

**BEVOLI IMEONG, ISIDORO
TAKISANG, KALISTO JOSEPH,
VELENTINA SUKRAD, and OURROT
OF ELKBAL CLAN,
Appellants,**

v.

**ELIA YOBECHE, JOB KIKUO, and
EKLBAI CLAN,
Appellees.**

CIVIL APPEAL NO. 08-055
Civil Action Nos. 09-261, 01-179, 01-180

Supreme Court, Appellate Division
Republic of Palau

Decided: June 24, 2010¹

[1] **Appeal and Error:** Standard of Review; **Custom:** Appellate Review

Status and membership in a lineage are questions of fact, as is the existence of a purported customary law, and the Appellate Division reviews these findings of fact for clear error. The Court will reverse only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record.

[2] **Appeal and Error:** Fact Finding; **Custom:** Appellate Review

An appellate court's role is not to determine issues of fact or custom as though hearing them for the first time. The trial court is in the

best position to hear the evidence and make credibility determinations, and if the evidence before it is insufficient to support its findings, the Court should remand rather than determine unresolved factual or customary issues on appeal.

[3] **Custom:** Clan Membership; **Custom:** Title Holders

A person's actions or behavior may be relevant to determining ocell status with a clan, but that fact is typically determined first and foremost based on blood, birthright, and ancestry.

[4] **Appeal and Error:** Standard of Review; **Custom:** Title Holders

Trial Court's unexplained findings that *both* of two competing factions were ocell clan members merit remand. The Trial Court must sufficiently explain its findings based on facts in the record before it, such that the Appellate Division can adequately review them.

Counsel for Appellants: Kevin N. Kirk

Counsel for Appellees: Douglas F. Cushnie

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEXANDRA F. FOSTER, Associate Justice; HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

¹ The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

This case, now over ten years old, is presently on its fourth trip up the appellate ladder. We remanded the matter to the Trial Division for the third time on April 26, 2006, and both parties have appealed portions of that court's latest decision. The underlying dispute concerns the identity of the true senior strong members of the Eklbai Clan. Two competing factions claim this status. At stake is the power to appoint the Clan's chief male title bearer, Iyechaderchemai, and in turn that individual's authority to control land owned by Eklbai Clan. Having reviewed the parties' arguments and the record below, we unfortunately must again remand this matter for reconsideration.

BACKGROUND

Eklbai Clan is the highest clan in Ngerchemai Hamlet, Koror State. This appeal is the latest round of a case that began with a simple complaint for trespassing,² although these parties have been engaged in various disputes that go back many years. Here, a seemingly innocuous property dispute eventually spawned disagreement over the identity of the Clan's true strong members, leading to two additional lawsuits in 2001. The three actions were consolidated for trial, at which the identity of the Clan's leadership was the central issue.

This case started in 1999, when Eklbai Clan's undisputed chief male titleholder, Iyechaderchemai Kikuo Remeskang, sued defendants Imeong and Takisang for trespassing on clan-owned land known as

Eklbai.³ In defense, Imeong and Takisang claimed that they received permission to reside on the property from certain strong Eklbai members. Remeskang, however, contended that those individuals were not even members of Eklbai Clan, much less strong ones.

In 2001, while the case was pending, Kikuo Remeskang passed away. Eklbai Clan sought to amend its complaint in the 1999 action to reflect its appointment of Elia Yobech, Remeskang's nephew, as the new Iyechaderchemai.⁴ Contesting Yobech's right to the title, however, were Kalisto Joseph and a group who purported to be Eklbai Clan's true senior strong female members, or ourrot.⁵

This group (the "Joseph faction") filed a new case, seeking declaratory and injunctive relief.⁶ The Joseph faction asserted that the

² See *Eklbai Clan v. Imeong*, Civ. Action No. 99-261.

³ The land commonly called *Eklbai* is described as Tochi Daicho Lot 553.

⁴ Those individuals siding with Elia Yobech will hereinafter be referred to as the "Yobech faction." The named parties are Elia Yobech, Job Kikuo, and the Eklbai Clan.

