

Siksei v. Toribiong, 7 ROP Intrm. 123 (1998)
NGIRUCHELBAD SIKSEI,
Appellant,

v.

MINEKO TORIBIONG,
Appellee.

CIVIL APPEAL NO. 57-97
Land Court D.O. No. 07-114

Supreme Court, Appellate Division
Republic of Palau

Argued: September 14, 1998

Decided: October 15, 1998

Counsel for Appellant: Mary Lourdes Materne

Counsel for Appellee: J. Roman Bedor

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; R- BARRIE MICHELSEN, Associate Justice.

MICHELSEN, Justice:

This is an appeal from a Land Court decision awarding land known as Obengedang or Emchong in Airai State to Mineko Toribiong. Because the Land Court erred in its application of 39 PNC § 102(d) to the facts presented by the parties, we are remanding the case to the Land Court for further proceedings.

BACKGROUND

The land at issue, identified as Lot No. N001-34, is listed in the Tochi Daicho as the individual property of Ngiraiderbei, who died intestate April 25, 1981. He was single and childless. Ngiraiderbei was the paternal uncle of appellant Ngiruchelbad Siksei and the maternal uncle of appellee Mineko Toribiong.¹

Both parties claim the land as their individual property based on alleged conveyances to them by Ngiraiderbei during his life. Before the Land Court, the parties were the only witnesses. They did not introduce any exhibits.

¹ Ngiraiderbei was the brother of appellant's father, Siksei, and of appellee's mother, Selau,

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The basis of Siksei's claim is that Ngiraiderbei gave the property to him as *ulsiungel* or for services rendered.² According to Siksei, Ngiraiderbei, who had no children to care for him in his old age, lived with Siksei for five years from 1976 until Ngiraiderbei died in 1981. Siksei testified that Ngiraiderbei took him to the land and showed him the boundaries.³

Appellee Toribiong contends that Ngiraiderbei lived with her from 1969 to 1976, and that he gave her the land by oral conveyance before Ngiraiderbei moved in with Siksei. Toribiong says that she cleared the land, planted markers on the land and delineated its boundaries. Toribiong argues that Ngiraiderbei did not move into Siksei's house; rather, he moved into a small house ¶124 next door to Siksei's house. According to Appellee, she was actively involved in Ngiraiderbei's funeral arrangements.

The Land Court did not make findings of fact indicating which parts, if any, of the parties' accounts were accepted. Instead, it analyzed the parties' relationship to the decedent and concluded that the Toribiong was the proper owner of the land because she was the closest relative to Ngiraiderbei:

5. The Court . . . considered the relationship of these two claimants to Ngiraiderbei and found that Mineko Toribiong was the closest relative to Ngiraiderbei because she was the daughter of Selau who was the sister of Ngiraiderbei, thus, it is appropriate in Palauan customs for her to handle properties of the deceased Ngiraiderbei. The law clearly states this, 39 PNC Section 102(d).

6. Ngiruchelbad is the son of Siksei, the younger brother of Ngiraiderbei, thus, according to Palauan customs he was not powerful enough to administer the properties of Ngiraiderbei.

Adjudication and Determination, D.O. No. 07114(Oct. 13, 1997) at 3-4.

On appeal, Siksei argues (1) that the Land Court erred in applying section 102(d) because Toribiong claimed the land as individual property and not on behalf of any lineage; (2) that the Land Court erred when it ignored Siksei's claim for the land as *ulsiungel* because that claim was based on "strong and convincing evidence", including the court's finding that Ngiraiderbei lived with appellant for five years before he died; and (3) even assuming section 102(d) is applicable, the Land Court erred when it misapplied that statute by awarding the land to Toribiong when both Siksei and Toribiong are members of Ngiraiderbei's paternal and maternal lineage and it was Siksei, not Toribiong, who actively and primarily took care of Ngiraiderbei for the five years prior to his death.

² "*Ulsiungel* is compensation received in exchange for services rendered." *In the Matter of Dengokl*, 6 ROP Intrm. 142, 144 (1997); *Umedib v. Smau*, 4 ROP Intrm. 257 (1994).

³ According to Siksei, Ngiraiderbei told him: "This is your property. This was given to me by my mothers and so I give it to you. It is my personal property and so I give it to you." Transcript at 11.

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Toribiong does not directly address the argument whether the Land Court incorrectly applied section 102(d). Toribiong contends that, even if the Land Court erred in applying section 102(d), there is relevant evidence under the clearly erroneous standard to support the Land Court decision.⁴

ANALYSIS

Siksei's argument that the Land Court erred in utilizing section 102(d) to decide this case has merit.⁵ Section 102(d) is only **¶125** applicable in determining ownership of land that a decedent owned at the time of his death. Neither party claimed that the land was owned by Ngiraiderbei at the time of his death - both claimed ownership based upon a conveyance during Ngiraiderbei's life. The question for the Land Court was whether Ngiraiderbei gave the land to Siksei or to Toribiong, and section 102(d) provides no guidance on that issue. Section 102(d) states, in part:

If the owner of fee simple land dies without issue and no will has been made in accordance with this section or with the laws of the Republic or if such lands were acquired by means other than as a bona fide purchaser for value, 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.

39 PNC § 102(d).

The facts presented by the parties do not call for an application of section 102(d). There was no evidence concerning "the desires of the immediate maternal and paternal lineage . . ." or which lineage was "actively and primarily responsible for the deceased prior to his death." 39 PNC § 102(d). This is not surprising since neither party argued that section 102(d) applied. Under these circumstances, the Land Court's decision utilizing section 102(d) was incorrect.

The case is hereby remanded to the Land Court for further proceedings consistent with this opinion.

⁴ When reviewing a Land Court factual determination, this Court applies the clearly erroneous standard. *Kulas v. Becheserrak*, 7 ROP Intrm. 76, 77 (1998).

⁵ Because this issue is a question of law, we review it de novo. *Ngiradilubch v. Nabeyama*, 5 ROP Intrm. 117, 119-20 (1995).