

Baules v. Kuartel, 13 ROP 129 (2006)
GHANDI BAULES,
Appellant,

v.

**YOU KUARTEL, TOSHIE NGIRAKESAU, ANEMARY NGOTEL, KESIIL
SOALABLAJ, YUSECHEMAD SADANG KAORU SASAO, IWESI RENGECHEL,
ALEXANDER REKEMESIK, DAIYENG IKESAKES, and SATOSHI REBETUU,**
Appellees.

CIVIL APPEAL NO. 04-038
Civil Action No. 03-195

Supreme Court, Appellate Division
Republic of Palau

Argued: March 6, 2006
Decided: June 12, 2006

Counsel for Appellant: Johnson Toribiong

Counsel for Appellees: Raynold B. Oilouch

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
and JANET HEALY WEEKS, Part-Time Associate Justice.

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

PER CURIAM:

BACKGROUND

On January 12, 2004, You Kuartel, Alexander Rekemesik, Daiyeng Ikesakes, Satoshi Rebetuu, Anemary R. Ngotel, Kaoru Sasao, Toshie Ngirakesau, Iwesei Rengechel, Kesiil Soalabjai, and Yusechemad Sadang ¹ filed a complaint against Hokkons Baules, Ghandi Baules, Emeraech Baules, and Johnson Toribiong seeking declaratory relief, injunctive relief, and damages. Specifically, plaintiffs below sought (1) a declaration that defendants' use of Meriang Clan land to the exclusion of other Clan members was unlawful because plaintiffs and not defendants are the senior strong members of Meriang Clan; (2) an injunction enjoining defendants from occupying or using Meriang Clan land without the permission of plaintiffs; (3) damages for the unlawful use of Meriang Clan land; (4) a declaration that money to be paid by

¹ Oritechereng Ngirchomlei was also named as a plaintiff in the action below, however, she was dismissed because she did not appear in plaintiffs' family tree and there was no evidence of her membership in Meriang Clan presented at trial. Accordingly, she is not a party on appeal.

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Koror State pursuant to a settlement agreement with Meriang Clan should be paid to plaintiffs as senior strong members of the Clan and not to defendants; and (5) an injunction directing Koror State to pay plaintiffs and not defendants the settlement money.

In its Findings of Fact and Conclusions of Law, the trial court began by noting that the oral histories of the parties were conflicting. According to plaintiffs' L130 version of oral history, they are the senior strong members of Meriang Clan and Plaintiff You Kuartel is Ngiramieriang, the senior titleholder of the Clan. On the other hand, defendants asserted below that they are the only remaining members of Meriang Clan. The trial court found that defendants' oral history did not correspond with certain historical facts and issued judgment in favor of plaintiffs.

On December 27, 2004, Ghandi Baules ("Ghandi") filed the instant appeal presenting three specific arguments.² Appellant first asserts that in accordance with Palauan custom, the trial court should have held that Appellees Anemary Ngotel ("Anemary"), Daiyeng Ikesakes ("Daiyeng"), Satoshi Rebetuu ("Satoshi"), and Alexander Rekesesik ("Alexander"), who are siblings, are weaker members of Meriang Clan than appellant by virtue of the adoption of their mother and grandmother to Ngermechuu Clan. Next, appellant claims that Appellee You Kuartel ("You") is not a member of Meriang Clan because, unlike his maternal aunt and mother's cousin, You's mother was not adopted into the Clan. Finally, appellant argues that the trial court erred in finding that Appellees Toshie Ngirakesau ("Toshie"), Kesiil Soalablai ("Kesiil"), Kaoru Sasao ("Kaoru"), Iwesei Rengechel ("Iwesei"), and Yusechemad Sadang ("Yusechemad") are stronger members of Meriang Clan than appellant because their membership in the Clan is through ulechell members two or three generations back, as opposed to appellant's ulechell membership through his father. At the very least, appellant contends that the trial court should have found him to have the same strength and status in the Clan as ulechell members Appellees Toshie, Kesiil, Kaoru, Iwesei, and Yusechemad.

ANALYSIS

Appellant contends that the trial court's findings that plaintiffs, appellees herein, are the senior strong members of Meriang Clan, with power and authority over all lands, matters, and affairs of the Clan, and that he is a weaker member of the Meriang Clan were clearly erroneous and contrary to Palauan custom. Accordingly, he submits that the trial court's judgment should be reversed in his favor and that he should be "declared Ngiramieriang and the strongest living member of Meriang Clan."