⁵ Expert testimony defined a clan's "ourrot" as the senior strong female members. This accords with other Palauan cases. See *Ngirmang v. Orrukem*, 3 ROP Intrm. 91, 91 (1992) (defining the ourrot as "senior female members"); see also *Ngirmang v. Filibert*, 9 ROP 226, 229 (Tr. Div. 1998) ("A senior ourrot is generally the oldest female of a maternal line of a clan, provided that she has attained a high enough age and has fulfilled her service and contribution obligations to the clan.").

⁶ See *Joseph v. Yobech*, Civ. Action No. 01-179.

Clan's true ourrot selected Kalisto Joseph as Iyechaderchemai, with the approval of the Ngerchemai klobak, or council of chiefs. Yobech responded that he had been selected as Iyechaderchemai by his aunt, Ibau Oiterong, who held the highest female title in Eklbai Clan, Uchelbil ra Kumer. Yobech argued that the klobak also accepted his appointment—one month before Joseph. Both Joseph and Yobech sought to enjoin the other from acting as chief on Eklbai Clan's behalf.

The third action leading to this appeal was also filed in 2001.⁷ Kalisto Joseph sought to enjoin Job Kikuo from building and earth-moving on Eklbai Clan land. Kikuo purportedly received permission to use the land from his father, former Iyechaderchemai Kikuo Remeskang. Joseph, however, claimed that he was the new titleholder and therefore his consent was required.

The consolidated cases went to trial in February 2002. Each faction claimed to possess the male title, and both produced evidence that certain of its members constitute Eklbai Clan's true senior strong female members and were therefore authorized to make the appointment.

According to the Yobech faction, it has held Eklbai Clan's highest male and female titles in an unbroken line for over 150 years, tracing its ancestry to a man named Tengeluk, who was purportedly Iyechaderchemai many years ago. This title was passed down among Tengeluk's descendants, and the titleholders directly

preceding Yobech were his uncles Sumang and Kikuo Remeskang. The Joseph faction does not dispute that Sumang and Kikuo both served as Iyechaderchemai, and their tenures are well documented.⁸ Both men are brothers of Eklbai Clan's alleged female titleholder, Uchelbil ra Kumer Ibau Oiterong, and the Yobech faction presented considerable evidence supporting Oiterong's position as Uchelbil ra Kumer. Several witnesses testified that they recognize her by that title, and she is also identified as such in Resolution No. 6-52 of the Sixth Koror State Legislature, which commemorated the life and service of her brother, the late Iyechaderchemai Remeskang. Even Joseph faction witnesses acknowledged that Oiterong is recognized in the hamlet as Uchelbil ra Kumer. The Yobech faction claimed that this title, like its counterpart male title, has been in the family's line for over a century. Oiterong's sister, Bsechel, held the title before her, and their mother, Rukebai, before that.

Elia Yobech is Oiterong's nephew. Upon the death of Iyechaderchemai Remeskang and after the traditional mourning period and related customs, Oiterong claims to have named Yobech as the next titleholder. As Uchelbil ra Kumer, Oiterong allegedly possesses the greatest authority in naming a successor to the male title, although expert witnesses explained that custom generally requires consent or approval by a clan's ourrot before submitting the name for the klobak's acceptance. Yobech supposedly held a debes, or customary feast, and five of the nine chiefs of Ngerchemai either attended or sent a

⁷ See *Joseph v. Kikuo*, Civ. Action No. 01-180.

⁸ See, e.g., *Sumang Yechadrechemai v. Ebau*, 3 TTR 511 (Tr. Div. 1968) (identifying Sumang as Iyechaderchemai of Eklbai Clan).

representative. Expert testimony suggested that this should be sufficient to indicate the klobak's acceptance of the new titleholder.

On the other side, the Joseph faction made similar claims regarding Kalisto Joseph's ascendancy to the title of Iyechaderchemai. The Joseph faction traces its connection to Eklbai Clan back to a man named Ngirameong, who is listed in the Tochi Daicho for several Eklbai-owned lots. The Joseph faction asserts that Ngirameong was a former titleholder, that his descendants represent the true strong members of Eklbai Clan, and that the purported ourrot selected Joseph as the next titleholder. The Yobech faction, however, argued that Ngirameong was a drifter who was taken in by Ibau Oiterong's mother, Rukebai, in 1923 and who never held a title in the Clan. They state that the Joseph faction cannot demonstrate any link to Eklbai Clan prior to Ngirameong's appearance.

