

Ngirmang v. Orrukem, 3 ROP Intrm. 91 (1992)
GABRIELA NGIRMANG,
Plaintiff/Appellant,

v.

LUSII ORRUKEM,
Defendant/Appellee.

CIVIL APPEAL NO. 1-91
Civil Action No. 276-90

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: February 20, 1992

Counsel for Appellant: Douglas F. Cushnie

Counsel for Appellee: Carlos H. Salii

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

NAKAMURA, Chief Justice:

This action originated with a Petition for Declaratory Judgment filed by Appellant requesting the court to declare that she was properly appointed to hold the female title of Mirair of the Ikelau Clan, the second-ranked clan of Koror. Appellee then joined the action asking the court to declare that she, rather than Appellant, had been appointed to hold the title of Mirair. While there have been several cases before this Court involving male titleholders, this is the first dispute regarding a female title bearer presented for our consideration.

In its decision, dated December 24, 1990, the Trial Court concluded that Appellee had been appointed Mirair by the ourrot (senior female members) of two of the three lineages of Ikelau **L92** Clan, with the tacit approval of several ourrot of the third lineage, and that the appointment had been ratified by the Kerngab (the female equivalent to the Council of Chiefs in Koror), as required by Koror custom.

Appellant filed a notice appealing the Trial Court decision on January 21, 1991, on several grounds. Appellant argues that Appellee cannot be Mirair because she is from Milong Lineage, which is not a lineage of the Ikelau Clan. Appellant also contends that the Trial Court erred as a matter of law in ruling that Appellant waived her right to participate in the selection of Mirair by refusing to consult with the ourrot of Milong and Owang lineages, which Appellant maintains are not part of the Ikelau Clan. Appellant objects to the Trial Court finding that, in

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addition to the requirement that a clan's female title bearer be selected by the ourrot of the clan, Koror custom requires that the selection be approved by the Kerngab.

As an appellate panel, it is not our duty to re-weigh the evidence, test the credibility of witnesses, or draw inferences from the evidence. The trial judge's analysis and consideration of the facts will not be disturbed on appeal unless clearly erroneous. *Chief Udui, et al. v. Dirrecheteet, et al.*, 1 ROP Intrm. 114 (App. Div. Feb. 1984).

Where the issue involves customary law, the standard of proof is higher. Conclusions of law regarding custom must be supported by clear and convincing evidence. *Id.*, at 117. Expert witnesses may testify as to the application of custom to the facts presented, 193 but that testimony must show facts clearly supporting a conclusion of law and may not be based on opinion as to what custom is or how it applies. The court may appoint an assessor to resolve conflicts between expert testimony or to confirm evidence relating to custom. *Id.*, at 116-117. Rule 53(c) of the ROP Rules of Civil Procedure specifies that all advice provided by an assessor shall be a matter of record. It does not appear from the record that an assessor was appointed, however, both parties presented testimony by expert witnesses.

The Trial Court stated that its determination was based on "Plaintiff's failure to meet its burden of establishing Gabriella Ngirmang's claim to the title of Mirair by the preponderance of the evidence, and on the more credible, compelling evidence that Lusii Orrukem was properly appointed to be Mirair, and that such appointment was confirmed by the Kerngab." (Tr. Dec., at p.2).

The parties are in direct conflict as to which lineages comprise Ikelau Clan of Koror. Appellant claims the clan is comprised only of Olngembang Lineage, to which she belongs. Appellee contends that Milong and Owang lineages also are part of Ikelau Clan. Appellant's own expert witness, Moses Mekoll, testified that a clan usually has four lineages, though it may be reduced to three or two, but that a clan never consists of only one lineage. (Affidavit of Moses Mekoll, Nov. 20, 1990, at p.2).

As additional support for its conclusion that Milong and Owang are also lineages of Ikelau Clan, the Trial Court relied on language in two previous cases involving the clan. In *Ngesengaol 194 v. Torual*, 2 TTR 275 (Tr. Div. 1961), the court determined that the land known as Trolii "was owned by the Milong Lineage within the Ikelau Clan before the official Japanese land survey of about 1938-1941 . . ." Ikelau Clan was determined to consist of the three houses of Milong, Olngembang and Owang in *Rdialul Torual v. Ngiramilong, et al.*, Civ. Act. No. 1389 (Palau Dist. Ct. Sept. 1968). Although not determinative of the issue, these cases indicate that at least as recently as 1968, Ikelau Clan was considered to consist of Milong, Olngembang and Owang Lineages.

