

Odilang Clan v. Ngiramechelbang, 9 ROP 267 (Tr. Div. 2001)
**ODILANG CLAN and UNITED MICRONESIAN DEVELOPMENT ASSOCIATION,
INC.,
Plaintiffs,**

v.

**RIMAT NGIRAMECHELBANG, et al.,
Defendants.**

CIVIL ACTION NO. 00-170

Supreme Court, Trial Division
Republic of Palau

Decided: December 13, 2001

[1] **Civil Procedure:** Res Judicata; **Judgments:** Finality

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 different claim.

[2] **Civil Procedure:** Res Judicata; **Judgments:** Finality

The *res judicata* requirement of mutuality has been largely abandoned.

[3] **Civil Procedure:** Res Judicata; **Judgments:** Finality

A party cannot relitigate an issue with another person unless the fact that the party seeking to relitigate lacked a full and fair opportunity to litigate the issue in the first action or other circumstances justify affording the party the opportunity to relitigate the issue.

[4] **Civil Procedure:** Res Judicata; **Judgments:** Finality

Issue preclusion used both defensively and offensively are recognized as legitimate.

[5] **Civil Procedure:** Res Judicata; **Judgments:** Finality

The party against whom the preclusive effect of a judgment is asserted must have been either a party or in privity with a party to the original action, although a judgment in an action whose purpose is to determine or change a person's status is conclusive with respect to that status upon all other persons.

[6] **Civil Procedure:** Res Judicata; **Judgments:** Finality

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With reference to a judgment, privity applies to one who was not a party in the prior proceeding but whose interest was legally represented at trial.

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

The existence of a custom must be proved by clear and convincing evidence.

Counsel for Odilang Clan: Johnson Toribiong

Counsel for UMDA: Kevin N. Kirk

Counsel for Claimants Ramarui, et al.: Clara Kalscheur

Counsel for Claimants Augustine, et al.: Pro se, Apolonia Shiprit Augustine

Counsel for Claimant Ingeiaol Clan: Pro se, Rubasch Santos Olikong

KATHLEEN M. SALII, Associate Justice:

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Background

In 1989, Civil Action No. 541-89 was filed, captioned *Odilang Clan, Represented by its female title bearer Odilang Becheserrak Rengechel vs. Melimarang Obakrakelau, Dirraikelau Kitalong, Umai Aribuk, Miotel Andres and Tadao Ngotel* (hereinafter “*Odilang I*”). *Odilang I* centered on the validity of a lease entered into in September of 1988 (hereinafter “Lease I”) by Melimarang Obakrakelau, Dirraikelau Kitalong, Umai Aribuk, and Miotel Andres with the United Micronesian Development Association, Inc. (hereinafter “UMDA”) for property in Ngerkebesang, known as “Desomel” and identified as Cadastral Lot No. 013 A 02. Specifically, the *Odilang I* Plaintiffs challenged both the legality of the lease and the authority of the purported lessors to enter into the lease on behalf of Odilang Clan. On October 15, 1990, Justice O’Brien issued a Ruling and Order in *Odilang I*, finding that Lease I’s 99-year term violated Palau’s constitutional ban on ownership of land by non-citizens and was therefore void.¹ Because resolution of the constitutional question was sufficient to dispose of the suit, *Odilang I* did not address the issue of membership in Odilang Clan and the strengths of the people claiming membership therein.

While *Odilang I* was pending, a new lawsuit, *Ibedul Obak Ra Iwong Yutaka M. Gibbons, Bilung Obkal Gloria G. Salii, and Rechebei Melimarang Obakrakelau vs. Becheserrak Rengechel and Singichi Katosang*, Civil Action No. 87-90, was filed in February of 1990. The Plaintiffs in this 1990 action sought a declaration that certain of the named Plaintiffs were the male and female title holders of Odilang Clan, a declaration that certain of the named Defendants were not the title holders, and an injunction prohibiting Defendants from interfering in Odilang Clan affairs. Three years later, with the 1990 action still pending, yet another related law suit

¹This decision was affirmed by Civil Appeal No. 32-90.

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was filed, this one entitled *Odilang Clan, represented by its male title bearer, Rechebei Singichi Katosang and female title bearer Odilang Becheserrak vs. Florencia Kitalong and John Does 1-10*, Civil Action No. 348-93. In this third action, Plaintiffs raised issues relating to membership in Odilang Clan and sought to enjoin Defendant Kitalong from constructing a building on property alleged to belong to Odilang Clan. The 1990 and 1993 suits were consolidated pursuant to a Consolidation Order of July 21, 1993, and will hereinafter be referred to as “*Odilang II*.”

