

**IRACHEL ADELBAI,
Appellant,**

v.

**UCHELIOU CLAN,
Appellee.**

CIVIL APPEAL NO. 09-001
Civil Action No. 04-109

Supreme Court, Appellate Division
Republic of Palau

Decided: February 10, 2010

Counsel for Appellant: Clara Kalscheur

Counsel for Appellee: Moses Uludong

BEFORE: ARTHUR NGIRAKLSONG,
Chief Justice; LOURDES MATERNE,
Associate Justice; KATHERINE A.
MARAMAN, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable
ALEXANDRA F. FOSTER, Associate Judge,
presiding.

PER CURIAM:

Appellant, Irachel Adelbai (“Irachel”),
appeals a judgment entered by the Trial
Division concerning Irachel’s right to own,
and remain on, property named *Ngermanrang*,
where she has lived for many years.
Specifically, the Trial Division found that (1)
two deeds of transfer dated December 6, 2000,
transferring *Ngermanrang* (Cadastral Lot Nos.
028 N 01 and 028 N 03) to Irachel were null
and void; (2) the property instead belonged to
Appellees, the Ucheliou Clan (“Ucheliou

Clan”), which is indeed a genuine clan; and, (3) Irachel must vacate the property within a reasonable time. For the reasons that follow, we AFFIRM the Judgment of the Trial Division.

BACKGROUND

As indicated by the briefs, the issue on appeal is extremely limited; thus, only an abbreviated version of the relevant facts is necessary.¹ On April 21, 2004, the Ucheliou Clan brought suit to eject Irachel from the house and the property of *Ngermanrang* and to have the two deeds of transfer for that land, which were executed between Irachel and Adelbai Remed (Irachel’s former husband and chief of the Ucheliou Clan) declared null and void. Irachel responded and also filed a counterclaim, which alleged that the Ucheliou Clan was nothing more than a construct of Adelbai Remed’s mind to create a venue for conferring private lands to his children from three different marriages. Not surprisingly, the Ucheliou Clan contended that they were indeed a traditional Palauan Clan, which has been in existence for hundreds of years.

At trial, Irachel conceded during closing that if the Trial Division concluded that the land belonged to Ucheliou Clan as a traditional Palauan Clan, then senior members of the clan would need to sign off on the deeds of transfer to validate the transfer. Several witnesses, including Otobed Adelbai and Rosania Masters (senior members of the Clan)

testified that they had never had signed, approved, or even seen the two deeds executed between Irachel and Adelbai Remed; thus, the Trial Division concluded that the primary issue was whether Ucheliou Clan was a traditional Clan or not: “If the Ucheliou Clan is a traditional Palauan Clan then [Irachel] must vacate the property, since the property is Clan land and the Clan has repeatedly asked [Irachel] to leave their land. If the Ucheliou Clan is a more recent creation of Adelbai Remed then *Ngermanrang* belongs either to Adelbai Remed’s children or to [Irachel], depending on the validity of [the] two deeds of transfer” *Ucheliou Clan v. Adelbai*, Civ. Act. No. 04-109, Decision (Tr. Div. Jan. 2, 2009).

In its decision, the Trial Division outlined its extensive findings of fact supporting its conclusion that the Ucheliou Clan is a traditional Palauan Clan. Indeed, Appellant has not appealed this portion of the decision of the Trial Division. Because it resolved this issue in favor of the Ucheliou Clan, the Trial Division declined to reach the second issue as to whether the deeds had properly transferred *Ngermanrang* to Irachel, because, as we noted above, it was undisputed that senior members of the Ucheliou Clan never signed the deeds of transfer.

