were plausible.” *Id.* (quoting *Esuroi Clan v. Roman Tmetuchl Family Trust*, 2019 Palau 31 ¶ 12).

DISCUSSION

[¶ 7] Takeo’s brief merely restates the factual arguments presented to and rejected by the trial court. The entire brief is dedicated to rearguing the factual questions concerning genealogy of the parties. This is a question of fact that is subject to clear error review. We do not see any error in the Trial Division’s determination. Appellant obviously disagrees with trial court’s determination and the weighing of evidence, but we have repeatedly said that “an appeal that merely re-states the facts in the light most favorable to the appellant and contends that the [trial] [c]ourt weighed the evidence incorrectly borders on frivolous.” *Ngerdelolk Hamlet v. Peleliu State Pub. Lands Auth.*, 2021 Palau 15 ¶ 10 (quoting *Ngiraked v. Koror State Pub. Lands Auth.*, 2016 Palau 1 ¶ 8). This is such an appeal.

[¶ 8] Takeo does point to testimony of Takeo Ngirmekur — an expert on Palauan customary law — to bolster her case that, given her genealogy, she is

a senior strong member of Lulk Lineage. The problem is that it is well established that ancestry is only one factor in determining whether or not someone is a senior strong member of a clan or lineage. See, e.g., *Isechal v. Umerang Clan*, 18 ROP 136, 141 (2011) (“Strong senior members are typically older people who have performed services for the clan”). “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.” *Id.* Relevant, of course, is not the same thing as “dispositive.” In this case, the burden of proof was on Kingzio (as she is the one who sought a declaration that Takeo was not senior strong member of Lulk Lineage). In order to carry her burden, Kingzio had to show that Takeo did not have sufficient “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, [or] financial contributions to the clan” *Id.* The Trial Division considered evidence on this point (including Takeo’s own testimony) and concluded that the evidence showed that Takeo “is not a senior strong member of Lulk Lineage based on her lack of information, knowledge, and services.” Findings of Fact and Conclusions of Law at 9. The trial court enumerated significant problems with Takeo’s credibility and specifically pointed out statements that turned out to be false. We will not second-guess these well-supported factual findings, as it is beyond our purview to “reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence.” *Ngerdelolk Hamlet v. Peleliu State Pub. Lands Auth.*, 2021 Palau 15 ¶ 10 (quoting *Children of Antonio Fritz v. Ibuuch Clan*, 2021 Palau 7 ¶ 4).

[¶ 9] The trial court’s factual determinations will be undisturbed absent “a definite and firm conviction [on our part] that an error has been made.” *Koror State Pub. Lands Auth. v. Idid Clan*, 2016 Palau 9 ¶ 9. On the record before us, we are unable to muster such a conviction.

CONCLUSION

[¶ 10] The judgment appealed from is **AFFIRMED**.