KYOMI UTEMEI TENGADIK,
Appellant,

v.

LOWRY KING,
Appellee.

CIVIL APPEAL NO. 08-039
Civil Action No. 07-176

Supreme Court, Appellate Division
Republic of Palau

Decided: November 4, 2009

[1] **Property**: Homesteads

A "homestead" is a plot of publicly owned land, designated as such by the President, that the government may allot to an applicant for farming or developing village lots. A homesteader receives a permit to use and improve the land, and he must comply with the conditions and requirements established under the homestead law. Upon fulfilling the applicable requirements, the government issues a certificate of compliance and, subsequently, a deed of conveyance for the homestead lot, granting the homesteader any and all rights of the national government to the property.

[2] **Constitutional Law**: Citizenship; **Property**: Acquisition Limited to Palauans

Article XIII, Section 8 of the Palau Constitution mandates that only citizens of Palau may acquire title to land or waters in Palau. Article III, Section 2 defines a Palauan citizen as one born of parents, one or both of whom are citizens of Palau is a citizen of

Palau by birth, and shall remain a citizen of Palau so long as the person is not or does not become a citizen of any other nation.

[3] **Constitutional Law**: Citizenship

The Second Amendment to the Palau Constitution changed Article III to provide that a Palauan-born individual need not renounce her U.S. citizenship to become a naturalized citizen of Palau. However, the Court does not apply the Second Amendment retroactively, and a renouncement made prior to the effective date of the amendment is not affected by it.

[4] **Descent and Distribution**: Determination of Heirs

The general rule is that individually owned lands vest immediately in a decedent's heirs at the time of death, even though a determination of who "immediately" inherited a decedent's property commonly comes long after the decedent's death.

[5] **Property**: Acquisition Limited to Palauans

The phrase "acquire title to land" in Article XIII, Section 8 applies equally to inheritance and the distribution of a decedent's estate as it does to other methods by which one can acquire such title.

[6] **Statutory Interpretation**: Ambiguity

The Court must interpret statutory and constitutional language according to its common usage, unless a technical word is used.

Counsel for Appellant: Moses Y. Uludong

Counsel for Appellee: Mark P. Doran

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

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

PER CURIAM:

Kyomi Utemei Tengadik appeals the Trial Division's decision denying her claim to property owned by her late father, Utemei Basechelai, and awarding the land to the appellee, Lowry King. Tengadik primarily disputes the court's ruling that she was ineligible to inherit her father's property because she was not a Palauan citizen at the relevant time periods. After considering Tengadik's arguments, we find no error below and affirm the court's disposition.

BACKGROUND

[1] This proceeding began in 2007, after Tengadik filed a petition to open the estate of her father, Utemei, who died on August 28, 1985. At the time of Utemei's death, the only property he owned was a homestead lot[1]

[1] A "homestead" is a plot of publicly owned land, designated as such by the President, that the government may allot to an applicant for farming or developing village lots. 35 PNCA § 802; *see also* 67 TTC § 201. A homesteader receives a permit to use and improve the land, and

commonly known as *Ngemsiul*, located in Ngerkesou Hamlet, Ngchesar State.[2] He was not the registered fee simple owner of the property at the time of his death, and the land apparently remained publicly owned for the next nineteen years, until the government issued a Certificate of Title naming him the fee simple owner on May 20, 2004.[3] Because Utemei was deceased, the land became an asset of his estate. Utemei was not married at the time of his death, but he left two surviving children: Tengadik and her brother, Curtis, who has since passed away.

Only two claimants sought ownership of *Ngemsiul*: Tengadik and the appellee, Lowry King. Tengadik is the biological daughter of Utemei and was born in Palau in 1938. In 1957, she moved to Guam with her father, and she became a citizen of the United States in 1965. Tengadik continued to live in Guam and visited Palau periodically, but she remained a U.S. citizen until she obtained dual Palauan and U.S. citizenship in 2005. She cared for her father until his death in 1985 and brought his remains to Palau for a funeral.

At trial, Tengadik presented evidence from family members that Utemei intended that his homestead property go to her upon his death. Two experts on Palauan custom also testified that the property of an unmarried decedent passes to his children unless disposed of during the cheldecheduch. There was no cheldecheduch for Utemei.

