

Ngerketiit Lineage v. Ngerukebid Clan, 7 ROP Intrm. 64 (1998)
**NGERKETIIT LINEAGE, represented by FRANCISCO
ARMALUUK, EUSEBIO RECHUCHER,
Appellants,**

v.

**NGERUKEBID CLAN, represented by Chief Remeliik
BECHESERRAK TMILCHOL, HEIRS OF NGERIBONGELRECHULD,
represented by MARIA RECHULD, GEORGE NGIRARSAOL, JEFF
NGIRARSAOL, HILDE BROADBENT, HEIDI EMERY, GEORGIANA
PERSONOUS, LORA DWARTE, ERNEST NGIRARSAOL, RAFAELA
SUMANG, VIOLA SUMANG, NAOMI SUMANG, ISABELLA SUMANG,
SAM MASANG, SABINO ANASTACIO, and ALAN SEID,
Appellees.**

CIVIL APPEAL NO. 9-96
Civil Action Nos. 108-94 and 121-94

Supreme Court, Appellate Division
Republic of Palau

Submitted: April 23, 1998

Decided: May 1, 1998

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

PER CURIAM:

Appellant Ngerketiit Lineage and appellee Ngerukebid Clan have each filed petitions for rehearing pursuant to ROP R. App. P. 40. Acknowledging that this Court grants such petitions only on rare occasions, *see Espangel v. Tirso*, 3 ROP Intrm. 282, 283 (1993), both parties nonetheless maintain that **¶65** our April 1 decision erred in significant ways. After consideration of the arguments, we deny the petitions.

A. Petition of Ngerukebid Clan

In the April 1 opinion, we reversed the Trial Division's award of certain lots to appellee Ngerukebid Clan. The Clan asks us to reconsider that decision on the ground that we misapplied the "clearly erroneous" standard applicable to appellate review of trial court findings of fact. According to the Clan, we overlooked the Trial Division's factual finding that the lands at issue were held by Armaluuk Kloteraol in trust for the benefit of the Clan.

The Clan misperceives our holding. We did not disturb the Trial Division's factual finding that Kloteraol and the Clan reached an agreement in the 1950's concerning this land.

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However, we did come to a different legal conclusion on the significance of that agreement. If the Trial Division had labeled the agreement a trust, that would be a legal conclusion, not a factual one. But we are not convinced that the Trial Division went as far as the Clan contends. The Trial Division held that the Clan could “probably” have brought an action for the imposition of a “constructive trust” if it had done so within the applicable statute of limitations. The Clan never brought such an action and the Trial Division never found that a trust had been established. The Trial Division went only so far as to say that the Lineage was holding the lands “in effect” as a trustee.

Moreover, the Lineage was determined to be the fee simple owner of this land by virtue of D.O. 162. Once the Lineage had title to the property, the senior strong members of the Lineage, not merely Kloteraol, had to assent to the transfer. The Clan’s citation to *Salii v. Sugiyama*, 4 ROP Intrm. 89 (1993) is unavailing. In that case, the “subject property was not clan owned, lineage owned or even owned by a family within a lineage.” *Id.* at 91. To the contrary, it dealt with the issue of the circumstances under which a trustee can convey title to trust property even where such a conveyance constitutes a breach of the trust.

The Clan argues also that we erred by reversing the Trial Division’s finding that the strong members of the lineage consented to the 1977 deed by not objecting to it until 1994. The Clan’s suggestion that such a finding was factual is incorrect. The Trial Division’s ruling on the consent issue was legal in nature. We have already stated our reasons for disagreeing with that ruling and are not persuaded to change those reasons now.

B. Petition of Ngerketiit Lineage

Ngerketiit Lineage’s petition for rehearing is based in large part on the July 22, 1983 deed from Armaluuk Kloteraol to Aot Ollaol. The Lineage contends that the deed is invalid and that therefore the lots we awarded to Sabino Anastacio and the Ngirarsaols (Ollaol’s successors in interest) should be awarded to the Lineage instead.

The simple response to this argument is that the Lineage had an opportunity to appeal the 1987 determinations of ownership to Ollaol (who later deeded the lot to Anastacio) and the Ngirarsaols and failed to do so. But the Lineage protests that it did appeal those determinations and that we erred in holding that its appeal of the 1987 determinations involved only lots awarded to Huan Ulengchong. We remain unconvinced that the Lineage’s appeal involved anyone other than Huan Ulengchong. The Lineage’s summary judgment motion requested relief **¶66** against Ulengchong only and that is what it received. It then permitted that judgment to be treated as a final judgment on appeal.

The Lineage argues also that they did not have notice that the lots eventually awarded to Ollaol and the Ngirarsaols would be up for determination at the 1986 hearings. Again, the Lineage could have, but did not, raise this issue in its appeal from the 1987 determinations. In any event, as noted in the April 1 opinion, a fair reading of the notice for the 1986 hearings would show that those lots were up for determination. Although three of the four lots were not specifically mentioned in the notice, the notice did explain that “all tracts of land which are

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covered by Determination of Ownership and Release No. 162" were up for determination.

Accordingly, the petitions for rehearing are DENIED.