

**ROMAN OSEKED,**  
**Appellant,**

v.

**UODELCHAD ANITA NGIRAKED and**  
**ERUANG CLAN,**  
**Appellees.**

CIVIL APPEAL NO. 12-001  
Civil Action No. 11-028

Supreme Court, Appellate Division  
Republic of Palau

Decided: May 29, 2013

[1] **Custom:** Judicial 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] **Evidence:** Preponderance of the Evidence

The preponderance of the evidence is defined as the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

Counsel for Appellant: Rachel A. Dimitruk  
Counsel for Appellees: Moses Uludong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and LOURDES F. MATERNE, Associate Justice.

Appeal from the Trial Division, the Honorable ALEXANDRA F. FOSTER, Associate Justice, presiding.

PER CURIAM:

This case concerns the parties' disputes over membership in Eruang Clan and the Clan titles of Uodelchad and Ngiracheruang. For the following reasons, the decision of the Trial Division is affirmed.<sup>1</sup>

## BACKGROUND

This matter involves two factions that claim ourrot status in the Eruang Clan of Ngchesar State. Each faction claims they descend from ochell members of the Clan and that they have corresponding superior claim to the Clan titles of Uodelchad and Ngiracheruang through an ancestor at least four generations removed from the individuals involved in the current dispute. *See* Plaintiffs' Exhibit 7. Appellees Anita Ngiraked and Eruang Clan claim Ngiraked and her relatives have ochell status through a woman named Ngurd and her children, sisters Melik and Esebar. Appellant Roman Oseked claims ourrot status (for himself and others) through a woman named Ngilas and her son Erbai, who was adopted from Ngurd. Despite the fact that Appellant descends from Erbai, a male member of the Clan, and admits he is ulechell, Appellant

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

maintains he and others among his relatives are ourrot because Ngurd was not a member of Eruang Clan and there are not any surviving descendants of an ochell member.

On February 1, 2011, Appellees filed a Verified Complaint for Declaratory Judgment and Damages, wherein they petitioned the court, in part, for a “declaration that the appointment . . . of Defendant (now Appellant) OSEKED to bear the traditional title of Ngiracheruang of ERUANG CLAN violates customs and tradition and was not made by the Ourrot of Eruang Clan and not approved by the Ngarabeluu pursuant to custom and tradition and is therefore null and void.” Appellees also sought a declaration that “under the customs and tradition of Ngchesar and Palau, the Ourrot of ERUANG have the sole authority to appoint a person to bear the title of Ngiracheruang of Eruang Clan and that plaintiff (now Appellee) Uodelchad Anita Ngiraked and those with her who appointed NGOTEL not OSEKED, are Ourrot of Eruang Clan.”

Appellant asserted that his Clan status stems from the adoption of his grandfather Erbai by his great-grandmother Ngilas, who was a strong senior member, or ourrot, of Eruang Clan. Appellant further alleged that “only the children and grandchildren of Erbai are members of Eruang Clan and can bear titles in the clan, and have the authority to appoint title bears [sic] in the Eruang Clan.” At trial, Appellant asserted: (1) Ngilas was the last ochell of Eruang Clan (and thus only her descendants are ochell members of the Clan), and (2) Ngurd was a member of Ngercheang Clan and not a member of Eruang Clan. Appellant argued Ngurd and

her descendants would, therefore, not have the requisite status to hold titles or choose titleholders.

Appellees asserted that Ngurd was an Eruang Clan member and that her descendants through their female children and grandchildren held ochell status in Eruang Clan. Appellees argued the children of Erbai, Ngilas’s adopted son and Appellant’s ancestor, would instead have ulechell status, which is weaker relative to ochell.

### **I. Trial Court’s Decision.**

On December 7, 2011, the trial court issued its Decision. As the trial court noted in its detailed Findings of Fact, “[t]here is little disagreement about who begat whom,” and while the list and arrangements of descendants are not in dispute, the clan statuses of certain ancestors are. The Court found that “[t]he issues of membership and status revolve around whether Ngilas and Ngurd were both ourrot of Eruang Clan, or whether solely Ngilas was an ourrot of Eruang . . . the Court adopts the first version.” The Court then made three relevant findings: (1) that the descendants of Ngurd are members of Eruang Clan, (2) that Ngurd was an ochell of Eruang Clan, and (3) Anita Ngiraked is Uodelchad of Eruang Clan.

