

**LORENZO EDWARD and
NGARANGEBIIS,
Appellants/Cross-Appellees,**

v.

**ABEL SUZUKY,
Appellee/Cross-Appellant.**

CIVIL APPEAL NO. 11-011
Civil Action No. 10-098

Supreme Court, Appellate Division
Republic of Palau

Decided: September 12, 2012

[1] Appeal and Error: Standard of 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.

[2] Appeal and Error: Transcript

An appellant is not required to file a trial transcript, but the absence of a transcript largely precludes any challenge to the findings of fact made below.

[3] Custom: Title Holders

Appointing Ucherbelau is a two-step process. First, the proper person must be appointed by the appropriate title bearer. The ourrot should get together to appoint someone as Ucherbelau. The female title bearer is the most senior member of the clan and as such her decision must be followed. The oldest

who happens to be the title bearer is responsible for the clan and is entrusted to make the best decision for the clan.

[4] Custom: Title Holders

While the strongest senior female may appoint someone to act as her proxy, she holds on to the power and authority of her title. She cannot “go off on her own.”

[5] Appeal and Error: Clear Error

Without sufficient information as to the trial court’s factual findings or credibility determinations, the Appellate Court lacks an adequate basis for review.

Counsel for Appellants: Moses Uludong
Counsel for Appellee: Brian Sers Nicholas

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and ROSE MARY SKEBONG, Associate Justice Pro Tem.

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

PER CURIAM:

This case concerns leadership of the Orakiblai Clan in Angaur State. The Orakiblai Clan is the highest ranking clan of Angaur. The dispute centers on who is the proper Ucherbelau, or highest title of the male chief, of the Clan. The Ucherbelau is appointed with the consent of the Dilbelau, the strongest senior female member of the Clan, and then confirmed by the klobak, or council of chiefs. The klobak for one of the villages

on Angaur, Ngerbelau village, is called Ngarangebiis. Defendant Ngarangebiis is a party to this appeal but does not appear to be represented by any individual.¹

The Ucherbelau is the head of Ngarangebiis Klobak and the highest chief and representative of Angaur State in the Palau Council of Chiefs. The Ucherbelau is also a member of the Angaur State Legislature. Appellant/Cross-Appellee Edward and Appellee/Cross-Appellant Suzuki have each been appointed as Ucherbelau, but there can be only one. In June 2010, Edward filed his complaint, and Suzuki filed a cross-claim. The parties sought, among other things, a declaration from the Trial Division as to who is the proper Ucherbelau.

The case proceeded to trial, and Edward and Ngarangebiis now appeal the Trial Division's May 11, 2011, Judgment and Decision. The Trial Division ultimately concluded that Suzuki was appointed to the title of Ucherbelau, but that he did not secure acceptance from all members of the Ngarangebiis Klobak and therefore did not succeed to the chiefly title. The Trial Division also concluded that Edward did not have the consent of Dilbelau and therefore did not bear the title Ucherbelau.

Edward and Ngarangebiis present the following issues for us to decide: First, whether the three ourrot, or strong senior female members, selected Edward as Ucherbelau of the Orakiblai Clan, and second, whether Ngarangebiis Klobak approved the appointment of Edward. Suzuki has cross-

appealed the issue of whether the Trial Court erred in ruling that he cannot succeed to the title of Ucherbelau because he did not secure the acceptance of all the members of the Ngarangebiis Klobak and that he did secure the acceptance of the larger klobak, Ngeaur Klobak, to be their "friend." For the reasons stated below, we affirm in part and reverse in part.

BACKGROUND

I. Factual Background

We have summarized the relevant facts below, but we direct curious readers to the Trial Division's recitation in its May 11, 2011, Judgment and Decision. This case began in 2008 with the passing of Ucherbelau Pedro. With no one claiming the chiefly title, three meetings took place on Guam between 2008 and 2010 to discuss this issue. A title bearer must be appointed and then confirmed according to custom.

