

**RULUKED TKOEL,**  
**Appellant,**

**v.**

**EREONG LINEAGE,**  
**Appellee.**

CIVIL APPEAL NO. 10-021  
LC/E 08-0855  
LC/E 08-0857  
LC/E 08-0897

Supreme Court, Appellate Division  
Republic of Palau

Decided: April 25, 2011<sup>1</sup>

[1] **Custom:** Heirs

A child customarily adopted by another family loses the right to inherit individual property from his or her natural father.

[2] **Custom:** Heirs

The determination of whether a customary adoption occurred is a question of fact.

Counsel for Appellant: Raynold B. Oilouch  
Counsel for Appellee: J. Uduch S. Senior

BEFORE: KATHLEEN M. SALII,  
Associate Justice; LOURDES F.  
MATERNE, Associate Justice; and  
ALEXANDRA F. FOSTER, Associate  
Justice.

Appeal from the Land Court, the Honorable

<sup>1</sup> The Court finds this case appropriate for submission without oral argument. *See* ROP R. App. P. 34(a).

C. QUAY POLOI, Senior Judge, presiding.

PER CURIAM:

Appellant Ruluked Tkoel, represented by Allen Oscar Ruluked, seeks review of the Land Court's determination of ownership awarding to Ereong Lineage three lots of land also claimed by Ruluked. For the following reasons, we affirm the Land Court's Decision.

### BACKGROUND

This appeal concerns the ownership of three pieces of land: Worksheet Lot 07E010-003 formerly Tochi Daicho Lot 2033; Worksheet Lot 07E010-049 formerly Tochi Daicho Lot 2015; and Worksheet Lot 07E010-051 formerly Tochi Daicho Lot 2000. Ruluked Tkoel, represented by Allen Oscar Ruluked, and Ereong Lineage claimed ownership of the lots.

The Land Court held a hearing on April 22, 2010, addressing the land at issue here as well as two other lots. As to the dispute between Ruluked Tkoel and Ereong Lineage, the court held that Ereong Lineage's claim prevailed.

At the hearing, the court considered the following facts about the three lots. A woman named Ereong owned the land at issue. She married a man named Rimirch, and they had three children: Omlei, Tkoel, and Sechedui. Ereong married a second time, to Siliang, and they had three children, Deltang, Ngirailemesang, and Ngeldei. During the Japanese Tochi Daicho registration process, the property was registered to Tkoel, as Ereong's eldest male child.

Tkoel married Kewei and had four children with her: Bultedaob, Omengades, Ngiramechelchalb, and Toriang. Tkoel and Kewei divorced, and Omengades Tkoel went to live with Tkoel's cousin Ngesechelel. Tkoel died in around 1940.

Ngesechelel married a man named Skilang. During the marriage Skilang changed Omengades's name to Ruluked. Ngesechelel and Skilang divorced, and Ruluked received a share of the child's money—*ududir ar ngalk*—from Skilang's relatives.

Ngesechelel married a second man named Renguul, and remained married until she died. After her death, Renguul's family gave children's money to Ruluked. Ruluked then went to live with his maternal grandfather Bekeruul, then Edellumel, and finally Blesoch, Ngesechelel's brother. Before Ruluked's death, he stated that he wished to be buried with his mother, referring to Ngesechelel.

Regarding the ownership of the three lots, the parties did not present evidence showing that Tkoel devised the property before his death, or that it was devised at his *eldecheduch*. At the hearing, Theodore Subris, Ereong's grandson and a claimant for Ereong Lineage, testified that Ereong did not devise the property. According to his testimony, Ereong stated that she wanted it to go to all of her children, but not any one child in particular. When Ereong died in 1968, there is no evidence that her property was awarded to anyone.

