

*Obeketang v. Sato*, 12 ROP 210 (Tr. Div. 2005)  
**TAKAO OBEKETANG, THOMAS O. REMENGESAU, PKOI ULECHONG, YOSKO  
MINER, and KYOKO NGOTEL,  
Plaintiffs,**

v.

**SINGICH SATO, NGARCHELONG STATE ASSEMBLY, ABRAHAM OSIMA, CALEB  
TEKRIU, JAMES ULTIRAKL, ULITECH NGIRAKEBOU, ONGINO IKESIIL, MATIAS  
ERBAI, in their individual capacities and as members of the Assembly,  
Defendants.**

CIVIL ACTION NO. 05-017

Supreme Court, Trial Division  
Republic of Palau

Decided: August 17, 2005

KATHLEEN M. SALII, Associate Justice:

Before the Court is the Motion for Partial Summary Judgment filed by Plaintiff Takao Obeketang and the Opposition and Cross-Motion for Summary Judgment filed by Defendants Ngarchelong State Assembly, Abraham Osima, Caleb Tekriu, James Ultirakl, Ulitech Ngirakebou, Ongino Ikesiil, and Matias Erbai. For the reasons which follow, the Plaintiff's motion is **GRANTED** in part and **DENIED** in part and Defendants' motion is **GRANTED**.

### **BACKGROUND**

On January 25, 2005, Takao Obeketang, Thomas O. Remengesau, Pkoi Ulechong, Yosko Miner, and Kyoko Ngotel brought this action against Singichi Sato, Ngarchelong State Assembly, Abraham Osima, Caleb Tekriu, James Ultirakl, Ulitech Ngirakebou, Ongino Ikesiil, and Matias Erbai in their individual capacity and as members of **L211** the Assembly, seeking a declaratory judgment that Defendant Singichi Sato ("Sato") does not hold the title "Tet ra Ollei" of Tech Woodward Clan in Ngarchelong and that Defendant Ngarchelong State Assembly's ("Assembly") act of accepting Sato into the Assembly as Tet is void. The Plaintiffs also seek an injunction to enjoin Defendants from seating Sato in the Assembly and disbursing the honorarium or allowance due to Tet. The Assembly, Osima, Tekriu, Ultirakl, Ngirakebou, Ikesiil, and Erbai filed their answer on April 1, 2005.<sup>1</sup> On April 18, 2005, Plaintiff Takao Obeketang ("Obeketang") moved for partial summary judgment that, as a matter of law, the purported appointment of Sato as Tet by "women of Ukall Clan" was neither approved nor ratified by the three lineages of Tech Woodward Clan as required by customary law. As such, Plaintiff argues that

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<sup>1</sup> Unless otherwise indicated, references to "Defendants" throughout this discussion are to all named Defendants with the exception of Sato, who filed neither an answer to the complaint nor a response to Plaintiff's motion for partial summary judgment.

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the doctrine of *res judicata* applies and bars Defendants' claim that it is only "the ranking women of Ukall" who appoint the Tet. Defendants filed their opposition to the motion and filed a cross-motion for summary judgment. In their cross-motion, Defendants argue that the issue of who is to be seated in the Assembly as Tet ra Ollei is moot and is now a nonjusticiable political issue since Sato has been seated, and they seek dismissal of the complaint.

## STANDARDS IN DETERMINING SUMMARY JUDGMENT

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." ROP R. Civ. P. 56; *Rechelulk v. Tmilchol*, 2 ROP Intrm. 277, 281-82 (1991). "In reviewing a motion for summary judgment, all doubts must be resolved against the movant, and the motion must be denied if the non-movant identifies some evidence in the record demonstrating a genuine factual dispute on a material issue." *Dilubech Clan v. Ngeremlengui State*, 8 ROP Intrm. 106, 108 (2000) (citing *Estate of Olkeriil v. Ulechong*, 4 ROP Intrm. 43, 51 (1993)).