Accordingly, the Trial Division issued its decision, concluding (1) two deeds of transfer dated December 6, 2000, transferring *Ngermanrang* (Cadastral Lot Nos. 028 N 01 and 028 N 03) to Irachel were null and void; (2) the property instead belonged to Appellees, the Ucheliou Clan (“Ucheliou Clan”), which is indeed a genuine clan; and, as a result, (3) Irachel must vacate the property

¹ The procedural history and factual background of this case are set out in more detail in the Trial Division’s Decision of January 2, 2009.

within a reasonable time. This appeal followed.

STANDARD OF REVIEW²

The trial court's findings of fact are reviewed for clear error. *Ongidobel v. Republic of Palau*, 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). Conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001); *Esebei v. Sadang*, 13 ROP 79, 81 (2006).

DISCUSSION

As we noted above, the issue on appeal is very limited. The gist of Appellant's argument is that, even though the Trial Division concluded that the Ucheliou Clan is a traditional Palauan Clan, it erred when it ordered Irachel to vacate the property without

making a customary finding or legal conclusion concerning the Clan's right to do so. Irachel argues that it was Appellee's burden at trial to put forth customary evidence regarding Ucheliou Clan's authority to evict a person from clan land. Because it failed to do so, Irachel argues that the only thing the trial established was that the Ucheliou Clan was a traditional Clan, and nothing more. If they wanted to eject her from the property, Ucheliou Clan were bound to prove that they had a right to do so under customary law. Just because the Trial Division found that the Ucheliou Clan was a traditional Clan and just because Ucheliou Clan brought suit to eject her, the Trial Division should not have summarily concluded that the latter necessarily followed from the former.

We begin by noting that, "this Court has consistently refused to consider issues raised for the first time on appeal." *Rechucher v. Lomisang*, 13 ROP 143. Irachel made no arguments at trial that Ucheliou Clan were bound to prove that they had a right to eject her under customary law. She elicited no testimony from any of the expert customary witnesses on issues relating to ejection and instead took the position that the case was about whether Ucheliou Clan was a traditional Clan or not. Most importantly, even though the Ucheliou Clan bore the burden to prove its right to eject her, Irachel herself failed to raise her latest argument in the form of an objection, even though Ucheliou's claim for ejection was at the very heart of the action. "Failing to object to a claim for relief before the trial court . . . constitutes a waiver." *Rechucher v. Seid*, 14 ROP 85 (2007).

Now, for the first time on appeal, Irachel asks this Court to consider a new

² The Appellant recited no applicable standard of review. We reemphasize that ROP R. App. P. 28(a)(7) requires all briefs to set forth any matters "necessary to inform the Appellate Division concerning the questions and contentions raised in the appeal." What is more, this Court has plainly stated that the "standard under which the Appellate Division is to review the issues before it is a matter necessary to the questions raised on appeal." *Scott v. Republic of Palau*, 10 ROP 92, 95 (2003). With this in mind, we require at the very least that the parties take their best shot.

argument about the Clan's right to eject her from the land. Irachel states that her daughter, Ellen Adelbai, who claims to be a strong member of the clan, has testified that she does not consent to the Clan's ejection of her mother. However, when Ucheliou Clan argued in their response brief that Irachel should not be entitled to raise this argument on appeal because it was not first raised at trial, Irachel failed to take advantage of her opportunity to submit a reply brief to point this Court to *any* place in the trial record that could conceivably be construed as embodying this new argument. Because the Trial Division was never presented with an opportunity to examine customary evidence regarding ejection or to consider Irachel's objection to Ucheliou's claims for relief, we can make no conclusions here other than to reemphasize that we lack jurisdiction to consider new arguments on appeal. Indeed, by now it should be axiomatic that arguments made for the first time on appeal are considered waived. *Badureang v. Ngirchorachel*, 6 ROP Intrm. 225 (1997); *Telei v. Rengiil*, 4 ROP Intrm. 224 (1994); *Udui v. Temot*, 2 ROP Intrm. 251 (1991).

Accordingly, the rule of law demands that we decline to consider Irachel's argument on appeal because such argument was never raised during trial.

CONCLUSION

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