

*Eklbai Clan v. Imeong*, 11 ROP 15 (2003)

**EKLBAI CLAN,  
Appellant,**

v.

**BEVOLI IMEONG  
and ISIDORO TAKISANG,  
Appellees.**

**ELIA YOBECH,  
Appellant,**

v.

**KALISTO JOSEPH  
and VALENTINA SUKRAD,  
Appellees.**

**JOB KIKUO,  
Appellant,**

v.

**KALISTO JOSEPH  
and VALENTINA SUKRAD,  
Appellees.**

CIVIL APPEAL NO. 02-033  
Civil Action Nos. 99-261, 01-179, & 01-180

Supreme Court, Appellate Division  
Republic of Palau

Argued: September 12, 2003

Decided: October 15, 2003

**¶16**

Counsel for Appellants: Douglas F. Cushnie

Counsel for Appellees: Kevin N. Kirk

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;  
J. UDUCH SENIOR, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable R. BARRIE MICHELSEN,

Associate Justice, presiding.

PER CURIAM:

This appeal is comprised of three civil actions that were consolidated for trial. Civil Action No. 99-261 was initiated by a complaint filed by Eklbai Clan on September 10, 1999. It is an action for trespass and ejectment of Defendants Bevoli Imeong and Isidoro Takisang from Tochi Daicho Lot No. 553, known as Eklbai, owned by Eklbai Clan, and located in Ngerchemai Hamlet. Defendants claimed a right to reside on the land through the consent of Kalisto Joseph and Valentina Sukrad. On January 9, 2001, Eklbai Clan filed a Notice of Death and Motion to Continue, informing the court that Iyechaderchemai Kikuo Remeskang, the chief male titleholder of Eklbai Clan, had died. On July 17, 2001, the court granted the Clan leave to amend its complaint to reflect that Elia Yobech had been appointed Iyechaderchemai of Eklbai Clan and that Yobech did not approve of the Defendants' presence on Eklbai Clan property.

A little over a month later, on July 30, 2001, Joseph and Sukrad filed Civil Action No. 01-179, a complaint for declaratory and injunctive relief in which they alleged that on June 1, 2001, the ourrot of Eklbai Clan conferred the title of Iyechaderchemai on Joseph and that the council of chiefs of Ngerchemai Hamlet had consented to his appointment. Joseph requested that the trial court declare him the male title holder of Eklbai Clan and enjoin Yobech from acting on Eklbai Clan's behalf. Yobech filed an answer and counterclaim alleging that he was appointed senior title holder by the ourrot of Eklbai Clan, including the senior female title holder, Uchelbil ra Kumer Ibau Oiterong, and that the council of chiefs had accepted his appointment on May 5, 2001.

On August 1, 2001, Joseph and Sukrad filed Civil Action No. 01-180 seeking to enjoin the activities of Defendant Job Kikuo on Cadastral Lot No. 024 B 07, a land known as Iosch and owned by Eklbai Clan. Joseph claimed that neither he, as Iyechaderchemai of Eklbai Clan, nor the ourrot of Eklbai Clan approved of Kikuo's earth moving and other activities on the land. Kikuo answered that he had the permission of former Iyechaderchemai Remeskang and continued to have the permission of the current senior title holder, Yobech, and the other senior strong members of Eklbai Clan.

The court consolidated the cases for trial and, on June 14, 2002, issued its Findings of Fact and Conclusions of Law. The court declined to issue a declaratory judgment in Civil Action No. 01-179 declaring the senior male title holder of Eklbai Clan. The court **¶17** found that Joseph proved by a preponderance of the evidence that he was the Iyechaderchemai. As a result of this finding, the court concluded that Defendants Imeong and Takisang were not trespassing because they had Joseph's permission to be on Eklbai Clan property and that Kikuo was trespassing because he did not have Joseph's permission. Eklbai Clan, Yobech, and Kikuo appeal.