## UNDISPUTED FACTS

In *Tet Ra Ollei Uehara v. Obeketang*, 1 ROP Intrm. 267 (Tr. Div. 1985), the Trial Division held that a nominee for the title Tet must, under Palauan custom, obtain the approval of the three lineages of Tech Woodward Clan -- Ngerbad, Olleb, and Ukall. The Trial Division further held that because none of the three claimants had been appointed pursuant to Palauan custom, the position of Tet remained vacant. This decision was not pursued on appeal. See Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment dated April 18, 2005 at pages 2-3 (hereinafter "Plaintiff's Memo.") and Affidavit of Plaintiff Takao Obeketang dated April 18, 2005, submitted in support of Plaintiff's Motion for Partial Summary Judgment at ¶¶ 1-2 (hereinafter "Plaintiff's Aff.").

In *Sato v. Ngerchelongs State Assembly*, 7 ROP Intrm. 79 (1998), Sato, one of the named Defendants herein, filed a suit against the Assembly, seeking a declaratory judgment requiring the Assembly to pay him an honorarium or allowance because he was **L212** Tet,<sup>2</sup> appointed by Orakidil Skesuk, an *ourrot* of Olleb lineage. In denying the requested relief, the Appellate Division affirmed the Trial Division's holding that Sato was collaterally estopped from challenging the finding in *Uehara* that all three lineages of Tech Woodward Clan must approve of a nominee, because Sato was in privity with his brother, Inao Sebaklim, a named defendant in *Uehara*.<sup>3</sup> Since the *Sato* Court's ruling was issued in June of 1998, the representatives of the three lineages of Tech Woodward Clan, namely, Ngerbad, Olleb, and Ukall, have not met to select a nominee to the chief's title, Tet. See Plaintiff's Memo. at 2-3 and Plaintiff's Aff. at ¶ 2.

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<sup>2</sup>The Ngarchelong State Constitution provides that Chief Tet-ra-Ollei is a member of the Ngarchelong State Assembly ("Assembly") (Article VIII, § 2(a)) [sic], and that the Assembly is the judge of the qualifications of its members (Article VII, § 4(b)).

<sup>3</sup>Sato did not challenge the Trial Division's determination of the issue of privity on appeal.

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Defendant Matias Erbai (“Erbai”) sits in the Assembly by virtue of his bearing the title Iyechad ra Butelbai of Ngruil Hamlet, Ngarchelong State. In October of 2004, Erbai became Chair of the Assembly’s Credentials Committee. In this capacity, he reviewed the file for Tet ra Ollei. During review of the Assembly’s file for Tet ra Ollei, Erbai learned of the written requests by the Ollei Hamlet Council of Chiefs and senior members of Ukall Clan, dated October and November of 2002, respectively, to have Singich Sato seated in the Assembly as Tet ra Ollei. See Affidavit of Matias Erbai dated June 22, 2005, submitted in support of Defendants’ Opposition and Cross-Motion for Summary Judgment at ¶¶ 4-11 (hereinafter “Erbai Aff.”).

Erbai then conducted his own investigation, in which he met with members of both the Council of Chiefs of Ollei Hamlet and the female members of Ukall Clan and confirmed that they were the individuals whose signatures appeared on the written requests and that they in fact did make the request to seat Sato as Tet. Based on his investigation, Erbai concluded that both the Council of Chiefs of Ollei Hamlet and the female members of Ukall Clan accepted Sato as Tet, and that no opposition was made on the record to Sato’s appointment at the Assembly. Erbai then reported his findings to the Assembly and, as a result, Assembly Resolution No. 12-04 was introduced on October 19, 2004 to seat Sato in the Assembly as Tet. Sato’s nomination to sit in the Assembly was approved by a vote of six members in favor of the resolution and five members against it. See Erbai Aff. at ¶¶ 12-20. At a May 24, 2005 hearing before Justice Miller in Civil Action No. 123-94, *Sato v. Ngerchelong State Assembly*, Defendants were informed on the record in open court that there is no order preventing the Assembly from seating Sato as Tet ra Ollei. See Erbai Aff. at ¶ 21.

