

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

<p>BESECHEL KIULUUL and NGESENGES NAKAMURA, <i>Appellants/Cross-Appellees,</i></p> <p style="text-align:center">v.</p> <p>ELILAI CLAN, re. by AUGUSTA RENGIL and NATHAN YUJI, <i>Appellee/Cross-Appellant.</i></p>

Cite as: 2022 Palau 3
Civil Appeal No. 21-010
Appeal from Civil Action No. 13-018

Decided: March 25, 2022

Counsel for Appellants.....	Siegfried B. Nakamura, Esq.
Counsel for Appellees.....	Johnson Toribiong, Esq.

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] Before the Court is an appeal and cross-appeal of the May 31, 2021 Trial Division Judgment and Decision on Remand. For the reasons set forth below, the judgment is **REVERSED** and this case is **REMANDED** to the Trial Division to clarify its understanding of the facts and provide adequate reasoning for its findings and decision.

PROCEDURAL HISTORY

[¶ 2] The dispute in this case involves the male and female titles and membership in Elilai Clan of Aimeliik. Elilai Clan is the second ranking clan

in Ngchemiangel Hamlet in Aimeliik State. Melachelbeluu and Obaklubil are the respective male and female titles of the Clan.

[¶ 3] The case came before the trial court when Wilhelm Rengiil and Alberta Rechirei (Plaintiffs below) filed a complaint on March 8, 2013, asking the Trial Division to declare that they, and not Besechel Kiuluul and Ngesenges Nakamura (Defendants below), held the male chief title Melachelbeluu and the female chief title Obaklubil of Elilai Clan. Defendants counterclaimed, alleging that they, instead of the Plaintiffs, were the proper title holders of the Clan's male and female titles.

[¶ 4] On March 30, 2015, approximately two years later, the Trial Division issued its decision in which it refused to entertain the parties' dispute. Both parties appealed.

[¶ 5] On March 16, 2017, the Appellate Division remanded the matter to the Trial Division. Following the remand, a second trial was held in early December 2019. Before the second trial commenced, Augusta Rengiil and Nathan Yuji were substituted for the original Plaintiffs, who died in the interim. The second trial lasted three days, from December 10–12, 2019. The trial transcript was approximately 250 pages long but combined with the transcript of the first trial exceeded well over 900 pages.

[¶ 6] On May 31, 2021, approximately fourteen months after the conclusion of the second trial, the Trial Division issued a four-page decision in which it found, among other things, that the parties were ulechell members of Elilai Clan (meaning they descended from a male line in the Clan) and possessed equal strength within the Clan. Further, the Trial Division held that none of the parties held the Clan's titles because the appointments did not receive both parties' consent. Both parties appealed.

FACTUAL BACKGROUND

[¶ 7] The parties here are closely related. Appellees Rengiil and Yuji (Plaintiffs below) (hereinafter Rengiil and Yuji) are the descendants of Etor of Terekiu Clan in Iyebukl, Koror. Etor begat Ngeduas, Ngeduas begat Telbong, and Telbong begat Imerab and Ngeaol (although Ngeaol was adopted by Losii). Imerab gave birth to thirteen children, including Wilhelm Rengiil,

Alberta Rechirei, Appellee Augusta Rengiil, Berenges Brenda Rengiil (Berenges), and Siang Yuji. Siang is the mother of Appellee Nathan Yuji. Tr. 129, 131; Tr. Remand 6–7, 8–9.

[¶ 8] Telbong also raised Tkedam, the mother of Appellant Besechel Kiuluul (hereinafter Kiuluul). Tkedam is the daughter of Ngertaoch, who is the granddaughter of Appellants’ ancestor Mausei through Dirusong. Tr. Remand 103. Losii, also a granddaughter of Mausei, through Obaklubil, adopted Ngeaol. *Id.* at 109:18–19. Ngeaol begat Appellant Ngesenges Nakamura (hereinafter Nakamura). *Id.* at 109:20–24.

[¶ 9] The parties agree that the head of Elilai Clan was Melachelbeluu, who lived alone in Ngchemiangel and through whom they are members of Elilai Clan. Despite this agreement, the parties present two different explanations of their connection to Melachelbeluu and membership in Elilai Clan.