#### **A. Ngurd was a member of Eruang Clan.**

Based on testimony at trial, the trial court found it more likely that Ngurd and Ngilas were blood relatives and were both members of Eruang Clan. According to Appellees’ expert witness, Floriano Felix, children are normally adopted between the

lineages within a clan in order to strengthen the relationship between those lineages. Tr. (Vol. 1) 179:27 – 180:2. Felix further testified that a person of a high ranking clan would not adopt a “low ranking child” without a clan relationship. Tr. (Vol. 1) 199: 17-21. On this basis, the trial court found it “difficult to accept that Erbai [Ngurd’s son] had absolutely no blood connection to Ngilas” and found it unlikely that a mother would give her child “to a complete stranger after – at best – a brief conversation.” Accordingly, the trial court found Erbai’s adoption by Ngilas made it more likely that Ngurd was a Clan member.

The court found additional support for Ngurd’s Eruang membership in the fact that she was buried in the Clan odesongel, or burial ground, noting that burial at a clan odesongel is “an indicia of rank with the clan.”

The court also based its conclusion that Ngurd was a member of Eruang Clan on the finding that Ngurd held the Uodelchad title, and she passed that same title down through her female descendants. The trial concluded it was undisputed that some of Ngurd’s male descendants, who are Ngiraked’s ancestors, held the Ngiracheruang title as appointed by Ngiraked’s female ancestors, and that holding these titles was additional evidence that Ngurd’s descendants were Eruang Clan members.

Finally, the trial court relied on the fact that Ngurd’s descendants have lived on Eruang Clan land as evidence of their Clan membership.

## **B. Ngiraked is Uodelchad of Eruang Clan.**

After concluding that Ngurd was an ochell Eruang Clan member, the court found that Ngurd’s descendants were ourrot members of the clan who properly appointed Ngiraked as Uodelchad. As support, the court found: (1) previous Uodelchad titleholders were all within Ngiraked’s family line, (2) Ngiraked lives on Eruang Clan land, and (3) Ngiraked has performed years of services for Eruang Clan.

The trial court also concluded that Appellant and his predecessors were ulechell members of Eruang Clan. The trial court found that Elizabeth Oseked (Appellant’s sister and Ngiraked’s challenger to the Uodelchad title) had been appointed by ulechell of Eruang Clan and supported this finding by taking note of Oseked’s lack of knowledge of any predecessors to the title, her lack of testimony regarding Clan services, and her failure to state whether she lived on Clan land. Thus, the court concluded Ngiraked had the stronger claim to the Uodelchad title.

## **STANDARDS**

[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). The appellate court’s role on clear error review is not to re-weigh the evidence produced below. *Beches v. Sumor*, 17 ROP 266, 272 (2010). Where admissible evidence supports competing versions of the facts, the trial court’s choice between them

is not clear error. *Id.* Credibility determinations are for the trier of fact, and the Appellate Division must give deference to the Trial Division's assessment of the credibility of the witnesses due to the trial court's opportunity to hear the witnesses and observe their demeanor. *Labarda v. Republic of Palau*, 11 ROP 43, 46 (2004). 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.* Conclusions of law are reviewed de novo. *Estate of Rechucher v. Seid*, 14 ROP 85, 88-89 (2007).

### ANALYSIS

Appellant raises several challenges on appeal. First, Appellant contends the trial court erroneously relied on evidence regarding adoptions among clans to conclude that Ngurd was a relative of Ngilas and a member of Eruang Clan. Second, Appellant contends the Trial Division clearly erred in finding the following facts to support the conclusion that Ngurd and her descendants were members of Eruang Clan: (1) that Ngurd and other members of Ngiraked's family were buried at the Eruang Clan odesongel, (2) that it was unlikely that Ngiraked's male ancestors were merely holding the Ngracheruang title until Appellant's male ancestors came of age, and (3) that Appellant's relatives and ancestors did not protest the fact that Ngiraked's ancestors held the male Clan title "for generations." Third, Appellant argues that the trial court erred in ruling that Ngiraked holds the Uodelchad title when it was not proven by a preponderance of the evidence.

Resolution of most of Appellant's appeal depends on the issue of Ngurd's

membership in Eruang Clan, the linchpin of Appellant's theory of his case below. When the trial court's finding that Ngurd was a member of Eruang Clan is sustained, as set out below, Appellant's arguments concerning the make-up of Eruang Clan, the lack of ochell members, and the ourrot status of members of his faction are fatally undermined.

