

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

JUSTINO NGSAL NGIKLEB and FELIX FRANCISCO,
Appellants,
v.
LOTHAIN SADAO,¹
Appellee.

Cite as: 2021 Palau 5
Civil Appeal No. 18-047
Appeal from Civil Action No. 18-079

Decided: February 3, 2021

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

BEFORE: KATHERINE A. MARAMAN, Associate Justice
DANIEL R. FOLEY, Associate Justice
KEVIN BENNARDO, Associate Justice

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

OPINION²

PER CURIAM:

[¶ 1] Appellants Justino Ngsal Ngikleb and Felix Francisco appeal from the Trial Division’s judgment that Appellee Lothain Sadao holds the chief title for Ngeuch Clan, and therefore has control over Clan lands. After careful consideration, we **AFFIRM** the trial court’s factual findings but **VACATE** the trial court’s legal conclusion regarding customary law and **REMAND** for the

¹ Because the chief title, and therefore the ability to bring suit on behalf of the Clan, is disputed in this case, we have altered the caption to remove the disputed title *Omuik* and Ngeuch Clan. Carlos and Selena Ramon initially filed suit on Sadao’s behalf but withdrew as plaintiffs at the start of the trial and are not parties to the appeal.

² The parties did not request oral argument, and the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

court to perform a proper analysis consistent with our decision in *Beouch v. Sasao*, 20 ROP 41 (2013).

BACKGROUND

[¶ 2] Ngeuch Clan owns property in Angaur State on which very valuable *dort* (ironwood) trees grow.³ Felix Francisco entered into an agreement with Justino Ngsal Ngikleb, who claims to be the male chief of Ngeuch Clan (*Omuik*), to purchase some of these trees.

[¶ 3] Lothain Sadao, sometimes known as Tangerkoi Sadao, also claims to hold the *Omuik* title. On May 2, 2018, Sadao, purportedly representing Ngeuch Clan, filed suit seeking a temporary restraining order (“TRO”) to stop the felling of the trees. The trial court granted the TRO that same day. In his subsequent Complaint, Sadao sought, among other forms of relief, a declaratory judgment that he holds the title *Omuik*, and that Ngikleb and Francisco did not have authorization to enter the land and take the trees. On May 18, the trial court granted a preliminary injunction against further felling or removal of the *dort* trees.

[¶ 4] On May 21, 2018, Ngikleb and Francisco filed an Answer and Counterclaim seeking a declaratory judgment that (1) Sadao is not *Omuik* and is, in fact, not even a member of the Clan; and (2) Ngikleb is *Omuik* and has authority over the trees. Following a trial, which was held on June 6-8, 2018, the court concluded that neither side had met its burden to establish that its candidate was properly appointed to hold the *Omuik* title.

[¶ 5] In its Decision and Findings of Fact issued on September 6, 2018, the trial court made several findings of fact, including that: (1) Ngeuch Clan is a duly recognized clan of Ngermasech Hamlet of Angaur State; (2) the *Omuik* has the authority to disperse clan property, including *dort* trees, and his consent must be obtained by anyone seeking to disperse Clan assets; (3) Sadao is descended from Osismereng and Modebel, who are *ochell* members of the Clan; (4) Modebel, Sadao’s grandmother, was Osismereng’s niece and had children named Madris Matreklai, Mesiou Renguul, and Ungilbesul Sadao; and (5) Ungilbesul Sadao, who is Lothain Sadao’s mother, and Renguul are *ourrot* of the clan and appointed Sadao as chief. The trial court concluded, however, that Sadao’s appointment as *Omuik* was invalid due to Blumel Ramon’s participation in the appointment, because Ramon is not a member of Ngeuch Clan.

³ The lot at issue is Cadastral Lot No. 003 S 03. A Certificate of Title in Ngeuch Clan’s name was recorded on March 23, 2001.

[¶ 6] On September 14, 2018, Sadao filed a Motion for Reconsideration, asserting that the trial court erred when it failed to find that he was *Omuik*. In its Order Granting the Motion for Reconsideration on October 3, 2019, the trial court reversed course and held that, regardless of Ramon’s participation in the appointment, Sadao was *Omuik* because he was properly appointed by Ungilbesul Sadao and Mesiou Renguul. Ngikleb and Francisco timely appealed.

STANDARD OF REVIEW

[¶ 7] 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). We review a trial court’s conclusions regarding customary law de novo. *Imetuker v. Ked Clan*, 2019 Palau 30 ¶ 10. On clear error review, a trial court’s factual findings “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.” *Ngotel v. Iyungel Clan*, 2018 Palau 21 ¶ 7 (internal quotation marks omitted). We have recognized that “[t]he trial court is in the best position to weigh evidence, determine the credibility of witnesses, and make findings of fact.” *Ngiraingas v. Tellei*, 20 ROP 90, 94 (2013).

DISCUSSION

[¶ 8] Appellants raise three arguments on appeal: (1) the trial court erred when it determined that Modebel is Osismereng’s niece because there was nothing in the record to establish that relationship; (2) Ungilbesul Sadao and Mesiou Renguul are not senior strong members of the Clan because they have not lived in Angaur for a long time and have not provided services to the Clan; and (3) even if Sadao was properly appointed by the *ourrot* of Ngeuch Clan, he is not *Omuik* because he was not accepted by the *klobak* of Ngermasech Hamlet of Angaur.

