

Saka v. Rubasch, 11 ROP 137 (2004)
**SIANG SAKA, ILEK ISKAWA, TOMIKO NGIRCHELUI, DIRRUTANG NGIRCHELUI,
SINGERU NGIRCHELUI, MASAE ISKAWA, SHIRO NGIRCHELUI, ALBERT
EMALEI, and MURAI NGIRCHELUI,
Appellants,¹**

v.

**BEDAL RUBASCH, AUGUSTINA ELECHUUS, BENITA MECHOL, and SANDRA
PIERANTOZZI,
Appellees.**

CIVIL APPEAL NO. 02-038
Civil Action No. 00-192

Supreme Court, Appellate Division
Republic of Palau

Argued: February 9, 2004

Decided: May 7, 2004

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Counsel for Appellants: Raynold B. Oilouch

Counsel for Rubasch, Elechus, and Mechol: Ernestine K. Rengiil

Counsel for Pierantozzi: Kevin N. Kirk

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate
Justice; ROSE MARY SKEBONG, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII,
Associate Justice, presiding.

MILLER, Justice:

Appellants challenge a Trial Division determination that they are not strong senior
members of Irebai Lineage, and that, as a result, transfers of land belonging to the Lineage were
valid without their approval. We affirm.

BACKGROUND

¹The notice of appeal in this matter, like the complaint below, was filed in the name of Irebai Lineage,
“represented by” the individuals listed above. In other circumstances, we have deleted the “represented
by” as surplusage where it was clear that the named clan or lineage was the real party in interest. Here,
however, where the question presented is whether the named individuals are strong senior members of the
Lineage, the real parties in interest are those individuals.

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Appellants and Appellees agree that Irebai Lineage of Omrekongel Clan was started by Elibosang, who settled in Ngerkebesang while her younger sister, Dirremidol, continued on to Peleliu. Some time later, Dirremidol joined Elibosang in Ngerkebesang, where the descendants of both remain. Appellants are the descendants of Dirremidol. Appellees are the descendants of Elibosang.

The two properties at issue in this case are the Irebai house site (“Irbai”), Tochi Daicho Lot No. 1682-A, Cadastral Lot No. 018 A 11, and a parcel of land commonly known as Keyobel, Tochi Daicho Lot No. 1607, Cadastral Lot No. 003 A 03 (“Keyobel”). The parties agree that both properties were formerly owned by Irebai Lineage, which received certificates of title to both of them in the 1970s. They disagree, however, as to whether these lands still belong to the Lineage. In May 1988, members of Omrekongel Clan signed a quitclaim deed that purportedly conveyed ownership of Keyobel to Ucheriang Mechol, the mother of Appellees Augustina Elechuus and Benita Mechol, and the sister of Appellee Bedal Rubasch. Ucheriang died in 1995. In May 1997, Augustina opened an estate proceeding for Ucheriang seeking the transfer of several parcels of land, including Irebai and Keyobel, to her, her sister, and their uncle. Her petition referenced the quitclaim deed to Keyobel and averred further that because Ucheriang and Bedal’s father had been the last strong senior member of Irebai Lineage, Ucheriang and Bedal were entitled to both lands at issue here. In May 1998, the Trial Division issued a Judgment and Order awarding Ucheriang’s “interest” in both Irebai and Keyobel to Bedal, Augustina and Benita. *In re Ucheriang Mechol*, Civil Action No. **L139** 201-97 (May 19, 1998).

Armed with that judgment, Appellees (other than Appellee Sandra Pierantozzi) asked for and received Certificates of Title to the two properties from the Land Court. In December 1999, they sold Keyobel to Pierantozzi.

After learning that Appellees had received Certificates of Title to the two parcels and had sold Keyobel to Pierantozzi, Appellants filed this suit seeking to void the Certificates of Title and the sale of Keyobel. The Trial Division denied their request, holding that Appellants did not have the right to object to the purported transfers to Mechol or the sale to Pierantozzi because they are not strong senior members of Irebai Lineage. It also held that Pierantozzi was a bona fide purchaser of Keyobel. Appellants filed this appeal, arguing that the Trial Division should have declared Irebai Lineage to be the owner of the disputed parcels.

