

*Arbedul v. Emaudiong*, 7 ROP Intrm. 108 (1998)  
**ESPANGEL ESEBEI ARBEDUL,**  
**Appellant,**

v.

**BOISEK EMAUDIONG,**  
**Appellee.**

CIVIL APPEAL NO. 32-97  
Civil Action No. 559-89

Supreme Court, Appellate Division  
Republic of Palau

Argued: September 4, 1998  
Decided: September 11, 1998

Counsel for Appellant: Yukiwo P. Dengokl

Counsel for Appellee: David J. Kirschenheiter

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

MILLER, Justice:

This appeal requires us to determine whether the Trial Division erred in invalidating as contrary to custom a deed purporting to transfer clan land to appellant Espangel Esebei Arbedul. We find that the Trial Division's decision in this regard contained no clear error and therefore affirm.<sup>1</sup>

#### ¶109 I. BACKGROUND

Appellant Esebei Arbedul filed this lawsuit in 1989 seeking to evict appellee Boisek Emaudiong from *Ngeruchoi*, a parcel of land in Ngerkebesang Hamlet, Koror State. Arbedul claimed ownership of *Ngeruchoi* on the basis of a deed from Omrekongel Clan dated May 11, 1987. Several years later, Arbedul filed a motion for summary judgment. Emaudiong opposed the motion, arguing that the deed was invalid for lack of strong member consent and maintaining that *Ngeruchoi* still belonged to Omrekongel Clan. The Trial Division granted Arbedul's motion. Emaudiong appealed and the Appellate Division reversed and remanded, finding that Emaudiong had produced sufficient evidence to withstand the motion for summary judgment. *See Emaudiong v. Arbedul*, 5 ROP Intrm. 31 (1994).

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<sup>1</sup> In light of this conclusion, the cross-appeal of Boisek Emaudiong is moot and need not be discussed.

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After trial, the Trial Division issued its judgment on June 19, 1997, ruling that the 1987 deed was invalid under Palauan custom. On the evidence presented, the court concluded that alienation of clan land required the agreement, at a minimum, of all the male and female title bearers of the clan and all of its lineages. Specifically, the Trial Division held that the 1987 deed was invalid because it lacked the approval of Tbekriu, the highest male title of Irbai lineage, one of the three lineages of Omrekongel Clan. Arbedul appealed, bringing the case before the Appellate Division.

## II. ANALYSIS

Arbedul argues that the Trial Division committed reversible error when it concluded that the May 11, 1987 deed from Omrekongel Clan to him was invalid. Although Arbedul acknowledges that under Palauan custom the consent of the senior strong members of a clan is necessary to alienate clan land, he contends that the Trial Division erred in its determination that the consent of the title bearers of all the lineages is necessary to alienate clan lands.

The Trial Division's findings on the terms or the existence of customary law are reviewed under the "clearly erroneous" standard. *Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225, 227 (1996). Reviewing the Trial Division's decision in light of this standard, we cannot find any clear error. Four expert witnesses testified at trial. At least three of them testified that, as found by the trial court, all titleholders of a clan and its lineages must consent to any alienation of clan land. Given that testimony, we are in no position to say that no reasonable trier of fact could have reached the same conclusion, nor are we "left with a definite and firm conviction that a mistake has been committed." *Remoket*, 5 ROP Intrm. at 228.<sup>2</sup>

Appellant contends that the finding of the trial court is inconsistent with prior cases requiring the consent of senior strong members of a clan to alienate clan land.<sup>3</sup> He argues that ¶110 a titleholder's consent is required only if the titleholder would otherwise be considered a strong member of the clan, which is not always the case. *See, e.g., Uehara v. Obeketang*, 1 ROP Intrm. 267, 269-70 (Tr. Div. 1985) ("Under Palauan custom, a weak member of a clan may become the title holder of the clan if that is the wishes of the senior female members (ourrot) of the clan and the council of chiefs of the village."). The testimony of the experts in this case, he argues, must have been based on the unstated assumption that a titleholder will typically be a strong member of the clan. Had they been confronted specifically with a hypothetical titleholder who was a weak member of the clan, his counsel suggested at oral argument, the experts would have agreed that his consent was not necessary.<sup>4</sup>

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<sup>2</sup> We also find no error in the trial court's conclusion that appellant failed to show either that the holder of the title Tbekriu consented to the deed or that the title was vacant at the time the deed was executed.

<sup>3</sup> *See Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 44 (1998); *Ngiraloi v. Faustino*, 6 ROP Intrm. 259, 260 (1997); *Ngiradilubch v. Nabeyama*, 3 ROP Intrm. 101, 105 (1992); *Beans v. Mesechebal*, 8 TTR 107, 110 (1980); *Maidesil v. Remengesau*, 6 TTR 453, 456 (Tr. Div. 1974).

<sup>4</sup> Contrary to this suggestion, however, one of tile experts was asked about an "ulechell member who now holds a title in one of the lineages within a clan," and responded, "his consent

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The answer to appellant's contention is that our longstanding determination to treat the existence and substance of custom as a matter of fact, *see Udui v. Dirrecheteet*, 1 ROP Intrm. 114 (1984), requires that the outcome of a case be decided on the basis of its own record and allows the possibility that the conclusions reached in one case may vary from, or even be inconsistent with, the conclusions in another. The distinction now drawn by appellant - that only strong titleholders need consent - may be developed in a future case; nevertheless, we are bound in reviewing this case to consider the answers given and not what might have been said had more questions been asked. In any event, we are not prepared to say that the customary rule applied in this case is inconsistent with prior case law. To say, as we have, that the consent of strong senior members is a necessary condition for the alienation of clan land is different from saying that it is sufficient and that no other requirements may be found to exist under custom.<sup>5</sup>

The judgment of the Trial Division is accordingly AFFIRMED.

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must be obtained.” (Tr. 499). By her reasoning, such an ulehell member would be considered strong by the very fact of his bearing the title. *Id.*

<sup>5</sup> Conversely, the rule as stated by the trial court here - that the consent of at least the titleholders is required - is not inconsistent with the general requirement of strong member consent.