

Ngirchokebai v. Reklai, 8 ROP Intrm. 151 (2000)
DIRRAKLANG NGIRCHOKEBAI,
Appellant,

v.

PAUL REKLAI,
Appellee.

CIVIL APPEAL NO. 98-51
D.O. No. 03-250

Supreme Court, Appellate Division
Republic of Palau

Argued: March 22, 2000
Decided: April 10, 2000

Counsel for Appellant: David J. Kirschenheiter, Micronesia Legal Services

Counsel for Appellee: J. Roman Bedor

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

PER CURIAM:

The Tochi Daicho for Babeldaob lists Lot No. 717 as the individual property of Reklai. Claimants Dirraklang Ngirchokebai and Paul Reklai are adopted children of Reklai.¹ Reklai had a biological son, Selbalt, who is now deceased, but no one claimed Lot. No. 717 for Selbalt's heirs.

¶152 The Land Court correctly awarded Lot No. 717 to Paul Reklai. Reklai died intestate in 1968 or 1969. The disposition of Reklai's property is therefore governed by Palau District Code § 801. The version of §801(c) in effect in the late 1960s provides that "lands held in fee simple by an individual shall, upon the death of the owner, be inherited by the owner's oldest living male child of sound mind, natural or adopted, or, if male heirs are lacking, the oldest living female child of sound mind, natural or adopted." Paul Reklai inherits under §801(c) as the oldest male child claiming the property.

Appellant claims that § 801 does not apply where the eldest male child is deceased. Appellant contends that customary law prevails in this situation and that she is the heir because she received Lot. No. 717 at Reklai's *eldecheduch*.

¹ The Land Court's finding that Paul Reklai is an adopted child of Reklai is supported by evidence in the record and therefore is not clearly erroneous. See *Arbedul v. Romei Lineage*, 8 ROP Intrm. 30, 31 (1999).

Ngirchokebai v. Reklai, 8 ROP Intrm. 151 (2000)

This argument must fail. The Land Court found that Lot. No. 717 was not discussed at Reklai's *eldecheduch*, and this finding was not clearly erroneous. However, the Land Court's finding is not determinative of the outcome on appeal. At the time of Reklai's death, § 801 governed the disposition of land held in fee simple by individuals who died intestate.² If the eldest male child or his heirs did not claim the property, under § 801(c) the property passed to the next oldest male child and so on down the line. The statute provided that the eldest female child only inherited "if male heirs are lacking," and that the deceased's relatives only determined who inherited if he died "without issue or eligible spouse." The failure of Selbalt's heirs to claim the property must be construed as a waiver of Selbalt's claim. That being the case, the next oldest male child, namely Paul Reklai, inherited the property.

The Land Court is AFFIRMED.

² The Palau Constitution does not apply retroactively to land transfers. *See Morei v. Ngetchuang Lineage*, 5 ROP Intrm. 292, 293 (Tr. Div. 1995). Consequently, the application of § 801 to property disposed of at *eldecheduch* before the adoption of the Constitution does not conflict with article V, § 2 of the Constitution.