

Lakobong v. Anastacio, 6 ROP Intrm. 178 (1997)

**HILARIA LAKOBONG,
Appellant**

v.

**IGNACIO ANASTACIO
Appellee.**

CIVIL APPEAL NO. 12-96
Civil Action No. 110-95

**HILARIA LAKOBONG,
Appellant,**

v.

**GERTERUT BUKURROU,
Appellee.**

CIVIL APPEAL NO. 24-96
Civil Action No. 294-91

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: June 11, 1997

Counsel for Appellant Hilaria U. Lakobong: Carlos H. Salii

Counsel for Appellee Ignacio Anastacio: Yukiwo P. Dengokl

No appearance for Appellee Gerterut Bukurrou

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

BEATTIE, Justice:

In these consolidated cases, Hilaria Lakobong appeals two Trial Division decisions: one in which it affirmed the LCHO's determination of ownership (C.A. 12-96), and one in which it **¶179** reversed the LCHO's determination (C.A. 24-96). For the following reasons, we AFFIRM the decisions of the Trial Division.

BACKGROUND

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These consolidated cases arise from a dispute over the ownership of land in Ngiwal State designated as Tochi Daicho Lot Nos. 856, 857, and 858 (collectively referred to as “Imekang”) and Tochi Daicho Lot No. 598 (“Buik Mesei”). Many of the facts concerning the history of the land are undisputed.

The land is listed in the Tochi Daicho as the individual property of Wasai. Wasai was the second-ranking chief in the Ucherriang Clan. He married Ikertang, and although they had no offspring together, Wasai adopted a number of Ikertang’s children and other relatives of hers -- eight children in all. Among these adoptees was Idechong Wasai. (hereinafter “Idechong.”)

Wasai died in 1946. At his death, there was a meeting of some of his relatives, and Wasai’s brother, Meltel, brought the eight children together and gave them Wasai’s property, along with some Palauan money.¹ Whether or not this meeting was an *eldech duch* is a disputed issue. In 1979, Idechong Wasai deeded both Imekang and Buik Mesei to his son Noah Idechong. In 1985, in order to get money for his father’s medical treatment, Noah sold Imekang to Ignacio Anastacio, and gave him a deed purporting to convey the property to him.

Anastacio claims Imekang as his individual property. Noah claims Buik Mesei as his individual property. Hilaria Lakobong, Wasai’s niece, disputes that Idechong had title to the properties that he deeded to his son, Noah. It is her contention that these lands were not mentioned at all during Wasai’s *eldech duch*. Therefore, she argues that all the land at issue reverted back to the Ucherriang Clan, and any disposition of said lands without the consent of all of the clan is ineffective. Thus, she contests Anastacio’s title to Imekang, **L180** and Noah’s title to Buik Mesei.²

STANDARD OF REVIEW

The appellant contends that the Trial Division made errors in its legal conclusions and findings of fact. We will not overturn the Trial Division’s factual findings unless those findings are clearly erroneous. *Ngirmang v. Orrukem*, 3 ROP Intrm. 91, 92 (1992). Questions of law are reviewed de novo. *Elbelau v. Semdiu*, 5 ROP Intrm. 19, 21 (1994).

Discussion of Claims to Imekang³

I. The Factual Findings Concerning the Eldech duch of Wasai

The appellant challenges certain findings of fact made by the LCHO and the Trial

¹ Meltel, who was the chief of another clan, also persuaded the children to remain on the land and thereby maintain the viability of the Ucherriang Clan, which was dying out.

² Appellant Lakobong attempts to include other properties in this appeal -- namely, Ngerwet. However, Appellant failed to include these properties in her Notice of Appeal from the LCHO to the Trial Division. Consequently, the Trial Division refused to hear arguments concerning them, as do we.

³ Imekang was the subject property in *Lakobong v. Anastacio*, Civil Action No. 110-95.

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Division's subsequent adoption thereof. The appellant contends that the LCHO erroneously found that there was no *eldecheduch* held for Wasai. She states that there was an *eldecheduch* for Wasai, and that none of the lands in question were disposed of at the *eldecheduch*. Accordingly, the appellant asserts that the lands should be awarded to her as trustee for Ucherriang Clan.

In asserting that the finding was erroneous, the appellant misapprehends what the LCHO and the Trial Division found concerning whether or not there was an *eldecheduch* for Wasai. The LCHO found that because Wasai died when World War II had just ended, there was no preparation of food and hence there was no formal *eldecheduch* in the traditional sense. However, the LCHO found that there was a meeting of Wasai's relatives and that Meltel was present and "settled the properties." It is apparent that the Trial Division adopted this finding in upholding the LCHO's determination. Therefore, although the LCHO's findings on this matter were somewhat muddled, we see no reason why, especially during post-war conditions, a meeting of a deceased person's relatives where the decedent's children and ¶181 properties are discussed does not determine who inherits his properties just as effectively as a formal *eldecheduch*, complete with food and all the other customary trimmings. ⁴ Whether this type of meeting of relatives can properly be called an *eldecheduch* is of no moment in this case. With that understanding, we will refer to the meeting of Wasai's relatives as an *eldecheduch*.