[¶ 10] According to Nakamura and Kiuluul, their membership in Elilai Clan is through Melachelbeluu and his wife, a woman named Mausei. Mausei lived in Medorm, Aimeliik, with her daughter Dirusong. While in Medorm she heard about a man who lived alone in Ngchemiangel. The man was Melachelbeluu. Mausei sought Melachelbeluu and eventually married him. When Mausei married Melachelbeluu, he had neither children nor relatives. Mausei and Melachelbeluu had two children – a boy and a girl – from their marriage. They named the boy Melachelbeluu and the girl Obaklubil because they were the last remaining Clan members. *Id.* at 107–109. When Melachelbeluu died, Mausei inherited the property and titles of the Clan by virtue of her marriage (chelbechiil) since there were no other members of the Clan alive. *Id.* As stated above, Mausei’s daughter Dirusong begat Ngertaoch and Ngertaoch begat Tkedam, the mother of Kiuluul. Obaklubil, the only daughter of Mausei and Melachelbeluu, gave birth to Losii. Losii adopted Ngeaol, the mother of Nakamura.

[¶ 11] In contrast, Rengiil and Yuji assert membership in the Clan based on the marriage of Melachelbeluu and Etor. At the time Etor married Melachelbeluu, there were no other members of the Clan alive. Tr. Remand 34:6–10. Berenges testified that the Clan was ngemed chad (members have died out). *Id.* at 46:17–19. Therefore, as the descendants of Etor and Melachelbeluu, they assert that they are the senior members of Elilai Clan. It

is important to note that the trial court found that Rengiil and Yuji “presented conflicting testimonies of their origin within the Clan[,]” as well as “conflicting family trees.” Dec. Remand 1, 2. By the trial court’s retelling, one version of events is the one testified to by Berenges at the first trial in which their ancestor Etor married into the clan by marrying Melachelbeluu. *Id.* at 2; *see also* Tr. 129–30. The second version, testified to at the second trial, does not trace their connection to Elilai Clan through Etor’s marriage to Melachelbeluu, but rather traces the lineage back to a great ancestor who landed in Aimeliik, named the area Ngchemiangel, and became the first Melachelbeluu. Dec. Remand 2. There is also a family tree prepared by Wilhelm Rengiil and admitted at the trial below as Defendants’ Exhibit A, in which their connection to Elilai Clan is not through Etor’s marriage to Melachelbeluu. The trial court did not state which, if either, of Rengiil and Yuji’s stories or family trees it found credible.

STANDARD OF REVIEW

[¶ 12] Clan membership and status are questions of fact, and the Appellate Division reviews the trial court’s findings for clear error. *Oseked v. Ngiraked*, 20 ROP 181, 183 (2013); *Imeong v. Yobech*, 17 ROP 210 (2010). By this standard, the trial court’s findings will be upheld if, based on the evidence, a reasonable trier of fact could have reached the same conclusions as the trial court. *Isechal v. Umerang Clan*, 18 ROP 136, 142 (2011). To set the trial court’s findings aside, the Appellate Division must have a “definite and firm conviction that an error was made.” *Id.* (citing *Ngirutang v. Ngirutang*, 11 ROP 208, 210 (2004)).

[¶ 13] Demonstrated inconsistencies in reasoning are a sufficient basis for a “firm conviction” that the trial court erred. *Camacho v. Osarch*, 19 ROP 94, 97. Such inconsistencies may arise when a trial court does not provide sufficient detail to allow for a meaningful appellate review. *See Whipps v. Idesmang*, 2017 Palau 24 ¶ 37; *Edward v. Suzuky*, 19 ROP 187. In the court’s analysis, it “need not discuss all the evidence relied on to support its conclusion, [but] the court’s decision must ‘reveal an understanding analysis of the evidence, a resolution of the material issues of fact that penetrate beneath the generality of ultimate conclusions, and an application of the law to those facts.’” *Eklbai Clan v. Imeong*, 13 ROP 102, 107 (2006) *quoting* *Fritz v. Blailes*, 6 ROP Intrm. 152, 153 (1997).

[¶ 14] Sufficient detail of the court’s assessment is essential because the finder of fact is uniquely well-suited to assess credibility; it is the only decisionmaker that observes the witnesses firsthand. An appellate court reviewing a cold record cannot meaningfully evaluate the trial court’s credibility determinations unless the trial judge clearly articulates her finding and the basis on which the court rests. “The trial court is in the best position . . . to make credibility determinations . . . and as an appellate tribunal, our review is limited. If the evidence before the trial court is insufficient to support its findings, we should therefore remand rather than determine unresolved factual or customary issues on appeal.” *Imeong v. Yobech*, 17 ROP 210, 215 (2010).