The Joseph faction produced testimony and documentation, including family trees, indicating that the purported ourrot descended from a maternal, female line several generations back. The evidence was less clear, however, whether this ancestry is part of Eklbai Clan. The parties did not dispute that members of the Joseph faction have held titles in Mowai over the years, including the highest male (Ngiramowai) and female (Dirramowai) titles. The Joseph faction claims that these titles are melanges to Eklbai Clan titles, meaning that these titleholders typically ascend to the Eklbai titles upon the death of the most recent titleholder. The parties disputed the status of Mowai, however. While the Joseph faction claimed that it was a lineage within Eklbai Clan, the Yobech

faction asserted that it was a separate clan altogether, having no authority in Eklbai.

Joseph claimed that he also held a debes feast, approximately one month after Elia Yobech. He produced a document demonstrating the klobak's attendance and acceptance of his appointment, signed by seven of the nine chiefs in the hamlet, including the chief of the second-highest ranking clan. Unlike Yobech, Joseph was also accepted by and seated in the Koror House of Traditional Leaders. Ibedul Yutaka Gibbons testified that this body recognized Joseph as Iyechaderchemai, although he suggested that it also would have seated Elia Yobech had his name been presented. Yobech does not appear to contest that Joseph was seated by the klobak and the House of Traditional Leaders; rather, he claims that these groups violated custom by doing so.

After hearing the competing claims, the first trial court found in favor of the Joseph faction. The procedural posture from this point can be found in more detail in our last opinion, *Eklbai Clan*, 13 ROP at 103-07. For purposes of this appeal, it is enough to note that we have remanded the case to the trial court on three separate occasions. In the first, we noted that the trial court's reasons for reaching its decision were unclear, and we asked the court to elaborate. *See Eklbai Clan v. Imeong*, 11 ROP 15, 17-18 (2003).

The case returned to this Court, and the trial court's new decision relied heavily on Joseph's acceptance by the klobak and the Koror House of Traditional Leaders. The trial court reasoned that by accepting Joseph as Iyechaderchemai, these groups *must* have also determined that those presenting him

constituted Eklbai's true ourrot. On November 22, 2004, we remanded a second time, noting that reliance on the klobak's acceptance alone created a presumption that was not an appropriate rule of law. *See Eklbai Clan v. Imeong*, 12 ROP 17, 23 (2004). We held that the klobak's acceptance of a proposed titleholder may be relevant, but it does not automatically follow that the presenting ourrot are the clan's true senior strong female members. *Id.* at 23. We therefore remanded for the trial court to determine which faction represented Eklbai's true strong members.

The case reappeared in our Court for a third time, and again we reversed and remanded to the trial court. *See Eklbai Clan*, 13 ROP 102. Although the court considered additional evidence in determining which faction constitutes Eklbai's true strong members, we found its opinion "cursory and insufficient to demonstrate that the decision was based on an adequate analysis of the evidence beyond the council's acceptance of Joseph as Iyechaderchemai." *Id.* at 107. We listed a significant amount of testimony that the trial court did not adequately address, and we instructed it to reconsider the evidence and "make findings as to who comprises the senior strong members of Eklbai Clan." *Id.* at 109.

That finally brings us to the proceeding that is the subject of this appeal. After acknowledging our instructions from the prior opinions, the trial court addressed the competing evidence and issued new findings of fact.⁹

⁹ The original trial judge was no longer on the court, and the matter was assigned to the Honorable Lourdes F. Materne, Associate Justice.

Turning first to the Yobech faction, the trial court found that its members have held the chief male title of Iyechaderchemai in an unbroken line for approximately 150 years. As for the female title, the court ruled that the Yobech faction has also held this title for over 100 years and that Ibau Oiterong has been Uchelbil ra Kumer since 1992. The court cited the testimony of many witnesses who know Oiterong as Uchelbil ra Kumer, including witnesses for the Joseph faction. Given this lengthy history of leadership within the Clan, the court held that the evidence supported the Yobech faction's claim and that "others maternally related to Ibau Oiterong qualify as ochell or strong members of Eklbai Clan." Civ. Act. Nos. 99-261, 01-179, 01-180, Further Findings of Fact at 4 (Tr. Div Oct. 8, 2008).