#### **I. The Trial Division did not err in weighing the evidence related to adoption.**

Appellant argues the trial court's reliance on a mischaracterization of an expert witness's testimony led to an erroneous finding of fact that necessitates reversal and remand. As explained above, customary expert Floriano Felix testified that (1) adoptions usually occur between lineages within the same clan, and (2) an individual from a high ranking clan would not have adopted from outside the clan. Appellant maintains that "no reasonable trier of fact could conclude that adoptions between non-related individuals are not allowed under Palauan custom." This misstates the trial court's finding. In its Decision, the trial court stated:

It is difficult to accept that Erbai had absolutely no blood connection to Ngilas. Plaintiffs' customary expert Floriano Felix testified that Palauan adoptions occur between related individuals. He had not heard of someone, even someone from a high ranking clan, adopting a child from a lower ranking clan when these people had no blood relation. This testimony was not rebutted. Such a required connection makes sense.

Why would a mother give up her baby to a complete stranger after – at best – a brief conversation. Given the expert’s testimony, it is more credible that Erbai was adopted by his mother Ngurd’s blood relative, Ngilas, and not just taken by a stranger.

First, Appellant appears to seek a legal ruling that un rebutted testimony, such as Felix’s expert testimony, is itself not necessarily clear and convincing evidence. We agree that un rebutted testimony must also be both clear and convincing to meet the standard.

Second, the “clear and convincing” standard does not apply under the circumstances because the trial court did not make any ruling as to customary law governing adoptions. Rather, the trial court relied on relevant testimony from a customary witness about common adoption practices of high-ranking officials that was probative of Ngurd’s membership in the Clan. The Trial Division’s reliance on such testimony is not in error.

Third, the trial court, in fact, did not misstate the expert witness’s testimony as it related to the adoption of an unrelated child from a low-ranking clan. The pertinent portion of Felix’s testimony is as follows:

Q : Rubak, now I am going to move to another section. Section of adoption. Rubak, you have testified that most adoptions happen between related people? Have you seen adoptions happen between people who are not related?

A : There is.

Q : Isn’t it true that there are situations where people in one village of a high ranking clan, a person of a high ranking clan who doesn’t have a child can go and adopt a child from a low ranking child but there’s no clan relationship?

A : No.

Q : But you’ve heard of situations where adoptions happens in a non-related?

A : That is correct.

Tr. (Vol. 1) 199:12 – 199:24. The trial court referred to this portion of the transcript by stating: “[Customary expert Felix] had not heard of someone, even someone from a high ranking clan, adopting a child from a lower ranking clan when these people had no blood relation.” We see no error in the trial court’s restatement of Felix’s testimony that an adoption is unlikely when two conditions are present: (1) when a child is from a lower-ranking clan, and (2) when the child is unrelated to the adopting high-ranking clan member. Appellant’s assertion that the trial court misstated the witness’s testimony is therefore incorrect, and the trial court’s reliance on Felix’s testimony in support of its finding that Ngurd was an Eruang Clan member was not error.

**II. The Trial Division did not clearly err in its factual findings leading to its conclusion that Ngurd and her descendants were members of Eruang Clan.**

Appellant argues the trial court made erroneous findings of fact and mischaracterized evidence in determining that descendants of Ngurd are members of Eruang Clan. Specifically, Appellant argues the trial court clearly erred as to the following findings of fact: (1) that the burial of Ngurd and other members of Ngiraked's family in the Eruang Clan odesongel was indicative of clan membership, (2) that it was unlikely that Ngiraked's male ancestors were merely holding the Ngiracheruang title until Appellant's male ancestors came of age, and (3) that Oseked's ancestors did not protest the fact that Ngiraked's ancestors held the male Clan title "for generations."

#### **A. Evidence of burials at Eruang Clan's Odesongel.**

Appellant argues that the trial court gave undue weight to the burial of Ngiraked's ancestors at the stone platform as evidence of Clan membership. Appellant contends: (1) out of five rows of graves, "a significant number of the names on the bottom of the odesongel do not appear in any of the [Eruang genealogy] charts," (2) several of Ngurd's descendants who are buried at the odesongel are there only because they bore the title Ngiracheruang, and (3) Appellant's father Oseked gave permission for two individuals (out of sixty-six people) to be buried at the odesongel.

In establishing Ngurd's membership in Eruang Clan as fact, the court notes her membership "explains why Ngurd and her progeny are buried in the Eruang stone platform. That also explains why Melik and Trang, who (along with Ngurd) predeceased Oseked and do not come from Erbai's line, are buried at the Eruang

odesongel." As the trial court pointed out, we have recognized that burials in a clan odesongel may reflect clan rank (and by association, clan membership). *Imeong*, 17 ROP at 214, 217–18. See also *Arbedul v. Diaz*, 9 ROP 218, 223 (Tr. Div. 1989) (same). Crucially, the trial court did not find that burial in a clan odesongel necessarily entails membership in the clan, but merely constitutes evidence suggesting membership.

