

Ngiramechelbang v. Katosang, 8 ROP Intrm. 333 (Tr. Div. 1999)

**RIMAT NGIRAMECHELBANG,
Plaintiff,**

v.

**SINGICHI KATOSANG, EDWINA KATOSANG,
IWESEI RENGEHEL, NGIRACHELONG RENGEHEL,
PETER SANG, IMEONG ETIBEK, BECHESERRAK RENGEHEL,
and UNITED MICRONESIA ASSOCIATION, INC.,
Defendants.**

CIVIL ACTION NO. 95-97

Supreme Court, Trial Division
Republic of Palau

Decided: September 3, 1999

BEFORE: JEFFREY L. BEATTIE, Associate Justice.

In this action, Plaintiff seeks a declaration that a lease between Odilang Clan and United Micronesia Development Association (UMDA) is invalid, that the manner in which the rent was divided among the clan members violated Palauan custom, and that Plaintiff should have received a greater share of the rental proceeds. The case has been tried ¹ and the Court now makes its findings of fact and conclusions of law.

Facts

Odilang Clan owns land on Ngerkebesang Island known as “Desomel.” In September of 1989, it entered into a lease with United Micronesia Development Association, Inc. (UMDA) under the terms of which Odilang leased Desomel to UMDA for 99 years. The lease was declared void in Civil Action No. 541-89 on the grounds that, due to the lengthy term, it amounted to a sale of land to a non-citizen in violation of the Palau Constitution. In 1996, Odilang Clan and UMDA amended the lease to, among other things, limit the term to 50 years. The lease, as amended, (the “Lease”) provided that rent would be in the amount of \$2,170,000, payable in two installments. The first installment was paid in 1996, and the second installment was paid in February of 1997. One month later, Plaintiff filed this action.

¹ This action was consolidated with No. 92-97 and 93-97. Before trial, No. 92-97 was deconsolidated because of counsel’s disclosure of a possible conflict due to prior representation of an adverse party. After trial, the Plaintiffs in No. 93-97 moved to withdraw their claims, and that case was dismissed.

Validity of Lease

Plaintiff contends that she is a strong senior member of Odilang Clan. She claims that, therefore, under Palauan custom, her consent to the Lease was required in order for it to have any validity. She also claims that, under Palauan custom, her approval of the distribution of rental proceeds among clan members was required. It is undisputed that Plaintiff consented to neither the Lease nor the distribution of its rental proceeds among clan members. Therefore, Plaintiff seeks a declaration that the Lease is invalid or, failing that, a declaration that the distribution of proceeds was in violation of Palauan custom and an order that the proceeds be returned by those defendants who received them and that distribution amounts be determined by the Court.

A party claiming to be a strong senior member of a clan has the burden of proving such status by a preponderance of the evidence. See *In re the Estate of Adelbeluu*, 3 ROP Intrm. 58 (1991). To the extent that a party relies upon custom to prove her case, she must prove the existence of the custom by clear and convincing evidence. *Remoket v. L334 Omrekongel Clan*, 5 ROP Intrm. 225, 227 (1996).

In earlier litigation, the Chief Justice found that Plaintiff was mechut el yars of Odilang Clan. *Gibbons v. Rengechel*, Consolidated Civil Action Nos. 87-90 and 348-93 (Tr. Div. April 15, 1994). The *Restatement of Judgments (Second)*, § 27 provides that:

When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.

Plaintiff contents that she is not bound by that finding because, according to her, (1) the finding was not essential to the judgment rendered in *Gibbons* and was not “actually litigated”; and (2) plaintiff and defendants, although parties to *Gibbons*, were not adversaries.

The amended pre-trial order in *Gibbons*, of which the Court takes judicial notice, in stating the issues to be tried said that “These cases are for: Determination of membership of Odilang . . . Who are the members of Odilang and who are the strong members?” Amended Pre-Trial Order at ¶ 1(a) (August 31, 1998). The amended pre-trial order, which was approved by Plaintiff, provided that “the parties having specified the foregoing issues of fact and law remaining to be litigated, this pre-trial order shall supersede the pleading and govern the course of the trial of this cause” Thus it seems clear that the factual issue of Plaintiff’s status in Odilang was essential to the judgment and was actually litigated.

Further, although the plaintiff and defendants may not have been opposing parties in *Gibbons* inasmuch as Plaintiff was an intervener, it is clear that Plaintiff and Gibbons were adversaries. The *Restatement of Judgments (Second)*, § 29 provides that

A party precluded from relitigating an issue with an opposing party, in accordance with §§ 27 and 28, is also precluded from doing so with another person unless the

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fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue.

