

Children of Dirrabang v. Children of Ngirailild, 10 ROP 150 (2003)
**CHILDREN OF DIRRABANG,
Appellants,**

v.

**CHILDREN OF NGIRAILILD and
CHILDREN OF BUKURROW,
Appellees.**

CIVIL APPEAL NO. 02-24
LC/H 01-250

Supreme Court, Appellate Division
Republic of Palau

Argued: August 25, 2003
Decided: September 19, 2003

Counsel for Appellants: Salvador Remoket

Counsel for Children of Ngirailild: Imelda Nakamura and Rose Mary Skebong

Counsel for Children of Bukurrow: No Appearance

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable FRANCISCO KEPTOT, Associate Judge, presiding.

PER CURIAM:

This appeal arises from a Determination of Ownership issued by the Land Court concerning Tochi Daicho Lot No. 1330, a land commonly known as Delbong, located in Mengellakl Hamlet, Ngerchelongs State. We affirm the Land Court's decision, but remand for further proceedings consistent with this opinion.

BACKGROUND

The Land Court conducted a hearing to determine the ownership of Tochi Daicho Lot No. 1330 on February 15, 2002. The lot is listed in the Tochi Daicho as the individual property of Bitelaol, who died intestate in 1946. There were five separate claims before the court.

Mesmis I. Ringang brought a claim **¶151** traceable through Bitelaol's adopted daughter, Dirrabang. Ringang filed a claim for Delbong on behalf of the "children of Dirrabang." Ringang testified that her natural mother, Uodelchad, was the sister of Korang, who was the wife

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of Bitelaol. Ringang was adopted by Dirrabang. According to Ringang, Korang passed away before her husband, and at her eldecheduch, Bitelaol fulfilled his customary obligations to Dirrabang, who received Palauan money and the land Chur. Ringang testified that after Korang's death, Bitelaol requested that Dirrabang remain with him because he was getting older and needed someone to care for him. Bitelaol was the maternal uncle of Ngirailild and Bukurrow, and Dirrabang was treated as their sister. Ringang testified that prior to his death, Bitelaol stated that his properties would go to Dirrabang and that Dirrabang, Ngirailild, and Bukurrow would care for each other and remain as one house. Delbong was not distributed at Bitelaol's eldecheduch.

Two claims for Bitelaol's property were traceable through Bitelaol's nephew Bukurrow. Bukurrow's daughter Miriam Alfonso claimed the land as her individual property. Alfonso stated that Bukurrow and Ngirailild were the sons of Aliil, the sister of Bitelaol. Alfonso maintained that Bukurrow farmed Delbong and that Bitelaol had told him to "go and put his name on the land." Alfonso did not provide the court with any documentation that a transfer of ownership occurred prior to Bitelaol's death. Miriam's brother, Don Bukurrow, testified that he claimed the land on behalf of the "children of Bukurrow, both sons and daughters." Don contended that Delbong is actually the name of a much larger property that was divided into Tochi Daicho Lot Nos. 1330 and 1344. Bukurrow had already been awarded lot 1344, a land known as Mtang el Rael, and Don maintained that Bukurrow should also have been awarded lot 1330 as the remainder of Delbong.

The final two claims were traceable through Bitelaol's other nephew, Ngirailild, brother of Bukurrow. Tutii Ngirailild and Sariang Ngirailild Mai, both of whom are children of Ngirailild, sought the property for themselves. Sariang contended that she and the family of Ngirailild took care of Bitelaol after his wife died. Sariang testified that her father, Ngirailild, was put in charge of Bitelaol's properties after Bitelaol's death, and Ngirailild gave Delbong to her for services she had provided to Bitelaol. Johnson Ngirailild, the son of Ngirailild and brother of Tutii and Sariang, testified last. He had filed a claim on behalf of "Ongalk ra Ngirailild." Johnson claimed that since Bukurrow succeeded to Bitelaol's ownership of lot 1344, it was only fair that the family of Ngirailild receive lot 1330.

