

*Estate of Rdiall v. Adelbai*, 16 ROP 135 (2009)  
**ESTATE OF HIROMI RDIALL,**  
**Rep. by Lisa Rdiall,**  
**Appellant,**

v.

**DIRRAIRACHEL SALII ADELBAI,**  
**Appellee.**

CIVIL APPEAL NO. 08-014  
Civil Action 04-129

Supreme Court, Appellate Division  
Republic of Palau

Decided: March 11, 2009

Counsel for Appellant: Ernestine K. Rengiil

Counsel for Appellee: John K. Rechucher

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEXANDRA F. FOSTER, Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice.

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

PER CURIAM:

This is an appeal from the trial court's determination that the land known as Limbo is the property of Ibai Lineage. The trial court found that the transfer of Limbo from Ibai Lineage to Hiromi Rdiall in 1997 was invalid because no notice of the transfer was given to Appellee, a strong senior member of the lineage. Appellant argues that the trial court erred in finding that Appellee was a strong senior member of Ibai Lineage. Because the trial court's findings were not clearly erroneous, we affirm.

## **BACKGROUND**

### **A. Familial Relationships**

To understand this appeal, a brief account of the family history of the parties is necessary. According to the trial testimony, a woman named Mkorong had at least three children: Tichiau, Iwaiu, and Kekefeldil. Tichiau, along with a man named Techitong, was adopted by a woman named Tamei (or Tomei), an ourrot<sup>1</sup> of Ibai Lineage. As a result of this adoption, Tichiau became

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<sup>1</sup>An ourrot is defined as the "oldest female of high family." Lewis S. Josephs, *New Palauan-English*

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a strong member of Ibai Lineage. Tichiau gave birth to two sons, Sakuma and Ais. p.136 Ais had a son named Hiromi Rdiall. Tichiau adopted Hiromi. Hiromi was therefore Tichiau's biological grandson and adopted son.

Appellee is the daughter of Kekereldil, Tichiau's sister. Because Kekereldil died in childbirth, Appellee was raised by her aunt Iwaiu until she was five or six years old. Appellee was then adopted by Tichiau. This means that Appellee is Tichiau's biological niece and adopted daughter. Moreover, it means that Appellee and Hiromi are adoptive siblings, despite Appellee being a generation older than Hiromi.

## **B. Background**

This case involves the land known as Limbo, Cadastral Lot No. 042 B 10 (Tochi Daicho Lot No. 1037 - part), located in Dngeronger Hamlet of Koror. Limbo is the omsolel a blai (principal house site) of Ibai Lineage, and members of the Lineage are buried there. Limbo was listed in the Tochi Daicho under the name Techitong. After Techitong's death, Sakuma filed an application to register the land in his name as trustee for Ibai Lineage. When Sakuma himself died in 1988, Hiromi pursued Ibai Lineage's claim to Limbo. In 1993, the Land Claims Hearing Office awarded Limbo to Hiromi as trustee for Ibai Lineage. A Certificate of Title reflecting this was issued in 1995.

In 1997, Hiromi applied for a loan and attempted to use Limbo as collateral. During the loan application process, he obtained the sworn statements of three men: Baules Sechelng, Roman Tmetuchl, and Daniel Ngirchokebai. In these statements, the men averred that (a) Hiromi was Tichiau's only surviving child, (b) he was the sole strong and senior member of Ibai Lineage, and (c) he had full authority as Trustee to administer, use, and mortgage Limbo. Armed with these statements, Hiromi went to the Land Court and requested a new Certificate of Title for Limbo, this time in his individual name – not as trustee for Ibai Lineage. The Land Court complied and issued such a certificate on October 20, 1997. The Land Court did not hold a hearing before issuing the 1997 Certificate of Title, and no notice, to the public or otherwise, was given prior to the issuance of the certificate. According to Appellee, who was 75 years old in 1997, she did not learn that Hiromi acquired Limbo as his own property until his death or soon afterward.