Dilbelau Concepcion P. Merrill is the strongest senior female member of the Clan. She lives on Guam and she attended all of these meetings. She is the female equivalent of the Ucherbelau. Her sister, Lorenza Pedro, attended only the second meeting. Lorenza, who lives in Palau, bears the title Omikbil, the next in line to become Dilbelau. She wrote a letter on December 24, 2008, stating that she and her sister would confer over the appointment of Ucherbelau, that "since time immemorial Dilbelau appoints Uche[r]belau," and that she would inform the members of Olbiil ra Ngeaur who the Ucherbelau would be.

¹ The Trial Division held that Andres Uherbelau is a member of the klobak but is not a party in interest to this case.

On January 13, 2009, Dilbelau Merrill wrote a letter to Governor Steven Salii and the members of the Olbiil ra Ngeaur, stating that Lorenza had authority over all Clan matters but that the title Ucherbelau will remain with Lorenza until Dilbelau and others have appointed someone at which time everyone will be informed. On November 30, 2009, Lorenza wrote a letter to the Ngarangebiis Klobak, stating that she, acting as Dilbelau, had appointed Appellant as Ucherbelau and offered him as the “friend” of the klobak. The letter refers to Dilbelau and the typewritten signature says “Dilbelau,” but Lorenza signed her own name. Lorenza believed she had the authority to appoint Edward pursuant to a notarized letter from January 13, 2009, in which she claimed Dilbelau had given her power of attorney. Edward met with Rubekul Belau, or the Council of Chiefs, on December 17, 2009.

A short time later, at the third meeting on Guam on January 30, 2010, Dilbelau Merrill questioned Suzuki and then appointed him Ucherbelau. She made this appointment known in writing to the Council of Chiefs and to Ngeaur Klobak Association. On February 1, 2010, she wrote a letter to Lorenza “clarifying that the authority given her was for Lorenza to be Dilbelau’s eyes, ears and mouthpiece during meetings and to report to her all important matters concerning Angaur and all of Palau.” Upon learning of Lorenza’s actions in appointing Ucherbelau, Dilbelau took away Lorenza’s title and revoked the power of attorney.

Suzuky then held his blengur (feast)² in June 2010 at Bai ra Maibrel in Koror. Ten rubaks, some from Ngarangebiis and some rubaks from other villages, attended this blengur. Believing that he had been appointed as Ucherbelau, Edward also held his blengur in Koror in 2010. Not all of the members of Ngarangebiis Klobak attended Edward’s blengur.

Trial took place from January 17 to 21, 2011, and Edward and Suzuki each presented several witnesses and numerous pieces of evidence. In its decision issued May 11, 2011, the Trial Division held that the undisputed ochell and ourrot (strong senior female) members are (1) Dilbelau Merrill and her children, (2) Lorenza Pedro and her children, and (3) Josepha Seba. The undisputed ochell members include the three ourrot members, plus Abel Suzuki and Vivian Pedro. Suzuki bore the title Bebuchel of Orakiblai; the bearer of this title is first in line to become Ucherbelau. Edward is an ulechell, or lower-ranked, member.

The Trial Division found that the selection and approval of Ucherbelau is a two-step process, whereby the ourrot members of Orakiblai must first select and approve a member, subject to approval by the klobak of his home village. Three experts testified to this process during the trial. The Court found that the evidence showed the ourrot should convene to appoint someone to bear the title. Two experts testified that the title bearer may delegate responsibilities and obligations to a merolel, or proxy of a title bearer, but that

² Various spellings of this word have been used throughout the briefing. For consistency, we use the spelling provided in the Trial Division’s decision.

Dilbelau holds on to the authority of the title. The merolel is the “eyes, ears, and mouthpiece of a title bearer,” but does not have independent authority. Rebechall Takeo Ngirmekur testified that the female title bearer’s decision must be followed.