DISCUSSION

[¶ 15] Both parties argue that the trial court erred in finding that the parties are of equal strength within the Clan. Ultimately, however, the trial court’s Decision on Remand did not provide sufficient clarity or specificity to evaluate these issues without remanding the case.

[¶ 16] Here, the trial court’s findings and conclusions of law in the four-page Decision on Remand seldom cited specific evidence and did not provide sufficient detail to allow for a meaningful appellate review. *See Whipps*, 2017 Palau at ¶ 37. It is not clear from the Decision on Remand whether the evidence presented to the trial court was insufficient to make more conclusive findings, or whether such evidence and specificity was simply omitted from the trial court’s articulated analysis. This is not for the Appellate Division to speculate. This matter must therefore be remanded to the Trial Division for additional findings and clarification of the Decision, either based on the present record or additional evidence. Specifically, on remand, the trial court should expressly address the following issues:

I. The trial court did not explain its finding that the parties are both ulechell and hold equal strength in the Clan.

[¶ 17] The trial court found that both parties are (1) ulechell and (2) of equal strength within the Clan. Dec. Remand 2. But multiple questions remain. The court did not explain the basis of its decision other than to say that the parties are “closely related and at one time worked closely together doing customary

obligations for the clan.” Dec. Remand 2. As to the ulechell status of Kiuluul and Nakamura, the trial court stated that, “Defendants claim membership of the Clan through a former Melachelbeluu. The plaintiffs and defendants are members of the Clan through a male line.” *Id.* Kiuluul and Nakamura trace their ancestral line to Melachelbeluu and Mausei. To this end, there is evidence in the record to support the finding that Kiuluul and Nakamura are ulechell of Elilai Clan. But as explained below, this finding cannot be squared with the same finding for the Rengiil and Yuji and, upon our review of the entire record, we are left with a definite and firm conviction that a mistake has been committed.

[¶ 18] In finding that Rengiil and Yuji are also ulechell members of Elilai Clan, the trial court implicitly accepted their version that Etor married Melachelbeluu. Berenges Rengiil testified to this version, stating that when Etor married Melachelbeluu, “he was the only, alone, this man.” Tr. Remand 44:16–17. She elaborated that, Etor “completed this clan” and her children became the members of Elilai. *Id.* at 44:17. They made the Clan “whole” because there was no one else. However, this ancestral narrative directly contradicts Kiuluul and Nakamura’s narrative. Kiuluul testified that *Mausei* heard about Melachelbeluu “who was alone with no wife and no children and no relatives” and she went to him and married him. *Id.* at 141:10–11. When they had children, Melachelbeluu explained to Mausei that they should name the children Melachelbeluu and Obaklubil because, “I have no other living relatives . . . they will bear these traditional titles.” *Id.* at 142:1–3. It is through *this* family line that Kiuluul and Nakamura are ulechell members. So, from these two versions of history, the question arises: if Etor married Melachelbeluu, then how can Mausei have also married the same person? The trial court’s finding that both parties are ulechell was therefore contradictory, as both narratives as presented cannot be true. The Decision on Remand did not elaborate on how the trial court reached this finding or which ancestral narrative, if either, the trial court found persuasive.

[¶ 19] The court likewise did not adequately support its finding that the parties are of equal strength in the Clan. The court stated that “[i]f anything, the evidence presented show the parties to be of equal strength within the Clan.” Dec. Remand 3. By adding the qualifying language of “if anything,” the court did not directly state whether the parties attained equal strength or not,

obscuring the earlier statement that “evidence reveal that they have the same status.” *Id.* at 2. Assuming the language “if anything” was meant to indicate that the parties *did* achieve equal strength, the court did not state what evidence it relied upon in making such a finding. Under this interpretation, the court also did not specify which individuals among the parties attained senior strength or if everyone did.

[¶ 20] In continuing that finding, the court subsequently wrote, “[s]o, if the parties have attained senior strength within the Clan because of the services they did together, then their consents are needed for the appointments of the title bearers.” *Id.* at 3–4 (emphasis added). These two conclusions do not square with the court’s factual finding that “little evidence is shown to prove service and contributions to the Clan.” *Id.* at 3. In the next sentence, however, the court wrote, “evidence provided were services and contributions to the Clan by both factions helping each other or contributing together.” *Id.* A strong senior member of a clan is determined by whether the member “participated in clan functions, has knowledge of internal clan affairs, performs services for the clan, and keeps peace within the clan.” *Isechal v. Umerang Clan*, 18 ROP 136, 145 (2011). The trial court did not clarify whether the “little evidence” shown was sufficient for the court to find senior strength, nor did the court explain what limited evidence it relied on.