Hiromi died on March 20, 2004. Following his eldecheduch, his daughter Lisa Rdiall filed a petition with the court to open his estate and appoint her as Administratrix. Rdiall listed Limbo as one of the assets of Hiromi's estate. On May 20, 2007, Appellee filed a claim against the estate and formally objected to Limbo being listed as an estate asset. A trial was held in April 2007. Several months later, the trial court issued a Decision and Judgment.<sup>2</sup>

In the Decision, the trial court found “[w]hile it is undisputed that Decedent [Hiromi] was a strong senior member of the Lineage at the time the second Certificate was issued, it is also

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*Dictionary* 281 (1997).

<sup>2</sup>Justice Materne presided at trial. After trial, however, Lisa Rdiall moved for Justice Materne's recusal. The case was then reassigned to Justice Salii, who issued the Decision based on a review of the record.

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p.137 clear that, at the time, he was *not* the sole surviving strong and senior member of the Lineage, contrary to the representations of Baules, Roman, and Daniel.” Decision at 8. Rather, the trial court found that Appellee had been adopted by Tichiau and that she was therefore a strong senior member of Ibai Lineage who had standing to challenge the issuance of the 1997 Certificate of Title. The trial court reasoned that Appellee “accompanied her mother to Ibai Lineage customs, and that, as a child of an ourrot of Ibai Lineage, she is expected to be one of the largest contributors to customs such as ocheraols, funerals, and cheldecheds for her brothers, Ais, Sakuma, Hiromi, and to make decisions or participate in land claims for the lineage.” Decision at 12.

The trial court acknowledged that Appellee had not participated “on a level expected of her within the Lineage as established by custom and a woman’s role in her family.” *Id.* The trial court stated that:

If she fails to contribute, however, she can still be considered their sister. Claimant [Appellee] failed to do her obligations under custom but it is fair to say that she remains an adopted sister who was careless in her duties and responsibilities. She is nevertheless a member of Ibai Lineage, an adopted child of Tichiau and adopted sister of Decedent. As such, she was, at the very least, entitled to notice and an opportunity to be heard before Ibai Lineage property could be transferred.

*Id.* at 13. Moreover, the trial court pointed out that because Limbo is the “omsolel a blai, the identity of the Lineage,” members of the lineage, including Appellee as a senior strong member, should have had a say in its distribution. *Id.* at 14. Appellee did not get a say, the trial court found, because she did not receive notice and an opportunity to be heard before the Land Court awarded Limbo to Hiromi individually in fee simple. In light of these findings, the trial court held that the 1997 Certificate of Title for Limbo was void and that Limbo was not an asset of Hiromi’s estate. *Id.*; Judgment ¶¶ 3-4.

## STANDARD OF REVIEW

A person’s status within a clan is a matter of custom, and we review a trial court’s findings regarding a custom’s terms, existence, or nonexistence for clear error. *Dokdok v. Rechelluul*, 14 ROP 116, 119 (2007). We “will not reweigh the evidence, test the credibility of the witnesses, or draw inferences from the evidence.” *Id.* “If the trial court’s findings as to custom are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be disturbed on appeal unless the Court is left with a definite and firm conviction that a mistake was committed.” *Id.* at 119. Likewise, “[w]here there are two permissible views of the evidence as to proof of custom, the fact finder’s choice between them cannot be clearly erroneous.” *Id.* at 118 (citing *Saka v. Rubasch*, 11 ROP 137, 141 (2004)).

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## DISCUSSION

Appellant does not challenge the trial court’s finding that Appellee was Tichiau’s adopted

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daughter. Nor does Appellant challenge the trial court's findings that Appellee was a member of Ibai Lineage and that she was a senior member at the time the 1997 Certificate of Title was issued. Likewise, no one challenges the proposition that senior strong members of lineage should be consulted before lineage lands are transferred. The only issue on appeal is whether it was clearly erroneous for the trial court to find that Appellee was a strong member of Ibai Lineage given that she had not contributed much to lineage customs since Tichiau's death over thirty years ago.

