

*Iderrech v. Ringrang*, 9 ROP 158 (2002)  
**FLORENCIO IDERRECH,**  
**Appellant,**

v.

**MIKEL RINGANG,**  
**Appellee.**

CIVIL APPEAL NO. 01-16  
LC/E 00-329

Supreme Court, Appellate Division  
Republic of Palau

Decided: July 18, 2002<sup>1</sup>

[1] **Appeal and Error:** Clear Error; Standard of Review

Pursuant to the clear error standard of review, the Appellate Division will usually defer to a lower court's determination regarding the credibility of the witnesses before it.

[2] **Appeal and Error:** Clear Error

Where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous.

[3] **Custom:** Expert Testimony; **Evidence:** Expert Testimony

Despite the presence of expert testimony on custom, a court is not obligated to explain the customary significance of its findings where it did not rely on custom in making its factual determinations.

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[4] **Custom:** Proof of Custom; **Evidence:** Clear and Convincing

Conclusions of law regarding custom must be supported by clear and convincing evidence.

Counsel for Appellant: Ernestine Rengiil

Counsel for Appellee: David Kirschenheiter

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;  
KATHLEEN M. SALII, Associate Justice.

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<sup>1</sup>The parties waived oral argument and, upon reviewing the briefs and the record, the panel agreed that the case was appropriate for submission without oral argument pursuant to ROP R. App. Pro. 34(a).

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Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Associate Judge, presiding.

PER CURIAM:

Florencio Iderrech appeals the Land Court's determination that Mikel Ringang ("Mikel") owns land known as Ngesemengui, Bureau of Lands and Surveys Cadastral Lot No. 00E002-021, in Choll Hamlet, Ngaraard State. Iderrech challenges the Land Court's crediting of Ringang's testimony regarding when a former occupant of the land died, and argues that it was improper for the court not to base its decision on testimony regarding Palauan custom. Because neither of Iderrech's arguments warrants reversal, we affirm.

On November 2, 2000, the Land Court commenced a hearing on Iderrech and Mikel's claims to Ngesemengui.<sup>2</sup> At the hearing Iderrech and Mikel agreed that in 1944 at the *eldecheduch* of Iruul, the Ikreked ra Idis of Choll, the land was dispensed to Iderrech's mother's brother, Ngiratang. Furthermore, it was undisputed that Mikel's father, Ringang, is the registered owner of the land in the Tochi Daicho. The parties disagreed, however, on the nature of Ngiratang's interest in the property. According to Iderrech, at the *eldecheduch* Ngiratang was given ownership rights over Ngesemengui, and Ringang merely looked after the land while Ngiratang was away in Anguar, Ngiratang's home state.

In contrast, according to Mikel, Ngesemengui was Ringang's individual property, as demonstrated by the Tochi Daicho listing. Nevertheless, Ringang announced at the *eldecheduch* – which Ringang headed – that Ngiratang would have the land so that Ngiratang could become a member of the Idis lineage of Choll. But Ringang's grant of land, averred Mikel, was conditional, and Ringang told Ngiratang that if he decided that he would like to leave Choll to go back to Angaur, then the land would revert to Ringang. Mikel explained that Ngiratang lived in Choll for four years, but then left for Angaur. Mikel further testified that six years after Ngiratang's departure from Choll, he returned with his new wife to stay with Ringang and Mikel for one week. At this time, averred Mikel, Ngiratang expressed his intention to live permanently in Angaur, and thus he gave the land back to Ringang. According to Mikel, Ngiratang died shortly after leaving Choll and returning to Angaur, which, based on Mikel's testimony, would have been sometime in either 1954 or 1955.

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At the conclusion of the testimony of Iderrech and Mikel, the Land Court announced that an expert on Palauan custom might help to shed light on the issue whether land that was given out at an *eldecheduch* could be "returned" to the original owner. Consequently, the court reconvened the hearing on December 14, 2000, at which court-appointed custom expert Ngirumerang Trolii testified. Trolii explained that, based on his own experience, he had no knowledge about a Palauan custom in which land given out at an *eldecheduch* would be returned to the original owner. He posited that he could think of circumstances where a return of land might be appropriate, but reiterated that he did not know of a situation when that actually

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<sup>2</sup>Teiko Uehara and Naruo Ngirngemeusch (representing the children of Blesam and Leleng) also claimed the land, but Uehara did not appear at the hearing, and Ngirngemeusch, who did appear at the hearing, offered no support for his claim besides the claim form itself. Accordingly, the Land Court dismissed Uehara's claim and rejected Ngirngemeusch's claim. Neither claimant appealed.

