

**NGETELKOU LINEAGE,  
Appellant,**

**v.**

**ORAKIBLAI CLAN,  
Appellee.**

CIVIL APPEAL NO. 09-002  
LC/S 07-478

Supreme Court, Appellate Division  
Republic of Palau

Decided: February 3, 2010

[1] **Evidence:** Testimony of Witnesses

The trial court is not required to accept uncontradicted testimony as true. Although a finder of fact may not arbitrarily disregard testimony, the finder of fact is not bound to accept even uncontradicted testimony.

[2] **Evidence:** Expert Testimony;  
**Custom:** Expert Testimony

Indeed, it is well established that, despite the presence of expert testimony on custom, a court is not obligated to explain the customary significance of its findings where it did not rely on custom in making its factual determinations.

[3] **Civil Procedure:** Res Judicata

The doctrine of *res judicata* is that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue, as to the parties and their privies in all other actions in the

same or any other jurisdictional tribunal of concurrent jurisdiction.

[4] **Appeal and Error: Preserving Issues**

When an issue is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law. The Court may consider an issue antecedent to and ultimately dispositive of the dispute before it, even an issue the parties fail to identify.

Counsel for Appellant: J. Uduch Sengebau Senior

Counsel for Appellee: Pro se (Abel Suzuky)

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.<sup>1</sup>

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

PER CURIAM:

Appellant Ngetelkou Lineage (“Ngetelkou”) appeals the *Summary of the Proceedings, Findings of Fact, Conclusions of Law and Determination of Ownership* (“Decision”) entered by the Land Court concerning a dispute between Ngetelkou and

Appellee Orakiblai Clan (“Orakiblai”) over the ownership of land located on Angaur Island. Specifically, Ngetelkou claims that the Land Court erred in awarding the land to Orakiblai because it disregarded the uncontested testimony of Ngetelkou’s expert customary witness. For the reasons that follow, we disagree and AFFIRM the Decision of the Land Court.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

As indicated by the briefs, the issue on appeal is limited to the court’s treatment of the expert testimony in this case; thus, only an abbreviated version of the relevant facts is necessary.<sup>2</sup> The land at issue in this case is known as *Ngetelkou* and was identified as Lots 297-39A, 297-39B, 297-40, 297-41, 297-43, and 297-52 at the Land Court hearing.<sup>3</sup> Ngetelkou traced its ownership of the six lots to the original acquisition of the lands from Orakiblai. At the hearing, Esuroi Obichang testified that Ngetelkou used the lands for several generations; however, since chief

<sup>2</sup> In its opening brief, Ngetelkou stated that, because the “argument on appeal is limited to the testimony of expert witness William Tabelual, Appellant will not summarize the testimonies of the other claimants.” (Appellant’s Br. at 6.)

<sup>3</sup> During the hearing, the Land Court heard claims by the Orakiblai Clan, Ucheliou Clan, Soweï Clan, Ngetelkou Lineage, Ngerbuuch Clan, and Ballerio Pedro to lands in Angaur State described on the BLS Worksheet No. 297 as Lots 297-278, 297-36, 297-38, 297-39A, 297-39B, 297-40, 297-41, 297-43, and 297-52. As noted above, Ngetelkou claimed ownership of six of the nine listed lots.

<sup>1</sup> The panel finds this case appropriate for determination without oral argument, pursuant to ROP R. App. P. 34(a).

Ngirturong died during the Trust Territory times, no males of Ngetelkou have borne the chief title there nor has any member of Ngetelkou resided on the lands in question.

