

Rdechor v. Trolii, 3 ROP Intrm. 150 (1992)

DIRRAROROU RDECHOR

Appellee,

v.

ELECHEL TROLII,

Appellant,

CIVIL APPEAL NO. 11-86

Civil Action No. 27-84

Supreme Court, Appellate Division

Republic of Palau

Appellate opinion

Decided: May 27, 1992

Counsel for Appellant: Clara Kalscheur

Counsel for Appellee: J. Roman Bedor

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice; and ROBERT A. HEFNER, Associate Justice¹

PER CURIAM:

BACKGROUND

In 1982 appellee Rdechor, appellant Trolii and another party named Ngemelas filed claims with the Palau Land Commission asserting ownership claims to land known as Iwereong which is located in Ngerchelongs State. After hearing the competing claims, the Palau Land Commission issued a Determination of Ownership on October 18, 1983: Iwereong was awarded in fee simple to Iwereong Lineage and Trolii was listed as trustee.

On February 10, 1984, Rdechor appealed the Determination of Ownership on the sole ground that it was error to designate Trolii **L151** as trustee instead of herself. The award of the land to Iwereong Lineage was not appealed. The appeal was assigned to Associate Justice Robert W. Gibson.

Prior to trial, the Court was notified that Rdechor had died on December 1, 1985. On January 14, 1986, Rdechor's counsel filed a motion for an order substituting Haruo Uchel as Rdechor's representative to prosecute the appeal pursuant to ROP Civ Pro Rule 25. Uchel is the son of Rdechor.

¹ This matter was heard by all three members of the panel, but this Opinion is signed by a majority of two Justices due to the death of Chief Justice Nakamura on April 25, 1992.

Appellant objected to the substitution and a hearing was held on the motion on February 21, 1986. The order entered by the court granting the substitution provides that Uchel submit in affidavit form “evidence showing that one Haruo Uchel has been designated by a majority of the members of the Iwereong Lineage as the person to succeed to the position of deceased Dirrarorou Rdechor as Appellant” (Substitution Order, February 26, 1986, p.1) The Order also provides that all known members of the Lineage be served by mail with notice of the application to appoint Uchel and the pendency of the action.

Following the entry of this Order, Uchel filed eight affidavits providing in substance that the affiant appoints Haruo Uchel to represent the Lineage in this action. None of the affidavits stated the number of total Lineage members or the affiant’s strength in the Lineage. It also appears that no proof of service on all Lineage members was ever filed with the Court.

¶152 The appeal proceeded to a trial *de novo* with Uchel as the substituted appellant. On August 1, 1986, the Court reversed the Determination of Ownership issued by the Land Commission and ordered that a new Determination be issued to reflect that Uchel is appointed trustee by the Court. The Court’s Order also adopted findings of fact that were submitted to the Court by Uchel’s counsel pursuant to the Court’s order to counsel for both parties to submit findings of fact and conclusions of law.

Trolii appeals this decision of the trial court asserting that it committed error by:

1. substituting Uchel for the deceased appellant Rdechor;
2. relying upon the findings of fact submitted by Uchel;
3. relying upon the conclusions of law submitted by Uchel; and
4. appointing Uchel as the trustee for Iwereong Lineage land.

ANALYSIS

We need not go beyond an analysis of the trial court’s decision granting Uchel’s motion to substitute to determine this appeal. The eight affidavits submitted by Uchel failed to meet the burden of proof established by the trial court for Uchel to become the substitute appellant. The affidavits did not list the total number of Lineage members from which a majority could be determined, and no proof of service was filed showing that all ¶153 Lineage members had been served with Uchel’s Application to Substitute. It was error for the trial court to order that Uchel be substituted in as appellant when he failed to satisfy the terms of the court’s substitution order. We therefore REMAND this matter to the trial court with the following instructions:

1. Hear *de novo* Uchel’s Application to Substitute, and either grant or deny the application in accordance with the court’s conclusion regarding whether a substitution is permissible pursuant to ROP Civ. Pro. 25(a)(1); and

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2. If the court determines that Uchel can properly substitute in as appellant, hold a trial *de novo* on the issue of who as between Trolii and Uchel has been selected as trustee of Iwereong for Iwereong Lineage in accordance with *Remoket v. Olkeriil*, 3 TTR 339, 344 (1967). (It is “Palauan custom that one who has been granted the power to administer either clan or lineage land may not pass on that power to another, including descendants, without consultation with and approval of the majority of the strong clan or lineage members.”), and such other law and facts the court deems applicable.