

*Aitaro, et al., v. Mengekur*, 14 ROP 71 (2007)

**TED AITARO, MASAE YOSHIWO, ERMANG NGIROUS, NAOMI MOBEL, ASAKO NAGATA, HARUKO SENGEBAU, WILLIAM M. MOBEL, WAHINTO ISECHAL, ERMAS NGIRACHELBAED, KOICHI WONG, and JOSEPH KINTOL,**  
**Appellants,**

v.

**REMOKET MENGEKUR and ULDEKEL ETIBEK (now deceased),**  
**Appellees.**

CIVIL APPEAL NO. 05-012  
Civil Action No. 02-102

Supreme Court, Appellate Division  
Republic of Palau

Decided: April 17, 2007

Counsel for Appellants: Raynold B. Oilouch

Counsel for Appellees: Ernestine K. Rengiil

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; JANET HEALY WEEKS, Part-Time Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

NGIRAKLSONG, Chief Justice:

Appellants Ted Aitaro, Masae Yoshiwo, Ermang Ngiruos, Naomi Mobel, Asako Nagata, Haruko Sengebau, William M. Mobel, Yashinto Isechal, Ermas Ngirachelbaed, Koichi Wong, and Joseph Kintol (“Appellants”) appeal from the Trial Division’s determination that Remoket Mengerkur and Uldekel Etibek (“Appellees”) are ochell members of Ngeribukel Clan. Because there is evidence in the record from which a reasonable trier of fact could conclude that Appellees are ochell members of Ngeribukel Clan, the trial court’s decision in that regard is affirmed. The court’s declaration that other members of Appellees’ family may be strong senior members of the Clan is advisory only.

## I. BACKGROUND

In March 2002, Appellants filed suit against Appellees arguing that Ted Aitaro and Masae Yoshiwo are the proper title holders of Ngeribukel Clan and that neither they nor the **L72** other strong members of Ngeribukel Clan had consented to Remoket’s construction of a house on

*Aitaro, et al., v. Mengekur*, 14 ROP 71 (2007)

lands controlled by the Clan. Appellants sought (1) a declaration that Ted and Masae currently bear the titles “Iechadribukel” and “Bechekldil,” respectively, (2) a declaration that the Appellants are senior strong members of Ngeribukel Clan, (3) an injunction against any further construction activities, and (4) an award of damages. Appellees counterclaimed, asserting that Remoket bears the chief title of “Iechadribukel” and that Uldekel bears the female title of “Bechekldil.”

Following a lengthy trial in 2003, the trial court determined that some of the plaintiffs and defendants, namely Ted Aitaro, Masae Yoshiwo, Naomi Mobil, Remoket Mengerkur, Uldekel Etibek (now deceased), and their matrilineally-related relatives, are ochell of Ngeribukel Clan with ultimate authority over its titles and properties. In its judgment, the trial court also found that other relatives of Appellants and Appellees may be considered strong senior members of the Clan depending on their past and future services to Ngeribukel Clan. Appellants appealed, arguing that the Trial Division’s determinations of fact regarding Appellees’ ochell status were clearly erroneous.

## II. STANDARD OF REVIEW

We review the trial court’s findings of fact for clear error. *Ongidobel v. ROP*, 9 ROP 63, 65 (2002). 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. *Dilubech Clan v. Ngaremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002).

## III. ANALYSIS

The parties presented two conflicting stories regarding their family tree. Appellants argued that Remoket and his family descended from a male ancestor, Debed, and are therefore ulechell. Appellees, on the other hand, denied that they are descendants of Debed and claimed to be ochell through a woman named Saroi. After summarizing the evidence and identifying weaknesses in both stories, the trial court found that Appellees and their matrilineally-related relatives are ochell of Ngeribukel Clan.

This finding is adequately supported by the record. All parties agree that Remoket’s side of the family, including his mother, bore the female title of Ngeribukel Clan for many years. There is also evidence from which a reasonable trier of fact could conclude that Appellants’ version of the family tree contains errors in the upper right-hand quadrant: in the past, both sides of the family agreed that Orrukem was a true ochell by birth and there was conflicting testimony offered at trial regarding the relationships between and among Lalloi, Maireng, Debed, Ulemikel, Dilsebsis, and Orrukem. In addition, Ted Aitaro’s great uncle and Remoket’s cousin jointly represented Ngeribukel Clan in a land dispute filed more than forty years ago.<sup>1</sup> Based on the

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Appellants argue that the trial court’s reference to and reliance on the 1960 litigation is clearly erroneous and must be reversed. Appellants provide no case law or other authority that prohibits a court from referring to statements or findings made prior adjudications between related parties. Rather,

*Aitaro, et al., v. Mengekur*, 14 ROP 71 (2007)

record 173 before it, the trial court found that it was more likely than not that both factions are ochell of Ngeribukel Clan.

Although this conclusion is not the only conclusion that could have been drawn from the record, where, as here, “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). *See also Pierantozzi v. Ueki*, 12 ROP 169, 170 (2005). The trial court’s finding that individuals who are matrilineally descended from Ulemikel or Taruu are ochell of Ngeribukel Clan is adequately supported by the evidence and will not be disturbed on appeal.

To the extent the trial court attempted to identify other individuals who, in addition to the matrilineally-related descendants of Ulemikel and Taruu, may be strong senior members of Ngeribukel Clan, Appellees agree that this is an issue that will have to be determined at a later time based on evidence regarding an individual’s parentage, age, and services rendered to the Clan. Paragraph 4 of the judgment is, therefore, advisory in nature and establishes no enforceable rights or obligations.

#### IV. CONCLUSION

The trial court’s finding that individuals who are matrilineally descended from Ulemikel or Taruu are ochell of Ngeribukel Clan is affirmed.

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Appellants argue that Civil Action No. 144 is irrelevant to the outcome of this case. The Trial Division disagreed, finding that “the very fact of plaintiffs’ and defendants’ relatives having joined together in the earlier litigation is better evidence of their mutual standing in the Clan, and of their mutual authority, than testimony to the contrary by their younger relatives based on ancient events.” Decision and Order at 14 (filed Nov. 5, 2003). The trial court’s relevance finding is amply supported by the record.