

Sked v. Ramarui, 14 ROP 149 (2007)
AKIKO SKED,
Appellant,

v.

YASKO RAMARUI,
Appellee.

CIVIL APPEAL NO. 06-041
LC/H 02-270

Supreme Court, Appellate Division
Republic of Palau

Decided: August 30, 2007¹

Counsel for Appellant: J. Roman Bedor

Counsel for Appellee: Salvador Remoket

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
LOURDES F. MATERNE, Associate Justice.

Appeal from the Land Court, the Honorable ROSE MARY SKEBONG, Associate Judge,
presiding.

MATERNE, Justice:

Appellant Akiko Sked challenges the Land Court's determination awarding to Appellee Yasko Ramarui ownership of the land known as *Metemtang*. Having considered the arguments of the parties, we affirm the determination of the Land Court.

BACKGROUND

The land in dispute, commonly known as *Metemtang*, is Lot No. 04H001-001 and Lot No. 04H001-002 located in Ngetbong Hamlet of Ngardmau State. A man named Sked owned *Metemtang* before the war. Sked married Melngoid and together they had a son named Obakrairur. Melngoid's brother had a son named Ngirmekur that Sked and Melngoid adopted as their son. Sked died during the war and an eldecheduch was held in 1945. At Sked's eldecheduch, other land owned by Sked and Palauan money were given to his sons Obakrairur and Ngirmekur. *Metemtang* was not distributed at the eldecheduch. Obakrairur retained control over *Metemtang* and in 1989 sold the property to Yasko Ramarui. Ngirmekur died in 1992.

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Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral arguments pursuant to ROP R. App. P. 34(a).

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After hearing customary evidence, the Land Court concluded that *Metemtang* passed on to Obakrairur only and not to Ngirmekur. The Land Court awarded *Metemtang* to Ramarui. Akiko appeals, claiming that Ngirmekur inherited only part ownership of ¶150 *Metemtang* and that the sale to Ramarui was improper.

STANDARD OF REVIEW

This Court reviews the Land Court's findings of fact for clear error. *Ibelau Clan v. Ngiraked*, 13 ROP 3, 4 (2005). The Land Court's conclusions of law are reviewed *de novo*. *Id.*

ANALYSIS

At the time of Sked's death in the 1940's, there was no applicable statute of descent and distribution. *See* Palau District Code § 801; *Obak v. Joseph*, 11 ROP 124, 127 (2004). Before the enactment of Section 801, the Trust Territory Courts held "that the land goes to the heirs of the deceased, said heirs being determined on the basis of Palauan custom." *Lekeok v. Ilangelang*, 7 TTR 27, 32 (1974). In *Edeyaoch v. Techur*, 7 TTR 55, 62 (1974), the Court held that in the absence of a will or applicable statute a decedent's property passes to his heirs, "which by custom are the children of the descendant." *Edeyaoch v. Techur*, 7 TTR 55, 62 (1974).

In *Obak* we considered a case where the land owner Sngaid died in 1941 and no distribution of the property was made at his *eldecheduch*. *Obak*, 11 ROP at 127. Sngaid had a son, Obak, who was the father of the claimant Natsuo Obak. Sngaid divorced Obak's mother and the mother and Obak moved away and had no contact with the land prior to filing a claim. Sngaid's brother sold the land to the father of one of the other claimants and the Land Court awarded the land to that claimant. Natsuo Obak argued that if it is not otherwise disposed of by the decedent's will or at an *eldecheduch*, a decedent's land automatically passes to his children. The Court stated that:

However, as we have recently explained, "[t]his is an incorrect statement of the law." *Ikluk v. Udui*, 11 ROP 93, 95 (2004) (quoting *Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 152 (2003)). While we have upheld determinations to that effect in the past, "we have expressly 'left open the possibility that [the] evidence . . . might support a different result,' and thus 'we have yet to formulate a single rule to deal with' these circumstances." *Ikluk*, 11 ROP at 95 (quoting *Matchiau v. Telungalek ra Klai*, 7 ROP Intrm. 177, 179 (1999) and *Tangadik v. Bitlaol*, 8 ROP Intrm. 204, 205 (2000)). "Rather, consistent with our usual approach to customary matters, we have gone no further than to say that 'the property passes to the proper customary heir or heirs' and 'who the customary heir happens to be is a question of fact to be established by the parties before the Land Court.'" *Ikluk*, 11 ROP at 95 (quoting *Dirrabang*, 10 ROP at 152). Thus, while the Land Court may determine that, under custom, a decedent's land ¶151 passes to his or her children, it is not bound to do so. . . .

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Id. at 127-28. Essentially, in pre-statutory situations the Land Court has wide discretion to determine who is the owner under custom. In this case, the Land Court properly turned to custom to determine the owner of *Metemtang*.

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. *See Masters v. Adelbai*, 13 ROP 139, 141 (2006). Wataru Elbelau, holder of the chiefly title Uchelrutechei of Ngeremlengui and member of the Palau Society of Historians, was called to testify as an expert on Palauan custom. Elbelau was accepted as an expert on Palauan custom without objection from the parties. Elbelau testified that once an adopted child is provided for at the eldecheduch it is final and the child cannot obtain more than what was given. The customary law was established by clear and convincing evidence and the Land Court did not commit clear error in basing its determination on the customary evidence.

The Land Court applied the customary law and determined that because Ngirmekur was provided for at the eldecheduch, he could not obtain any of Sked's property not included at the eldecheduch, including *Metemtang*. This conclusion is supported by the fact that Obakrairur remained in Ngardmau, used and controlled *Metemtang*, and eventually sold it to Ramarui. Ngirmekur was alive when Obakrairur sold *Metemtang* to Ramarui, but the Land Court found no evidence that Ngirmekur objected to the sale. The Land Court properly determined that Obakrairur was the sole owner of *Metemtang* after Sked's death. As Obakrairur owned *Metemtang*, his sale to Ramarui was valid and the Land Court properly determined that Ramarui is the current owner of *Metemtang*.

CONCLUSION

As the Land Court did not commit clear error in its factual findings, it properly found that Ramarui is the current owner of *Metemtang*. Accordingly, the Land Court's determination is affirmed.