

Matchiau v. Telungalk ra Klai, 7 ROP Intrm. 177 (1999)

ELCHESEL MATCHIAU

Appellant

v.

**TELUNGALEK RA KLAI,
Rep. By Ngetwai Ngiracheriang and
TELUNGALEK RA SMASERUI
Appellees.**

**TELUNGALEK RA KLAI,
Rep. By Ngetwai Ngiracheriang, “Ebil ra Klai”
Appellant,**

v.

**TELUNGALEK RA SMASERUI,
Rep. By Taro Ngiraingas, “Chief Erungel”
Appellee.**

CIVIL APPEAL NO. 98-02 & 98-04

D.O. No. 07-124 & 07-127

Supreme Court, Appellate Division
Republic of Palau

Argued: January 8, 1999

Decided: April 8, 1999

Counsel for Appellant Elchesel Matchiau: J. Roman Bedor

Counsel for Appellant/Appellee Telungalek Ra Klai: Ernestine K. Rengiil

Counsel for Appellee Telungalek Ra Smaserui lineage: Yukiwo P. Dengokl

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BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; and LARRY W. MILLER, Associate Justice.

BEATTIE, Justice:

These consolidated appeals concern ownership of Lot Nos. N001-21 and N001-25 in Irrai Hamlet, Airai State, traditionally known as Smoll and Smaserui respectively. The Land Court awarded lot 1-21 to Telungalk Ra Klai (“Klai Lineage”) and lot 1-25 to Telungalk Ra Smaserui (“Smaserui Lineage”). We affirm as to lot 1-25 and remand as to lot 1-21.

I. BACKGROUND

The Tochi Daicho for Airai has not been located, and there is no evidence in the record concerning who was listed therein as the owner of the property. Elchesel Matechiau (“Matechiau”) and Ngetwai Ngiracheriang (“Ngiracheriang”) claim that both lots 1-21 and 1-25 were owned by Reklai.¹ Reklai died intestate in 1944, long before the enactment of any statute of descent and distribution for Palau. Although the property was not distributed at Reklai’s eldecheduch, Matechiau, who was Reklai’s daughter and was adopted by Reklai’s mother, claims that she is the owner of lot 1-21 as Reklai’s customary heir. Ngiracheriang, Reklai’s sister, claims that both lots passed to the Klai Lineage after Reklai died. Smaserui Lineage claims lot 1-25 and argues that Reklai never owned it because it has always belonged to Smaserui Lineage.

On December 18, 1997, the Land Court issued Determinations of Ownership, awarding lot 1-21 to Klai Lineage, and the lot 1-25 to Smaserui Lineage. The Land Court found that lot 1-21 was given to Reklai as *ulsiungel*² by Ngirasmoll Sngaid and his sister Ucheliou, and that it was Reklai’s individual property. The Land Court did not expressly state the basis for awarding the lot to Klai Lineage, but it did find that after Reklai died Ucheliou told Ngiracheriang that she could bury her father there, and that she did so without protest from anyone. In addition, the Land Court found that Matechiau was adopted by Reklai’s mother and was part of Klai Lineage, and that Reklai gave Matechiau a property called Ngerkelau prior to his death. Regarding lot 1-25, the Land Court found that it was not Reklai’s property, and that it belonged to Smaserui Lineage.

Matechiau appealed, claiming that she was entitled to inherit lot 1-21 as Reklai’s biological daughter. Klai Lineage also appealed, contesting the award of lot 1-25 to Smaserui Lineage on the basis that the latter did not file a claim for the lot.

II. LOT 1-21

It is undisputed that lot 1-21 was Reklai’s individual land. Matechiau argues that the Land Court erred in giving the lot to Klai Lineage because, despite her adoption, L179 she is Reklai’s customary heir. Klai Lineage argues that Matechiau’s customary inheritance rights were severed after her adoption.

Reklai died intestate prior to the enactment of 39 PNC Section 102 and its predecessor, Palau District Code Section 801, Palau’s statutory laws governing the disposition of the property of an intestate decedent. The statutes do not apply retroactively, *Wasisang v. Remeskang*, 5 ROP Intrm. 201, 203 (1996); *Lakobong v. Anastacio*, 6 ROP Intrm. 178, 182 (1997), and the property was not distributed at Reklai’s eldecheduch. Where there is no applicable statute of descent and distribution and no distribution of the property at an eldecheduch, we have upheld determinations

¹ Matechiau appealed the award of lots 1-21, 1-25 and two other lots (1-24 and 1-26) awarded to Smaserui Lineage. However, we dismissed Matechiau’s appeal respecting all lots except lot 121 on July 7, 1998.

² *Ulsiungel* is compensation received in exchange for services rendered. See *In Re Dengokl*, 6 ROP Intrm. 142, 144, fn. 3 (1997); *Umedib v. Smau*, 4 ROP Intrm. 257, 257 (1994).