Moving to the Joseph faction, the trial court found that its members are *also* strong or ochell members of Eklbai Clan. The court found that Ngirameong and some of his descendants within the Joseph faction have lived on the land called *Eklbai*, and most of the Clan's lands were once listed in the Tochi Daicho under Ngirameong's name, indicating he was a strong member at that time. The court also noted that some Joseph faction members, including Ngirameong's sister, are buried at the odesongel, which indicates rank within a clan.

Having found both factions to be strong members of Eklbai Clan, the trial court turned to the issue of the proper male titleholder. First, it held that Kalisto Joseph could not have been appointed Iyechaderchemai because Uchelbil ra Kumer Oiterong did not participate in his selection. On the other hand, Elia Yobech was not

properly selected because custom requires that the ourrot (which the court found includes members of the Joseph faction) approve of a nominee before requesting the klobak’s acceptance. Thus, Elia Yobech was also not properly appointed as Iyechaderchemai.

The consequence of these conclusions was that neither Yobech nor Joseph had the authority to control Eklbai Clan property. Yobech could not eject Beverly Imeong and Isidoro Takisang; Joseph could not enjoin Job Kikuo from performing work on Clan land. Not surprisingly given the history of this case, both factions cross-appealed, and the case is before us for a fourth time.

ANALYSIS

[1, 2] The parties each contest the trial court’s conclusion that members of the competing faction are the true strong members of Eklbai Clan. The Yobech faction argues that the Joseph faction is not part of Eklbai Clan at all (and certainly not strong); the Joseph faction argues that the Yobech faction, having descended from a male, cannot possibly be strong or ochell. We review the trial court’s findings of fact for clear error. *Nebre v. Uludong*, 15 ROP 15, 21 (2008). Under this standard, we will reverse only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record. *See id.*; *see also Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 168 (2006). Status and membership in a lineage are questions of fact, as is the existence of a purported customary law. *Ngiraswei v. Malsol*, 12 ROP 61, 63 (2005).¹⁰ It is

important to note at the outset that an appellate court’s role is not to determine issues of fact or custom as though hearing them for the first time. *See Sambal v. Ngiramolau*, 14 ROP 125, 127 (2007) (“The Appellate Division does not reweigh the evidence.”). The trial court is in the best position to hear the evidence and make credibility determinations, *see id.* at 126 n.1, and as an appellate tribunal, our review is limited. If the evidence before the trial court is insufficient to support its findings, we should therefore remand rather than determine unresolved factual or customary issues on appeal.

In our last opinion remanding this case, we instructed the trial court to “review the record, consider all of the evidence presented, and make findings as to who comprises the senior strong members of Eklbai Clan.” *See Eklbai Clan*, 13 ROP at 109. Specifically, we noted a dearth of analysis regarding the Yobech faction’s evidence in the previous trial court’s decision. We therefore consider now whether sufficient evidence in the record supports the court’s conclusions. After reviewing the parties’ claims, our prior opinions, the pleadings, transcripts, evidence, and relevant legal authority, we find that the trial court erred by finding that *both* the Yobech and Joseph factions comprise the senior strong members of Eklbai Clan. We are loathe to remand this matter yet again, but the evidence at trial does not support the court’s conclusion, which—as both parties seem to agree—appears factually untenable and perhaps even impossible.

¹⁰ The existence and content of a custom must be established by clear and convincing

evidence. *Ngiraswei*, 12 ROP at 63.

The trial court began by finding certain Palauan customs based on expert testimony. The court noted: (1) “senior female members of a clan are those who can trace their lineage through the female line”; (2) “it is possible to be from the male line (‘Ulechell’) and yet attain the status of a senior member (‘Ourrot’) through services and recognition by ochell members”; and (3) “the female title holder is a strong female member.” Civ. Act. Nos. 99-261, 01-179, 01-180, Further Findings of Fact at 3 (Tr. Div Oct. 8, 2008). As becomes apparent in the remaining discussion, the trial court was not clear on how it applied these three customs, nor did it make any additional customary findings to aid its analysis.