Plaintiff does not claim that she lacked a full and fair opportunity to litigate the issue of her membership status in Odilang Clan in the trial against Gibbons. Thus, she is bound by the *Gibbons* finding and cannot relitigate the *mechut el yars* finding here.

Notwithstanding the foregoing, at the trial of this case, Plaintiff was essentially allowed to relitigate the issue of her status in the clan, and the evidence presented in this case paints the same picture it did in *Gibbons*. Thus, even if the Court were to ignore the *Gibbons* findings, the evidence presented in this case shows that Plaintiff is *mechut el yars* of Odilang.

The evidence presented in this case shows that Plaintiff lived in Ngardmau until she married Ngiramechelbang, a man from Meyuns. It was then that she moved to Ngerkebesang. Her connection to Odilang Clan is a woman named Dirrengewis. Dirrengewis was the daughter of a Portugese seafarer whose vessel was wrecked on the reef near Ulong. Dirrengewis was born on a rock island and later moved in with Odilang on L335 Ngerkebesang Island. She gave birth to a woman named Dengir and then died and was buried at the Odilang odesongel. Dengir left Ngerkebesang and married a man from Aimeliik, eventually settling in Airai. Dengir became the title bearer of Esuroi Clan of Airai, as Esuroi's original members had left, so Dengir and her relatives took over the clans titles and land. Dengir's children stayed with Esuroi in Airai, and her descendants have held the Esuroi titles since then. Plaintiff is an *ochell* member of Esuroi Clan.

Under these facts, Plaintiff is *mechut el yars* of Odilang Clan according to the expert testimony presented in this case, defining *mechut el yars* as original settlers in one clan who left to go to another clan and take over the titles and authority in the new clan. Indeed, Plaintiff herself testified at one point that she was *mechut el yars* of Odilang Clan. Even after all of this discussion, however, the question remains, what is Plaintiff's strength in Odilang Clan? This question was not answered in the *Gibbons* case.

In support of her contention that she is a strong member of Odilang, Plaintiff asserts that her strength is evidenced by several factors. First, she is allowed to use the *lkul a dui el mesei*, or the chief's taro patch. Second, at the funeral of Imeong Etibek, a strong senior member of Odilang, she sat at the head of the body. Third, she claims that her contributions to Odilang Clan have given her strength in the clan.

The *lkul a dui el mesei* is, under Palauan custom, a taro patch for the male title bearer's wife. Plaintiff testified that defendant Bechesserak Rengechel, who is the female title bearer of Odilang, gave her permission to use Odilang's *lkul a dui el mesei*. At that time, the *mesei* was overgrown with vegetation and was not in use. Plaintiff argues that the *mesei* is an important clan property and that, under Palauan custom, only a strong member of the clan is allowed to use it. Plaintiff, of course, must prove the existence of that custom by clear and convincing evidence even though the custom is sought to be used as circumstantial evidence of her strength in Odilang Clan. *Remoket v. Omrekongel*, 5 ROP Intrm. at 228. Weighing the conflicting expert

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testimony on this point of custom, the Court finds that there is not clear and convincing evidence that only strong members of the clan may use the *lkul a dui el mesei*.²

Similarly, there was no clear and convincing evidence that, under Palauan custom, only strong members may sit at the head of the body at the funeral of a strong member of the clan, such as *Imeong*. Plaintiff was allowed to testify as her own expert witness on Palauan custom. She testified that the custom was that a strong member of the clan is seated at the head of the deceased and wipes the condensation off the face of the body when necessary. The testimony of the other expert witnesses did not corroborate this version of custom. Rather, they stated that the deceased's siblings or parents would sit at the head and that even a distant relative could sit there if permitted by the clan's *ourrot*. In viewing this and the other conflicting expert testimony presented concerning custom, the Court takes into account the fact that Plaintiff did not have an independent expert witness and instead relied upon her own testimony. Moreover, her testimony was confused at times, and she confessed that she is a little senile. Indeed, at one point in her testimony she indicated that she was not aware that she was the person who filed the lawsuit and stated that she did not know why she filed it, requesting that she ask her siblings.