After hearing the evidence and the parties' arguments, the court made two

findings. First the court held by a preponderance of the evidence that Ruluked Tkoel had been adopted out of Tkoel's family. It noted that because Palau's intestacy statutes went into effect after Tkoel's death, under the applicable law, once a child is customarily adopted out of a family, he or she is no longer a rightful heir of the birth parents. *See Ngiraswei v. Malsol*, 12 ROP 61, 63 (2005). The court supported its conclusion that Ruluked was adopted out of Tkoel's family with six facts:

1. After Ngesechelel married Skilang, Skilang changed Ruluked's name from Omengades to Ruluked, and Ruluked kept that name.
2. When Ngesechelel and Skilang divorced, Ruluked received money as a child from the marriage.
3. When Ngesechelel married Renguul, and Renguul died, Ruluked received money from Renguul's relatives as a child of the marriage.
4. After Ngesechelel died, Ruluked returned to his biological relatives, ultimately living with Ngesechelel's brother, Blesoch.
5. Tkoel, Ruluked's biological father, married Bledor, and raised her son, Tetsuo as if he was his own. Consequently, Tetsuo was addressed at the *eldecheduch* as a child of the marriage, and Ruluked was not.
6. Before his death, Ruluked requested to be buried with his "mother," meaning Ngesechelel, not Kewei.

Second, after concluding that a *de facto* adoption occurred, the court found that

Ereong Lineage’s claim prevailed, as the only remaining claimant with a valid claim. The court reasoned that the properties were registered in Tkoel’s name during the Tochi Daicho registration process, and that Ereong instructed that her property would belong to all her children—not any one particular child—after her death. The Land Court thus determined that Ereong Lineage was the proper owner of the three lots. Allen Oscar Ruloked, representing Ruloked Tkoel, now appeals the Land Court’s determination.

### STANDARD OF REVIEW

We review the Land Court’s findings of fact under the clearly erroneous standard. *Aribuk v. Rebluud*, 11 ROP 224, 225 (2004). Under this standard, reversal is warranted “only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.” *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 165 (2004) (citation omitted). It is not clear error for the Land Court to give greater weight to certain evidence so long as one view of the evidence supports the fact finder’s decision. *Remeskang v. West*, 10 ROP 27, 29 (2002).

### DISCUSSION

Ruloked contends that the Land Court committed reversible error in two ways: (1) finding that Ruloked was adopted out of Tkoel’s family; and (2) concluding that Ereong Lineage succeeded to Tkoel’s real properties when no evidence showed such entitlement. He therefore asks this Court to reverse the Land Court’s decision and award him the three pieces of land. We address the two arguments separately.

#### 1. Ruloked was Adopted Out.

Ruloked initially argues that the Land Court erred in finding that Ruloked was customarily adopted out of Tkoel’s immediate family. We disagree because we do not find the Land Court’s analysis of whether Ruloked was customarily adopted clearly erroneous.

[1, 2] Palau’s intestacy statute went into effect after Tkoel’s death, so customary law applies. *See Ngiraswei*, 12 ROP at 63. The general rule is that “a child customarily adopted by another family loses the right to inherit individual properties from his natural father.” *Id.* “There is no question that Palauan customary adoption exists.” *In re Estate of Delemel*, 4 ROP Intrm. 148, 150 (1994). This determination is therefore a question of fact. *Nakamura v. Markub*, 8 ROP Intrm. 39, 39 (1999) (affirming Land Court conclusion that customary adoption took place without requiring expert testimony to establish the existence of the custom); *but see Orak v. Ueki*, Civil App. No. 07-031, slip at 13 (Dec. 3, 2009) (“[I]t is not within the province of the court to create Palauan custom without clear and convincing evidence . . .”).

Ruloked’s argument can be categorized into two groups. We are persuaded by neither. First, he argues that the Land Court revealed bias by relying upon Appellees’ witnesses, spending more time dissecting Ruloked’s claim, and addressing Ruloked’s claim first. The Land Court did consider Ruloked’s testimony, limited as it was. Ruloked’s witnesses only testified to what they did not know. For example, Allen Oscar Ruloked could not explain how Tkoel came to own the property or when Tkoel died. The court filled in the gaps of Ruloked’s

witnesses from the testimony of witnesses called by Ereong Lineage. As Ruluked's claim presented the thornier legal issue, it was not surprising that the court addressed that issue first and spent more time parsing it out. Ruluked simply did not provide credible, complete or persuasive evidence, so he cannot now complain that the court either ignored that evidence or spent too much time addressing it. As the court may give greater weight to some evidence over others as long as the facts support its conclusion, Ruluked's first argument fails. *Remeskang*, 10 ROP at 29.