During the Land Court hearing, Ngetelkou called Techetbos William Tabelual (“Tabelual”) as an expert customary witness. Tabelual testified on a number of customary traditions regarding the transfer of lands between clans and lineages, namely, that clan properties were separate and distinct from lineage-owned properties. He testified further that whether a clan gives land to a lineage simply to use or to own outright depends on what was said at the time of the transfer. If, for example, a clan gave land to a lineage to own outright, then the lineage will continue to own those lands into perpetuity, even if the members of the lineage move away from the land, i.e., once the clan transfers ownership in the land to the lineage, the clan’s authority over the land is extinguished and, unless there was some previous understanding to the contrary, any reversionary interest in the land would also be extinguished. Finally, Tabelual testified that the land being named after the lineage indicates that it was assigned to the lineage as its property. (*See generally*, Testimony of William Tabelual at 05/07/09—1:58:51 - 2:12:06.)<sup>4</sup>

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<sup>4</sup> According to the Land Court, Ngetelkou also presented several pieces of documentary evidence supporting their ownership claims, the most important of which is Exhibit A, a 1958 Findings of Fact, Conclusions of Law and Judgment in *Merar and Remekel, representing Ngetelkou Lineage or Clan v. Ucherebuuch, Chief of and representing Orakiblai Clan*, Civil Action No. 34 (Tr. Div. 1958).

Orakiblai Clan claimed all nine of the parcels that were the subject of the hearing. Abel Suzuki (“Suzuky”) testified that Orakiblai’s claim was based on the 1950’s survey that resulted in the 1962 Angaur Land Settlement Map, Serial No. 355. He testified that the nine lots in question were all part of Lot 12-278, which is uniformly described as Orakiblai Clan land on the 1962 map. He went on to state that when he identified Orakiblai’s claims during monumentation, he followed the boundary markers of the 1950’s survey.<sup>5</sup> Finally, Suzuki testified that there are no residences in any portion of this land and that he has personally planted coconut and betel nut trees on worksheet Lots 297-278 and 297-40 since he moved to Angaur in 1983. He noted that the site known as *Ngetelkou* is located in a small area near the crossroad on 297-40.

In finding that Ngetelkou failed to sufficiently prove its claim against Orakiblai, the Land Court stated as follows:

The Findings of Fact, Conclusions of Law and Judgment in Civil Action No. 34 confirms the testimony presented by Ngetelkou about how it acquired lands in Angaur. However, in that 1958 case brought by Ngetelkou against Orakiblai, the court held, after discussing Ngetelkou’s status as a separate lineage or clan of Angaur, that “the freedom of

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<sup>5</sup> Suzuki adopted Ngetelkou’s Exhibit A as evidence of Orakiblai’s claim instead.

action which Ngetelkou have been allowed to exercise in other matters does not free the lands, which they received the use of through the cooperation and permission of the Orakiblai Clan, from the traditional controls and rights of the Orakiblai Clan.” The court went on to hold that “regardless of whether Ngetelkou more closely resemble a conventional Palauan clan or conventional Palauan lineage, **their land rights on Angaur are held under the Orakiblai Clan.**

The court in Civil Action No. 34 rejected Ngetelkou’s argument, made in the instant case again, that Orakiblai gave outright ownership of land to Ngetelkou. Ngetelkou’s expert witness on custom testified that whether a lineage acquired permanent ownership or a use right only of lands assigned to it by a clan depended on what was said at the time. As early as 1958, the court determined that Orakiblai granted a use right only to Ngetelkou.

Land Ct. Case No. LC/S 07-478, Decision at 9-10 (December 29, 2008) (quoting *Merar and Remekel, representing Ngetelkou Lineage or Clan v. Ucherebuuch, Chief of and representing Orakiblai Clan*, Civ. Act. No. 34 (Tr. Div. 1958) (emphasis in original)). Accordingly, the Land Court determined that Orakiblai owns all of the disputed lands. This appeal followed.

#### STANDARD OF REVIEW

We review Land Court factual findings for clear error. *Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 168 (2006). “Under this standard, if the findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made.” *Id.* Moreover, “[i]t is not the appellate panel’s duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence.” *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007). Rather, Land Court determinations are affirmed so long as the factual findings are “plausible.” *Id.* We review Land Court legal conclusions *de novo*. *Singeo v. Secharmidal*, 14 ROP 99, 100 (2007).

