

*Kedung Clan v. Kerradel*, 4 ROP Intrm. 77 (1993)

**KEDUNG CLAN,  
Appellant,**

v.

**SESARIO KERRADEL,  
Appellee.**

CIVIL APPEAL NO. 16-91  
Civil Action No. 516-90

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: December 17, 1993

Attorney for Appellant: John Tarkong  
Johnson Toribiong

Attorney for Appellee: Kevin Kirk  
David Shadel

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice.

BEATTIE, Justice:

This appeal concerns the ownership of land in Ngaraard State known as Yungl, which is listed in the Tochi Daicho as being the individual property of Klemellong. It is unclear from the record when Klemellong died, but it appears to have been shortly after the end of the Second World War. Klemellong had two daughters, Ungiil and Youlsau. Ungiil's son, Sesarrio Kerradel, appeared on Ungiil's behalf before the Land Claims Hearing Office ("LCHO") in 1990 to claim Yungl for Ungiil and her heirs. Chiokai Kloulubak also appeared before the LCHO, claiming Yungl for Kedung Clan. The LCHO decided Yungl belonged to Kedung Clan. It rested its decision on a 1973 deed in which Kedung Clan purported to transfer certain properties registered in Klemellong's name to **178** Klemellong's daughter Ungiil. Because Yungl was not one of the properties mentioned in the deed, the LCHO reasoned that Ungiil and her heirs had no right to claim it. The LCHO further reasoned that because Kloulubak was the only strong ochell member of Kedung still living, he was the proper person to dispose of Yungl.

The trial court reversed, finding that Kedung Clan had not introduced enough evidence to rebut the Tochi Daicho's presumption of accuracy.

Kedung Clan appeals. We affirm.

DISCUSSION

A party contesting a Tochi Daicho listing must show by clear and convincing evidence that the listing is wrong. *Ngiradilubech v. Timulch*, 1 ROP Intrm. 625, 629 (1989). Kloulubak testified that he did not know why Yungl came to be registered as Klemellong's individual property. Kloulubak based his opinion that Yungl was Kedung Clan's land on his judgment alone, without discussing the issue with any other member of Kedung Clan. Obviously, Kloulubak's testimony is not clear and convincing evidence that the Tochi Daicho listing is incorrect.

Kedung Clan argues that the 1973 deed, transferring certain properties to Ungiil, inferentially proves that Yungl was not Klemellong's individual property because the deed makes no mention of it. But if Yungl was Klemellong's individual property, as the Tochi Daicho indicates, then Ungiil would not need a deed of transfer from Kedung Clan to claim ownership. A deed transferring certain property registered in Klemellong's name does not L79 necessarily mean that Klemellong did not own other property. It would be strange indeed to create a rule that property ownership can be proven or disproven through the admission of a deed not mentioning that property, especially where, as here, the evidence must be clear and convincing.

Finally, Kedung Clan argues that the trial court's decision ignores Palauan custom. Kedung Clan argues that Ungiil's rights to Yungl were extinguished at Klemellong's eldecheduch, where she allegedly received a taro patch and Palauan money. However, the record reveals that Ungiil received the taro patch and Palauan money at her mother's eldecheduch. In fact, there is nothing in the record to indicate that Klemellong ever had an eldecheduch. Thus, the trial court's decision did not ignore custom. Instead, it followed the well-settled rule that a clan has no reversionary interest in individually owned land. *Ngirumergang v. Watanabe*, 7 TTR 260, 262 (App. Div. 1975).

The trial court's decision is AFFIRMED.