The other claimant, Lowry King, is the grandson of Utemei's sister, Balii. King is a Palauan citizen who has always lived in Palau. King testified that Utemei occasionally stayed at his home when in Koror to visit the hospital, and King took care of Utemei on these trips. King claimed that Utemei informed him multiple times that he wanted Curtis and him to have the land at *Ngemsiul* to take care of it for the family. Curtis passed away several years after Utemei, and King therefore claims sole ownership of the land according to Utemei's wishes.

The trial of Utemei's estate occurred on April 29, 2008. After hearing the evidence, the trial court first concluded that customary law, rather than the intestacy statute, applied to the distribution of Utemei's property.[4]

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he must comply with the conditions and requirements established under the homestead law. 35 PNCA §§ 802, 806; 67 TTC §§ 202, 206. Upon fulfilling the applicable requirements, the government issues a certificate of compliance and, subsequently, a deed of conveyance for the homestead lot, granting the homesteader any and all rights of the national government to the property. 35 PNCA §§ 810-811; 67 TTC §§ 208, 212.

[2] The property is also identified in the Certificate of Title as Cadastral Lot No. 057 P 01 (Tochi Daicho Lot 451 part) and consists of 96,610 square meters.

[3] The record is notably silent regarding the status of the land in the intervening nineteen years, as well as what prompted the national government to issue the Certificate of Title to Utemei in 2004.

[4] In determining who should inherit a decedent's property, we apply the statute in effect at the time of decedent's death. *Ngirasqei v. Malsol*, 12 ROP 61, 63 (2005). At the time of Utemei's death in 1985, the applicable statute was 39 PNCA § 102, which has since been recodified

According to custom, *Ngemsiul* would normally go to Tengadik as Utemei's sole remaining child; there was no cheldecheduch, and Utemei's son, Curtis, had since deceased. The court also noted that the evidence of Utemei's desire for the property to go to King and Curtis was minimal and consisted of little more than King's own, mostly unsupported testimony.

Nevertheless, the trial court was forced to confront Article XIII, § 8 of the Palau Constitution, which prohibits non-Palauan citizens from acquiring title to land in Palau. The court found that Tengadik became a U.S. citizen in 1965—thereby renouncing her Palauan citizenship—and remained a U.S. citizen continuously until 2005. Consequently, she was not a Palauan citizen in 1985, when her father died, nor in 2004, when Utemei's estate received the Certificate of Title conveying fee simple ownership of *Ngemsiul*. The court held that Tengadik was therefore ineligible to acquire land in Palau, even though she was born to Palauan parents and subsequently became (and is currently) a Palau citizen. The court granted fee simple ownership of *Ngemsiul* to King, the only eligible claimant. Tengadik now appeals.

as 25 PNCA § 301. Section 102(c) applies to a decedent without a will who was a bona fide purchaser for value of land held in fee simple. Utemei, as a homesteader, did not purchase *Ngemsiul* for value. Section 102(d) applies to an owner of fee simple land who dies without issue and who has not left a will or if his lands were acquired by means other than as a bona fide purchaser for value. Utemei had issue at the time of his death—Tengadik and Curtis—and the trial court therefore held that § 102(d) was inapplicable.

ANALYSIS

Tengadik presents issues of both fact and law in her appeal. We review the trial court's legal conclusions *de novo* and its factual determinations for clear error. *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007). We will not set aside the court's findings of fact so long as they are supported by evidence such that any reasonable trier of fact could have reached the same conclusion, unless we are left with a definite and firm conviction that an error has been made. *Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 168 (2006).

[2] The overarching issue is whether Tengadik's citizenship precluded her from inheriting her father's interest in *Ngemsiul*. Our starting point for answering this question is Article XIII, Section 8 of the Palau Constitution, which mandates that "[o]nly citizens of Palau . . . may acquire title to land or waters in Palau." A Palauan citizen is defined in Article III, Section 2: "A person born of parents, one or both of whom are citizens of Palau is a citizen of Palau by birth, and shall remain a citizen of Palau so long as the person is not or does not become a citizen of any other nation." Accordingly, Tengadik was a Palauan citizen by birth.