The Trial Division found that Dilbelau Merrill is the senior member of Orakiblai Clan, and she has the authority under Palauan custom to appoint a member of the Clan to become Ucherbelau. Her sisters, Lorenza Pedro and Josepha Pedro, are ourrot members of the clan, but they must defer to Dilbelau Merrill’s appointment of Suzuki. The Court further held that Edward had not succeeded to the title of Ucherbelau, did not have the consent of Dilbelau to become Ucherbelau, and therefore he does not bear that title. Moreover, even though Dilbelau appointed Suzuki, he did not secure the acceptance of all members of the Ngarangebiis Klobak, and therefore did not have the title.

II. Procedural Background

The parties filed this appeal and cross-appeal in June 2011. This launched a five-month frenzy of filings to request additional time to file transcripts. The trial was conducted in Palauan, and the transcriber stated that she was having difficulty discerning the witnesses’ testimony. Suzuki filed with the Court a copy of an order of transcript pursuant to ROP Rule of Appellate Procedure 10(b). Edward filed nothing and then sought an extension to order written transcripts and to file his opening brief. His motion was granted. The parties were both given until October 11, 2011, to file their transcripts. Edward then filed another motion to extend time to file his transcript, which was

denied. Suzuki then moved for and was granted an extra week to file his transcript.

However, instead of filing the transcript, he filed a “third ex parte request for extension of time to file transcripts” on October 31, 2011, which was denied on November 1, 2011. The Court acknowledged that the audio recording was served on Edward on June 13, 2011, and on Suzuki on June 30, 2011. The Court then issued an order to show cause as to why the appeal should not be dismissed for failure to prosecute.

Suzuky filed a response and stated that he was unable to secure the funding for this appeal; his counsel states that he is representing Suzuki pro bono. Edward also filed a statement that the lack of a transcript was “caused by the inability of the transcriber and it was beyond their control and was unforeseen” and “does not prejudice nor undermine court rules or adversely affect its proceedings of this appeal.” No transcript was filed. The parties filed their opening briefs on November 25, 2011. The Trial Division then considered whether to dismiss these appeals because no transcript was filed. The Court found that the failure to file the transcripts was the result of excusable neglect and the parties filed their response briefs.

According to Palau’s Rules of Appellate Procedure, at the time the notice of appeal is filed, “an appellant may request an audio recording of the testimony or evidence adduced in the trial court.” ROP R. App. P. 10(b). Within fourteen days after the recording is provided, any appellant who wishes to raise an issue must either order the transcript or file a certificate stating that no transcript will be ordered. The parties ordered

transcripts and then spent several months seeking extensions for the transcription. The transcription was never completed.

STANDARD OF REVIEW

[1] “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. *Imeong v. Yobech*, 17 ROP 210, 215 (2010) (citations omitted). The Court will reverse only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record. *Id.*; see also *Estate of Rdiall v. Adelbai*, 16 ROP 135, 137 (2009) (“[S]tatus within a clan is a matter of custom, and [the Appellate Division] review[s] a trial court’s findings regarding a custom’s terms, existence, or nonexistence for clear error.”). This Court has a history of reviewing conclusions about custom as a factual matter, which necessarily limits the scope of appellate review. *Imeong*, 17 ROP at 215. “If the Trial Division’s findings as to custom are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be disturbed on appeal unless the Court is left with a definite and firm conviction that a mistake was committed.” *Orak v. Ueki*, 17 ROP 42, 46 (2009). However, “[i]f 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.” *Imeong*, 17 ROP at 215.

ANALYSIS

I. Record on Appeal

[2] Both parties argue about the scope of the record on appeal, and whether the trial testimony may be cited. “An appellant is not required to file a trial transcript, but the absence of a transcript largely precludes any challenge to the findings of fact made below.” *Shmull v. Ngirirs Clan*, 11 ROP 198, 203 (2004). Where a party “has chosen not to provide a transcript from the hearing below, we are bound therefore to accept [the trial court’s] factual finding as true.” *In re Tellei*, 7 ROP Intrm. 195, 196 (1999) (citing *Smau v. Emilian*, 6 ROP Intrm. 31, 33 n.1 (1996)).

