

*Ngardmau Traditional Chiefs v. Ngardmau State Gov't.*, 6 ROP Intrm. 192 (1997)  
**NGARDMAU TRADITIONAL CHIEFS, et al.,**  
**Appellants,**

v.

**NGARDMAU STATE GOVERNMENT, et al.,**  
**Appellees.**

CIVIL APPEAL NO. 13-95  
Civil Action No. 498-93

Supreme Court, Appellate Division  
Republic of Palau

Opinion  
Decided: July 22, 1997

Counsel for Appellants: Johnson Toribiong

Counsel for Appellees: John K. Rechucher

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;  
R. BARRIE MICHELSEN, Associate Justice.

MILLER, Justice:

In 1994, the Governor and Legislature of the Ngardmau State Government (“Legislature” or “Appellees”) passed NSPL No. 3-19, which designated the number and titles of the chiefs to sit on the Ngardmau Council of Chiefs (“Council”), and further, designated persons to fill these roles. The Ngardmau **¶193** Traditional Chiefs (“Traditional Chiefs” or “Appellants”), consisting of the members of the Ngara-Urdmang, Ngara-Iwekei, and Ngara-Oldiang, the three klobaks <sup>1</sup> in the State of Ngardmau, filed suit to invalidate the law. <sup>2</sup> The trial court upheld the validity of NSPL No. 3-19, and the Traditional Chiefs appeal that judgment. We reverse.

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<sup>1</sup> The *New Palauan-English Dictionary*, Lewis S. Josephs (1990), defines klobak as “council of chiefs (usually containing ten members).”

<sup>2</sup> As is apparent below, there are numerous disputes concerning the membership of these klobaks. By our reference to Appellants as Traditional Chiefs, we do not intend to decide those disputes at this time.

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BACKGROUND

The Ngardmau State Constitution<sup>3</sup> provides for a Council of Chiefs, which must approve of any bills relating to agreements between Ngardmau and other states or foreign nations, or relating to traditional customs. Art. VII, § 6.<sup>4</sup> Until 1994, the Council of Chiefs was composed of the members of the three klobaks of Ngardmau, who were chosen in the traditional manner.<sup>5</sup> **¶194** By early 1994, however, at least five chief positions were in dispute, and therefore vacant. The Legislature interpreted the language of the Ngardmau Constitution requiring the approval of the “full membership” of the Council of Chiefs for certain legislation to prescribe unanimous approval by the complete membership of the Council, without any vacant seats.<sup>6</sup> Citing an inability to carry out the functions of government due to the disputes regarding traditional leaders, Appellees passed NSPL No. 3-19 declaring that specified persons hold these positions. In addition, NSPL No 3-19 increased the membership of the Council,<sup>7</sup> by recognizing the validity of several chiefly positions which the Traditional Leaders dispute.

ANALYSIS

The Ngardmau State Constitution fails to specify how members of the Council of Chiefs

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<sup>3</sup> The Ngardmau State Constitution has not been translated into English. Counsel for appellees has provided a partial English translation of the relevant portions of the Constitution that both sides have agreed is accurate.

<sup>4</sup> Article VII, § 6, provides in part:

A bill shall be adopted in the Kelulul Ngardmau pursuant to its rules and procedures; provided, however, that a bill relating to agreements between Ngardmau State and other states in Palau, or agreement with foreign nations, or relating to traditional customs shall require approval of the full membership of the Council of Chiefs of Ngardmau State.

<sup>5</sup> The trial court found that:

Under Palauan Custom, . . . the selection of chiefs is a two stage process. First the clan or lineage must unanimously agree on who should receive the title. Second, the name is then submitted for approval to the klobak in which the chief will sit. If the chiefs in the klobak do not accept the person named as their friend, then the name will be returned to the clan or lineage which will select another person as chief. Thus any chief must receive approval both from the clan or lineage responsible for the title and from the klobak in which the chief will sit.

Decision at 2.

<sup>6</sup> A plausible alternative interpretation was offered at oral argument, suggesting that the reference to “full membership” was not intended to require unanimity, but merely to establish that the Council of Chiefs should consist of members of all three klobaks, and not just the members of Ngara-Urdmang.

