

*Sambal v. Ngiramolau*, 14 ROP 125 (2007)

**DAVIS SAMBAL,**  
**Appellant,**

v.

**LORENZO NGIRAMOLAU.**  
**Appellee.**

CIVIL APPEAL NO. 06-011  
Civil Action No. 04-142

Supreme Court, Appellate Division  
Republic of Palau

Argued: June 18, 2007  
Decided: June 20, 2007

Counsel for Appellant: David J. Kirschenheiter

Counsel for Appellee: Johnson Toribiong

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

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

PER CURIAM:

Appellant Davis Sambal appeals the judgment of the Trial Division finding that Appellee Lorenzo Ngiramolau is a stronger member of Tmangelchab Clan than Sambal. Having considered the arguments of the parties, we affirm the judgment of the Trial Division.

### **BACKGROUND**

Tmangelchab Clan is the first-ranking clan of Iebukel Hamlet of Ngarchelong State. Its paramount male title is Obakraiyebukel and its paramount female title is Delalabulai. The Trial Division found, and the parties do not dispute on appeal, that roughly a hundred years ago there was a group of siblings **¶126** including three males, West, Obechelang, and Mengloi, and a female, Ngeriam (“the Siblings”). When Ngeriam died young and there were no other older female members of Tmangelchab to contribute to customary obligations, members of Tmangelchab Clan went to Ngedengoll Clan of Ngardmau and brought a woman named Emau to Ngarchelong to be the sister of West, Obechelang, and Mengloi. Emau was an ochell of Ngedengoll Clan and already an adult when she came to Tmangelchab Clan. Appellant Sambal is the biological son of Ulang, Emau’s biological daughter, and he was also adopted by Emau.

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Appellee Ngiramolau is the biological great grandson of Obechelang, and was also adopted by his biological aunt and can also be considered the adoptive grandson of Obechelang.

The main factual issue in dispute is the identity of the mother of the Siblings. Sambal claims the mother's name is Irriu and that like Emau, she was an ochell of Ngedengoll Clan who was brought to Ngarchelong when there were no other female members of Tmangelchab to contribute. Ngiramolau claims the mother was a different woman named Uedil, also spelled as Widil.

The Trial Division found that Emau was a lengelchad, a "borrowed person" who held the Delalabulai title. Under custom, only the lengelchad came into Tmangelchab Clan and not her children, so Ulang and Sambal did not ascend to the same rank as Emau. The Trial Division found that Ngiramolau is ulechell and that because Sambal is a descendent of a lengelchad, Sambal's status is lower than Ngiramolau. Sambal claims he is the stronger member and should hold the title of Obakraiyebukel.<sup>1</sup>

## II. STANDARD OF REVIEW

This Court reviews the trial court's findings of fact for clear error. *Masters v. Adelbai*, 13 ROP 139, 140-41 (2006). Under this standard, the factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 46 (2006).

## III. ANALYSIS

### A. The Mother of the Siblings

Sambal argues that the evidence he presented at trial established that Irriu was the mother of the Siblings.<sup>2</sup> Sambal's brother ¶127 Ngirablau Sambal, Ngiraikelau Teriong from Ngedengoll Clan, Sambal's mother Ulang Ruluked, and Esther Ngiraibiochel from Tmangelchab Clan all testified that the mother was Irriu and that she was borrowed from Ngardmau. Ngiramolau claims the mother's name is Uedil, also spelled as Widil, but his evidence is less compelling. Koichi West testified his father West never told him the name of his mother and he

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<sup>1</sup>The parties are reminded that "[t]he selection of a title bearer is the clan's responsibility, not the courts." *Sato v. Ngarchelong State Assembly*, 7 ROP Intrm. 79, 81 (1997). Although the courts have constitutional authority over matters presenting issues of customary law, see *Espangel v. Diaz*, 3 ROP Intrm. 240, 244 (1992), it remains true that disputes over customary matters are best resolved by the parties involved rather than the courts. *Filibert v. Ngirmang*, 8 ROP Intrm. 273, 276 (2001).

<sup>2</sup>The overarching issue Sambal raises on appeal is that the Trial Division abused its discretion in its credibility determinations. It is well-settled that the trial judge is best situated to make credibility determinations of witnesses, and this Court will generally defer to those decisions. *Tmiu Clan v. Hesus*, 12 ROP 156, 158 (2005). Attacks on witness credibility are challenges to the quality of the evidence and not the sufficiency of the evidence. *Filibert v. Ngirmang*, 8 ROP Intrm. 273, 278 (2001). In actuality, Sambal is challenging the quality of the evidence of the Trial Division's factual findings and not the credibility of the witnesses.

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heard the name Irriu for the first time at the trial. Kiyoko Ngotel testified that her grandfather Obechelang's mother's name was Widil. The Trial Division made no specific finding of fact about the identity of the mother of the Siblings.