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occurred. Furthermore, although his testimony is not particularly clear on the matter, at several points he disclaimed any knowledge regarding whether, under custom, Ngiratrang properly returned the land by explaining his intention solely to Ringang's household, or whether Ngiratrang should have reconvened all those present at the *eldecheduc*.

The Land Court issued its decision awarding the land to Mikel on February 16, 2001. In the decision, the court first cited the high standard that a challenger to a Tochi Daicho listing of ownership must meet, and concluded that Iderrech "failed to prove by 'clear and convincing evidence' that Ringang was merely a trustee of Ngesemengui." Decision at 6 (citing *Elbelau v. Semdiu*, 5 ROP Intrm. 19, 21 (1994)). The court then explained that it credited Mikel's version of events over Iderrech's because (a) Iderrech was very young (four or five years old) at the time that Iderrech contended Ngiratrang went to Angaur and died (around 1945 and 1946 respectively), thus making it unlikely that Iderrech remembered Ngiratrang's actions; (b) in contrast to Mikel's testimony, which was based on first-hand observation, Iderrech's testimony was based solely on hearsay which the court viewed "with caution"; and (c) Mikel would have been around 25 years old when Ngiratrang returned to Choll to stay with him and his father, and thus "would have been in a better position to understand what occurred than . . . Iderrech." Decision at 7-8. Finally, the Land Court concluded that Trolii's testimony on Palauan custom was "inconclusive" and did not prove "by 'clear and convincing' evidence" that under custom Ngiratrang could not return the land by talking solely to Ringang's household. This appeal followed.

[1, 2] Iderrech's first argument on appeal, that the Land Court should have credited his testimony over Mikel's regarding the date of Ngiratrang's death, flies in the face of well-established Supreme Court precedent. Pursuant to the clear error standard, this Court generally will defer to a lower court's determination regarding the credibility of the witnesses before it. *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 37 (1999) (citing *Lakobong v. Anastacio*, 6 ROP Intrm. 178, 181 n.6 (1997)); *Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 35 (1999) (citing *Tmol v. Ngirchoimei*, 5 ROP Intrm. 264, 265 (1996)). And nothing in the record in this case suggests that this is one of those "extraordinary cases," *Ngirakebou*, 8 ROP Intrm. at 35 (citation and internal quotations omitted), where this Court should second guess the Land Court's credibility determination. Furthermore, this Court has held repeatedly that when "there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous." *Olngembang Lineage v. ROP*, 8 ROP Intrm. 197, 200 (2000) (quoting *Lulk Clan v. Estate of Tubeito*, 7 ROP Intrm. 17, 19 (1998)); *Sumang v. Baiei*, 8 ROP Intrm. 186, 187 (2000); *Ramon v. Telungalek ra Silang*, 8 ROP Intrm. 124, 125 (2000); **L161** *Ngetchab Lineage v. Klewei*, 8 ROP Intrm. 116, 117 (2000). Because the Land Court reasonably could have accepted either Mikel's version of events, including that Ngiratrang died in the 1950s, or Iderrech's contention that Ngiratrang died much earlier, the court's decision to find Mikel's version more credible is not clearly erroneous.

[3, 4] Iderrech's second contention on appeal likewise lacks merit. He argues that the Land Court's finding that Ngiratrang returned the land to Ringang was contrary to the testimony of the expert witness, Trolii, and that the court failed to explain the "customary significance" of its finding. Iderrech, however, misunderstands the law and the record in this case. As an initial matter, the Land Court was not obligated to explain the customary significance of its finding

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regarding Ngiratang's return of the land, because the court did not rely on custom in making its factual determination. Rather, the court explicitly rejected the expert witness's testimony as "inconclusive" and instead relied on the relative credibility of the witnesses to determine the underlying events in the case. Moreover, as the Land Court pointed out in its decision, "[c]onclusions of law regarding custom must be supported by clear and convincing evidence." *Ngirmang v. Orrukem*, 3 ROP Intrm. 91, 92 (1992).<sup>3</sup> Based on our review of the hearing transcript, we agree with the Land Court that Trolii's testimony was inconclusive regarding the existence of a custom (or lack thereof) in which land may be returned in the manner described by Mikel. Specifically, Trolii repeatedly stated that he had "no knowledge" of whether land could be returned, or whether all of the persons present at the *eldech duch* would have to be present when the land was returned. Thus the customary expert's disclaimer of any knowledge regarding the presence or absence of custom does not meet the "clear and convincing" evidence standard that would have been required to support a conclusion about custom, and it was proper for the Land Court to decline to make such a conclusion.

Therefore, for the foregoing reasons, we affirm the Land Court's determination of ownership.

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<sup>3</sup>Under Land Court Rule of Procedure 9, a Land Court judge may take judicial notice of custom, but obviously is not required to do so.