

**LUCAS BEKEBEKMAD,  
Appellant/Cross-Appellee,**

**v.**

**CHILDREN OF SABINO  
BEKEBEKMAD, represented by  
ANTOINETTE SABINO and  
WINIFRED SABINO,  
Appellees/Cross-Appellants.**

CIVIL APPEAL NO. 11-021  
Civil Action No. 07-374

Supreme Court, Appellate Division  
Republic of Palau

Decided: September 20, 2012

[1] **Custom:** Expert Testimony

On matters of custom, the trial court is free to credit the testimony of expert witnesses as it deems appropriate.

[2] **Appeal and Error:** Clear Error

Unless a court's determination lacks any foundation in the evidence submitted or is internally inconsistent, we will find no clear error and will defer to the Trial Division's findings.

[3] **Civil Procedure:** Alternative Claims

A plaintiff is not barred from submitting different theories to support his ultimate goal of attaining power to dispose of the lands at issue, so long as the theories were not so inconsistent such that one necessarily negated the other.

[4] **Custom:** Expert Testimony

**BACKGROUND**

It was not within a customary expert's province to opine on legal conclusions and it was certainly not error for the Trial Division to disregard this portion of his testimony.

Counsel for Appellant/Cross-Appellee: J. Uduch Sengebau Senior

Counsel for Appellee/Cross-Appellant Winifred Sabino: Salvador Remoket  
Counsel for Appellee/Cross-Appellant Antoinette Sabino: Raynold B. Oilouch

BEFORE: KATHLEEN M. SALII, Associate Justice; C. QUAY POLLOI, Associate Justice Pro Tem; and ROSE MARY SKEBONG, Associate Justice Pro Tem.

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

PER CURIAM:

Lucas Bekebekmad ("Bekebekmad") and the Children of Sabino ("the Children") have filed cross-appeals in this matter concerning thirteen parcels of land owned by Sabino Bekebekmad ("Sabino"). Because the Trial Division did not identify clear and convincing evidence concerning participation of the Children in disposition of the estate, we reverse in part and affirm in part.<sup>1</sup>

Sabino died intestate on October 7, 2007. His wife predeceased him. Bekebekmad is Sabino's eldest living sibling. Two other siblings survived Sabino, Thomas and Johnny. Sabino is also survived by his children, Sabina, Antonio, Anghenio, Antoinette, Judy Anne, and Sarah. At the time of his death, Sabino held thirteen parcels of land in fee simple. These lands came to him through his family on his mother's side.

Bekebekmad petitioned to be the administrator of Sabino's estate. The Children filed a claim seeking the thirteen parcels of land. The Trial Division held a hearing, at which several witnesses were heard concerning Palauan custom. Kazumoto Rengulbai testified that land coming to someone by his mother's side should be disposed of by surviving maternal relatives. However, on cross-examination, Rengulbai expressed his understanding that land owned in fee simple is inherited by a decedent's children. The Trial Division credited Rengulbai's testimony above the other expert testimony. It held that Sabino's relatives on his mother's side "must get together to dispose of his properties," and it went on to make clear that this group of relatives included the Children.

On appeal, Bekebekmad argues that the Trial Division clearly erred in its determination that the Children should be involved in the disposition of Sabino's land. The Children cross-appeal raising four arguments: (1) the Trial Division erred by failing to dismiss Bekebekmad's claim; (2) the Trial Division erred by awarding relief not requested to Sabino's siblings, several of whom did not file claims ; (3) the Trial

<sup>1</sup> Although Bekebekmad requests oral argument, we determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

Division erred by crediting Rengulbai's testimony but failing to heed his statement that customary rules do not apply to individually owned land; and (4) the Trial Division clearly erred in its determination that Sabino's maternal relatives should be involved in the disposition of Sabino's land.

### STANDARD OF REVIEW

Conclusions concerning the content of customs are factual findings, which we will not set aside unless we are "left with a definite and firm conviction that an error has been made." *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000). We affirm the Trial Division as long as its "findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion." *Id.* Conclusions of law are reviewed de novo. *Wong v. Obichang*, 16 ROP 209, 212 (2009). If an error is identified, the correct course is not to substitute our judgment for that of the Trial Division's, but to remand for determinations regarding "unresolved factual or customary issues." *Imeong v. Yobech*, 17 ROP 210, 215 (2010).

### ANALYSIS

#### I. Bekebekmad's Appeal

Bekebekmad's sole argument on appeal is that the Trial Division erred in ordering that Sabino's children be allowed to participate in the determination regarding the disposition of Sabino's lands. The Trial Division, after hearing several witnesses testify on the matter, credited Bekebekmad's expert, Rengulbai. Specifically, the court concluded that "[t]he credible testimony was that the relatives on whose side the land came from get to dispose the decedent's lands."

Because no gathering took place after Sabino's death to dispose of his property, the Court determined that the relevant descendants of Sabino's mother must meet to dispose of the property. It went on to state that the relevant family members included Sabino's siblings and his children. The court did not provide its reasoning as to why the Children should be included in the determination.