The Land Court denied Alfonso's claim that Bitelaol gave Bukurrow the land. The court found no strong evidence, such as documentary proof of a transfer of ownership or proof of a claim for the land filed by Bukurrow, supporting her claim. The court also denied Sariang and Tutii's claim, finding Sariang's testimony contradictory and not credible. The court awarded Delbong to "Ongalk ra Ngirailild, Bukurrow, ma Dirrabang." Ongalk ra Dirrabang, represented by Ringang, appeals.

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STANDARD OF REVIEW

We review the Land Court's findings of fact for clear error and its conclusions of law *de novo*. *Temaungil v. Ulechong*, 9 ROP 31, 33 (2001).

DISCUSSION

¶152 Appellants contend that the Land Court's award of ownership to Bukurrow and Ngirailild is inconsistent with its determination that Bitelaol did not give the property to either Bukurrow or Ngirailild. Appellants maintain that in the absence of a finding that Bitelaol gave his nephews the property, the Land Court's decision to award the property to Ngirailild and Bukurrow must be based on an inference that they had a customary interest in the land through their relationship to Bitelaol. Appellants insist that such an inference violates our current case law. According to Appellants, if a property owner died intestate, prior to the enactment of any statutes of descent and distribution, and the land at issue was not distributed at his eldecheduch, the children of the decedent, in this instance, Dirrabang, are entitled to sole ownership of the land. This is an incorrect statement of the law.

This Court has previously stated:

Where there is no applicable statute of descent and distribution and no distribution of the property at an eldecheduch, we have upheld determinations that, under custom, a decedent's land passes to his children. *Ruluked v. Skilang*, 6 ROP Intrm. 170 (1997). *Ruluked*, however, left open the possibility that contrary evidence regarding custom might support a different result. *Ruluked* at 172 (“ . . . in view of the parties' failure to present any other evidence of Palauan customary law relevant to the issue, we find no error in the Trial Division's decision to uphold the LCHO's finding . . .”).

Matchiau v. Telungalek ra Klai, 7 ROP Intrm. 177, 179 (1999).

In other words, if a property owner died intestate prior to the enactment of a statute of decent and distribution and the property was not distributed at the decedent's eldecheduch, the property passes to the proper customary heir or heirs. Who the customary heir happens to be is a question of fact to be established by the parties before the Land Court. *Ruluked*, 6 ROP Intrm. at 171. Appellants have not directed this Court's attention to any evidence of custom it presented to the Land Court that “support[s] a different result.” *Matchiau*, 7 ROP Intrm. at 179. Under such circumstances, we find no error in the Land Court's determination of ownership.

The parties to this appeal agree that the Land Court failed to issue a determination of ownership to Lot No. 01F005-005, which is mentioned as one of the properties awarded in the court's Adjudication and Determination. Accordingly, this matter is remanded to allow the Land Court to issue a determination of ownership for Lot No. 01-F005-005. The Land Court is also directed take this opportunity to clarify exactly who the owners of Delbong are. The Determination of Ownership designates “Ongalk ra Ngirailild, Bukurrow, ma Dirrabang” as the

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owner of Delbong. The Notice of Appeal designated the Appellants as “Ongalk ra Dirrabang” and Appellees as “Ongalk ra Bukurrow” and “Ongalk ra Ngirailild.” However, the parties translated “Ongalk” as children in their briefing. We are unaware whether the claims were meant to create individual ownership interests in the various members of Ongalk ra Ngirailild, Bukurrow, ma Dirrabang, or whether they intended to designate a form of **§153** communal ownership, similar to clan or lineage ownership. If it is the latter, the Land Court’s determination of ownership must identify the owners by name and not by descriptive category.¹

CONCLUSION

The Land Court’s Determination of Ownership for Lot No. 01F005-004B is affirmed. However, this matter is remanded to the Land Court to issue a determination of ownership for Lot No. 01F005-005 and to allow the parties to clarify the nature of their respective ownership interests.

¹This is not a matter that requires further hearing. The Land Court should simply ask the successful claimants, Mesmis Ringang, Johnson Bukurrow, and Don Bukurrow, to clarify their respective claims.