In 1965, however, Tengadik became a U.S. citizen and thereby relinquished her Palauan citizenship according to Article III, Section 2. According to Article III, Section 3, Tengadik could have regained her Palauan citizenship if, within three years of the

effective date of the Palau Constitution,[5] she renounced her foreign citizenship and registered her intent to remain a citizen of Palau. *See also* 13 PNCA § 121. Tengadik failed to fulfill these requirements and therefore remained a U.S. citizen until 2005.

[3] In November 2004, the Second Amendment to the Palau Constitution changed Article III to provide that a Palauan-born individual need not renounce her U.S. citizenship to become a naturalized citizen of Palau. In 2005, Tengadik obtained dual Palauan and U.S. citizenship under this provision. The Second Amendment, however, expressly states that "Palauan citizens may renounce their Palauan citizenship. Renouncements made prior to the effective date of this amendment are not affected by this amendment." Accordingly, we do not apply the Second Amendment retroactively.

Applying the above law to Tengadik's case, we are compelled to agree with the trial court that she was not a Palauan citizen from 1965 until 2005, and she was therefore ineligible to inherit title to property in Palau during that time. Tengadik was a U.S. citizen at the time of Utemei's death in 1985 and when the Certificate of Title to *Ngemsiul* was issued in 2004. That Tengadik was born to Palauan parents and currently holds a Palauan passport cannot overcome the clear text of Article XIII, Section 8, which states unequivocally that only citizens of Palau may acquire title to land in Palau.

Tengadik presents a number of arguments to avoid this result, many unsupported by legal authority. She first argues that the court erred by finding that she renounced her Palauan citizenship in 1965, noting that there was no such thing as Palauan citizenship at that time. This argument is without merit, and we have rejected it before. *See Diaz v. Estate of Ngirchorachel*, 14 ROP 110 (2007). In *Diaz*, we determined that a Palauan-born citizen of the Trust Territory renounced his Trust Territory citizenship when he became a U.S. citizen in 1969. *Id.* at 110-11. We cited 8 U.S.C. § 1448(a), which requires an applicant for U.S. citizenship "to renounce and abjure absolutely and entirely all allegiance and fidelity" to a foreign state of which the applicant was previously a citizen. *Id.* Diaz was therefore not a Palauan citizen in 1983 and could not acquire title to land in Palau. *Id.* at 111. Tengadik's situation is nearly identical to that in *Diaz*; she renounced her Trust Territory citizenship when she became a U.S. citizen in 1965, and she was therefore not a Palauan citizen until she reacquired that status in 2005.

[4] Tengadik next asserts that she is eligible to inherit her father's land because she was a Palauan citizen at the time she petitioned the court to open his estate. This is directly contrary to the established general rule that individually owned lands vest immediately in a decedent's heirs at the time of death. *Bandarii v. Ngerusebek Lineage*, 11 ROP 83, 86 (2004). It is common for a determination of who "immediately" inherited a decedent's property to come long after the decedent's death. *See Bandarii*, 11 ROP at 86 (citing *Temaungil v. Ulechong*, 9 ROP 31, 34 (2000)); *Heirs of Drairoro v. Yangilmau*, 14 ROP 18, 20 (2006) ("It is not unusual for this

[5] The Palau Constitution became effective on January 1, 1981, meaning an eligible foreign citizen had until January 1, 1984, to fulfill the requirements for Palauan citizenship.

determination to be made many years after the decedent dies . . . ."). Tengadik's interest in *Ngemsiul* vested in either 1985 or, at the latest, 2004,[6] and whether she became a Palauan citizen after that time is irrelevant.

Tengadik's next challenge suffers a similar fate. She argues that the phrase "acquire title," as used in Article XIII, Section 8, refers only to the "transfer, conveyance or grant of title to land from one party to another," but not to inheritance. (Appellant's Br. 12.) We see no such distinction in the clear language of the constitutional provision and decline to create one.