Sambal argues that the Trial Division did not accord the weight to the testimony that it deserved. The Appellate Division does not reweigh the evidence. *Ngeribongel v. Gulibert*, 8 ROP Intrm. 68, 70 (1999). The Trial Division's choice not to accord significant weight to the witnesses' testimony does not mean that the court did not properly consider that testimony. See *RTFT v. Airai State Pub. Lands Auth.*, 12 ROP 76, 80 (2005). The Trial Division found that each side presented witnesses who, in all sincerity, believe that their version of Tmangelchab's history is the truth. However, competing familial histories told by people with no direct knowledge of events more than a century old are very difficult for a court to weigh. A court may give greater weight to recent familial evidence, especially direct physical evidence or testimonial evidence of persons with direct knowledge, than to old stories passed from generation to generation. The Trial Division did not err in weighing the testimonial evidence.

Sambal argues that if Irriu is the mother of the Siblings and she was a lengelchad, then her children did not ascend to the same rank as Irriu. Along that same line, Sambal argues that because Obechelang and Ulang would both be children of lengelchad they would be equal strength and then because Sambal is the child of a female and Ngiramolau is the child of a male line, Sambal would be stronger than Ngiramolau. At trial, Sambal acknowledged that everyone in Tmangelchab Clan, including himself, considered West, Obechelang, and Mengloi to be ochell. Under the custom established at trial, if their mother was a lengelchad then they could not be considered ochell. The evidence of West, Obechelang, and Mengloi's status as ochell is direct evidence from individuals with direct knowledge, unlike the testimony about Irriu that is entirely indirect knowledge. Even though the Trial Division made no specific finding of fact about Irriu, by ruling that West, Obechelang, and Mengloi were ochell the Trial Division implicitly ruled that Irriu was not a lengelchad. Although we would have preferred that the Trial Division make a specific finding of fact concerning Irriu, the evidence presented at trial established that the Siblings were ochell and as a result their mother could not be a lengelchad. The Trial Division was not clearly erroneous in finding that Ngiramolau is an ulechell.

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### **B. Status of Emau's Children**

Sambal next claims that the Trial Division erred in its findings that Emau's children were not ulechell because he presented evidence that members of Tmangelchab Clan treated her children as ochell. He cites to the testimony of Esther Ngiraibiochel and Spis Midar who both testified that they considered Emau's children ochell in Tmangelchab Clan. Evidence that Emau's children were considered ochell is contrary to the Trial Division's findings that Emau was a lengelchad<sup>3</sup> and that under custom the children of lengelchad are not ochell.<sup>4</sup> The Trial

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Unlike the evidence that the Siblings were ochell, evidence that Emau's children were considered ochell does not disprove that Emau was a lengelchad because not only do the parties agree Emau was a lengelchad, but there was also direct testimonial evidence that she was a lengelchad.

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Division's findings are well supported by the evidence, and where, as here, "there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous." *Baules v. Kuartel*, 13 ROP 129, 131 (2006) (citations omitted). The Trial Division did not commit clear error in its findings about the status of Emau's children.

### **C. Emau's Status as Ochell in Ngardmau**

Sambal finally claims that the Trial Division erred when it found that Emau continued to be an ochell in Ngardmau after moving to Ngarchelong. Sambal does not dispute the Trial Division's findings that Emau was an ochell in Ngardmau prior to moving to Ngarchelong nor does he challenge the Trial Division's finding that as a result of moving from Ngardmau Emau was a lengelchad. Late in Emau's life in a land proceeding, she referred to herself as an ochell of Ngedengoll Clan. There was conflicting testimony of whether she retained her ochell status in Ngedengoll Clan and the Trial Division did not commit clear error when it found that Emau remained an ochell in Ngedengoll Clan after moving to Ngarchelong. *See Baules v. Kuartel*, 13 ROP at 131. Furthermore, the Trial Division's factual finding is inconsequential because regardless of Emau's status in Ngedengoll Clan she was always a lengelchad in Tmangelchab Clan.

### **CONCLUSION**

The Trial Division did not commit clear error in its factual findings. Accordingly, the judgment of the Trial Division is affirmed.

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The Trial Division's decision states that the expert witness on Palauan custom testified that while a lengelchad becomes a member of the clan, the children remain as members of the original clan. While Sambal does not dispute this finding, he does mention that the expert was not as clear as the Trial Division indicates. In the slightly convoluted example given by the customary expert, the children did not become part of the clan. The expert did not definitively state whether custom always dictates that the lengelchad's children do not become part of the clan. Despite this lack of definitiveness, Sambal has not argued nor proven that the Trial Division's customary finding was clearly erroneous and the finding will not be disturbed on appeal.