## DISCUSSION

The Court may resolve this dispute without hearing additional facts at a trial as the facts are not in dispute. The issue for resolution is of a legal nature surrounding the title of Tet ra Ollei (hereinafter “Tet”). The background of the dispute surrounding the title Tet is more fully set forth in *Sato v. Ngerchelong State Assembly*, 7 ROP Intrm. 79 (1998) and will be referred to throughout this discussion.

Plaintiff, in moving for partial **1213** summary judgment, argues that the purported appointment of Sato as Tet by “women of Ukall Clan” is void *ab initio* as a matter of law based on earlier decisions of the Supreme Court. In particular, Plaintiff cites to two cases in support of his position. In *Uehara, supra*, the Trial Division, with then-Chief Justice Nakamura presiding, held that the appointment of Tet required the approval of the members of the three lineages of Techewood Clan, namely, Ngerbad, Olleb, and Ukall Lineages. No timely appeal of the 1985 *Uehara* decision was taken. In 1994, Civil Action No. 123-94 was filed, *Sato v. Ngerchelong State Assembly*, in which Sato, then claiming to have been appointed as Tet by Orakidil Skesuk of Olleb lineage, sought a declaration that such appointment was valid, and for the Assembly seat him as Tet. The Trial Division found that because Sato’s argument was identical to Inao Sebaklim’s argument in *Uehara* that only Olleb Lineage members appoint Tet, and in light of the fact that Sebaklim, a named party in *Uehara*, is Sato’s brother, and that there was no change in position from the earlier *Uehara* case, that Sato was in privity with his brother. Accordingly, the Trial Division entered partial summary judgment holding that Sato does not bear the title Tet.

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This decision was affirmed on appeal in *Sato*, 7 ROP Intrm. 79 (1998).

Plaintiff also argues that the decision in *Sato* is final and conclusive against Defendants, who are bound by the decision that the appointment of Tet must be made by the three lineages of Tech Woodward Clan. Plaintiff relies on the doctrine of estoppel by judgment. This doctrine holds that when a fact has been agreed on or decided in a court of record, the parties are not allowed to call it in question or to have the issue retried so long as the judgment or decree stands unreversed. *Bras v. First National Bank and Trust Company of Sand Springs*, 735 P. 2d. 329 (Okla. 1985). It is undisputed that the unappealed *Uehara* decision remains valid.

Plaintiff also maintains that the doctrine of *res judicata* is an additional bar to Defendants' claims that Sato is the new Tet. To apply the doctrine of *res judicata*, a court must find that the issue before it has been determined in a prior case between the same parties. *Masang v. Ngirmang*, 9 ROP 215, 217 (2002). Under the doctrine of *res judicata*, the party against whom the preclusive effect of a judgment is asserted must have been either a party or in privity with a party to the original action. However, a judgment in action whose purpose is to determine or change a person's status is conclusive with respect to that status upon all other persons. *Odilang Clan v. Ngiramechelbang*, 9 ROP 267, 270 (Tr. Div. 2001).

In this case, there is no question that the appointment of Tet was the main issue in *Uehara*, and that Plaintiff and Sato (in privity with his brother, Inao Sebaklim) were named defendants therein. In this case, where Sato maintains that he was appointed by the women of Ukall Clan, such claim is barred for the same reasoning as held in *Uehara* and *Sato*. Accordingly, Plaintiff is therefore entitled to entry of partial summary judgment in his favor that Sato is collaterally estopped from challenging the findings in the earlier case of *Uehara* that he was not properly appointed as Tet, because his appointment was not approved by all three lineages of Tech Woodward Clan.