## **DISCUSSION**

The core of the instant appeal turns on who is Iyechaderchemai of Eklbai Clan. Yobech

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maintained that he had been selected by the ourrot of Eklbai Clan and accepted by the council of chiefs. Joseph insisted that he was Iyechaderchemai. The vast majority of the evidence before the trial court concerned the customs surrounding the selection of a senior title-holder and subsidiary factual issues such as who the proper ourrot of Eklbai Clan were, which person had been selected by them, and which person had been validly accepted by the council. In assessing this evidence, the trial court simply stated that “[o]n or about June 1, 2001, the council of chiefs of Ngerchemai Hamlet consented to the ourrot’s appointment of Kalisto Joseph as Iyechaderchemai.”

ROP R. Civ. P. 52(a) requires a trial court to “find the facts specially.” A trial 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 conclusions, and an application of the law to the facts.” *Fritz v. Blailles*, 6 ROP Intrm. 152, 153 (1997) (quoting 5A James Wm. Moore et al., *Moore’s Federal Practice* ¶ 52-05[1] (1984)). “Where custom is applied it ‘must be reduced to written form by the record at [trial].’” *Id.* (quoting *Udui v. Dirrechetet*, 1 ROP Intrm. 114, 117 (1984)). The trial court’s finding that Joseph established by a preponderance of the evidence that he is Iyechaderchemai is not specific enough for us to adequately review it.<sup>1</sup> Both parties presented evidence that they were selected by the ourrot and accepted by the council of chiefs. Obviously, the trial court accepted Joseph’s evidence, but we are uncertain as to how it reached that finding.

One reading of the trial court’s decision is that it found that Joseph’s supporters were the true ourrot of Eklbai Clan, that they had validly selected him as Iyechaderchemai, and that the Ngerchemai council of chiefs had validly accepted him under Palauan custom. It is also possible to read the trial court’s opinion, however, as bypassing any resolution of who the ourrot of Eklbai were and concluding that as a matter of Palauan custom the current acceptance of Joseph by the council of chiefs was in itself a sufficient basis to find that he holds the title of Iyechaderchemai.<sup>2</sup> We do not mean to suggest that these are the only alternatives; we note simply that our review of the trial court’s judgment would be assisted by a fuller ¶18 explanation of how its findings were reached. Thus, we hereby remand the case to the trial court with instructions that it state its findings with greater specificity.<sup>3</sup> We retain jurisdiction over this appeal and instruct the Trial

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<sup>1</sup>Appellees maintained at oral argument that Appellants did not contest the lack of specificity of the trial court’s findings. Appellants directly raised the claim in their Opening Brief, insisting that the trial court’s finding that Joseph is the true Iyechaderchemai “has been made without any factual recitation which essentially precludes an appellant from showing to the appeals court where the lower court is in error.” (Opening Brief at 33.)

<sup>2</sup>The court stated, “Since Joseph is seated as Iyechaderchemai in both the hamlet council and the Koror Traditional Council of Chiefs, Yobech’s evidence fails to prove he holds the title Iyechaderchemai.” (Findings of Fact and Conclusions of Law at 3.)

<sup>3</sup>We note in this regard Appellants’ contention that regardless of who is ultimately found to be the current Iyechaderchemai of Eklbai Clan, Job Kikuo has the right to remain on the Eklbai Clan land Iosch because he received permission to be on the land from the previous Iyechaderchemai, Remeskang. Although the court stated that “Kikuo’s sole defense is that his actions are authorized by Elia Yobech as Iyechaderchemai,” in fact Kikuo pled in his Answer and Counterclaim that his use of the property “was fully consented to by Iyechaderchemai Kikuo Remeskang prior to his death in accordance with recognized Palauan cultural principles,” and Kikuo testified in support of his pleadings at trial. We are

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Division to forward its findings to us. *See Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 319 (2001).

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thus uncertain whether the trial court failed to consider this defense, whether it rejected Kikuo's factual contentions, or whether it concluded as a matter of custom that Joseph, acting as Iyechaderchemai, could eject Kikuo even if Kikuo's presence and activities had been previously authorized.