

Gibbons v. Techekii Clan, 6 ROP Intrm. 218 (1997)
**IBEDUL YUTAKA M. GIBBONS,
BILUNG GLORIA G. SALII, and ALEXANDER MEREP,
Appellants,**

v.

**TECHEKII CLAN, Represented by ILUCHES REKSID,
Appellees.**

CIVIL APPEAL NO. 40-95
Civil Action No. 53-90

Supreme Court, Appellate Division
Republic of Palau

Decided: August 22, 1997

Counsel for Appellants: Carlos H. Salii

Counsel for Appellees: John K. Rechucher

BEFORE: Chief Justice Arthur Ngiraklsong, Associate Justice Jeffrey L. Beattie, Associate Justice R. Barrie Michelsen

PER CURIAM:

This appeal relates to the Trial Division's finding that both Appellants and Appellees (defined *infra* in this paragraph) are members of equal strength in Techekii Clan. Appellants Ibedul Yutaka M. Gibbons, Bilung Gloria G. Salii and Alexander Merep (hereinafter "Appellants" or "Defendants") appeal this decision. Although Appellees are listed as "Techekii Clan, represented by Iluches Reskid," in this case in which membership of Techekii Clan is the ultimate issue, Appellees actually were Kyota Dengokl (who died during the course of the proceedings below) and Iluches Reskid (hereinafter "Appellees" or "Plaintiffs").

1219 DISCUSSION

A. Finding of Fact: Appellants and Appellees are Techekii Clan Members.

Findings of fact made by the trial court will be upheld by an appellate court unless such findings are clearly erroneous. ROP Civ. Pro. Rule 52(a). *Gaag v. ROP*, 2 ROP Intrm. 199, 200 (1991).

Based on testimonial and documentary evidence presented to it and the holding of *Gibbons v. Kisaol*, 1 T.T.R. 219 (Tr. Div. 1955), *aff'd*, 1 T.T.R. 597 (App. Div. 1956), the Trial Division found that both Defendants and Plaintiffs are members of Techekii Clan. Reliance on

such evidence and on the doctrine of collateral estoppel was proper.

The Trial Division's holding that Plaintiffs were members of Techekii Clan is in accord with a finding of fact of *Gibbons*. In that case, Charly Gibbons, Melengoes (mother of Iluches Reskid) and Rengiil (sister of Melengoes and aunt of Iluches Reskid) claimed to be members of Techekii Clan. Defendant Kisaol -- the sister of Appellants' natural mother Maria¹ -- opposed such claim and *lost*; that is, the *Gibbons* court found that Charly Gibbons, Melengoes and Rengiil were indeed members of Techekii Clan. Accordingly, the finding that Plaintiffs/Appellees are members of Techekii Clan is consistent with the *Gibbons* finding that Charly Gibbons, Melengoes and Rengiil -- all relatives of Appellees -- also were members of Techekii Clan. Appellants argue that this finding of fact appears on its face to be clearly erroneous given the arguments of both Defendants and Plaintiffs below that both groups are not members of the same clan. However, evidence provided at the *Gibbons* trial which was noted by the Trial Division indicates that ancestors of both Defendants and Plaintiffs attended a key meeting of Techekii Clan, all as Techekii Clan members. This provides further support for the finding that both Appellants and Appellees are members of Techekii Clan. This finding of the Trial Division, therefore, was not clearly erroneous, and, as a result, is hereby affirmed on appeal.

1220 B. Finding of Fact: Appellants and Appellees are Techekii Clan Members of Equal Strength.

As noted by the Trial Division, neither Plaintiff nor Defendant raised the issue of the relative strength of each, respectively, within Techekii Clan. The Trial Division nevertheless stated its opinion regarding this issue, finding that each group has equal strength within Techekii Clan.

Making this factual finding on an issue which was neither raised nor argued by the parties constitutes dicta. Since this finding was not necessary to the issue raised and argued below, we hold that this statement is not binding on the parties.

CONCLUSION

For the reasons set forth above, this Court hereby AFFIRMS in part and REVERSES in part the holding of the Trial Division in this case. The case is remanded with instructions to issue an amended judgment deleting the words "entitled to participate equally in its affairs."

¹ It is through the mother of Maria and Kisaol, among other ways, that Appellants in the present appeal claim membership in Techekii Clan.