[5, 6] We must interpret statutory (and constitutional) language according to its common usage, unless a technical word is used. *Ministry of Justice v. Rechetuker*, 12 ROP 43, 46 (2005) (citing 1 PNC § 202). A common definition of "acquire" is "to come into possession, control, or power of disposal." *Webster's Int'l Dictionary* 18 (3d ed. 1981); *see also Black's Law Dictionary* 25 (8th ed. 2004) ("To gain possession or control of; to get or obtain."). This common usage encompasses obtaining title to property through inheritance. Furthermore, we have previously suggested that Article XIII, Section 8 applies to inheritance. *See Dalton v. Borja*, 8 ROP Intrm. 301, 303 n.2 (2001) ("[Petitioner] never made an averment that she was eligible to *inherit* real property in Palau. It is an affirmative obligation to prove citizenship whenever claiming *acquisition* of land." (emphases added)). Accordingly, we hold that the phrase "acquire title to land" in Article XIII, Section 8 applies equally to inheritance and the distribution of a decedent's estate as it does to other methods by which one can acquire such title. Tengadik was therefore subject to the provision, and her claim fails.

Perhaps the most interesting of Tengadik's arguments is that she did not "acquire" title in her father's interest in *Ngemsiul* until the Certificate of Title conveyed fee simple ownership in 2004. As we have already noted, an heir's interest in the decedent's estate typically vests at the time of his death, even if the proper heirs are not determined until years later. *Bandarii*, 11 ROP at 86; *Heirs of Drairoro*, 14 ROP at 20. Under this principle, Tengadik's interest in Utemei's estate vested upon his death, and she became the heir to whatever property interest her father possessed at that time.

In this case, however, Utemei's interest in *Ngemsiul* at the time of his death is unclear. We know that he possessed the property as a homesteader at some point. Accordingly, his land was publicly owned, but he had a permit to use it and "a right to acquire title upon the fulfillment of the conditions" of the homestead. 35 PNCA § 801; *see also id.* §§ 806-807; 67 TTC §§ 201, 206-207 (1980). There is no evidence in the record of whether Utemei fulfilled the conditions of the homestead or received a Certificate of Compliance from the national government. *See* 35 PNCA § 811; 67 TTC § 212. If he had already complied with the homestead requirements at the time of his

[6] As described below, there is some dispute about when title to *Ngemsiul* vested, but we need not resolve that issue in this case.

death,[7] then he may have had a vested right to the property in 1985. *See Tmetuchl v. Siksei*, 7 ROP Intrm. 102, 105 (1998) (citing *Sablan v. Norita*, 7 TTR 90, 92 (Tr. Div. 1974)). The government, however, did not issue the Certificate of Title granting fee simple ownership to Utemei until 2004, and Tengadik asserts that only then did the estate—and therefore she, as an heir—"acquire title" for purposes of Article XIII, Section 8 of the Palau Constitution.

Unfortunately for Tengadik, this dispute is immaterial to her case. She was still a U.S. citizen in 2004, and she remained ineligible to acquire title to *Ngemsiul*. Had she become a Palauan citizen some time between 1985 and May 20, 2004, we may have been called upon to decide this issue. But she was not a citizen of Palau at any relevant time period, and we therefore express no opinion on when her interest in *Ngemsiul* vested or precisely when she "acquired title" to the land.

CONCLUSION

In the end, Tengadik is unable to overcome that she was not a Palauan citizen at the time of her father's death in 1985, nor when the Certificate of Title was issued in 2004. According to the express and unambiguous language of the Palau Constitution, Tengadik was ineligible to acquire title to land in Palau. We acknowledge the oddity of denying inheritance to a claimant born to Palauan parents and who currently holds a Palauan passport, but the Constitution is clear. The Second Amendment partially addressed this concern, but that provision expressly stated that it shall not have retroactive effect. Accordingly, the trial court did not err in awarding the property to King, the sole remaining claimant, and we AFFIRM.

[7] We presume that Utemei did, in fact, fulfill these requirements, evidenced by the national government's conveyance of fee simple title to him in 2004. The record contains nothing, however, regarding these facts, and we are left to speculate what happened to *Ngemsiul* upon Utemei's death.