ANALYSIS

Although Appellants devote a portion of their brief to challenging the judgment in the estate case and the subsequent issuance of Certificates of Title by the Land Court, Appellants’ right to relief ultimately turns on whether they had a right to object to the transfer of Lineage lands.² Therefore, the key question before us is the same one the Trial Division answered:

²Appellants argue that the judgment in the estate case was void. There is no question of voidness, however, since the trial court unquestionably had jurisdiction over the case and the parties before it. Appellants might have argued that, since they were not parties, the failure to give appropriate notice that ownership of the lands was at issue meant that the judgment was not binding upon them. But Appellants’ argument is misplaced in any event, because the trial court did not determine ownership of the land.

whether or not Appellants are strong senior members of Irebai Lineage.

A. Issue preclusion

Appellants first argue that the Trial Division erred by failing to apply the doctrine of *res judicata* to hold that the judgment in an earlier lawsuit conclusively found them to be strong senior members of Irebai Lineage. In the companion cases of *Saka v. Bedal* and *Irbai Lineage v. Bedal*, Civil Action Nos. 355-91 and 356-91, the Trial Division, referring to Appellant Siang Saka, wrote “[t]he Court doubts that it is a good cause to terminate a use right of a legitimate Ochell member of the lineage in favor of someone’s eltekllel.” Appellants argue that the Trial Division in that case determined that Saka was an ochell member of Irebai Lineage; that the determination was conclusive in this case pursuant to the doctrine of issue preclusion; and that, because Saka was an ochell member, ¶140 Irebai Lineage was required to get her approval before transferring any land. The Trial Division rejected that argument, holding that the judgment in the prior case was not binding in this litigation. We agree.

For a determination in a previous case to be conclusive under the doctrine of issue preclusion, it must have been “essential to the judgment.” Restatement (Second) of Judgments § 27 (1982). “If issues are determined but the judgment is not dependent upon the determinations, relitigation of those issues in a subsequent action between the parties is not precluded.” *Id.* cmt. h; *see also Sers v. Ucherbuuch*, 1 ROP Intrm. 595, 595 (“To apply the doctrine of *res judicata*, a court must find, *inter alia*, that the issue before it has been determined in a prior case between the same parties.”).

That the statement that Siang Saka was an ochell member of Irebai Lineage was not essential to the judgment in the prior case is apparent both from the Findings of Fact and Conclusions of Law made by the court in that case and from the judgment itself. In its Findings, the court wrote:

The remaining issue . . . is whether plaintiff Siang Saka is a member of Irebai Lineage with a use right to a portion of the Lineage land known as Irebai? If plaintiff is a member of the Irebai Lineage and has a use right to a portion of Irebai, has the Irebai Lineage properly terminated that use right?

The Court holds that Siang Saka is a member of Irebai Lineage. The Court further holds that Siang Saka has a use right to a portion of Irebai where she and her mother have farmed or otherwise used continuously for over 20 years. The

Rather, as noted above, the judgment only addressed the inheritance of Ucheriang’s interest in the disputed lands, without determining whether Ucheriang had any interest at all. *See Mesebeluu v. Uchelkumer Clan*, 10 ROP 68, 72 n.2 (explaining that an estate proceeding is not the same as a quiet title action). The limited nature of that judgment does raise doubts whether it served as a proper basis for the issuance of Certificates of Title by the Land Court since, at least under current rules, the Land Court should not have issued them without first determining whether there were any other strong senior members of Irebai Lineage entitled to object to the transfer of Lineage lands to Appellees. *See Amended Land Court Rule 24(B)* (promulgated on October 8, 2001). We need not separately address the correctness of the Land Court’s action, however, since that is precisely the issue now before us.

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Court finally holds that Irebai Lineage has not properly terminated Saka's use right to a portion of Irebai.

Consistent with this discussion, the court's judgment declared that Siang Saka "is a member of Irebai Lineage," that she and her mother had "used a portion of Irebai land continuously for over 20 years," that she accordingly "has a vested use right on th[at] portion of Irebai," that "Irbai Lineage may terminate any use right of its land on good cause," but that "[t]here is no good cause to terminate [her] use right."