Second, Ruluked claims that the Land Court erred in finding that a customary adoption took place without establishing what a *de facto* adoption is under customary law. It is true that the parties did not present expert testimony related to the adoption issue. However, as the Land Court noted, it gave the parties a chance to submit expert testimony, but the parties agreed that Senior Judge Polloi would determine custom through judicial notice of prior cases or other accurate sources. (Hr'g Tr. 124–25.)

Given his mandate, the Land Court engaged in a careful evaluation of the evidence based on prior decisions addressing customary adoption. In concluding that Ruluked was adopted out, it first acknowledged that a formal adoption did not take place. Then it pointed to the indicia that a *de facto*–customary–adoption took place: Ngesechelel acted as his mother; her two husbands acted as his father; and Tkoel did not act as his father. The court specifically stated that when Skilang changed Ruluked's name, he asserted parental control over Ruluked. Also, the court was persuaded that

Ngesechelel's two husbands acted as Ruluked's fathers due to the child's money Ruluked received from his two step fathers' families. It further noted that at Tkoel's *eldecheduch*, Tetsuo, not Ruluked, was addressed as the child of the marriage. Finally, the court found it telling that Ruluked requested to be buried with his mother—meaning Ngesechelel—after his death. These factors are all relevant to the determination of customary adoption. *See Nakamura*, 8 ROP Intrm. at 39–40 (affirming Land Court's finding of adoption based on where the child lived, who he referred to as his father, and whose name the child took); *In re Estate of Delemel*, 4 ROP Intrm. at 150–51 (reversing Land Court and concluding that a customary adoption took place, taking into account who raised the child, whose name the child used, and the fact that the child was held out as adopted and others considered her adopted). Given the parties' request that the Land Court determine issues of Palauan custom and the court's careful evaluation of the evidence based on prior case law discussing Palauan customary adoption, its finding was not clearly erroneous.

## 2. Ereong Lineage Succeeded to Tkoel's Real Properties.

Ruluked's second argument is that the determination in favor of Ereong Lineage was reversible error. We disagree and affirm the Land Court's decision to award Ereong Lineage the property.

Ruluked claims that the Land Court misunderstood Theodore Subris's testimony about Ereong's intent for the land after she died. At the hearing, Subris testified that

Ereong stated that there was an *eldecheduch* for Tkoel, but the lands were not distributed at that point. He also testified that before Ereong died she said she wanted the property to go to all her children. Ruluked claims that Ereong Lineage and Ereong's children are two different groups, and under customary law, individually-owned lands do not revert to a lineage after the death of the owner.

Ruluked's reading of the Land Court's reasoning is incorrect. When the Land Court concluded that Ruluked did not have a valid claim, it turned to any other valid claimants. The court acknowledged that there was no evidence that Tkoel devised the property before his death or that it was devised at his *eldecheduch*, concluding that it was not passed on with his death. Then the court noted that Ereong was the original owner of the property before the Tochi Daicho registration process. Because Ereong instructed that the property should belong to all her children, including her sole remaining son Ngirailemesang, the Land Court found that Ereong Lineage had a valid claim to the properties.

We disagree with Ruluked's argument that Ereong Lineage and the children of Ereong are completely different. Ruluked provides no support for this argument, and logic dictates that Ereong's children (and their offspring) are all part of Ereong Lineage, especially since her sole surviving son, Ngirailemesang, testified for Ereong Lineage.

### CONCLUSION

Appellant Ruluked Tkoel has not established that the Land Court's Decision regarding the ownership of Worksheet Lot

07E010-003, formerly Tochi Daicho Lot 2033; Worksheet Lot 07E010-049 formerly Tochi Daicho Lot 2015; and Worksheet Lot 07E010-051 formerly Tochi Daicho Lot 2000 was clearly erroneous. For the foregoing reasons, the Land Court's Decision is **AFFIRMED**.