Odilang II went to trial, and judgment was entered on April 15, 1994. As relevant to the matter at hand, that judgment held that 1) Odilang Becheserrak Rengechel and Singichi Katosang are the *ochell* and the strongest members of Odilang Clan; 2) Florencia Kitalong is an *ulechell* member of Odilang Clan; and 3) Intervenor Rimat Ngiramechelbang is a *mechut el yars* member of Odilang Clan. This judgment was affirmed in *Gibbons v. Rengechel*, 5 ROP Intrm. 181 (1996). In affirming the Trial Court’s judgment, the Appellate Division endorsed the lower court’s finding that Odilang was a clan, that the previous holders of the title Rechebei did not include the Ibeduls named by the appellants, and that the appellants were not members of Odilang Clan. *Id.* at 182. The appellate division also affirmed the lower court’s findings “as to the membership of appellees and their respective strength within the Clan.” *Id.* at 182 n.1. Shortly after the appellate decision was rendered in *Odilang II*, the *Odilang I* parties stipulated to the **1269** dismissal of the appeal in that case, since the *Odilang II* ruling effectively invalidated Lease I on the alternate basis that the purported lessors lacked the authority to enter into that lease. See February 13, 1996, Stipulation and Order for Dismissal.

In yet another case, *Rimat Ngiramechelbang v. Singichi Katosang, et al.*, Civil Action No. 95-97 (hereinafter “*Rimat*”), Rimat Ngiramechelbang sought, *inter alia*, a declaration that a lease between Odilang Clan and UMDA was invalid because she, as a strong and senior member of the clan, had not given consent to it. In its post-trial Decision of September 3, 1999, the Trial Division determined that Rimat was *mechut el yars* of Odilang Clan. The trial division further found that the evidence established that Rimat claimed her membership in Odilang Clan through Dirrengewis, who gave birth to a woman named Dengir. Dengir, in turn, left Ngerkebesang and eventually settled in Airai, later becoming a title bearer of Esuroi Clan, and her descendants, including Rimat, stayed with Esuroi Clan in Airai. The Trial Court found that Rimat was an *ochell* member of Esuroi Clan of Airai, but went on to conclude that Rimat’s evidence failed to establish that she was a strong member of Odilang Clan and that she, as well as most of the members of Esuroi Clan, are *mechut el yars* of Odilang Clan.

The Instant Action

In 1996, Odilang Clan, represented by those whom *Odilang II* had declared to be its senior and strongest members, namely Odilang Becheserrak Rengechel and Rechebei Singichi Katosang, signed various agreements (collectively hereinafter “Lease II”) with UMDA relating to the lease of Desomel, Lot No. 013 A 02. In August of 2000, Odilang Clan, represented by Odilang Becheserrak Rengechel, Rechebei Singichi Katosang, and Joe Ngirachelchong Rengechel, rescinded Lease II and entered into a new lease (hereinafter “the 2000 Lease”) for Desomel, Lot No. 013 A 02.

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As part of the consideration for entering into the 2000 Lease, Odilang Clan filed the instant complaint on September 12, 2000, to quiet any remaining claims with respect to the 2000 Lease and to confirm the authority of Odilang Becheserrak Rengechel, Rechebei Singichi Katosang, and Joe Ngirachelchong Rengechel to bind Odilang Clan thereto. Following public and personal notice, various claimants filed claims and objections contesting Plaintiffs' ability to enter into the 2000 Lease. On December 18, 2000, an entry of default against Rimat Ngiramechelbang was filed. On July 25, 2001, Plaintiffs filed a Motion for Summary Judgment which remained pending at the time of the hearing on the claims. On September 10, 2001, an entry of default was entered against 22 additional claimants.² On September 24, 2001, the remaining, timely-filed claims were heard. On the same day, Plaintiffs moved for a judgment on the evidence under Rule 41(b) of the ROP Rules of Civil Procedure. The Court now enters its Findings and Orders based on the pleadings and evidence presented during the hearing of September 24, 2001.

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Preclusion And The Claimants

[1-4] Preclusion is a complicated area of law, riddled with exceptions, and sometimes very slippery to pin down. Fortunately, this is a case where its application – in the form of the doctrine of issue preclusion – is clear cut. As the court is obliged, in the absence of Palauan statutory or decisional law, to follow the rules of the common law as articulated by the Restatement, *see* 1 PNC § 303, the following principles control the court's consideration of the question of issue preclusion in this case. "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." Restatement (Second) of Judgments § 27. This formulation includes the traditional *res judicata* requirement of mutuality – in other words, that the doctrine of preclusion can only apply in a subsequent action with the same parties as had been involved in the prior one. But this mutuality requirement has largely been abandoned. *See Ngersikesol Lineage v. Ngawal State Legislature*, 5 ROP Intrm. 284, 287 (Tr. Div. 1994). The Restatement has also recognized that issue preclusion can apply even when the subsequent action is not between or among the same parties to the first suit.

A party precluded from relitigating an issue with an opposing party . . . is also precluded from doing so with *another person* unless the fact that [the party seeking to relitigate] lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording [the relitigant] an opportunity to relitigate the issue.