The evidence in the record demonstrates that a reasonable trier of fact could find that Appellee met her burden of proving that, based on rank, she is a strong member of Ibai Lineage. Appellee testified that she was an ourrot and strong member of Ibai Lineage through her mother, Tichiau. Tr. at 76, lines 3-7. Moreover, Appellee's expert witness on custom, Wataru Ucherbelau, testified that an adopted daughter of a strong female member of a lineage can herself be a strong member of the lineage. Tr. at 105, line 28; Tr. at 106, lines 1-10. Similarly, he testified that the adopted female child of an ochell will also be ochell.<sup>3</sup> Tr. at 106, lines 11-15 (Q: In terms of Palau custom, this woman, this female child is now adopted to this woman, can we say, 'ochell' of this house because she is the daughter of this woman? A: 'Ochell.' She will be an 'ochell.'). Moreover, on cross examination, Appellant's expert witness, William Tabelual, stated that an adopted daughter of an ourrot is stronger than a younger adopted son of an ourrot. Tr. at 196, lines 26-28; Tr. at 197, lines 1-19.

As Appellant points out, rank alone does not determine strength within a lineage. The parties agree, without pointing to supporting expert testimony, that the degree to which a lineage member participates in lineage activities affects the strength of that member vis-a-vis other members. The parties disagree, however, on the degree to which services to the lineage, or the lack thereof, can overcome the strength accorded to particular lineage ranks. Appellant asserts that Appellee's failure to participate in lineage activities means she is no longer a strong senior member of Ibai Lineage. Appellee, on the other hand, argues that although a person can gain strength within a clan by performing services, a person, such as Appellee, "who otherwise is a strong member of a clan through birth or adoption will not be stripped of member's p.139 strength because of member's lack of services to member's clan." Resp. Br. at 9.

It was not clearly erroneous for the trial court to find that Appellee retained her strong status despite her failure to participate in lineage affairs. Appellant did not elicit expert testimony for the proposition that an ochell member's lack of services can render her so weak that she need not be notified when another lineage member purports to transfer lineage land to himself. This is important because custom is a matter of fact, and "matters of custom are resolved according to the record presented in each case." *Dokdok v. Rechelluul*, 14 ROP 116, 119

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<sup>3</sup>Although there was no testimony at trial on the issue, it is well-established in Palau that clan members have the following ranks, in declining order of strength: (1) ochell members (children of female members of the lineage); (2) ulechell members (children of male members of the lineage); (3) rrodel members (children adopted through blood relations); (4) mlotechakl members (drifters who end up within the lineage with no blood relationship); and (5) terruaol (people taken up by a member of the lineage with no blood relationship). *Dokdok v. Rechelluul*, 14 ROP 116, 118 (2007).

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(2007). This means that Appellant cannot rely on other cases for principles of custom; if there is no evidence of a particular customary principle in the record, then strictly speaking, the custom does not exist for the purposes of that case. Put simply, Appellant has failed to rebut the conclusion that Appellee is a strong member of Ibai Lineage with evidence that under Palauan custom she would not be considered a strong member.

The cases cited by Appellant are distinguishable from the present case and thus do not advance her argument. Appellant cites *Rechebei v. Ngirangeang*, Civil Appeal No. 06-043 (Feb. 14, 2008), and *Dokdok v. Rechelluul*, 14 ROP 116 (2007), for the proposition that strength is based on services. Those cases involved the strength of some clan members versus the strength of other clan members. In *Dokdok*, for instance, the Appellate Division affirmed a trial court finding that ulechell members of a clan can become stronger than ochell members if the ulechell members performed almost all of the clan functions and the ochell members did very little. *Dokdok*, 14 ROP at 119-120. The present case, on the other hand, does not deal with relative strength within a lineage. The question is not whether Appellee is stronger than Hiromi. The question is whether Appellee is, in absolute terms, a strong member of the lineage.

In a similar vein, we note that this is not a case that turns on fine distinctions of rank and authority within a lineage. The primary issue is whether Appellee had sufficient status within Ibai Lineage to have standing to challenge the 1997 Certificate of Title, whereby Hiromi, as trustee for Ibai Lineage, transferred Limbo to himself. Although Appellee may or may not be as strong as Hiromi was, it was certainly not clearly erroneous for the trial court to find that Appellee was entitled to be notified before Ibai Lineage property was transferred in a questionable manner.

## CONCLUSION

The evidence in the record supports the trial court's finding that, through Tichiau, Appellee was a senior strong member of Ibai Lineage at the time Hiromi Rdiall transferred Limbo from the lineage to himself, services notwithstanding. Therefore, we **AFFIRM** the Decision and Judgment of the trial court.