If the Court were to accept, *arguendo*, the facts Appellant asserts with respect to the Clan membership reflected in the Eruang Clan odesongel, the sum of each of the arguments suggests that, at most, one-third of the individuals buried at the Eruang odesongel might not be Eruang Clan members. Conversely, Appellant, therefore, admits that at least two-thirds of the individuals buried at the odesongel *are* Eruang Clan members. Given this fact, and the fact that Ngurd and her descendants were buried there, it was not clear error for the trial court to find that Ngurd's burial at the Eruang odesongel was one among several indicia of her Clan membership.

#### **B. Evidence of "regency" for the title of Ngiracheruang.**

Appellant argues that it was clear error for the court to find it implausible that Ngiraked's male predecessors were entrusted with the title of Ngiracheruang as regents for young male relatives of Appellant. In particular, Appellant points to expert witness testimony that it is possible for someone to hold a title in safekeeping for another. Tr. (Vol. 1) 203:28–204:8. The court, however, did not conclude that it was impossible for a person to hold a title for the

benefit of another, but instead made its finding after weighing the available evidence and finding little support for the existence of such an arrangement under these circumstances. Specifically, the trial court explained why it found Appellant's argument untenable:

Defendants gave no satisfactory answer to the question of why such an egregious power grab by Plaintiffs' ancestors [who did not give back the Ngiracheruang title] went unanswered for generations. [Appellees'] ancestors appointed their male relatives over and over again to the Ngiracheruang title, and [Appellant's] ancestors did nothing to stop them. According to [Appellant], [his] ancestors were too young or too busy or too pacifist. Such assertions ring hollow when one reviews the list of available men on Ngilas' and Obechou's family trees. In addition, if Techemang predeceased Oseked, why not take the title back at that point and appoint someone truly from Eruang Clan? Roman said Oseked was physically weak but mentally capable. Surely Oseked understood that if he allowed Ngotel to take the title, Oseked may not get it back for his clan. Such acquiescence to others' will sits in stark contrast with the powerful and controlling character of Oseked otherwise painted by [Appellant].

Appellant may have established that such a practice exists in Palau, but he failed to provide sufficient evidence to convince us that the trial court clearly erred when it found that the predecessors of Appellant and

Ngiraked did not enter into an arrangement under which Ngiraked's ancestors merely held the Ngiracheruang title in favor of Appellant's young male ancestors.<sup>2</sup>

### **C. Evidence of objections to appointment of Ngiraked's ancestors to Eruang Clan titles.**

Appellant argues that it was error for the trial court to state that Appellant's ancestors had failed to challenge the "usurpation" of the Eruang titles by descendants of Ngurd. Again, the trial court stated in its Decision: "[Appellant] gave no satisfactory answer to the question of why such an egregious power grab by [Ngiraked's] ancestors went unanswered for generations," and that the explanations offered by Appellant "ring hollow." In support of his argument, Appellant cites to testimony describing why one of his great-granduncles was unable to protest the title being held by a descendant of Ngurd. Appellant then cites testimony alluding to vague, unsuccessful attempts to retrieve titles and properties then held by Ngurd's descendants, as well as various other reasons why his ancestors were unable to object to the situation. The trial court's decision not to credit this testimony on the basis of its credibility determination is not clear error and will not be disturbed on appeal. *See Labarda*, 11 ROP at 46.

Further, whether Appellant's ancestors' efforts amounted to an actual protest was not central to the question of

<sup>2</sup> Although Appellant notes that his witnesses' testimony was un rebutted, a trial court "is not required to accept uncontradicted testimony as true." *Idid Clan v. Olngebang Lineage*, 12 ROP 111, 124 (2005).

whether Ngurd was a member of Eruang Clan. The trial court merely mentioned this fact to support its determination that Ngiraked's ancestors held titles in Eruang Clan, for whatever reason, which made it more likely that they were, in fact, members of the Clan.

Accordingly, this Court concludes that the trial court did not clearly err with respect to the above findings made in support of the trial court's conclusion that Ngurd and her descendants are Eruang Clan members.

