

In re Tellei, 7 ROP Intrm. 195 (1999)
**IN THE MATTER OF THE
ESTATE OF JOSEPH W. TELLEI,
Deceased.**

CIVIL APPEAL NO. 98-03
Civil Action No. 211-89

Supreme Court, Appellate Division
Republic of Palau

Argued: February 19, 1999
Decided: May 6, 1999

Counsel for Appellant: J. Roman Bedor
Counsel for Appellee: Mark Doran

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
and Associate Justice R. BARRIE MICHELSEN.

MILLER, Justice:

This is an appeal from the trial court's judgment regarding the distribution of property from the estate of Joseph W. Tellei ("Tellei"). We affirm.

I. BACKGROUND

Tellei died intestate on September 15, 1987, survived by, among others, his brother, Appellant Ubal Tellei ("Ubal"), and his son, Appellee Mariano Tellei ("Mariano"). As found by the trial court, shortly before Tellei died and in Mariano's presence, he told his wife and Ubal that he did not want an eldecheduch to be held and that he wanted his real property to go to Mariano. After Tellei died, Ubal told Tellei's relatives what Tellei's wishes were. The trial court found that those relatives were authorized under 39 PNC § 196 § 102(d) to dispose of Tellei's property,¹ and that they acquiesced to Tellei's wishes. Ubal then told Mariano he could have whatever land he wanted. This estate proceeding was initiated in May 1989. With the exception of certain property given away pursuant to stipulation, Mariano claimed all of the real property that was individually owned by Tellei at the time of his death. In addition, Polycarp Basilius ("Polycarp") filed a creditor claim to recover a \$1,500 loan to Tellei plus interest from July 11, 1986. The parties stipulated to the full amount of Polycarp's claim, and agreed that "the court may and shall enter whatever orders it deems necessary and proper in relation to said claim, including orders regarding payment of same."

Six months after the estate proceedings were commenced, in November 1989, Ubal caused an eldecheduch to be held Tellei's widow did not attend, and no property was disposed of. However, approximately \$21,000 was raised and was put in an escrow account.

¹ It is undisputed that Tellei did not purchase any of the contested property.

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The trial court awarded all of Tellei's real property (except that given away pursuant to stipulation) to Mariano, finding that it had been given to him in accordance with § 102(d). The trial court also ordered that the administrator of the estate pay Polycarp's claim out of the funds raised during the eldecheduch. Ubal, who had been appointed administrator of the estate, timely filed an appeal, and challenges both of these rulings.

ANALYSIS

A. THE AWARD TO MARIANO

Ubal challenges the award to Mariano on the ground that the trial court improperly disregarded the decision of the eldecheduch. Although he acknowledges that no decision was made with respect to Tellei's property at the eldecheduch, he appears to argue that the trial court was without the authority to make any award or perhaps that it should have waited for a further meeting to be held. We disagree.

Section 102(d), which the trial court applied and which Ubal agrees is applicable here, requires that a decedent's property 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). Here, the trial court found that prior to the eldecheduch, the relatives authorized to dispose of Tellei's property pursuant to § 102(d) had acquiesced in his wish that his property should go to Mariano. Appellant has chosen not to provide a transcript from the hearing below, and we are bound therefore to accept that factual finding as true. *See Smau v. Emilian*, 6 ROP Intrm. 31, 33 n. 1 (1996). Given that finding in essence, that the responsible lineage under § 102(d) had expressed its desire that Tellei's real property should go to Mariano - the trial court's award is unimpeachable.

B. POLYCARP'S CLAIM

Ubal also argues that the trial court erred in ordering that Polycarp's claim be paid out of the money raised at the eldecheduch. He **¶197** claims that the money raised was children's money (ududir a rengalek) and widow's money (techel a otungel), which are not part of Tellei's estate and cannot be used to pay estate debts.

As an initial matter, we are doubtful whether this issue is properly before us since there is no indication in the record that Ubal's notice of appeal or brief was served on Polycarp, who is obviously an - if not the only - interested party with respect thereto. We are also doubtful of Ubal's right to raise this issue since Mariano's counsel stated at oral argument that he, his siblings, and his mother - the intended beneficiaries of the money in question - have no objection to its use in paying Polycarp's claim. Indeed, and in any event, it was in light of that fact that the trial court, although acknowledging that most of the money should not be considered part of the estate, concluded that Polycarp had a lien against a portion of it, which should be used to pay off

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his claim.² We find no fault in the trial court's analysis.

CONCLUSION

For the foregoing reasons, the Trial Court's judgment is AFFIRMED in all respects.

² "Rather than holding up the closing of the estate pending a sale of property, the court finds that Polycarp Basilius has an equitable lien on that cash fund because the fund was raised for the benefit of decedent's widow and children -- the same people who are inheriting the property which would otherwise be sold to satisfy Polycarp's claim. The administrator shall therefore forthwith pay the Polycarp claim out of that fund." Order of Final Distribution and Closing of Estate at p. 5.