I. The Trial Court Did Not Clearly Err in Finding that Modebel is Osismereng’s Niece.

[¶ 9] Appellants argue that the trial court committed clear error when it found that Modebel is Osismereng’s niece. Despite Appellants’ assertions to the contrary, there was sufficient evidence, including Sadao’s testimony, for the trial court to reasonably conclude that Modebel is Osismereng’s niece.⁴ *See* Trial Tr. at 356-57. The fact that Sadao’s testimony was, at times, ambiguous as to the relationship between Osismereng and Modebel is an insufficient basis for this Court to reverse the trial court’s finding on clear error review.

II. The Trial Court Did Not Err in Concluding that Ungilbesul Sadao and Mesiou Renguul are Senior Strong Members of the Clan.

[¶ 10] Appellants argue that the trial court erred when it concluded that Ungilbesul Sadao and Mesiou Renguul are senior strong members of the Clan. “[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. Where a party seeks to prove not that it is a strong member, but that instead another individual is a weak member, the burden of proof is placed on the party that would lose if no evidence were presented.” *Beouch*, 20 ROP at 51 (internal quotation marks omitted).

[¶ 11] As noted earlier, the trial court found that Ungilbesul Sadao and Renguul are *ochell* members of Ngeuch Clan. Our precedent establishes that one’s strength in a clan can be diminished through failure to render services to the clan. *See Dokdok v. Rechelluul*, 14 ROP 116, 119 (2007) (noting with approval expert evidence that “by moving away from the physical location of their lineage, failing to bear the lineage titles for several generations, and deciding not to play [an] active and significant role in the affairs of the community, Appellants have voluntarily relinquished some of the strength related to their rank”).

[¶ 12] However, at trial, Appellee presented evidence that—despite not living in Angaur State—Modebel and her family provided services to the Clan, such as taking in Osismereng in her old age and organizing her funeral.⁵

⁴ When asked about the relationship between his grandmother Modebel and Osismereng, Sadao testified: “I heard that [Osismereng] is either, she and Modebel are, uh, she is like sister of Modebel’s mother.” Trial Tr. at 356:26-27.

⁵ We note that the trial court also determined that the status of Modebel’s family in Ngeuch Clan is not affected by their status as senior strong members of another clan. *See, e.g., Ngerungor*

Further, Appellants have presented no authority for the proposition that, regardless of services to a clan, a person can lose her senior strong status simply by living in another state. Thus, this Court concludes that the trial court did not commit error, factual or legal, when it determined that Modebel's children are *ochell* members of Ngeuch Clan and are senior to *ulechell* member Ngikleb.

III. The Trial Court Erred by Recognizing a Custom Without Applying the Proper *Beouch* Analysis.

[¶ 13] Finally, Appellants contend that even if Sadao was properly appointed by the *ourrot* of Ngeuch Clan, the trial court erred in concluding he is *Omuik* because he was not accepted by the *klobak* of Ngermasech Hamlet of Angaur. Appellee contended that approval by the *klobak* was not necessary. Based on the record and testimony presented at trial, the trial court concluded that Appellee's assertion was consistent with the custom of Ngeuch Clan.

[¶ 14] Ordinarily, appointment of a chief is a two-step process: first, the *ourrot* select and appoint a candidate to be the chief titleholder; and second, the *klobak* must accept this candidate by holding a *blengur*. See *Edward v. Suzuki*, 19 ROP 187, 192-93 (2012). A particular clan's custom may differ from that followed by other Palauan clans. The Court has previously noted how clan customs can change and the legal analysis that must be performed to determine a new custom.

Customs may change gradually, and changes may be started by some of the people affected agreeing to some new way of doing things, but such new ways will not become established and legally binding or accepted customs until they have at least existed long enough to have become generally known and have been peaceably and fairly uniformly acquiesced in by those whose rights would naturally be affected.

Beouch, 20 ROP at 48 n.4.

[¶ 15] However, prior to concluding that a particular practice constitutes a clan's custom, a trial court must consider whether: "(1) the custom is engaged 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." *Id.* at 48.

Clan v. Renguul, 2019 Palau 4 ¶ 22 ("It is possible for individuals to be members of multiple clans and in some rare situations, even *ochell* members of multiple clans.").

[¶ 16] Rather than undertaking the proper analysis, the trial court simply stated, “[i]n Ngermasech Hamlet, one becomes a rubak or title bearer once he is appointed by the ourrot” and that “[t]he council of chiefs can only expel or discipline” a title bearer. Decision and Findings of Fact (Sept. 6, 2018) at 3. We thus understand the trial court to have determined, contrary to established Palauan custom, that the approval of the *klobak* is not necessary for a titleholder to be properly appointed in Ngermasech Hamlet. Because the trial court recognized this custom without undertaking the proper analysis, we must vacate this part of the trial court’s judgment and remand for the court to perform a *Beouch* analysis in the first instance. See *Rengiil v. Ongos*, 22 ROP 48, 54 n.7 (2015); see also *Rechesengel v. Mikel*, 2018 Palau 20 ¶ 23.

CONCLUSION

[¶ 17] For the foregoing reasons, we **AFFIRM** the Trial Division’s judgment as to its findings that Modebel was Osismereng’s niece, and that Ungilbesul Sadao and Mesiou Renguul are *ourrot ochell* members of Ngeuch Clan. However, we **VACATE** the Trial Division’s judgment as to its conclusion regarding the process for appointing the *Omuik* and **REMAND** for the trial court to apply the proper *Beouch* analysis. The status quo as to the *dort* trees shall remain in effect pending final resolution of the question of who is title bearer with authority to dispose of Clan property. Each side shall bear its own costs.