Appellant first asserts that, in accordance with Palauan custom, the trial court should have held that Appellees Anemary, Daiyeng, Satoshi, and Alexander, who are siblings, might have been ochell members of the Clan had their mother and grandmother not been adopted to Ngermechuu Clan but that they are weaker members of Meriang Clan than appellant by virtue of these adoptions. As support, appellant quotes *Elechuus v. Kdesau*, 4 TTR 444 (1969), for the proposition that "an *ochell* adopted from his or her clan to another clan remains an *ochell*

² Hokkons Baules, Emeraech Baules, and Johnson Toribiong are not parties on appeal because they either did not appeal the trial court's decision or were dismissed for failure to prosecute.

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member of the original clan, but his or her authority is not as great in the original clan as an *ochell* member remaining in the clan . . . [and] members . . . who were not strong members 30 years ago, . . . now may be regarded as strong members.” Op. Br. at 14. Thus, appellant essentially admits that these appellees are *ochell* members of Meriang Clan despite any potential weakening in their status caused by the adoption of their mother and grandmother to another clan. Moreover, the **L131** record reveals that sufficient evidence was presented at trial to support the trial court’s conclusion that appellees’ mother returned to Meriang Clan despite her adoption out of the Clan.³ Thus, it is clear that the trial court’s holding that Appellees Anemary, Daiyeng, Satoshi, and Alexander are senior strong members of Meriang Clan was not clearly erroneous.

Appellant next claims that Appellee You is not even a member of Meriang Clan because, unlike his maternal aunt and his mother’s cousin, You’s mother was not adopted into the Clan by appellant’s great aunt.⁴ In support of this argument, appellant relies on the fact that despite being alive at the time, neither You nor his mother signed the Statement of Claim in Ngiramering Baules Sechelong’s 1956 action filed with the Land Title Officer on behalf of Meriang Clan for the return of Clan land, and on Ngiramering Sechelong’s 1956 statement that he was the “only male member of the clan surviving.” Essentially, this argument raised by appellant amounts to nothing more than a complaint that the trial court erred in holding appellees’ evidence more credible and convincing than appellant’s evidence. In such situations, “where there are two permissible views of the evidence, the court’s choice between them cannot be clearly erroneous.” *Uchelkumer Clan v. Isechal*, 11 ROP 215, 219 (2004) (citations omitted). As a review of the record in the instant action reveals that sufficient evidence was presented to support the trial court’s findings of fact, it is clear that the trial court’s conclusion that You is an *ochell* member of Meriang Clan was not clearly erroneous.⁵ Accordingly, this argument does **L132** not warrant

³ The return of appellees’ mother to the Clan is evidenced by the fact that appellant’s father gave her money from the sale of Meriang Clan land and the fact that she is buried on Clan land along with other senior strong members. Furthermore, appellees noted that Appellee Alexander lives on Clan land and Appellee Anemary has lived on Clan land since 1962. Therefore, the record below demonstrates that their mother maintained her *ochell* status despite her adoption, their mother returned to Meriang Clan, they live on Clan lands, and they have performed services on behalf of the Clan.

⁴ Although not specifically contested, appellant also appears to challenge Appellee You’s status as Ngiramering, arguing that appellant was appointed Ngiramering in 1993 by his father, the previous Ngiramering, and his appointment was accepted by the Ngerbeched council of chiefs. As his appointment and acceptance as Ngiramering allegedly occurred prior to You’s appointment as Ngiramering, appellant argues that he, and not You, is Ngiramering. The trial court’s finding that appellant’s assertion was without merit was not clearly erroneous. First, appellant’s description of his appointment does not comport with Palauan custom as he claims to have been appointed by his father, Ngiramering Sechelong, as opposed to being appointed by the senior strong female members of the Clan. Second, appellant claims to have become Ngiramering in 1993 but his own evidence presented at trial demonstrates that his father’s title as Ngiramering was not removed until his father’s death in 2000, and that no feast was held for appellant after his father’s death. On the other hand, the evidence at trial demonstrated that You was appointed by the female senior strong members of the Clan and that his appointment was confirmed by the council of chiefs after Ngiramering Sechelong’s death. Thus, while appellant’s argument and evidence do not comply with Palauan custom, appellees’ evidence does.

⁵ At trial, appellee’s oral history demonstrated that You is an *ochell* member of Meriang Clan because he is a member through the Clan’s female line. On the other hand, appellant’s version of history was that he and his siblings are the only remaining members of Meriang Clan. The trial court accepted

reversal of the trial court's judgment.