¶336 Plaintiff testified that she attended four funerals of *Odilang* and one *eldechuduch*. She contributed money, food or both for all of the funerals she attended. She contends that her contributions to *Odilang* Clan have made her a strong member regardless of her *mechut el yars* status. The Court finds that Plaintiff has failed to establish that these contributions have made her a strong member of *Odilang*. First, *Esuroi* Clan and *Odilang* Clan are *kaukebliil*, which means there is some relationship between members of the two clans. Under Palauan custom, when two clans are *kaukebliil*, their members assist each other in funerals, contributions of money, *eldechuduchs* and *ocheraols*. Second, the credible expert testimony established by clear and convincing evidence that a *mechut el yars* of a clan does not have any say over the clan's property or distribution of money. Third, even if it were possible under custom for a *mechut el yars* to become elevated to a strong member by contributions to the clan, Plaintiff did not establish that her contributions were sufficient to elevate her to the level of a strong member.

In view of the foregoing, it is clear that, even if Plaintiff were correct in her contention that custom requires the consent of a clan's senior strong members to any lease of clan land, Plaintiff's consent was not required. The people who signed the Lease on behalf of *Odilang* Clan were *Singichi Katosang*, *Becheserrak Rengechel*, and *Imeong Etibek*. *Katosang* bears the title *Rechebei*, the highest male title of *Odilang* Clan, and he held his chiefly title when he executed the Lease. *Rengechel* is, and at the time of the execution of the lease was, his female counterpart, bearing the title *Odilang* of *Odilang* Clan. *Etibek* was the oldest *ochell* member of *Odilang* Clan and was considered as one of the clan leaders. The preponderance of the evidence was that these people were the senior strong members of *Odilang* Clan at the time the Lease was signed and that they all consented.³ Accordingly, the Lease is not invalid due to the lack of the consent of the senior strong members.

² Plaintiff was the only expert who even implied that this was the custom, and even she testified that under certain circumstances weak members and non-members might use the *mesei*.

³ For that reason, the Court need not decide whether Plaintiff carried her burden of proving that Palauan custom required that all senior strong members consent to the Lease.

Distribution of Lease Proceeds

Plaintiff contends that Palauan custom requires that the senior strong members of a clan consent to the manner in which rental money from the lease of clan land is distributed among clan members. She also claims that she did not receive any of the proceeds of the Lease, and requests that the Court designate a sum for her share.

Plaintiff did not show by clear and convincing evidence that Palauan custom requires that a clan's senior strong members agree to the manner in which clan money – and here the Court refers to U.S. money and not Palauan money – is distributed among clan members. The expert testimony was neither clear nor consistent on this point. Plaintiff herself made contradictory statements, as did Palaus Sked.⁴ The same clan members who signed the Lease are the ones that made the decisions regarding how the proceeds would be distributed. Although they agreed to delegate some of the task to the most senior ochell member, Etibek, Plaintiff did not establish by clear and convincing evidence that the distribution procedure employed by the clan violated Palauan custom.

¶337 Etibek, using his daughter as courier, gave \$10,000 to Esuroi Clan as their share of Lease proceeds. The money was delivered to the home of Ingereklii, who holds the chiefly title Rdialul of Esuroi Clan. Later, three younger members of Esuroi, including Plaintiff's daughter, Yasko, went to Etibek's home and asked for more money. They were given another \$3,000. Of that money, \$1,000 was given to Yasko, who gave the money to Plaintiff. Thus, Odilang gave \$10,000 for members of Esuroi, including Plaintiff, plus another \$1,000 for Plaintiff through Yasko. The issue presented is whether Plaintiff was entitled to more. There is no basis for the Court to say that Plaintiff has shown that Palauan custom was violated by Odilang's giving her share to the Rdialul of Esuroi Clan for allocation. Certainly, because most, if not all, of the Esuroi members are descendants of Dengir, they, too, are mechut el yars of Odilang Clan. As to the amount of money given to Plaintiff and to Esuroi for Plaintiff and others, Plaintiff did not establish that it was so small that it violated custom, law, or fundamental considerations of fairness. Her mechut el yars status leaves her with little or no room to complain, and she has not directed the Court's attention to any authority to support the claim that she should have received more – \$200,000 being the amount she suggested in closing argument. Nor does it appear that Plaintiff was treated less favorably than other mechut el yars of Odilang.

Accordingly, judgment will enter for the defendants, dismissing the complaint.

⁴ For example, Sked said at one point that the heads of the clan decide, and at another point said that he was not aware of any Palauan custom that pertains to how American money is distributed among the clan members. Similarly, Plaintiff said that senior strong members must consent to the distribution, but later said that the title bearers could decide.