It is clear from the foregoing that the judgment in the prior case turned not on Siang Saka's relative strength within the Lineage, but solely on whether her right to use the land as a member of Irebai Lineage had been terminated for good cause. Indeed, the court said as much: "Without a good cause for terminating plaintiff's land use right, it is not necessary to decide who in a lineage controls disposition of the lineage's property." Thus, although it appears from the language relied upon by Appellants that the trial court believed that Saka was a "legitimate Ochell member of [Irbai] Lineage," there is little question that that observation was not necessary to its judgment. Therefore, the Trial Division correctly decided that it was not bound thereby.

B. Strong senior members

Appellants argue that, even if it has not been judicially determined, they are strong senior members with the right to approve any transfer of lineage land. Appellants are **1141** descendants of Dirremidol in the female line, while Appellees are descendants of Elibosang in the male line. Appellants accordingly argue that they are the ochell members of the Lineage. Appellees argue, however—and the Trial Division found—that, pursuant to Palauan custom, the descendants of Elibosang are stronger than the descendants of Dirremidol and that they took the authority of the ochell members when the last of the ochell descendants of Elibosang died.

The existence of a claimed customary law is a question of fact that must be established by clear and convincing evidence. *See Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225, 227 (1996); *Ngiraremiang v. Ngiramolau*, 4 ROP Intrm. 112, 115 (1993). A challenge to the trial court's finding of the terms or existence of a customary law is reviewed for clear error. *Remoket*, 5 ROP Intrm. at 227.

Although Appellants' status within the Lineage is hard to classify, we cannot find that the Trial Division committed clear error in determining that the descendants of Elibosang were stronger than the descendants of Dirremidol. The trial court was presented with conflicting customary evidence. Appellants' expert witness, Wataru Elbelau, acknowledged that as the first member of the Lineage, Elibosang was a stronger member of the Lineage than Dirremidol. He testified, however, that the strength of the descendants of each sister depended on whether they were children of male or female members of the Lineage. Under that theory, Appellants are stronger than Appellees because Appellants are children of female members of the Lineage and Appellees are not.

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But the Trial Division found the testimony of Appellees' expert witness, Theodosia Blailes, to be more convincing. Blailes testified that, in a situation like this one where one sister starts a lineage and the other sister later joins the lineage, the descendants of the founding sister will always be stronger than the descendants of the second sister, even if, as is true here, the descendants of the founding sister are descended from a male member of the lineage.

We readily acknowledge that this expert analysis of the situation of Irebai Lineage is novel to the members of this panel, American and Palauan alike. But matters of custom must be resolved on the record of each case, *see Arbedul v. Emaudiong*, 7 ROP Intrm. 108, 110 (1998) (noting that "our longstanding determination to treat the existence and substance of custom as a matter of fact requires that the outcome of a case be decided on the basis of its own record"), and we are in no position to second-guess the trial court, who saw and heard both experts testify, in choosing to credit one over the other. As to proof of custom no less than other factual matters, "where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous." *Rechucher v. Ngirmeriil*, 9 ROP 206, 211 (2002). Moreover, as the trial court noted, the expert testimony that Appellees were stronger than Appellants appeared to be confirmed by other factual evidence, most notably, that the male and female titles of the Lineage have always been borne by Appellees' relatives and never by Appellants'.

In sum, therefore, it was not clearly erroneous for the trial court to conclude that Appellants are not strong senior members of Irebai Lineage and that their consent was not required for the transfer of Lineage property. Consequently, the transfers of Irebai and Keyobel to ¶142 Appellees Bedal Rubasch, Augustina Elechuus and Benita Mechol and the subsequent transfer of Keyobel to Appellee Pierantozzi were valid.³

CONCLUSION

For the foregoing reasons, the judgment of the Trial Division is AFFIRMED.

³Because we find that Appellees were the owners of Keyobel, we need not determine whether Pierantozzi qualifies as a bona fide purchaser for value.