### **III. The trial court did not clearly err in finding that Ngiraked is Uodelchad.**

Appellant makes five separate arguments alleging factual error in the trial court's determination that Ngiraked was properly appointed as and now holds the title of Uodelchad of Eruang Clan. The Court notes that each of the following assertions of error presumes that Ngurd and her descendants are not members of Eruang Clan. Appellant merely recasts the testimony of his trial witnesses in the record in a light that favors his claim, emphasizing, despite the contrary testimony and explicit findings by the trial court, the statements that support his position that Ngurd and her descendants are not members of Eruang Clan. As set out above, these issues are well settled in Appellees' favor, and we are not inclined to revisit them here. We, nevertheless, address each of Appellant's specific contentions briefly.

First, Appellant argues that there was "absolutely no evidence presented to the trial court about whether the women who appointed [Ngiraked] were actually ourrot of

Eruang Clan." However, Appellant cites directly to Ngiraked's testimony in which she specifically attests that she was appointed by the ourrot of Eruang Clan and names the ochell women who appointed her to the position. Tr. (Vol. 1) 66:27 – 67:15. Thus, as Appellant's argument makes plain, there is admissible evidence in the record upon which a reasonable trier of fact could reach the same conclusion as the trial court, and the trial court's choice between two competing version of the facts is not error. *See Beches*, 17 ROP at 272.

Second, Appellant argues that the court erred in taking into account the "years of services" that Ngiraked performed for Eruang Clan because such acts were "self-serving," in that they benefitted Ngiraked and her family. This argument concedes Ngiraked performed services, but questions to whom those services were directed. Again, once the trial court ruled that Ngiraked and her faction are, in fact, members of Eruang Clan, any such services that Ngiraked performed for her family were, in fact, services for the Clan. Likewise, Appellant's contention—that one's service to the clan is somehow discounted if the services also benefit that person—seems inapposite and is certainly not supported. Appellant merely presents his view of the evidence and challenges the credibility of Ngiraked's testimony, but he does not demonstrate clear error on the part of the Trial Division.

Third, Appellant argues that the question of "who is and who is not ochell of Eruang Clan had not been established by a preponderance of the evidence." Appellant reiterates that he and his sister Elizabeth are members of Eruang Clan through Erbai,

who was adopted by Ngilas. Of note, Appellant's sister admitted in her testimony that "although she and her brother . . . are members through their male ancestors and would therefore be ulehell, there are no remaining ancestors from the female line so they became strong senior members." Thus, Appellant's argument rests on the conclusion that Ngurd and her descendants were not members of Eruang Clan. Once again, because the trial court found to the contrary, Ngurd's descendants through the female line are considered ochell of Eruang. As noted, we do not find any clear error of fact in the trial court's findings relating to the ochell status of the descendants of Ngurd.

Fourth, Appellant argues that the trial court mischaracterized evidence when it stated that Elizabeth Oseked could not name any of her predecessors to the Uodelchad title. Appellant maintains, contrary to the trial court's factual finding and Ngiraked's credited testimony, that no one was appointed to the Uodelchad title for "the last 40 or 50 years." The trial court concluded Elizabeth Okseked's testimony was "unconvincing," determining it was not credible that "Eruang Clan was maintained by just one man, first by Erbai and then by Oseked, with no female counterparts for generations." The trial court's choice between the competing testimony by Ngiraked and Oseked is not clear error.

Finally, Appellant argues that the trial court misstated Elizabeth Oseked's testimony when it noted that she "could not describe an Eruang Clan function that she had participated in." Appellant points to testimony by Elizabeth Oseked that she attended functions relating to Hitler Demei's

appointment to the Ngiracheruang title. Both Elizabeth Oseked and Ngiraked attested to the performance of Clan services. With the trial court finding that Ngurd was a member of Eruang Clan, which granted her descendants through the female line ochell status, the resulting conclusion is that Elizabeth Oseked was not ourrot and the functions she attended to appoint a Ngiracheruang title bearer were not for someone who had been properly appointed. The trial court found Ngiraked's testimony more credible concerning the performance of Clan services, and we do not find any error in its resolution of this competing testimony.

[2] These findings, as well as the others that Appellant contends are in error, have been established by a preponderance of the evidence, which is defined as:

[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

Black's Law Dictionary 1220 (8th ed. 2004). The trial court weighed all of the evidence and concluded that a greater weight of the evidence favored Appellees' claims that Ngurd was a true member of Eruang Clan; her descendants through the female line are true ochell, among whom are a number of ourrot of the Clan; and Ngiraked is the current and properly appointed Uodelchad

of the Clan. Because we do not find any error in those factual findings, we affirm the trial court.

### **CONCLUSION**

Based on the foregoing, we **AFFIRM** the Trial Division's decision.