However, Rule 10(a) of our Appellate Rules of Civil Procedure provides that the “original papers and exhibits filed in the Trial Division and the transcript or an audio recording of the proceedings, if any, shall constitute the record on appeal. The entire record shall be open for consideration on appeal to the Appellate Division.” We note that Edward in his Reply Brief, filed January 20, 2012, argues that Suzuki is prohibited “from using references to specific testimony in audio recording,” and notes that the parties are limited to the court judgment and the records and evidence submitted and admitted during trial.

Rule 10(b) permits reliance upon an audio recording under certain conditions. First, an appellant may request an audio recording of the testimony, which is what occurred here. Fourteen days later, any appellant “desiring to raise an issue on appeal depending on the whole or any part of the testimony or evidence adduced in the trial

must either (i) order a transcript . . . and file a copy of the transcript order with the Appellate Division or (ii) file a certificate stating that no transcript will be ordered” ROP R. App. P. 10(b).

While the parties intended to file transcripts, they appear to have run into a number of difficulties. The Court’s November 11, 2011, Order is sufficient to indicate that the parties may proceed in reliance on the audio recording. We note only Suzuki provided specific references to the transcript in his briefing. Pursuant to the Clerk of Courts’ letters submitting to the parties copies of the audio recording, “[r]eferences to the record must be followed by a pinpoint citation to the page, transcript line, or recording time in the record Factual arguments or references to the record not supported by such an adequately precise pinpoint citation may not be considered by the Appellate Division.” Because we ultimately remand, we are aware that the Trial Division may ask for additional briefing or references to the testimony from the trial. The parties are advised to cite carefully to the audio transcript.

II. Appointment

[3, 4] With the scope of the record now defined, we turn to the process of the appointment of Ucherbelau. The parties agree that appointment is a two-step process. First, the proper person must be appointed by the appropriate title bearer. The ourrot should get together to appoint someone as Ucherbelau. However, as the Trial Division stated, the “female title bearer is the most senior member of the clan and as such her decision must be followed.” The Trial Division also stated that the oldest “who happens to be the title bearer

is responsible for the clan and is entrusted to make the best decision for the clan.” While a title bearer may delegate some responsibility, she “holds on to the power and authority of the title,” and anyone she appoints to act as her proxy cannot “go off on her own.” Whether Edward or Suzuki was rightfully appointed as Ucherbelau according to custom is a question of fact that we review for clear error.

In determining that Suzuki was rightfully appointed, there are several pieces of evidence the Trial Division considered. First, Dilbelau Merrill has the authority to make the appointment for Ucherbelau. As Dilbelau, her decisions are to be respected by the ourrot. On February 1, 2010, while Dilbelau clarified that her sister Lorenza was to be the “eyes, ears and voice in attending meetings” occurring in Palau, she was very clear that the “appointment of Ucherbelau and the appointment of men and women who will bear titles for the Clan of Orakiblai are things I should be aware of and have my approval and signature.”

Edward argues that the three ourrot appointed him as Ucherbelau, and suggests that the letter Lorenza wrote on November 30, 2009, acts as sufficient evidence of his appointment as Ucherbelau. The letter was written as Dilbelau but signed with Lorenza’s name: as the Trial Division concluded, Lorenza was acting outside of her authority because she did not defer to her sister. Edward also argues that any time Dilbelau acted on her own, she was “already ill and old” and that her signature indicated some kind of lack of consent to appointing Suzuki. It is not the function of this Court to review the evidence and evaluate its veracity. Instead, we can only review the factual

conclusions of the Trial Division for reversible error. We find that the conclusion that Suzuki was properly appointed by Dilbelau Merrill was not erroneous.

Second, Dilbelau Merrill did in fact make this appointment at the final meeting held in Guam in 2009 and finalized it in a series of letters in January of 2010. Dilbelau Merrill explained during her deposition that she could not appoint Edward because he is an ulechell member, and “we cannot get an ulechell to bear the title.” We find the conclusion drawn by the Trial Division, that Dilbelau Merrill had the authority to make an appointment to Ucherbelau, and that she acted within her authority when she appointed Suzuki, to be a factually correct one. We find no error and we accordingly affirm the Trial Division as to this finding.