The trial court next turned to the evidence in favor of the Yobech faction. The court’s conclusion that the Yobech faction has held Eklbai’s male and female titles in an unbroken line “as far as the German time,” *id.*, is properly supported by documents and the testimony of several witnesses, including those for the Joseph faction. Nothing suggests that anyone challenged Yobech faction’s right to bear these titles throughout the years, at least until the present dispute. The court’s conclusion that Ibau Oiterong has held the highest female title in Eklbai Clan since 1992 was also supported by testimony from several witnesses who recognize Oiterong as Uchelbil ra Kumer, as well as the Ibedul’s acknowledgment of her title in a Koror State Resolution. Up to this point, the trial court’s conclusions are valid and adequately supported.

Based on these findings, the court then found that the Yobech faction are “ochell or strong” members of Eklbai Clan. Civ. Act. Nos. 99-261, 01-179, 01-180, Further

Findings of Fact at 4 (Tr. Div Oct. 8, 2008). In explaining this conclusion, the court merely stated that “Ibau Oiterong as the female title bearer is a senior strong member of Eklbai and others maternally related to Ibau Oiterong qualify as ochell or strong members of Eklbai Clan of Ngerchemai Hamlet.” *Id.* The trial court apparently reasoned that Oiterong’s status as Uchelbil ra Kumer (as well as the Yobech faction’s historical line of titleholders) meant that she *must* be a “ochell or strong” Eklbai member. Likewise, an implicit finding in the trial court’s conclusion that relatives of Oiterong are ochell is that Oiterong is herself ochell. Again, it appears that the trial court reached this conclusion based on the family’s long string of titleholders and its third finding of custom listed above—that a clan’s female title holder is a strong member.

The trial court, however, did not explain its finding or how it made the logical jump to find that Ibau Oiterong and all of those maternally related to her are ochell, and we are left to speculate about its reasoning. More importantly, the trial court’s finding disregards the undisputed testimony that the Yobech faction descends from a man named Tengeluk. According to the customary evidence, in the ordinary case this would render Tengeluk’s descendants ulechell members, not ochell.¹¹ An expert witness testified that ulechell members may attain the status of an ochell member if a clan’s ochell line dies out, but the trial court did not make any findings concerning this customary rule, nor did it apply such a rule to find that the Yobech faction attained ochell status in this

¹¹ It is undisputed that Tengeluk’s wife was not from Eklbai Clan.

fashion. Perhaps the trial court determined that the string of titleholders, going all the way back to Tengeluk himself, was enough to find that the Yobech faction must have attained ochell status at some time, regardless of the faction's original status. Nonetheless, the trial court did not discuss this critical issue, and its ruling is thus unclear and unexplained.

The only other relevant custom the trial court addressed is that an ulechell member may gain strength and even attain the status of an ochell member through services and recognition by a clan's other ochell members. Despite this customary finding, the trial court did not apply the principle to this case. It did not find that anyone from the Yobech faction attained ochell status this way, nor that any other ochell members of Eklbai (if there were any) approved of it. Furthermore, the expert testimony suggested that if a clan member attained ochell status by this route, her maternal descendants would not automatically become ochell members of the clan or otherwise possess ochell status, as the trial court found, but that such status is attained only on an individual basis.

In short, there is ample evidentiary support for finding that the Yobech faction has held the male and female titles for generations. The trial court, however, did not express how it took the next analytical step in concluding that Oiterong and those maternally related to her are "ochell or strong members of Eklbai Clan." Civ. Act. Nos. 99-261, 01-179, 01-180, Further Findings of Fact at 4 (Tr. Div Oct. 8, 2008). There may be good reasons for this conclusion, but this Court is left guessing at what they are.