Our review focuses on Rengulbai's testimony. Bekebekmad points to other testimony suggesting that it is Sabino's siblings alone who have the authority to dispose of his lands. However, the Trial Division did not credit this testimony; it credited Rengulbai's. Rengulbai's testimony regarding who is empowered to dispose of property was open to some interpretation. Rengulbai stated that the "relatives" of a decedent's mother, provided she is the one from whom he received the land, "are the ones with the authority to dispose of the . . . land." He also stated that "[n]ot all relatives of the deceased have that authority." He further noted that if the children of a decedent would like to receive such land, they must go to the maternal relatives and ask. Although Rengulbai did not confine his definition of "relatives" to the decedent's siblings, he did not explicitly say that the Children should be involved in the disposition of the property.

[1, 2] On matters of custom, the trial court is free to credit the testimony of expert witnesses as it deems appropriate. *Koror State Pub. Lands Auth. v. Ngirmang*, 14 ROP 29, 34 (2006). Unless a court's determination lacks any foundation in the evidence submitted or is internally inconsistent, we will find no clear error and will defer to the Trial Division's findings. *See Kerradel*, 8 ROP Intrm. at 105.

In this case, the court's determination that Sabino's children and siblings all have a role in the disposition of Sabino's property is not supported by Rengulbai's testimony. Although Rengulbai's testimony was open to some interpretation by the Trial Division, we fail to see any clear and convincing evidence, credited by the Trial Division, to support the Children's role in the handling of the estate. Nowhere in Rengulbai's testimony does he reach the counterintuitive conclusion that the Children, who are younger and therefore less senior than Bekebekmad and his siblings, may participate in the property disposition. Therefore, we must remand because the Trial Divisions reasoning and the evidence were insufficient to support its finding. *See Imeong*, 17 ROP at 215.

## II. The Children's Appeal

The Children's first argument is that Bekebekmad's claim should have been dismissed by the Trial Division because Bekebekmad refused to acknowledge that Sabino owned the lands in fee simple. In support, the Children cite *Temaungil v. Ulechong*, 9 ROP 31, 35 (2001), in which this Court held that certain theories not advanced at trial were waived on appeal. Furthermore, the Children contend, it is internally inconsistent for Bekebekmad to argue *both* that Sabino did not own the land *and*, that pursuant to custom, Sabino's maternal relatives have a role in the disposition of those lands.

[3] However, it is clear from the record below that, though Bekebekmad did not agree with the settled conclusion that Sabino owned the land in fee simple, Bekebekmad raised the argument below that he and his siblings should have the power to dispose of Sabino's

individually owned lands. Furthermore, Bekebekmad was not barred from submitting different theories to support his ultimate goal of attaining power to dispose of the lands at issue, so long as the theories were not so inconsistent such that one necessarily negated the other. *See Whittom v. Alexander-Richardson P'ship*, 851 SW 2d 504, 507 (Mo. 1993).<sup>2</sup> Finally, the Children cite no portion of the record below in which they moved to dismiss Bekebekmad's claim. Thus, they have waived the argument on appeal. *See Temaungil*, 9 ROP at 35.

Along similar lines, the Children contend that Bekebekmad's siblings have waived the right to stake any claim to Sabino's property or to be involved in its disposition. However, none of the cases cited by the Children support the conclusion that Bekebekmad may not act on behalf of his siblings. Given the customary expert's testimony that Sabino's maternal relations, including Bekebekmad and his other siblings, have a say in the disposition of Sabino's property, the court did not err in recognizing their rights. The Children cite no authority stating that one family member may not vindicate his family's interests in the courts.

Next, pointing to certain portions of Rengulbai's testimony, the Children argue that Palauan custom does not apply to individually-owned land. Rengulbai testified that, according to custom, there is no individually-owned land in Palau. However, Rengulbai also stated that land "registered" as individual property should be disposed of by the owner's relatives upon his death. Thus, although Rengulbai indicated that individual

<sup>2</sup> Because there is no Palauan law on point, we rely on the common law in reaching this determination. *See* 1 PNC § 303.

ownership is inconsistent with Palauan culture, his testimony supports the conclusion that individually-owned land, when acquired by means other than purchase, should be dispensed of by customary means. It was not error for the Trial Division to attempt to reconcile the contemporary notion of fee simple ownership with traditional Palauan custom in a manner consistent with the credible expert testimony.

[4] Finally, the Children claim that Rengulbai “appeared to admit that . . . individually-owned lands go to [the decedent’s] children after death.” During cross-examination of Rengulbai, he was prompted to agree that land owned in fee simple is inherited by the children of a decedent. But this is a legal conclusion regarding land that is not subject to disposition by custom. It was not within the Rengulbai’s province to opine on such a matter and it was certainly not error for the Trial Division to disregard this portion of his testimony. It is clear from Rengulbai’s testimony as a whole that land which comes to someone from his mother’s family should be disposed of with input from his maternal relatives upon his death.

### CONCLUSION

For the foregoing reasons, we **AFFIRM** as to the Children’s allegations of error. We **REVERSE** the Trial Division’s judgment insofar as it requires inclusion of the Children in the meeting to take place regarding disposition of the property. We **REMAND** for proceedings consistent with this opinion. The Trial Division is within its discretion to hold a hearing on the matter to solicit additional argument and testimony or to decide the matter on the record as it stands.