However, that does not end the analysis, because one of the named Defendants, the Assembly, was not a party in *Uehara*. Accordingly, while that case stands **L214** for the holding that the Tet must be appointed by the three lineages of Tech Woodward Clan, such holding is not binding on the Assembly. Defendants, in opposing Plaintiff's motion and in seeking summary judgment in its favor, claim that there is nothing prohibiting it from accepting Sato as a member of the Assembly. In the *Sato* case relied on by Plaintiff in support of its motion, the Appellate Division affirmed the Trial Division's entry of partial summary judgment that Sato did not bear the title Tet. So while the Assembly may have been a party in that case, the entry of partial summary judgment was to declare that Sato had not been appointed Tet in accordance with Palauan custom as established in *Uehara*. However, the decision did not specifically prohibit the Assembly from seating Sato as Tet.

Defendants filed their opposition to Plaintiff's motion, and also filed a cross-motion for summary judgment in their favor seeking dismissal of the complaint. Citing to *Ngerul v. Chin*, 8 ROP Intrm. 263, 266 (2001), Defendants argue that the issue of whether to seat Sato is a political issue to be resolved solely by the Assembly and because Sato has been unconditionally seated as a member of the Assembly, the issue of whether he should be seated or not has become a non-

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justiciable political issue.

The *Ngerul* case involved a dispute about the qualifications of a candidate for Senate,<sup>4</sup> and the Court there held that it retained jurisdiction to decide certain issues [tabulation of results or qualification of candidates] because the Senate had not yet officially seated any candidate. *Ngerul*, 8 ROP Intrm. at 265. It did not decide, however, whether it would retain such jurisdiction after the legislative body reached a final decision on who to seat. *Id.* at 266.

The *Ngerul* case cites to the United States case of *Roudebush v. Hartke*, 92 S. Ct. 804 (1972), in which the United States Supreme Court, in addressing the similarly-worded sole judge clause of the United States Constitution, held inter alia that once [the Senate] makes an unconditional and final judgment, the controversy becomes moot and the courts cannot hear it. In *Ngerul*, the Court held that it retained jurisdiction, and that it did not need to address the scope of Palau's Sole Judge Clause, because the Senate had not officially seated a candidate. *See also Tulop v. Palau Election Comm'n*, 12 ROP 100 (2005) (citing *Ngerul* and holding that because the seating of Noah Idechong as Ngiwal's delegate to the House of Delegates was contingent on the outcome of the appeal, the Court retained jurisdiction to decide the case without infringing on the House's power as sole judge of its members' qualifications).

After the *Ngerul* case, *Francisco v. Chin*, 10 ROP 44, 49 (2000) was filed. The ultimate question in *Francisco* was to what extent the Senate's conclusion regarding a candidate's qualification is insulated from judicial review. In reviewing the Sole Judge Clause of the Palau Constitution, the *Francisco* Court held that while the framers of the Palau Constitution intended for the Senate to determine which candidates were elected and whether those candidates were qualified, they did not intend for the Senate to pass judgment on what the eligibility requirements set forth in the Constitution were. Because the Court is the ultimate interpreter of the Constitution, *see e.g., Gibbons v. Etpison*, 4 ROP Intrm. 1, 6 (1993), with the duty to "say **L215** what the law is," *Becheserrak v. Koror State*, 3 ROP Intrm. 53, 55 (1991), and must decide whether another branch of government has exceeded whatever authority has been committed to it by the Constitution, *see Salii v. House of Delegates*, 3 ROP Intrm. 351, 357 (Tr. Div. 1989), *Francisco* held that the Sole Judge Clause does not divest the Court of its role as the ultimate interpreter of the meaning of the age, residency, and citizenship requirements set forth in the Palau Constitution, and the Senate exceeded its own authority by promulgating its own definition of the residency requirement.

In a case involving the parameters of the sole judge clause of a state constitution, *Melaitau v. Lakobong*, 9 ROP 165 (2002), the Appellate Division had occasion to review Ngiwal State Constitution's sole judge provision<sup>5</sup> and recognized that an argument could be made that the Sole Judge clause of the Palau Constitution does not sweep as broadly as the Sole Judge provisions found in the United States. However, the *Melaitau* Court remanded the case for entry of declaratory relief in favor of appellants, and thus had no need to decide whether, and to what

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<sup>4</sup>Article IX, Section 10 of the Palau Constitution provides that "[e]ach house of the Olbiil Era Kelulau shall be the sole judge of the election and qualification of its members."