The picture does not get clearer after reviewing the trial court's discussion of the Joseph faction's evidence. Despite this Court's instruction to reconsider all of the evidence in the record, the trial court began by noting that it would not disturb the prior trial judge's credibility findings and agreed that there was sufficient evidence that the Joseph faction constitutes "the true members of Eklbai."¹² *Id.* at 5. To support this conclusion, the court cited evidence that Ngirameong lived on the land called Eklbai; he was called Ngireklbai by members of the Ngerchemai community; Ngirameong's name is listed in the Tochi Daicho as the individual owner of many Eklbai Clan lots; and certain relatives of Ngirameong are buried at the Eklbai odesongel, or stone platform, an indication of rank within a clan. *Id.* From this evidence alone, the trial court determined that the Joseph faction "constitutes the true members of Eklbai Clan and that the ochell members or strong senior members" are certain members of the faction. *Id.* at 5-6.

[3] The trial court's discussion of the Joseph faction's evidence takes several unarticulated logical steps and does not

¹² These statements, in isolation, might not warrant remand. But in light of the outstanding factual questions and other inconsistencies, they raise a concern that the trial court unduly deferred to the prior trial court's factual determinations while conducting its review of the record. We remanded this case for a fresh and independent analysis of that record. The trial court was not instructed to review the prior findings, as an appellate court would do, and the trial court owed them no deference. On remand, the trial court should reevaluate the evidence independent of the prior trial court's findings and reach its own determinations.

address certain crucial points. First, the court found ochell status based on behavioral evidence such as Ngirameong's nickname, his presence at Eklbai land, his name in the Tochi Daicho, and the burial of certain relatives at the odesongel. This evidence may be relevant, but ochell status within a clan typically is determined based on blood, birthright, and ancestry, rather than actions or behavior. *Cf. Orak v. Ueki*, 17 ROP 42 (2009) (rejecting a trial court's finding that behavioral evidence, without more, was sufficient to establish that one faction comprised strong clan members). The trial court did not discuss the Joseph faction's ancestors other than Ngirameong, a male, nor did it make any findings about the faction's history in Eklbai. It did not address the Yobech faction's argument—which was supported by some testimony—that Ngirameong was a drifter who arrived in Eklbai in 1923 and lived there with permission from Ibau Oiterong's mother, Rukebai. According to that version of events, Ngirameong's relatives then gradually joined him at Eklbai. Thus, although the Joseph faction's members descended from a female, maternal line of some clan, it appears that their first connection to *Eklbai Clan* was through a man, Ngirameong, rendering the Joseph faction, at best, ulechell of Eklbai Clan.

This last point raises a more fundamental, yet unanswered question: is the Joseph faction part of Mowai, Eklbai, or both? Although the Joseph faction produced evidence that it is part of Eklbai Clan, it also established that several of its members have held the chief male and female titles of Mowai. Indeed, at the time Kalisto Joseph was purportedly named Iyechaderchemai, he was Ngiramowai, Mowai's chief male title

holder. The parties disputed whether Mowai was a lineage within Eklbai or a separate clan. There was not much evidence on this issue, and the trial court made no determination concerning this central fact. If Mowai is a separate clan in Ngerchemai, then the Joseph faction would likely have no claim to a title in Eklbai Clan. If it is a lineage within Eklbai, however, then perhaps the Joseph faction could constitute the Clan's strong members. Without clarity on this point, one cannot ascertain the Joseph faction's true status.

Turning from the trial court's findings to the parties' briefs, both factions assert that because there is no blood relation between them, a finding that *both* are ochell is impossible. Because they appear to agree on this point, we will not belabor it, but matters of ochell status and strength within a clan are typically determined by bloodlines and ancestry. More often than not, there can be no ties in matters such as these. Perhaps the court determined that the two factions represented separate lineages of Eklbai and somehow could have been strong members without family relation, or that both sides were ulechell members, all ochell members had died out, and therefore they both had a claim to strength within the Clan. If so, the trial court did not state or explain how this could be, and the decision provides little insight to its reasoning. Given the parties' unified response that the trial court's resolution is impossible, we find that it at least requires further explanation.