II. The trial court did not specify who the ourrot members of the Clan are or whether any parties here have reached ourrot status.

[¶ 21] The trial court also found that none of the parties can claim Clan titles because none of them has been appointed by the ourrot (the most senior women in the Clan). This finding is problematic for two reasons. First, the ourrot members of Elilai Clan are not identified. In order for one of the parties to hold the Clan titles, it must be established who the individuals are who can make those appointments. The appointment of the female titleholder requires the consensus of the ourrot of all lineages of a clan. *Demei v. Sugiyama*, 2021 Palau 2 ¶ 7. As for the male titleholder, it is the female title holder who ultimately chooses that person. *Kebliil ra Uchelkeyukl v. Ngiraingas*, 2018

Palau 15 ¶ 11. The Decision on Remand did not identify the ourrot members or discuss evidence in the record to support each member’s ourrot status.¹

[¶ 22] Second, in the Decision on Remand, the court stated that “scant evidence” was presented to show how any party to the case achieved ourrot status. Dec. Remand 3. This assertion suggests that no party successfully proved it achieved ourrot status. But in the Judgment, the court stated that the parties each need the consent of the other to hold Clan titles. If there is insufficient evidence to show that the parties have achieved ourrot status, it does not follow that their consent would be necessary for title appointments. The trial court did not elaborate. Although ochell members (descendant from a female line) are stronger than ulechell members, an ulechell member can still become a strong member and achieve ourrot status, depending on her age and contribution. *See, e.g. Ngirmang v Filibert*, 9 ROP 226, 229 (1998). The trial court did not discuss to what degree this was successfully shown here, if at all.

* * *

[¶ 23] Ultimately,

[a]lthough a trial court need not discuss all the evidence relied on to support its conclusion, the court’s decision must “reveal an understanding analysis of the evidence, a resolution of the material issues of fact that penetrate beneath the generality of ultimate conclusions, and an application of the law to those facts.”

Eklbai Clan v. Imeong, 13 ROP 102, 107 (2006) quoting *Fritz v. Blailes*, 6 ROP Intrm. 152, 153 (1997). Here, there were significant inconsistencies or conflicts in the evidence. Yet, the trial court’s Decision on Remand not only failed to resolve these conflicts, it also did not reveal an understanding analysis of the evidence, a resolution of the material issues of fact, or an application of the law to those facts. There was simply not enough factual specificity or clarity for the Appellate Division to meaningfully review the arguments of the parties on appeal. The lingering questions articulated above demonstrate that

¹ Plaintiffs’ trial exhibit 3 lists the names of the “ourrot” who appointed Appellant Kiuluul to the Melachelbeluu title. They are: Ruong N Ngirakelau, Dirturong N Rengiil, Ilong Udui, Ngesenges Nakamura, and Katsumi N. Erungel. The court did not state whether it finds these individuals to be ourrot, and if so, what evidence in the record supports such findings as to each individual.

the case should properly be remanded to the trial court so that it can explain why it weighed the evidence as it did and provide a reasoned explanation for its decision that is amenable to judicial review. *See Imeong*, 17 ROP at 215.

[¶ 24] To avoid prolonging this case further with additional remands, as the trial court considers the issues articulated above, the court should address and settle these specific questions 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 achieved ourrot status with appointment powers of Elilai Clan? On what basis is this status established?

[¶ 25] In listing these questions, we do not intend to entirely restrict the trial court’s analysis. The issues of the case remain unchanged: who are the true members of Elilai Clan and rightful bearers of the Clan’s titles? In reaching a clear and fully-reasoned decision on these issues, however, the enumerated questions must all be answered. In making these findings, the trial court may decide to receive additional evidence or rely on the existing record from the first two trials, but regardless, the court should review the complete record of the case. The court should then make conclusive determinations as to these issues, and articulate its reasoning explicitly.

CONCLUSION

[¶ 26] We find that the trial court clearly erred in its factual findings and **REVERSE** its decision that the parties are ulechell members, have equal strength within Elilai Clan, and their consent is needed for the appointment of the Clan’s title-bearers; we **REMAND** this matter to the trial court to reconsider, clarify, and provide adequate reasons for its findings and decision in light of this opinion.