

Ruluked v. Skilang, 6 ROP Intrm. 170 (1997)
UMAI RULUKED, Represented by POLYCARP BASILIUS,
Appellant,

v.

MILAD SKILANG, et al.,
Appellees.

CIVIL APPEAL NO. 36-95
Civil Action No. 86-93

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: June 10, 1997

Counsel for Appellant: Kevin N. Kirk

Counsel for Appellees: J. Roman Bedor, T.C.

BEFORE: JEFFREY L. BEATTIE, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; JANET HEALY WEEKS, Part-time Associate Justice.

BEATTIE, Justice:

At issue in this case is whether the Trial Division erred in affirming a determination of the Land Claims Hearing Office (LCHO) that appellee inherited the individually-owned land of her deceased father, who died intestate before any applicable statute of descent and distribution was enacted, and for whom no *eldech duch* was held. We affirm.

I.

The property in dispute is Tochi Daicho lot number 7, located in the State of Melekeok and known as *Omis*. The Tochi Daicho lists a man named Mad as the individual owner of the property. Appellee, Milad Skilang, is Mad's daughter by birth and his only surviving child. Appellant is Mad's sister due to the fact that Mad was adopted by Rolmi, who was the biological mother of the appellant.

Mad died in 1945. It is undisputed that, due to war time 1171 conditions, no *eldech duch* was held after his death. Mad's death preceded the enactment of Palau District Code § 801, which was Palau's first statutory law governing the disposition of the property of an intestate decedent. Neither party presented any expert testimony before the LCHO regarding who Mad's customary heirs would have been in 1945.

Ruluked v. Skilang, 6 ROP Intrm. 170 (1997)

The LCHO held that, under the circumstances here presented, the property passed to Milad Skilang, Mad's natural daughter, as his heir. The Trial Division upheld the LCHO's determination and denied appellant's motion for a trial *de novo*. On appeal to this court, appellant argues that the Trial Division erred because there was insufficient evidence to support the LCHO finding that Mad's daughter is his heir pursuant to custom. Appellant further argues that the trial court abused its discretion by failing to conduct a trial *de novo* in light of the absence of evidence as to custom presented before the LCHO.

II.

1. Evidence Regarding Customary Heirs

When we are called upon to review a decision of the Trial Division on an appeal of an LCHO determination of ownership, "the findings of the Trial Division, including the findings of the LCHO which it adopts or leaves undisturbed, shall be upheld as long as they are supported by reasonable evidence, even if the court could reasonably have made different findings of fact." *Silmai v. Rechucher*, 4 ROP Intrm. 55, 57 (1993). The question whether an alleged customary law exists is a question of fact. *Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225, 227 (1996).

In upholding the LCHO finding that pursuant to custom the decedent's children are his heirs in the absence of an *eldechoduch*, the trial court relied on two cases from the Trust Territory period, *Edeyaoch v. Timarong*, 7 TTR 54 (Tr. Div. 1974), and *Ngiruhelbad v. Merii*, 1 TTR 367 (Tr. Div. 1958), *aff'd* 2 TTR 631 (1961).

In *Edeyaoch*, the court held that "[s]ince this is individual land, the land passes to the decedent's heirs which by custom are the children of the decedent" and that "[t]he brother of the deceased . . . does not have the right to claim or administer individual land." 7 TTR at 62. In *Ngiruhelbad*, the trial court also found that individual land passes to the decedent's children. 1 TTR at 371. The *Ngiruhelbad* court relied in part on Resolution 2-51 adopted by the Palau Congress, which was formulated in 1172 response to a request for a statement regarding Palauan land law. 1 TTR at 370. Resolution 2-51 provided that individually-owned lands pass to the decedent's children.¹ *Id.*

Appellant points out that another Trust Territory case, *Ngeskesuk v. Solang*, 6 TTR 505 (Tr. Div. 1974), is inconsistent with these cases. The court in *Ngeskesuk* upheld a determination by the Land Commission that the brothers and sisters, as well as the children, of the decedent

¹ Resolution 2-51 provides in part that:

1. Inheritance of lands owned by an individual shall pass to his male children, in patrilineal descent.

6. Female inheritors shall exist . . . in the absence of all male inheritors.

1 TTR at 370.

Ruluked v. Skilang, 6 ROP Intrm. 170 (1997)

were his heirs.² 6 TTR at 513. The court noted, however, that the preparation of the case was exceptionally poor, and the court had attempted “to dredge out the real issues involved” at the hearing.³ 6 TTR at 507. Under these circumstances, the holdings of *Edeyaoch* and *Ngiruhelbad* supplied reasonable evidence to support the LCHO findings on custom notwithstanding the conflicting holding of *Ngeskesuk* and, in view of the parties’ failure to present any other evidence regarding Palauan customary law relevant to the issue, we find no error in the Trial Division’s decision to uphold the LCHO’s finding that **L173** appellee was Mad’s heir.

2. Trial De Novo

Appellant requested a trial *de novo* before the Trial Division in order to present evidence on Palauan custom. She claims the court abused its discretion in denying the request. We disagree.

“[T]he discretion to grant a trial *de novo* need not be exercised merely because an appellant believes that a better case can be presented if granted a second opportunity.” *Arbedul v. Mokoll*, 4 ROP Intrm. 189, 191 (1994). Here, appellant does not contend that she was denied the opportunity to produce evidence regarding custom in the LCHO proceedings. Accordingly, the Trial Division did not abuse its discretion in denying the request for a trial *de novo*.

CONCLUSION

For the foregoing reasons, the decision of the Trial Division is AFFIRMED.

² In the Trial Division, appellant did not rely upon *Ngeskesuk*, but contended there and in the LCHO proceedings that the property was inherited by Mad’s mother, Rolmi, under custom. Appellant argued that when Rolmi died, appellant inherited the property. As the Trial Division pointed out, appellant’s theory itself relied upon a custom of children being the heirs of their parents.

³ The court wrote:

[t]he state of the pleadings in the two appeals is so inadequate, incomplete and contrary to the appellate code the Court would have been justified in dismissing both appeals. In neither case did counsel who appeared at the appeal hearing in representation of the parties prepare the appeals. Because the appeals were made by representatives who apparently had no intention of appearing in court in support of the appeals, the pleadings were carelessly prepared and completely inadequate.