[4] To summarize, the trial court obeyed our instruction to reconsider the evidence and make a finding concerning the true strong members of Eklbai Clan. Taken independently, there is *some* evidentiary

support for each faction's claims to that status. But much of the evidence was contradictory, and to decide that *both* factions are ochell members is seemingly untenable in light of the record below. More importantly, if such a finding could be supported by the evidence, the trial court did not adequately articulate how it reached this conclusion. The trial court merely made a list of supporting evidence for each faction, declined to explain the evidentiary value of the various facts, and then called it a tie. A number of factual questions remain unanswered: the Yobech faction's evidence of title holders is powerful, but if its members descended from a male (Tengeluk), how and when did its members attain status as ochell members, rather than ulechell? And if certain members achieved that status through service or deeds, how does it extend to maternal relatives? Or did the Clan's ochell line die out long ago? Did the trial court rely solely on the string of titleholders to conclude that, regardless of the past, the Yobech faction *must* have attained ochell status? And on the other side, a significant amount of evidence suggested that Mowai is a separate clan in Ngerchemai and that members of the Joseph faction have held their titles, so is Mowai a separate clan or a lineage within Eklbai Clan? And if Ngirameong's first connection with Eklbai Clan was in 1923, and all of his relatives moved to Eklbai land after him, how and when did they become ochell members of Eklbai? By listing these questions, we do not intend to limit the scope of the trial court's inquiry on remand or provide a complete checklist of outstanding factual issues. The trial court's directive remains the same: which faction—Yobech or Joseph—comprises the true senior strong and potentially ochell members of Eklbai Clan? The answer cannot be both.

Finally, both factions have asked this Court to find in their favor based on the current record, rather than remand yet again. We would welcome a way to resolve this matter once and for all, and we have scoured the record in search of evidence that would either require or preclude a finding that one faction is stronger as a matter of law. But the record is full of competing yet unresolved facts, and it is not this Court's role to decide between them on appeal. What is more, we have refused to resolve these factual matters in our two most recent opinions remanding this case to the trial court. In our second opinion, we noted the parties' dispute over which faction contained the Clan's true members and stated: "We are in no position to make findings on this issue, and we decline Appellants' invitation to do so. But we agree with Appellants that some finding in this regard was crucial: a finding that one or the other of Joseph or Yobech was Iyechaderchemai . . . cannot stand without some finding that the people who nominated him are true members of the Clan." *Eklbai Clan*, 12 ROP at 22 (footnote omitted). In our last remand, we stated that despite certain evidence in Yobech's favor, "[w]e specifically reject the Yobech faction's suggestion that we now enter judgment in their favor." *Eklbai Clan*, 13 ROP at 109. The record upon which we based these statements has not changed, and therefore our position also cannot change. Determining Eklbai Clan's true senior strong and potentially ochell members is essential and best left to the trial court.

CONCLUSION

This is not a legally complex case, but it is a factually difficult one. Matters of clan membership and strength inherently rely on

facts and evidence from generations past, and the parties' alleged histories often contradict or overlap. The Court is also sensitive to the amount of time and money this matter has cost the competing parties. We would strongly prefer to bring this litigation to an end in this proceeding. It would be even better if the two competing factions were able to conclude this matter on satisfactory terms outside of court. *Cf. Filibert v. Ngirmang*, 8 ROP Intrm. 273, 276 (2001) (“The selection of a title bearer is the Clan’s responsibility, not the Court’s.” Although the courts have constitutional authority over matters presenting issues of customary law, . . . it remains true that disputes over customary matters are best resolved by the parties involved rather than the courts.” (quoting *Sato v. Ngerchelong State Assembly*, 7 ROP Intrm. 79, 81 (1997))). But in the likely event that the parties decline to resolve this dispute independently, the outstanding factual determinations are for the trial court.

On remand, the trial court may choose to receive additional evidence, and, given the amount of time since the first trial, this may benefit both parties and the court. In any event, the trial court should review the complete record and make an independent and conclusive determination as to which faction—Yobech or Joseph—comprises the true senior strong and potentially ochell members of Eklbai Clan. The trial court should articulate its reasoning to the best of its ability, making explicit any customary law or findings of fact upon which it relies. We sincerely hope that this will be the last time this matter appears in the trial court. For these reasons, we find that the trial court clearly erred in its factual findings and REVERSE its decision that both the Yobech and Joseph

factions comprise the ochell members of Eklbai Clan; we REMAND this matter for the trial court to reconsider in light of this opinion.