

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

OIWERRANG LINEAGE, represented by Apton Techur,
Appellant,
v.
JANETTE TECHUR,
Appellee.

Cite as: 2022 Palau 4
Civil Appeal No. 21-014
Appeal from Civil Action No. 18-053

Decided: April 11, 2022¹

Counsel for Appellants..... Johnson Toribiong
Counsel for Appellees..... Ronald K. Ledgerwood (MLSC)

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
 JOHN K. RECHUCHER, Associate Justice
 DANIEL R. FOLEY, Associate Justice

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

OPINION

NGIRAIKELAU, Chief Justice:

[¶ 1] Oiwerrang Lineage appeals the Trial Division's June 16, 2021 Judgment and Decision awarding Cadastral Lot No. 019 N 01 (also known as *Bariloi*) to the children of Marcelus Techur. For the reasons set forth below, we **AFFIRM**.

¹ Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. P. 34(a).

BACKGROUND

[¶ 2] Marcelus Techur (Decedent), a paternal member of Oiwerrang Lineage, died intestate in 2015. Prior to and at the time of his death, Decedent individually owned *Bariloi*. The land was originally owned by Oiwerrang Lineage. In 2007, the strong senior members of the Lineage conveyed *Bariloi* to Decedent. Decedent then treated the land as his individual land. Several months before his death, Decedent relayed his wishes to his immediate family, Marcelus Augustine,² and Takeo Ngirmekur (Ngirmekur)³ to have all his children and his wife buried on the land. Decedent was survived by four children, Appellee Janette, Joann, Jorinda, and Jacqueline, and three siblings, Apton, Veronica, and Rosamistica.

[¶ 3] A funeral, followed by an *cheldecheduch* for Decedent, was held in Airai. Decedent's four children and three siblings attended the funeral, so did Ngirmekur. Ngirmekur announced that *Bariloi* would go to Decedent's children. No one objected to Ngirmekur's statement and none of Decedent's siblings made his or her wishes known then as to the proper disposition of *Bariloi*.

[¶ 4] On March 8, 2018, Appellee Janette Techur (Janette) filed a petition to settle the estate of Decedent. The estate's sole asset was *Bariloi*. Consistent with what was announced at the funeral, Janette claimed *Bariloi* for herself and her three sisters. Appellant Apton Techur (Apton), on behalf of his siblings and Oiwerrang Lineage (Lineage), also filed a claim to *Bariloi*.

[¶ 5] The case proceeded to trial. At the trial, evidence was presented to show that Decedent's funeral was held at his house, followed by an *cheldecheduch*. Ngirmekur, who was in charge of the funeral, announced that Decedent's house and *Bariloi* would go to his children. Uncontradicted expert testimony on Palauan custom was also presented which established that Decedent's interest in land should go to his children. Apton and his siblings claimed, however, that the Decedent was adopted to Oiwerrang Lineage and, therefore, under Palauan custom they, as members of the Lineage and not Ngirmekur, had the authority to dispose the land. Apton and his siblings sought to have the land revert to the Lineage. The trial court rejected the claim and proceeded to award *Bariloi* to Decedent's children. In so doing, the trial court concluded that the disposition of *Bariloi* as announced by Ngirmekur was consistent with Palauan custom that children inherit from their

² Marcelus is the son of Midol. Midol, deceased, is the sister of Decedent.

³ Takeo Ngirmekur is the natural son of Imekedong. Decedent and Imekedong are biological brother and sister, but Decedent was adopted to Oiwerrang Lineage and Imekedong was adopted to Ngerchemuul Clan.

father and the father's individual property go to his children⁴ as well as Decedent's wishes for his family to be buried on the land. This appeal followed.

STANDARD OF REVIEW

[¶ 6] On appeal, the trial court's factual findings are reviewed for clear error, and its legal conclusions, including its application of customary law, de novo. *Etpison v. Ngeruluobel Hamlet*, 2020 Palau 10 ¶ 16; *Beouch v. Sasao*, 20 ROP 41, 50 (2013). In addition, we generally defer to the trial court's credibility determinations. *Palau Cmty. Coll. v. Ibai Lineage*, 10 ROP 143, 149 (2003). This is because “[i]t is not the appellate panel’s duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence.” *Esuroi Clan v. Roman Tmetuchl Family Trust*, 2019 Palau 31 ¶ 12 (quoting *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007)). That job is reserved for the trial court. A credibility determination will only be set aside in “extraordinary circumstances[,]” which do *not* exist where the trial court has demonstrated consideration and weighing of both sides. *Ngermengiau Lineage v. Estate of Isaol*, 20 ROP 68, 71 (2013) (internal quotation marks omitted).