The next issue is whether the lower courts gave proper effect to Wasai's *eldecheduch*. The evidence on this question is scarce and at times contradictory. However, there is evidence from which a reasonable trier of fact could find that at the *eldecheduch*, the lands were given to all of Wasai's children jointly. ⁵ In particular, Bukurrou testified that this occurred. Testimony contradicting this finding came from Noah and the appellant. ⁶ Where there are two factual conclusions which may reasonably be drawn from the evidence, the fact finder's choice between them is not clearly erroneous. *Riumd v. Masae Tanaka & Mobel Delemel*, 1 ROP Intrm. 597, 602 (1989). Therefore, the Trial Division's decision upholding the LCHO finding that Imekang was given to Wasai's children at his *eldecheduch* is not clearly erroneous.

II. The Applicability of 39 PNC § 102

Appellant states that 39 PNC § 102(d) should be applied to ¶182 determine the

⁴ We note that under 39 PNC § 102(d), which was not in effect when Wasai died, land which an intestate decedent did not acquire as a bona fide purchaser for value is disposed of in accordance with the desires of the appropriate relatives of the decedent, but there is no requirement of a formal *eldecheduch* with food preparation.

⁵ The Trial Division upheld the conveyance of Imekang to Anastacio by reason of the finding that the other children acquiesced to the sale. Appellant does not contest this finding and this Court will not address it. *Idechiil v. Uludong* 5 ROP Intrm. 15 (1994).

⁶ The appellant also claims that Gerthrut Bukurrou was mistaken in her testimony that the Ucherriang clan had died out. Although this issue has no bearing on the outcome of the case, the appellant implies that due to the inaccuracy of Bukurrou's testimony on this issue, her credibility as a whole should be discounted. However, it is not our function to determine the credibility of witnesses. *Palau v. Ngiraboi* 2 ROP Intrm. 257 (1991).

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ownership of Imekang.⁷ That statute was not enacted until after the death of Wasai and it is therefore inapplicable here. *Kubarii & Arbedul v. Olkeriil* 3 ROP Intrm. 39, 41 (1991).

Discussion of Claims to Buik Mesei

This property was not included in the sale to Anastacio, so Noah claimed it as his property in the LCHO proceedings. Appellant Lakobong has challenged Noah's right to the land on the same grounds upon which she challenged the claims to Imekang. Gerthrut Bukurrou, who is one of Wasai's children, also claimed the land as trustee for the children of Wasai, asserting that Idechong alone could not transfer the property to Noah without the consent of the other children.

This land went through the LCHO process separately from Imekang. The LCHO made no ruling as to whether an *eldecheduch* had been held for Wasai. Rather, it simply determined that Idechong had a superior right to Buik Mesei because Wasai told him he would get it, and awarded the land to him. The Trial Division reversed this decision, and ruled that Wasai's *eldecheduch* had awarded all of his land to his children jointly and equally. But, although the Trial Division reversed the LCHO's determination, it rejected Lakobong's claim and awarded Buik Mesei to Gerthrut Bukurrou as trustee for Wasai's children.⁸

I. The Trial Division's Factual Determinations

The first issue is whether the Trial Division was clearly erroneous in finding that the *eldecheduch* awarded Buik Mesei to the Wasai's children. The LCHO found that Wasai had given the land to Idechong individually. On appeal, the Trial Division, **L183** following the reasoning of its decision regarding Imekang in *Lakobong v. Anastacio*, rejected the LCHO finding and instead found that Buik Mesei was the joint property of all of Wasai's children, as decided at Wasai's *eldecheduch*.

The Trial Division "has the discretion to adopt the LCHO findings in whole or in part and/or make its own new findings as long as there is evidence in the LCHO record to support its findings." *Ngiratred v. Joseph*, 4 ROP Intrm. 80, 83 (1993). As we have already discussed in connection with the claims to Imekang there was evidence to support the Trial Division's finding and it was not clearly erroneous.

II. Bukurrou's right to Buik Mesei

⁷ That statute provides in pertinent part:

If the owner of fee simple land dies without issue and no will has been made . . . then the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death.

⁸ Noah did not appeal the Trial Division's decision.

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The appellant also argues that Bukurrou should not have been awarded the land in the Trial Division because she never appealed the LCHO determination, and was thus a non-party to the action. However, the record reveals that Bukurrou appealed the LCHO decision on August 20, 1991.⁹

CONCLUSION

For the foregoing reasons, the trial division's decisions are AFFIRMED.

⁹ During the pendency of the appeal, Bukurrou was dismissed for failure to pay transcript costs. The Court subsequently reinstated her as an appellant by agreement of the parties.