<sup>5</sup>The *Melaitau* Court looked to the Palau Constitution's Sole Judge Clause because the relevant languages contained in both documents are identical, the inference being that the framers of the Ngiwal State Constitution looked to the Palau Constitution in choosing that language.

extent, the Palau Constitution's Framers intended to allow judicial intervention

In this case, the Assembly introduced Resolution No. 12-04 to "confirm and to seat Mr. Singich Sato (Tet ra Ollei) in the Ngarchelong State Assembly." In that resolution, the Assembly seated Sato in the Assembly to sit with the ranking rubaks of Ngarchelong, representing Ollei Hamlet. Such seating of Sato was unconditional, unlike the situation in the *Tulop* case, and no evidence has been presented to establish that said seating was conditional on any final decision by the courts. Thus, it appears that, notwithstanding the *Uehara* and *Sato* decisions that Sato does not bear the title Tet, there was no prohibition on the Assembly seating Sato as a member. In addition, given that there has been no allegation that the Assembly violated its own procedures in having the Credentials Committee investigate Sato's nomination to the Assembly, the Assembly's passing of a resolution to seat Sato in the assembly cannot be said to be void.

The Court is of the opinion that once the Assembly seated Sato after conducting its own investigation and being satisfied that Sato met the eligibility requirements, and where there has been no allegation of a constitutional violation surrounding the eligibility requirements, the issue became a non-justiciable, political issue outside the jurisdiction of the courts. For these reasons, the Court holds that whether Sato should be seated in the Assembly is a non-justiciable, political issue beyond the jurisdiction of this Court. As the *Sato* Court noted in 1998, the dispute about the rightful holder of the Tet title may continue, and this has been the case. However, where there is no dispute that the Assembly accepted Sato based on the submission of his name from the members of Ukall Clan and the Ollei Council of Chiefs, and where previous court decisions surrounding the issue of the appointment of Tet did not prohibit the Assembly from seating Sato, this Court is of the belief that the Sole Judge Clause of the Ngarchelong State Constitution places this issue before the Assembly, and the Assembly has seated Sato.

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The Court has little difficulty distinguishing this case from those of *Ngerul*, *Francisco*, and *Melaitau*, because in this case, Plaintiff has not raised any allegation that Defendants violated any provisions of the Ngarchelong State Constitution, particularly the Sole Judge Clause thereof. Instead, the allegations raised both in the Complaint and in the motion for partial summary judgment are of violations of custom as established by case law. What this means, as has been the case for the past two decades, is that the dispute about the rightful holder of the Tet title will continue within Techwood Clan. An additional layer to this ongoing dispute has now been added, because those members of Techwood Clan who disagree with the seating of Sato as Tet in the Assembly are all presumably registered voters in Ngarchelong who have the prerogative to choose their representatives to the Assembly at the next scheduled election. Such is the system of government we live in.

### CONCLUSION

The Court concludes that this matter is ripe for summary judgment in light of the absence of a genuine issue as to any material fact. Based on the undisputed facts, Plaintiff is entitled to partial judgment in his favor that Sato is collaterally estopped from challenging the findings in the earlier case of *Uehara* that he was not properly appointed as Tet, because his appointment

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was not approved by all three lineages of Techiwood Clan. However, Plaintiff is not entitled to summary judgment that Defendants are barred from seating Sato in the Assembly. On these grounds, Plaintiff's motion for partial summary judgment is **GRANTED** against Sato but **DENIED** as to the Assembly. The undisputed facts also support Defendants' motion for summary judgment that the issue of whether to seat Sato in the assembly is a non-justiciable political issue. On these grounds, and particularly in light of the fact that Plaintiff has made no allegations of constitutional violations of the Sole Judge Clause of the Ngarchelong State Constitution, Defendants' motion for summary judgment seeking dismissal of the complaint is **GRANTED** and this case is hereby **DISMISSED**. A separate judgment will be entered in accordance herewith.