DISCUSSION

[¶ 7] Appellant Lineage first argues that the Trial Division erred or abused its discretion in holding that under 25 PNC § 301(b) Decedent’s children were the customary beneficiaries because the court did not take into consideration the wishes of Decedent’s surviving siblings to have the land returned to the Lineage, pursuant to Palauan custom. Next, the Lineage argues that the holding in the case of *Kee v. Ngiraingas*, relied upon by the Trial Division in interpreting and applying 25 PNC § 301(b), should be revisited and reinterpreted. The Court addresses these arguments in turn.

[¶ 8] Appellant Lineage’s first argument is rejected for the following reasons: First, Appellant Lineage misconstrues the trial court’s ruling. The court did not base its decision on 25 PNC § 301(b). Instead, the trial court made its decision based on custom. The court writes: “In this case, Decedent was not a bona fide purchaser for value, so the court looks to custom.” Decision at 10. *See also Omelau v. Saito*, 19 ROP 198, 199 (2012) (finding that where neither 25 PNC § 301(a) nor (b) applies, property is to be awarded by custom). Secondly, the Lineage did not

⁴ To be sure, there are instances where, under Palauan custom, a deceased father’s individual land would not necessarily go to his children. *See Omelau v. Saito*, 19 ROP 198, 199 (2012) (paternal aunt was allowed to claim decedent’s individual lands that he inherited from his father).

make its desires known nor asserted its right to dispose of the land. The Lineage's failure to do so constituted a waiver. See *Tarkong v. Mesebeluu*, 7 ROP Intrm. 85, 87 (1998) (holding that a Lineage's failure to assert its right to dispose of land constitutes a waiver of that right). Thus, even if the Lineage, and not Ngirmekur, had the authority to dispose of the land because the Decedent was adopted to the Lineage, its failure to assert its right at the funeral and *cheldech duch* was fatal to its claim.

[¶ 9] Here, a decision was made and announced at Decedent's funeral, followed by an *cheldech duch* that *Bariloi* would go to Decedent's children. The decision was consistent with the expert's testimony on Palauan custom as well as decedent's wishes. The Lineage neither objected to the decision nor asserted its right to dispose of the land at any time during the funeral or the *cheldech duch*. Thus, the trial court neither erred nor abused its discretion in awarding *Bariloi* to the Decedent's children.

[¶ 10] The Lineage next argues that the holding in the case of *Kee v. Ngiraingas*, relied upon by the Trial Division in interpreting and applying 25 PNC § 301(b), should be revisited and reinterpreted. As previously stated, the trial court did not make its decision based on 25 PNC § 301(b). But even if it did and even if we agreed with the Lineage's proposed interpretation of § 301(b), we would nevertheless affirm the trial court's judgment and decision for the reason that since no objection was made to the disposition of *Bariloi* as announced at the Decedent's funeral, the disposition became final and could not be altered.⁵ *Nakamura v. Nakamura*, 2016 Palau 23 ¶ 28. (A decision made at an *cheldech duch* regarding the distribution of the decedent's individual assets, which decision is not objected to by the participants before the end of the *cheldech duch*, is final and cannot be altered.). Here, neither Apton nor his two sisters objected to the decision to award the land to the surviving children of Decedent. Hence, the decision became final.

[¶ 11] The Lineage contends, however, that none of the decedent's siblings who attended the funeral and *cheldech duch* heard Ngirmekur's statement regarding the disposition of the land. The clear import of this argument is that the Decedent's siblings did not object because they did not hear Ngirmekur's statement. In rejecting this contention, the trial court stated,

⁵ Although this reasoning differs slightly from the trial court's, we are allowed to affirm even though our reasoning differs. *Republic of Palau v. Pacific Development Corp.*, 1 ROP Intrm. 383, 392 (1987).

The court finds it difficult to believe that with the number of people in attendance at the Decedent's funeral, even accepting the testimony that Decedent's siblings were sitting some distance away or where not at the table where Takeo was sitting, or left to the burial so did not hear what was announced, that they were not informed or did not learn of this statement made by Takeo Ngirmekur at any later time that day, to meet and discuss Takeo Ngirmekur's statement. Decision at 11.

Here, the trial court considered the evidence and made a credibility determination. That task is reserved for the trial judge, who is best suited to make such determinations. Absent extraordinary circumstances, this Court may not set aside a trial court's credibility determination. Finding none in this case, we defer to the trial court's determination.

CONCLUSION

[¶ 12] For the reasons set forth above, we **AFFIRM** the Judgement and Decision of the Trial Division.