Finally, appellant submits that the trial court should have found that he was a stronger member of Meriang Clan than Appellees Toshie, Kesiil, Kaoru, Iwesei, and Yusechemad because their memberships in the Clan are through more remote ulechell clan members, namely their grandparents and great-grandparents, than appellant's membership through his father, Ngiramering Baules Sechelong. The membership of Appellees Toshie, Kesiil, Kaoru, Iwesei, and Yusechemad in Meriang Clan is traced to Ngiramering Rekemel from whom appellees are two or three generations removed. Appellant lends great importance to how many generations removed a person is descended from a title holder or ochell member of the Clan, but he failed to present any evidence of customary law at trial or cite any supporting cases on appeal that would dictate finding that these appellees' ulechell status is weaker than appellant's ulechell status simply because they are two or three generations removed from their closest ochell ancestor. As the existence of customary law must be established by clear and convincing evidence, *see Ngirutang v. Ngirutang*, 11 ROP 208 (2004), appellant has utterly failed to present any support for his argument that the more remote a clan member's connection to an ochell member, the weaker his or her status within the Clan. Therefore, this argument does not warrant reversal of the trial court's decision.

Although we reject appellant's last argument for reversal, his assertion that, at the very least, the trial court should have held him to be as strong a member of Meriang Clan as Appellees Toshie, Kesiil, Kaoru, Iwesei, and Yusechemad warrants further consideration. Both these particular appellees and appellant are admitted ulechell members of Meriang Clan. Thus, any difference in the strength of their status in the Clan relative to each other would have to be attributable to their age and performance of obligations on behalf of the Clan. At trial, the evidence demonstrated that **L133** these appellees are sixty-six years of age or older, with Kesiil Soalablai being the oldest at over ninety years old. Of these appellees, the only one to testify was Toshie. The evidence demonstrated that her brother and grandfather were Ngiramering, her

appellee's oral history and family tree as opposed to appellant's version, finding appellant's version inconsistent with certain historical facts. Specifically, the trial court focused on a claim filed in the Palau District Land Office in 1956 by appellant's father, which was cosigned by Dilirang and Kiyarii as members of the Clan. The trial court noted that the claim was consistent with appellees' assertion that Dilirang and Kiyarii were members of Meriang Clan and inconsistent with appellant's assertion that Dilirang and Kiyarii were adopted to the half sister of Ngiramering Kelbak, who was not a member of the Clan. Additionally, appellant relied heavily at trial, as he does on appeal, on Ngiramering Sechelong's statement in a 1956 land claim that he was the "only male member of the clan living." The trial court placed little weight on this statement, as Ngiramering Sechelong later testified in a 1990 Land Court hearing that he filed the 1956 claim on behalf of his uncle, Ngiramering Kelbak. Between these two inconsistent statements, the trial court held that Ngiramering Sechelong's actual testimony should be accepted over a document written in English for him to sign. The evidence also demonstrated that Ngiramering Sechelong not only distributed payments resulting from litigation over Meriang Clan land to You, appellee herein, but also that Ghandi Baules accepted contributions from You to cover expenses in the Meriang Clan case. Also of significance is that the Tochi Daicho listed Ngiramering Kelbak, who appellees claimed was an ochell member through maternal lines and was You's natural uncle, as administrator of certain Meriang Clan land. Thus, the court found appellees' oral history consistent with the Tochi Daicho.

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grandmother had a “relation to” Meriang Clan, and she is an ochell member of Ngesiliong Clan. She testified that she considers herself and her mother to be senior strong members of Meriang Clan, she attends customs for Meriang Clan, and along with the other senior strong members of Meriang Clan, she helped appoint You Kuartel as Ngiramering. The only relevant evidence presented at trial as to Appellees Kesiil, Kaoru, Iwesei, and Yusechemad was Appellee Anemary Ngotel’s testimony that they attend customs obligations of the Clan. Ghandi did not testify at trial, but the evidence presented demonstrated that his father was Ngiramering, his father purported to give him the title of Ngiramering in 1993 while retaining the title for himself, his parents performed obligations for the Clan, he and his siblings consider themselves senior strong members of the Clan, and his sister holds the title of Diluang. Thus, there was no specific information as to customs attended and obligations performed by either appellees or appellant enabling the trial court to determine the relative strength in the Clan of these parties. However, the trial court held that all of the appellees, including ulehell members Toshie, Kesiil, Kaoru, Iwesei, and Yusechemad, are senior strong members of the Clan but that Ghandi is a weaker member. As there is no basis in the record for that finding, we remand this action for the limited purpose of declaring appellant to have the same status in the Clan as appellees. As the original trial judge is no longer on the Court, the new judge assigned to this action should amend the trial court’s judgment in accordance with this opinion.

CONCLUSION

For the foregoing reasons, we affirm in part the judgment of the trial court as to the finding that appellees are senior strong members of Meriang Clan; however, we remand for the limited purpose of amending the judgment to reflect that Appellant Ghandi Baules has the same strength and status in Meriang Clan as appellees.