

Masters v. Adelbai, 13 ROP 139 (2006)
YOHIM MASTERS and ROSANIA MASTERS,
Appellants,

v.

MASAYUKI ADELBAI,
Appellee.

CIVIL APPEAL NO. 04-036
Civil Action No. 02-045

Supreme Court, Appellate Division
Republic of Palau

Decided: June 13, 2006¹

Counsel for Appellants: Moses Y. Uludong

Counsel for Appellee: John K. Rechucher

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
LOURDES F. MATERNE, Associate Justice.

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

PER CURIAM:

BACKGROUND

In 1996, members of the Ngermengrang Lineage approached Appellee Masayuki Adelbai and asked if he would lend Ebas Ngiraloi \$10,000 to help him satisfy some outstanding debts. Ngiraloi sought money primarily to pay legal fees for a case involving land owned by another lineage. Appellee, who was looking for a piece of property on which to build, gave the money to Ngiraloi and claims that he was given a Land Use Right for lands known as *Ngerullang* and *Ngelung*—which are owned by Ngermengrang Lineage and located in Ngetkib Hamlet, Airai State—in consideration for the money. On September 26, 1996, Appellee recorded this document, and it appears to be signed by Adelbai Remed, Swars Remed, Dilubech Misch, Dolores Adelbai, and Ellen Adelbai, who are identified in the Land Use Right as members of the Ucheliou Clan, of which Ngermengrang Lineage is a part.

¶140 Apparently, Appellants Yohim and Rosania Masters had been occupying and/or using *Ngerullang* prior to 1996. Rosania testified that she began clearing the land in 1993, and Yohim testified that he began clearing the land in 1995, after his house was completed. In 2002, Adelbai

¹ The court has concluded that oral argument would not materially assist in the resolution of this appeal. ROP R. App. P. 34(a).

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Remed and Yolanda Warren filed this lawsuit to prevent Appellants from interfering with Warren's use of *Ngerullang*. Based on his land use right, Appellee eventually substituted as plaintiff in interest. The trial focused on whether the use right granted to Appellee is valid.

The trial lasted ten days over a five month period. The trial court found that Adelbai Remed, Swars Remed, and Dilubech Misch were the senior strong members of Ngermengrang Lineage because they were the living descendants of Irikl and Remed, and that they had the power of granting a use right for lineage-owned land. Although there were other biological siblings of these three individuals, the court concluded that custom dictated that adopted children—specifically, Ebas Ngiraloi, Saburo Olkeriil, and Elchesel Matchiau—lost their senior status in their former lineage.

Appellants challenge these findings and conclusions. First, they argue that the trial court erred in finding that Adelbai, Swars, and Dilubech were the only senior strong members of Ngermengrang Lineage, and that only they had the power to grant a use right for *Ngerullang*. Specifically, they maintain that Ebas Ngiraloi, Saburo Olkeriil, and Elchesel Matchiau should have been required to sign the Land Use Right in order for it to be valid. In another section of their brief, they also suggest Otobed Adelbai should have participated in the transfer decision. Second, Appellants contend that the court erred in holding that the strong senior members of the Ucheliou Clan were also the strong senior members of the lineage. Third, they argue that the strong senior members of the clan could not transfer land use rights owned by a lineage.

ANALYSIS

A. Senior Strong Members of Ngermengrang Lineage

1. *Ebas Ngiraloi, Saburo Olkeriil, and Elchesel Matchiau*

In their first issue on appeal, Appellants maintain that the trial court erred in finding that Adelbai, Swars, and Dilubech were the only senior strong members of Ngermengrang Lineage, and that they alone had the power of granting a use right for *Ngerullang*. Appellants argue that Ebas Ngiraloi, Saburo Olkeriil, and Elchesel Matchiau were also senior strong members of the lineage and that their consent would have been required for a transfer of lineage-owned land. All six individuals were descendants of Irikl—the common link in the Ngermengrang Lineage—but Ngiraloi, Olkeriil, and Matchiau were adopted by other families.

The parties agree that a grant of a land use right for lineage-owned land must be approved by the strong senior members of the lineage. The dispute centers around whether a member of the lineage can lose his or her strength by being adopted by another lineage. The trial court determined that Ngiraloi, Olkeriil, and Matchiau would always be a part of the lineage based on birth, but that their adoption by another lineage and their reduced contributions and services to the Ngermengrang Lineage weakened their strength in that lineage. Appellants disagree.

Whether an individual was adopted is a question of fact, and this Court reviews the factual findings of the trial judge on a clearly **1141** erroneous standard. *Ongidobel v. ROP*, 9

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ROP 63, 65 (2002). The impact of adoption on an individual's strength in a lineage is based on custom. The existence of a claimed customary law is a question of fact that must be established by clear and convincing evidence and is reviewed for clear error. *Saka v. Rubasch*, 11 ROP 137, 141 (2004). Under this standard, if the trial court's findings of fact are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless the Appellate Division is left with a definite and firm conviction that an error was made. *Ngirutang v. Ngirutang*, 11 ROP 208, 210 (2004).