#### DISCUSSION

On appeal, Ngetelkou asserts that the Land Court erroneously concluded that Orakiblai Clan granted only a use right to the lands in Angaur by refusing to credit the uncontested expert testimony of customary witness Tabelual, which purported to establish that, once clan land is given out to a lineage, the clan’s right to the land is extinguished. Ngetelkou states,

Here Ngetelkou Lineage received the lands known as Ngetelkou from Orakiblai Clan. This finding is supported by the decision in Civil Action No. 34 (1958). Although the Land Court subsequently concluded that the lands known as Ngetelkou were not free from the traditional controls and rights

of the Orakiblai Clan, this conclusion was directly contradicted by the expert witness who explicitly testified that once clan lands are given to a lineage, the clan loses its authority over the lands.

(Ngetelkou's Br. at 9). For the reasons outlined below, we disagree.

**[1, 2]** First, "the trial court is not required to accept uncontradicted testimony as true." *Ngerungor Clan v. Mochouang Clan*, 8 ROP Intrm. 94, 96 (1999). Although "a finder of fact may not arbitrarily disregard testimony, the finder of fact is not bound to accept even uncontradicted testimony." *Ongklungel v. Uchau*, 7 ROP Intrm. 192, 194 (1999) (quoting *Elewel v. Oiterong*, 6 ROP Intrm. 229, 232 (1997)). In its Decision here, the Land Court made no explicit findings as to the testimony of the expert witness. It only noted that "Ngetelkou's expert witness on custom testified that whether a lineage acquired permanent ownership or a use right only of lands assigned to it by a clan depended on what was said at the time. As early as 1958, the court determined that Orakiblai granted a use right only to Ngetelkou." In doing so, the Land Court accepted, at least in part, the expert testimony and simply interpreted it differently than Ngetelkou would have liked. By invoking the 1958 Decision here, the Land Court emphasized that the 1958 court was clearly in a better position to adjudicate the factual questions regarding "what was said at the time." In doing so, it was entitled to rely on what appears to this Court to be the clear

and unambiguous *res judicata* effect of the previous land determination in the 1958 case. In addition to this evidence, the Land Court also relied on documentary and testimonial evidence, such as the 1962 Map and undisputed quitclaim deed of Lot 12-278 to Orakiblai Clan, the receipt of war claim proceeds for property damage and loss accepted by Orakiblai Clan, the use of the land as a cemetery, and the more recent use by the Orakiblai Clan for farming purposes. As such, the Land Court appeared to rely very little on the customary testimony presented in the case, but rather on other, more convincing factors, such as the *res judicata* effect of the 1958 case and the additional documentary pieces of evidence mentioned above. Indeed, it is well established that, despite the presence of expert testimony on custom, a court is not obligated to explain the customary significance of its findings where it did not rely on custom in making its factual determinations. See *Iderrech v. Ringrang*, 9 ROP 158, 161 (2002).

**[3]** With respect to the *res judicata* effect of the previous land determination in 1958, "[t]he doctrine of *res judicata* is that an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue, as to the parties and their privies in all other actions in the same or any other jurisdictional tribunal of concurrent jurisdiction." 30A Am. Jur. 2d *Judgments* § 324 (2007). *Res judicata*, or claim preclusion, prevents the subsequent litigation by either party of any ground of recovery that was available in the prior action, whether or not it was actually litigated or determined. See *Renguul v. Airai State Pub. Lands Auth.*, 8 ROP Intrm. 282, 284 (2001)

(doctrine of *res judicata* bars litigating an issue that has been previously determined between the same parties in an earlier proceeding); *Ngerketiit Lineage v. Tmetuchl*, 8 ROP Intrm. 122, 123 (2000); *see also* Restatement (Second) of Judgments § 24 (1982); *Jim Bean Brands Co. v. Beamish & Crawford, Ltd.*, 937 F.2d 729, 736 (2d Cir. 1991). Ngetelkou argues that the Land Court's reliance on the 1958 judgment is misplaced because the "Judgment neither affirms nor establishes Orakiblai's ownership of the land known as Ngetelkou. It simply confirms Ngetelkou's status as a lineage of Orakiblai clan." (Ngetelkou's Br. at 10). We disagree.

