

Sengebau v. Balang, 1 ROP Intrm. 695 (1989)
**HIROE SENGEBAU, ANICIA MENGIOR, HMAKO UCHERCHEWAR, SECHEWEI
MENGIOR, JOHNNY UCHERCHEWAR and VICTOR UCHERCHEWAR,
Appellees,**

v.

**TOYOMI BALANG, a/k/a TOYOMI SINGEO, individually and as representative of the
Ngerulkong Clan; and YOICH SINGEO,
Appellants.**

CIVIL APPEAL NO. 7-84
Civil Action No. 17-79

Supreme Court, Appellate Division
Republic of Palau

Opinion and order
Decided: September 19, 1989

Counsel for Appellees: John K. Rechucher

Counsel for Appellants: Johnson Toribiong

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice;
ARTHUR NGIRAKLSONG, Associate Justice.

PER CURIAM:

The subject of the controversy between the parties is the damage award made by the Micronesian Claims Commission in Decision No. 9590 (Claim No. 6429-F) dated February 17, 1976. The award, commonly known as war claims money, totalled \$190,345.00.

The Trial Court found that the award was made to defendant Toyomi Balang as representative of the Ngerulkong Lineage of Peleliu State. The Trial Court also found that “Balang” is the “head of” the Ngerulkong Lineage and that **¶696** Toyomi Balang holds the title Balang.

Each of the plaintiffs were also found by the Trial Court to be strong members of the Ngerulkong Lineage via adoption by Ucheduch Balang, who preceded Toyomi as Balang. Consequently, the Court ordered that all plaintiffs would participate with defendant Toyomi Balang in making distribution of all the war claims money. The Court further ordered that the funds “shall be made [available] to all members of the Ngerulkong Lineage without deference to their respective strengths or weaknesses.”

Defendants/Appellants contend essentially that the Trial Court’s finding that plaintiffs are

Sengebau v. Balang, 1 ROP Intrm. 695 (1989)

“strong members” of the Ngerulkong Lineage is clearly erroneous and must be overturned because adopted members of a lineage cannot be considered “strong members” of a lineage under Palauan custom. Defendants/Appellants contend further that since Plaintiffs/Appellees are actually weak members of the lineage, the Trial Court erred in ordering that weak members participate in the process of determining how the assets of the lineage are to be administered. Defendants/Appellants’ final assignment of error contends that a court may not legally require a lineage to distribute its war claim money in equal portions to all its members without regard to the recognized Palauan customary method of distribution.

“Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the 1697 opportunity of the trial court to judge the credibility of the witnesses.” [Republic of Palauan, sic] Rules of Civil Procedure, Rule 52(a).

Rule 52(a) of the Federal Rules of Civil Procedure of the United States is worded the same as ROP Rule 52(a). United States case law interpretations of the “clearly erroneous” standard are therefore applicable for guidance. *Usui, et al., v. Nishizono, et al.*, 1 ROP Intrm. 358 (App. Div., February 1987).

In *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948), the U.S. Supreme Court held that “a finding is “clearly erroneous,” when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.”

In the case at bar, we have examined the record thoroughly and find that from the evidence produced at trial, particularly evidence of lineages within the Ucheliou Clan and of the strength of adopted members, this Court is not left with the definite and firm conviction that a mistake has been committed. Therefore, Defendants/Appellants’ argument that Plaintiffs/Appellees are not strong members may not be addressed by this Court.

The war claims award in this case was for loss of trees and crops, and for the use of and damage to land. The lots upon which the loss, use, and damage occurred were 1698 confirmed by the Trial Court to be the property of the Ngerulkong Lineage. The award was not made to individuals as compensation for damages to individually owned property. The award was made for the benefit of the Ngerulkong Lineage for damage to property of the lineage. The war claims money belongs to the lineage collectively and not to anyone individually.

The remaining issues are how the lineage should administer and distribute the award. The receipt and distribution of a large sum of money given *ex gratia* as an award is out of the ordinary in traditional Palauan culture. It has never happened before and most likely will never happen again. The award is not a customary payment but an external infusion of funds into the lineage which, except for the war and its aftermath, would never have been paid. *Kokichi Ngiraingas, et al., v. Yashinto Isechal and the Bank of Hawaii, et al.*, slip opinion at 14 (Trial Div. Civil Action No. 84-77, 1982).

This award was given with the intention of compensating those who suffered during and

Sengebau v. Balang, 1 ROP Intrm. 695 (1989)

after the war. *Id.* It is a unique award and presents issues that customary laws do not fully address. However, this does not mean that we should not look to customary law for guidance.

We hold that the customary law that applies to the distribution of ordinary assets of a lineage or clan is not directly applicable to the distribution of a war claims award, **¶699** but we also over-rule the Trial Court to the extent that it ordered that the award be divided equally among the lineage members.

Customary law throughout Palau requires that assets of a clan or lineage obtained in the normal course be distributed fairly. Traditionally, these fundamental considerations of fairness form the bases of most just decisions under customary law. Often these qualities are assured by the use of consensus of strong, senior members. Accordingly we find no basis for the Trial Court's order requiring all plaintiffs to participate in the distribution decision. Even though the Trial Court found that all plaintiffs were strong members of the lineage, the evidence indicates that only plaintiffs Hiroe Sengebau and Hamako Ucherchewar are strong, senior members. Since the senior members are also, by reason of age, most likely to have suffered most from the war, the equity of having them direct the distribution coincides with the wisdom of custom.

Because there is no customary law directly on point that would produce an equitable and fair plan for distributing the award money, and because the lineage has been unable to use customary methods to produce such a plan, we remand the case to the Trial Division of this Court with the following instructions:

- 1) The strong, senior members of the Ngerulekong lineage, including plaintiffs Hamako Ucherchewar and Hiroe Sengebau, as well as defendant Toyomi Balang, shall meet and agree on a fair and equitable plan for the distribution of the **¶700** war claims money within sixty (60) days of the date of this order. They shall also submit this plan to the Trial Court within sixty (60) days of this order.
- 2) Any party may petition the Trial Court for a hearing within 90 days of this order.
- 3) The war claims money may not be distributed or otherwise used without approval of the Trial Court.
- 4) If the lineage fails to produce a plan that is acceptable to the Trial Court, the Trial Court shall disburse the money to the members of the lineage in a fair and equitable manner.

IT IS SO ORDERED.