Both parties presented expert testimony regarding whether adoption out of a lineage lowers an individual's status or strength within the original lineage. Plaintiff's expert Kathy Kesolei testified that "[i]f you're adopted out of this clan to another clan, then you have, in, in a way, severed ties from that clan." In addition, on cross examination, Kesolei also testified that even if the adopted son returns to his biological family, he will always be viewed in his adopted position, and he would not retain his biological strong status in the clan. Her testimony supports the finding that an individual loses strength in a clan or lineage when he or she is adopted out of that lineage. In contrast, the testimony of Defendants' expert witness Wataru Elbelau focused more on whether the adopted child continued to perform services to his former family. Elbelau testified that the individual will always keep their designation in the original family—such as ochell—when adopted, and that the individual (or his adopted family) is required to perform services to the original family. He stated that if an adopted son fails to perform services to the original family, he will become less strong than the individuals who remain and work in the clan; however, Elbelau testified that he had never seen a case in which the adopted child or adopting family failed to perform services to the biological family.

No other testimony was presented on this issue. From the Court's limited perspective on appeal, Kesolei's and Elbelau's testimonies are not entirely inconsistent. Kesolei stated the general principle that adoption separates the child from his or her former clan, whereas Elbelau testified that an individual loses strength within a clan if he or she fails to perform requisite services. In other words, one expert was focused on the impact of adoption, while the other expert focused on performance of services. To the extent there is a conflict between Kesolei's and Elbelau's testimonies, the trial court was entitled to rely on Kesolei. 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 (2004). Accordingly, there is no reversible error in the trial court's treatment of the impact of adoption on an individual's status within a lineage.

2. *Otobed Adelbai*

In the second section of their brief, Appellants argue that Otobed Adelbai should have consented to the use right in order for it to be valid. They contend that he held the lineage title of Klou el Adelbai in 1996 when the land use right was purportedly given. According to Otobed's testimony, the bearer of this title would become Remesechau (the highest title in Ucheliou Clan) when the preceding Remesechau passed away. Both Rosania Masters and Otobed testified that Otobed was a senior strong member of the lineage.

⌋142 In contrast, Ellen Adelbai testified that Otobed is a weak member of the lineage. Ellen

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also testified that a non-lineage member held the title of Klou el Adelbai when her father died in 2002. She stated that Adelbai Remed gave the title to a man named Secharraimul because Otobed did not contribute to the lineage.

The trial court did not discuss the title of Klou el Adelbai or the specific status of Otobed in its findings. Nevertheless, it did find that Adelbai, Swars, and Dilubech were the only senior strong members of Ngermengrang Lineage, and it follows that the Court implicitly determined that Otobed did not have high enough status to warrant a finding that his signature was required on the use right document. Testimony supports both parties' contentions, and the evidence does not so strongly support Appellants' argument that the Court is left with a definite and firm conviction that an error was made. Therefore, the Court cannot hold that the trial court committed reversible error on this issue.

B. Clan and Lineage Comparison

Appellants contend that the court erred in concluding that the strong senior members of the Ucheliou Clan were also the strong senior members of the Ngermengrang Lineage. This conclusion, however, had no role in the court's holding. The court determined that the land was owned by Ngermengrang Lineage, and not by Ucheliou Clan. It stated that under Palauan custom the agreement of senior strong members of the owning clan or lineage was required to grant land use rights. Therefore, the Ngermengrang Lineage's senior strong members were required to sign the land use right. The court's statement that the strong senior members of the Ucheliou Clan were also the strong senior members of the lineage had no effect on its holding. Thus, even if that conclusion were inaccurate, it was harmless and not an error on which the Court can reverse the judgment.

C. Clan Transferring Lineage-Owned Land

In a related argument, Appellants argue that the strong senior members of a clan could not transfer land use rights owned by a lineage. This issue arose from the fact that the signatories of the land use right document identify themselves as "members of the Ucheliou Clan." To the extent that Appellants argue that an individual or entity cannot convey an interest in land that it does not possess, Appellants are correct. *See Rechucher v. Ngiraked*, 10 ROP 20, 23 (2002). The key finding of the trial court, however, is that the individuals who signed the Land Use Right for Masayuki were the senior strong members of Ngermengrang Lineage, despite their identification as members of the Ucheliou Clan on the document. Therefore, there is no reversible error on this issue.

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CONCLUSION

As discussed above, Appellants have presented no reversible error. Accordingly, the trial court's judgment is AFFIRMED.