<sup>7</sup> There are four chiefly titles set forth in NSPL No. 3-19 that Appellants contend are not traditionally part of the three Ngardmau klobaks.

*Ngardmau Traditional Chiefs v. Ngardmau State Gov't.*, 6 ROP Intrm. 192 (1997) are selected. Appellees contend, and the trial court agreed, that the Legislature may (1) appoint chiefs to the Council in disputed cases, and (2) determine the composition of the Council based on its understanding of the historical validity of each chief's title. We disagree.

As we have stated before, "it is well established that where there is no controlling language, the Court must look to the intent of the Framers to give effect to the Constitution." *Peleliu v. Koror*, 6 ROP Intrm. 91, 93 (1997). We agree with the trial court that the Framers of the Ngardmau Constitution could have created a body called the Council of Chiefs and made its membership distinct from the traditional klobaks, to be selected ¶195 by whatever appointment process they thought was appropriate. We think it clear, however, and we believe there is little dispute between the parties, that that was not their intention, but rather that the constitutional Council of Chiefs should consist of chiefs who are members of Ngardmau's traditional klobaks.<sup>8</sup> As the trial court noted, this was the practice until the passage of NSPL 3-19, and NSPL 3-19 itself refers to the three klobaks and their traditional titles. Moreover, the Ngardmau Constitution itself uses the traditional term "klobak." *See also* Ngardmau Const. Art. VIII, § 1 ("The powers, responsibilities and noble positions of Ngardmau chiefs are clearly established following the *traditional practices* of the council of Chiefs in relation to their leadership in the state of Ngardmau.") (emphasis added). We see no basis for a conclusion that the Framers of the Ngardmau Constitution sought to do anything more than to create a body consisting of all of Ngardmau's traditional leaders.

Given that the Council was intended to comprise only traditional chiefs, we do not see how the Legislature can appoint members of the Council, even if a deadlock otherwise exists. The Framers of the Ngardmau Constitution clearly did not contemplate that chiefs appointed by the Legislature rather than pursuant to custom should serve on the Council. Moreover, permitting the Legislature to appoint the members of the Council of Chiefs increases the scope of legislative influence while diminishing the role of the traditional chiefs mandated by the Ngardmau Constitution. It makes little sense to suppose that the Ngardmau Constitution that created the Council of Chiefs and required its approval of certain legislative acts intended that the membership of the Council could itself be determined by the Legislature.<sup>9</sup>

Accordingly, we hold NSPL 3-19 invalid under the Ngardmau ¶196 Constitution. We therefore need not reach the issue of its constitutionality under the Palau Constitution. In addition, we do not decide at this time what chiefs have been traditionally recognized in Ngardmau State or who holds these titles pursuant to custom, since neither of these questions is before the Court.<sup>10</sup> Both of these issues, however, may be appropriately brought before the Court

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<sup>8</sup> At oral argument, counsel for the Appellants agreed that although he is not a member of the Ngara-Urdmang (or the other klobaks), the bearer of the title Uong Remersai or Uormersai is nevertheless one of the traditional chiefs of Ngardmau entitled to sit on the Council of Chiefs.

<sup>9</sup> We understand NSPL 3-19 to depart from custom only with respect to titles that are the subject of disputes, and the trial court limited its approval to that circumstance. *See* Decision at 4 n.1. On the logic of the trial court's decision, however, there would be no constitutional bar to the Legislature's choosing all of the Council's members irrespective of customary practices.

<sup>10</sup> Although Appellants challenged particular appointments in the court below, they have not raised those matters on appeal, instead focusing their attention on the validity of NSPL No.

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under the proper circumstances.

The judgment of the trial court is accordingly REVERSED to the extent that it upholds the validity of NSPL 3-19.

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3-19. In any event, as we understand Appellees to have argued below, we do not believe that a title dispute can be resolved -- if judicial resolution is appropriate at all -- unless both (or as many as there may be) contestants to that dispute are parties to the case.