Appellant's position that the clan consists only of Olngembang Lineage was supported by testimony which the Trial Court did not find convincing. The case of *Dudiu v. Ngiraikelau*, 1 TTR 504 (Tr. Div. Sept. 1958), cited by Appellant, is of limited use in resolving this issue. The court in *Dudiu* found that the Ngermengiau (Owang) Clan combined with the Ikelau Clan,

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although the two remained separate in some respects. The court stated that the “Nermengiau [sic] Clan is still in existence as such . . .” but concluded that “The land known as Ngermengiau in Koror . . . is chief’s title land of the combined Ikelau-Ngermengiau Clan.” *Id.*, at 511. Thus, no clear determination can be made from this case.

The Trial Court’s finding that Ikelau Clan is comprised of Olngembang, Milong and Owang Lineages is reasonable and supported by the evidence presented. Appellant has failed to show that it is clearly erroneous.

It is undisputed that Appellant is an ourrot member of Olngembang Lineage of Ikelau Clan. The Trial Court determined that **195** Appellee is an ourrot member of Milong Lineage, which is held to be a house of Ikelau Clan. The next issue, then, is whether the Trial Court erred in finding that Appellee was properly selected Mirair of the clan.

The Trial Court found that a clan’s female title bearer is selected by all the ourrot of each lineage of a clan under Palauan custom, a finding neither party appears to dispute. Appellant maintains that she was appointed Mirair by the ourrot of Olngembang, which she contends is the only lineage of the clan. Because we AFFIRM the Trial Court’s finding that Ikelau Clan consists of Olngembang, Milong and Owang Lineages, Appellant’s claim to the title of Mirair must fail. She has not been appointed by the ourrot of each lineage of the clan.

For the same reason, however, we cannot uphold the Trial Court’s conclusion that Appellee was properly appointed Mirair. Recognizing that the ourrot of all lineages of a clan must reach a consensus about such an appointment in order for it to be valid, the Trial Court stated that Appellant refused to consult with the ourrot members of Milong and Owang Lineages to select a new Mirair. “She thus waived her right to be consulted about the appointment . . .” (Tr. Dec. at p. 7).

The record does not show how the Trial Court reached this conclusion, which is inconsistent with the Palauan custom of requiring consensus and agreement on the selection of a clan titleholder. *See, Blesam v. Tamakong, et al.*, 1 ROP Intrm. 578, 582 (App. Div. Mar. 1989). The Trial Court acknowledged that **196** Appellant is an ourrot of Olngembang Lineage, and that she did not participate in Appellee’s selection. Because all ourrot of each of the three lineages of Ikelau Clan did not reach a consensus on Appellee’s appointment, we must REVERSE the Trial Court’s conclusion that Appellee was properly selected Mirair.

Appellant also objects to the Trial Court’s conclusion that the Mirair is selected not only by consensus of all the ourrot of each lineage of the clan, but is subject to approval by the Kerngab. This, again, is a conclusion of customary law, which must be supported in the record by clear and convincing evidence. *Chief Udui, et al. v. Dirrecheteet, et al., supra*, at 117.

The Trial Court apparently relied on testimony of Bilung Gloria Salii that the Kerngab had rejected two appointees as Kerngab members in the past. Additional support may have been implied from the finding that “appointment of a male title bearer requires approval by the council of Chiefs.” (Tr. Dec. at p. 4). As in *Chief Udui, et al., v. Dirrecheteet, et al., supra*, this Court is

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unable to review the Trial Court's ruling on this issue because the conclusions of law regarding custom on which the lower court judgment is based are not clearly supported by the record. *Id.*

We are not convinced that clear and convincing evidence was presented to support the conclusion that the selection of a clan's female title bearer is subject to the Kerngab's approval under customary law of Koror.

The judgment of the Trial Court declaring Appellee to be L97 Mirair of Ikelau Clan of Koror is hereby REVERSED. The Trial Court's finding that Ikelau Clan is comprised of Milong, Olngembang and Owang Lineages is hereby AFFIRMED. We hereby REMAND this action to the Trial Court for entry of judgment declaring that neither Appellee nor Appellant was properly appointed by a consensus of all ourrot of the three lineages of Ikelau Clan of Koror.¹

¹ The effect of our ruling, of course, is to return this entire matter to the Ikelau Clan for a resolution of the title of Mirair according to the customary procedures determined in this decision.