Although it is true that the 1958 Judgment confirms Ngetelkou's status as a lineage of Orakiblai Clan, Ngetelkou's reading of it is suspiciously incomplete. The High Court in its 1958 Judgment also makes explicit findings regarding the land in question. First, it stated that "the freedom of action which Ngetelkou have [sic] been allowed to exercise in other matters does not free the lands, which they received *the use of* through the cooperation and permission of the Orakiblai Clan, from the traditional controls and rights of the Orakiblai Clan." *Merar*, Civ. Act. No. 34 (Tr. Div. 1958) (emphasis added). Then, the High Court reemphasized this by concluding that "regardless of whether Ngetelkou more closely resemble [sic] a conventional Palauan clan or conventional Palauan lineage, their land rights on Angaur are held under the Orakiblai Clan." *Id.*

Despite Ngetelkou's arguments to the contrary, this Court cannot envisage a clearer or more unambiguous determination of land rights than this. The 1958 Court clearly came

to the conclusion that Ngetelkou was given *use* rights only and that they held those rights under the traditional powers of the Orakiblai Clan. This, coupled with the other evidence presented at the trial, i.e., the 1962 Map and undisputed quitclaim deed of Lot 12-278 to Orakiblai Clan, the receipt of war claim proceeds for property damage and loss accepted by Orakiblai Clan, the use of the land as a cemetery, and the more recent use by the Orakiblai Clan for farming purposes, was sufficient for the Land Court to make an ownership determination despite the uncontested customary testimony.

[4] Although Orakiblai fails to offer a *res judicata* argument in its brief, "when an issue . . . is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law." *Ongalibang v. Republic of Palau*, 8 ROP Intrm. 219, (2000) (quoting *Kamen v. Kemper Fin. Servs., Inc.*, 111 S. Ct. 1711, 1718 (1991)). The Court "may consider an issue antecedent to . . . and ultimately dispositive of the dispute before it, even an issue the parties fail to identify." *Id.* (quoting *U.S. Nat'l Bank of Ore. v. Indep. Ins. Agents*, 113 S. Ct. 2173, 2178 (1993) (citations and internal quotations omitted)). An appellate court may affirm or reverse a decision of a trial court even though the reasoning differs. *Inglai Clan v. Emesiochel*, 3 ROP Intrm. 219 (1992) (citing *Republic of Palau v. Pacifica Dev. Corp. and Koror State Government v. Republic of Palau*, 1 ROP Intrm. 383 (1987)); *see also* 5 Am. Jur. 2d *Appellate Review* § 775 (2007) ("An appellate court is not limited, in affirming a judgment, to grounds raised by the parties, or grounds relied upon by the court below.").

Thus, this Court holds that the 1958 Judgment of the High Court clearly made a determination as to land rights and was entitled to be afforded preclusive effect in the Land Court case appealed from here. During the course of the Land Court case, Ngetelkou pointed to no intervening actions taken by Orakiblai or Ngetelkou between the 1958 decision and the time of this claim that would change a subsequent court's determination about land rights. If anything, the facts have become less arranged in Ngetelkou's favor, in that it is uncontested that no males of Ngetelkou have borne the chief title there nor has any member of Ngetelkou resided on the lands in question since Trust Territory times. Rather, Ngetelkou only raises new arguments, which their privies could have raised in the previous case. This forms the very heart of the *res judicata* doctrine, which exists to give finality and legitimacy to judgments and which is highly favored in the courts of Palau.

### **CONCLUSION**

For the reasons set forth above, the judgment of the Trial Division is AFFIRMED.