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that, under custom, a decedent's land passes to his children. *Ruluked v. Skilang*, 6 ROP Intrm. 170 (1997). *Ruluked*, however, left open the possibility that contrary evidence regarding custom might support a different result. *Ruluked* at 172 (“ . . . in view of the parties' failure to present any other evidence regarding Palauan customary law relevant to the issue, we find no error in the Trial Division's decision to uphold the LCHO's finding . . .”). We have never addressed the issue of whether a child's customary inheritance rights are severed by adoption.³

The findings of the Land Court do not make clear the basis for awarding the property to Klai Clan and rejecting Matechiau's claim. It made a finding that Matechiau had been given “a property of Ngerkelau from her father Reklai.” However, the Land Court did not articulate the legal or customary significance of that finding. When a trial court applies custom, it must include a written description of such custom in the record. *Fritz v. Blailles*, 6 ROP Intrm. 152, 153 (1997). Here, there was no description of any custom relied upon in awarding the property to Klai and rejecting Matechiau's claim, nor was any evidence of custom presented to the Land Court. Although the Land Court may take judicial notice of a custom even if no evidence of the custom is presented, (see Rule 9, Land Court Rules of Procedure), it must describe the custom in its written findings.⁴ The Land Court's findings of fact and conclusions of law are not specific enough for us to determine the basis for awarding lot 1-21 to Klai Lineage. As a result, we cannot adequately review its determination of ownership respecting this lot.⁵

The determination regarding lot 1-21 is hereby remanded to the Land Court with instructions that the Land Court make findings of fact which clearly set forth the basis for its determination, including a description of any **§180** custom upon which it relies. The Land Court need not take further evidence except as required by Rule 5 upon timely request. Once the Land Court has issued its Findings and new Determination of Ownership -- which may, but need not, reach the same result as the first Determination of Ownership -- any party aggrieved may file an appeal in accordance with the law.

III. LOT 1-25

Klai Lineage argues that the Land Court's award of lot 1-25 to Smaserui Lineage was clearly erroneous because Smaserui Lineage did not make a claim for the lot. Klai Lineage's entire argument rests on one portion of the transcript where Smaserui Lineage's representative, Taro Ngiraingas (“Ngiraingas”) stated that the Lineage claimed only lots 1-24 and 1-26.

³ Matechiau's reliance on *Ruluked* in this regard is unfounded. Contrary to Matechiau's representations to the Court, *Ruluked* did not involve the issue of a child's inheritance rights from her natural family after adoption. Rather, that case involved the right of a child to inherit from her natural father, who himself was adopted.

⁴ We also note that, if a party makes a timely request, the party should be given an opportunity to be heard as to the propriety and tenor of the matter judicially noticed. Rule 5, Land Court Rules of Procedure.

⁵ Nor can we hold that one particular party failed to prove the custom on which it relies, and therefore loses on appeal. Both Matechiau and Klai Lineage claim that custom supports their position, and accordingly the Land Court must determine which is correct.

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Smaserui Lineage's Application for Land Registration does not indicate which lots it claimed. The Application only states that the Lineage was claiming the Smaserui boat landing (Ngetbuil and Arkemais), which it described as the boat landing site and small dock on the right side of the road leading toward Airai village. It is not clear whether lot 1-25 is included in this description.

However, there is other evidence that supports the Land Court's finding the Smaserui Lineage did claim the property. For example, Ngiraingas testified that the land claimed by Smaserui Lineage shared a common boundary to the south with Smoll (lot 1-21) which was identified by cement markers. Tr. at pp. 63-66. The Land Court judge then went to the field and viewed the boundary makers, and listened and watched as Ngiraingas physically identified the boundary markers delineating the land claimed by Smaserui Lineage. Tr. at pp. 84-85. Having observed Ngiraingas identify the boundary, the Land Court found that lot 1-21 and the land belonging to Smaserui Lineage were separated by a boundary marker running straight from monument marker number C-20 to C-16. Drawing the boundary in this manner separates lot 1-21 from lot 1-25.

We review the findings of the Land Court under the clearly erroneous standard. *Tesei v. Belechal*, Civ. App. No. 14-97 (July 30, 1998). Under that standard, if the factual findings made by the Land Court are "supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, those findings will not be set aside unless this Court is left with a definite conviction that a mistake has been committed." *Elbelau v. Semdiu*, 5 ROP Intrm. 19, 22 (1994). A reasonable trier of fact could have reached the conclusion that Smaserui Lineage claimed lot 1-25, and therefore the Land Court's factual finding was not clearly erroneous. We affirm the award to Smaserui.

CONCLUSION

For the foregoing reasons, the Land Court's determination regarding lot 1-21 is VACATED and REMANDED for further findings consistent with this opinion. The determination regarding lot 1-25 is AFFIRMED.