

Blesam v. Tamakong, 1 ROP Intrm. 578 (1989)
**ICHIRO BLESAM, Representing
himself as OBAKLCHOL,
Appellee,**

v.

**ILAB TAMAKONG and
GILLIAN T. TELLAMES,
Appellants.**

CIVIL APPEAL NO. 13-86
Civil Action No. 161-86
Originally CCP/CA 24-85

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: March 27, 1989

Counsel for Appellants: Toribiong & Coughlin

Counsel for Appellee: John K. Rechucher

BEFORE: LOREN A. SUTTON, Associate Justice; ARTHUR NGIRAKLSONG, Associate Justice; FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

PER CURIAM:

This appeal involves a controversy over who is the proper principle title holder of Ngetpak Clan of Ngerchol Hamlet, Peleliu, called "OBAKLCHOL".

1579 Litigation over this issue has boiled for nearly ten (10) years commencing in 1979 and reaching the Court first by way of Civil Action No. 165-80, filed in the Palau District Court.

Civil Action 165-80 went to disposition in July 1980, when a default judgment was entered in favor of the Plaintiff. This Judgment, however, was set aside and in April 1981, the case under Civil Action No. 52-81, was transferred to the Trial Division of The Supreme Court, Republic of Palau and assigned to the Honorable Associate Justice Alan Lane.

On September 13, 1984, judgment was rendered in CA 52-81, based upon stipulation of the Parties.

This Judgment required that the members of Ngetpak Clan meet in proper assemblage within Ninety (90) days of the entry of the Judgment and by means of customary process resolve

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the dispute and select the person desired to hold the title OBAKLCHOL. Both Parties were Ordered to participate and the door was left open to return to the Court if resolution did not occur.

In February of 1985, Plaintiff/Appellee herein filed Complaint For Injunction alleging that the September 1984, Order of Associate Justice Lane had been complied with and that he (Plaintiff/Appellee) had been appointed OBAKLCHOL pursuant to recognized Palauan Custom. The Complaint prayed for injunctive relief against Defendants/Appellants herein and their supporters contending that they were interfering with efforts of the Plaintiff/Appellee to carry out his traditional 1580 functions as OBAKLCHOL of Ngetpak Clan of Ngerchol. This lawsuit was designated CCP/CA 24-85 and assigned to the Honorable Judge Amador Ngirkelau, Court of Common Pleas, Republic of Palau.

An Amended complaint was filed May 3, 1985, containing minor modifications and after much delay and continued controversy, Judge Ngirkelau, in August 1986, disqualified himself on the Defendant's Motion.

The matter was re designated CA 161-86 and transferred from the Court of Common Pleas to the Trial Division of the Supreme Court where it was assigned to The Honorable Associate Justice Robert W. Gibson.

In October 1986, Justice Gibson issued an Order granting the injunction prayed for. In that same Order a Motion to Dismiss by Defendant was denied and an Order denying stay of execution pending appeal was likewise denied.

Justice Gibson reasoned that Justice Lane's Orders had been substantially complied with and that Defendants' contention that the meeting of Ourrot and Rubak of Ngetpak Clan did not include all who were required to participate in the selection of OBAKLCHOL, was of little merit, on the ground that Defendants/Appellants herein (Defendant therein) and their supporters were not in attendance due to their own actions and dilatory tactics and holding that they had received proper notice of the meeting but had chosen unilaterally not to attend.

Justice Gibson certified the matter for an interlocutory appeal on the limited issues of Defendant/Appellants' contention that the stipulated Judgment 1581 of Justice Lane was not complied with and that notice of the selection meeting was improper as prepared and planned by only one of the factions involved in the dispute.

Other issues going more directly to the merits and set forth in Defendant/Appellant's Notice of Interlocutory Appeal in paragraphs 3, 4 and 5 were ruled "inappropriate for consideration at this time by way of Interlocutory Appeal" and are therefore not before us.

At the outset we note that the principle of Kltarremg or consensus expressed in the Palauan proverb A chimad el dodersii a chimal a chad elodersii, i.e. put out your arm and a man's hand shall reach back, has been and continues to be a basic principle in Palauan custom.

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We decline to fault Justice Gibson in his laudable desire and effort to bring to finality this lengthy and vexatious controversy, however, we FIND that his effort to do so was insufficient and based upon a misconception or lack of attention to the basic principles underlying Palauan customary process.

This case, like others involving custom, presents a difficult and sensitive choice. May the Court in the exercise of its constitutional powers and authority, but within the context of the very influences that serve to degrade and diminish customary processes, take over and supervise the conduct of these processes in order to quiet controversy, bring peace, and settle differences among participants in traditional customary matters?

¶582 We must answer this question, yes, but we are mindful that in doing so we must take care that a balance is maintained between the Court's exercise of authority and the size of the space within which customary player/litigants are accorded to play their customary roles. Wherever it is possible we adhere to a course of judicial restraint in these matters and opt for the exercise of the least supervision necessary and provision for the greatest freedom of customary action as may be accorded.

In that spirit we come to the following conclusions and findings in the hope and with the desire that the two factions of Ngetpak Clan in contention here may repair the floor (Orellel'a Ulaol) and that true finality may occur based upon consensus.

We FIND that the Order issued in September 1984, by Associate Justice Lane was lawful and a proper exercise of the Court's authority but that, given the length of time this controversy had festered and the strength of feelings among the contenders, insufficient control and supervision was exercised resulting in the balance we have spoken of being too weighty on the side of space provided within which the litigants might act.

We therefore determine that Justice Gibson's denial of Defendant/Appellant's Motion to Dismiss was proper and lawful and we affirm it, however, we HOLD that the trial Court's grant of injunctive relief along with the necessarily concomitant approval of Plaintiff/Appellees' appointment as OBAKLCHOL inferred, though not expressed directly by the Court, in 1984, must be reversed as not in compliance with either the letter or ¶583 the spirit of Palauan custom which requires consensus and agreement in matters of this nature.

We therefore reverse the trial Court's Order granting injunctive relief and remand the case to the trial court with the following instructions:

A process of Court Supervision shall be executed by the Trial Court in the following steps:

1. Each Counsel shall be Ordered to submit within a time certain the names of all Ourrot and Rubak required by Palauan custom and traditionally by Ngetpak Clan to be present at a meeting to select the OBAKLCHOL and each Party shall stipulate by personal attestation that the result of a properly conducted meeting

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with those persons present shall be honored and observed by them.

2. The Court, in consultation with Counsel, shall set a time and place agreeable to the Parties and if agreement cannot be reached such shall be set at the discretion of the Court, for the meeting to select OBAKLCHOL.
3. The meeting shall be held at the time and place selected and with the Court and Counsel present.
4. A time limit shall be set at the Court's discretion and with advice from Counsel and the parties at the end of which Kltarreng must be accomplished and OBAKLCHOL named.
- 1584 5. The Court shall certify the appointment of OBAKLCHOL as named and declare that he shall hold such title without interference and with cooperation and proper observance by all members of Ngetpak Clan until his death or until, pursuant to properly carried out Palauan custom, he is replaced by another, whichever occurs first.
6. The Court shall issue Judgment in accordance with the result of this process, which Judgment shall be Res Judicata against any further litigation on this issue.