III. Acceptance by Ngarangebiis Klobak

The second part of the appointment process requires that the newly appointed Ucherbelau gain approval as the “friend” of the klobak of the village where he comes from. The Trial Division held that both parties needed the acceptance of Ngarangebiis Klobak of Ngerbelau Village. The opinion devotes only a half page to the evidence supporting the custom of acceptance by the klobak. The Trial Division has stated that “as established by the customary experts . . . one must be accepted as a friend of the Klobak of the area where one is from.” The opinion also states that the “evidence provided shows not all members of Ngarangebiis attended the blengur,” without stating who presented such evidence, and that “no other evidence was shown to prove that all members of Ngarangebiis accepted either of the two men

to be their friend.” Unfortunately, the Court was not more specific than that.

[5] We have held that “[w]ithout sufficient information as to the trial court’s factual findings or credibility determinations, the Appellate Court lacks an adequate basis for review.” *Beouch v. Sasao*, 16 ROP 116, 119 (2009). Moreover, we note that “where a lower court has not clearly set forth the basis for its decision, remand for further elaboration is appropriate.” *Estate of Tmilchol v. Kumangai*, 13 ROP 179, 182 (2006); *see also Eklbai Clan v. Imeong*, 11 ROP 15, 17-18 (2003).

In his Opening Brief, Suzuki asks the Court to rule there is only one klobak in Angaur, “that of Ngeaur Klobak.” Suzuki also seeks a declaration that “it is now the customary practices [sic] of the people of Angaur that any [blengur] must be had with the Ngeaur Klobak.” Suzuki further argues that the Trial Division erred in holding that Suzuki needed to “secure the acceptance of the members of Ngarangebiis Klobak of Ngerbelau Village, not the Ngeaur Klobak, of Angaur State.” Suzuki argues that Ngarangebiis and the klobaks from the three remaining villages on Angaur had united to form the Ngeaur Klobak in 1937 and therefore the custom was and is presently that for “any [blengur] for any male traditional title be had with Ngeaur Klobak as it is their acceptance and consent that is required as a matter of Palauan customary law as applied in Angaur.”

The Trial Division’s opinion lacks citations to evidence upon which it relied, making the Appellate Division’s review very difficult. The Trial Division’s decision says nothing of whether there is only one klobak or whether the customary practices are now

different. The decision says that besides a blengur, “another means of showing acceptance by a klobak is through a document with the rubaks showing support,” but this is not supported by citation to testimony or other evidence. This decision lacks the specificity to show how the Trial Division reached the conclusions that (1) an Ucherbelau must be accepted by the klobak of the village where he is from, and (2) how that acceptance is made.

Suzuky also asks that we “take judicial notice” of certain facts in order to draw an inference about the rubaks who attended his blengur. We cannot take judicial notice of facts at this stage in the appellate process. Further, we are sympathetic to Edward’s argument that there was no evidence that was “legitimized by the Palau or Angaur governments through constitutional or legal mechanisms or through traditional and customary laws or practices” regarding the blengur. The decision below lacks the detail necessary for us to review it properly. *See Estate of Tmilchol*, 13 ROP at 182. Accordingly, on the issue of whether Suzuky was accepted by the klobak (and which klobak must accept him), we reverse the Trial Division below and remand for further proceedings.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the Trial Division’s conclusion as to the appointment of Suzuky as Ucherbelau, and we **REVERSE AND REMAND** on the limited issue of which klobak must accept Ucherbelau as its “friend.” We remind the parties that “disputes over customary matters are best resolved by the parties rather than the courts.” *Imeong*, 17 ROP at 220. As we have noted in other cases, we believe it would “be

even better if the two competing factions were able to conclude this matter on satisfactory terms outside of court.” *Id.*

The Trial Division is instructed to review the record and make a conclusive determination as to the appropriate custom for the Clan. The Trial Division may choose to receive additional evidence and, if necessary, should “articulate its reasoning to the best of its ability, making explicit any customary law or findings of fact upon which it relies.” *Imeong*, 17 ROP at 220.