Restatement (Second) of Judgments § 29 (emphasis added). Section 29 thus recognizes the legitimacy of both "defensive" issue preclusion (which prevents a plaintiff from relitigating an

²These individuals are Radis Modechel, Ngitong Osubedereng, Arboi Louch, Mary Melimarang, Justino Meseksei, Siles Ngiralulk, Konishi Osubedereng, Justina Louch, Lorenzo Louch, Michaela Louch, Elizabeth Ngiralulk, Joshua Ngiralulk, Maria Meseksei, Brien Shiprit, Johnsen Shiprit, Johnson Shiprit, Ngetchedong Terry Shiprit, Basilia You, Eugene Louch, Natalie Louch, Olivia Louch, and Sereng Meseksei a.k.a. Serafina Tulop.

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issue on which it previously lost merely by naming a different defendant) and “offensive” issue preclusion (which allows a plaintiff to assert the preclusive effect of a judgment that a defendant lost to a different plaintiff). *See also Parkline Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 329 (1979).

[5] Under both the defensive and offensive approach, however, the party *against* whom the preclusive effect of a judgment is asserted must have been either a party or in privity with a party to the original action. *See, e.g., Hydronautics v. FilmTec Corp.*, 204 F.3d 880, 885 (9th Cir. 2001). However, the Restatement provides a salient exception to this general requirement: “A judgment in an action whose purpose is to determine or change a person’s status³ is conclusive with respect to that status upon *all* other persons . . .” Restatement (Second) of Judgments § 31(2) (emphasis added).⁴ Section 31(2) is clearly applicable to this case, where the key issue raised by both the previous and the instant action is the determination of the status of various individuals within Odilang Clan. This conclusion is further buttressed by the fact **1271** that there are no circumstances present that demonstrate that it would be unfair to bind any of the parties to the instant action to the determinations made in *Odilang II* or *Rimat*, as applicable.

In light of the foregoing, the claims of three groups of claimants in the matter at hand are precluded. The first group of estopped claimants consists of siblings Dirraikelau Obakrakelau⁵, Umai Aribuk, Techelul Ormengii, and Miotel Andres. The members of this group (hereinafter “the Dirraikelau Claimants”), filed their claims and objections on April 6, 2001, asserting that they are *ochell* members of Odilang Clan, with authority to, *inter alia*, appoint titleholders, authorize alienation of clan land (including leases of clan land), dispose of clan property including lease proceeds, incur and pay attorney’s fees, and participate in determinations concerning the distribution of clan property including the distribution of lease proceeds.

But these claims present a textbook case of issue preclusion. Dirraikelau herself was actually a party to *Odilang II*, and her status in Odilang Clan was actually litigated and determined in that earlier case. *See Odilang II* Findings of Fact and Conclusions of Law of April 15, 1994, at 6, 8; *Odilang II* Judgment of April 15, 1994, at 2. As the judgment in *Odilang II* is final, and as the finding concerning Dirraikelau’s status was an essential part of that judgment, she cannot now seek to revisit that determination, which is what she asks this Court to do. Dirraikelau’s instant claim must therefore fail as barred. The totality of the record in *Odilang II* suggests that the other Dirraikelau Claimants were also parties to that action, though they are not formally listed in its caption. Out of an abundance of caution, however, the Court will analyze the preclusion question in relation to these claimants as if they were not parties to *Odilang II*.⁶

[6] As noted above, a person not a party to a prior case may still be bound by the judgment therein if the person is in privity with a party to that case. *See Hydronautics*, 204 F.3d at 885.

³Comment a to this section makes clear that clan status logically falls within the ambit of this rule.

⁴Section 31(2) goes on to list three qualifications to the general rule cited above, none of which are applicable in this case.

⁵From the Court’s review of the numerous files in the different lawsuits, Dirraikelau Obakraikelau is the same person as Dirraikelau Melimarang or Dirraikelau Kitalong. She is referred to by her first name to avoid any further confusion.

⁶If they were parties, obviously they would be precluded in the same manner as Dirraikelau.

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While “[p]rivity is a concept not readily susceptible to a uniform definition[,]” *Troutt v. Colo. W. Ins. Co.*, 246 F.3d 1150, 1159 (2001), the Ninth Circuit has explained that “[p]rivies are those who are so connected with the parties in estate or in blood or in law as to be identified with them in interest.” *Id.* In other words, “[w]ith reference to a judgment, privity applies to one who was not a party in the prior proceeding but whose interest was legally represented at trial.” *Id.* In the matter at hand, it is clear that the remainder of the Dirraikelau Claimants are in privity with Dirraikelau vis a vis *Odilang II*. *Odilang II* held that Dirraikelau’s status in Odilang Clan, which derived through her father, was that of *ulechell* rather than *ochell*. The other Dirraikelau Claimants obviously stand in the same relationship to Dirraikelau’s father (i.e., he was their father as well), and therefore the status Dirraikelau sought to have declared for herself in *Odilang II* would have applied to them as well. Thus, they are “so connected with” Dirraikelau “as to be identified with [her] in interest.” Consequently, their claims are likewise 1272 precluded.

Even assuming *arguendo* that the remainder of the Dirraikelau Claimants are not in privity with Dirraikelau, Restatement (Second) of Judgments § 31(2) would preclude their claims. Their attempt to induce this Court to overturn the status determinations made in *Odilang II* is precisely the sort of repetitive challenge that § 31(2) expressly bars. Given the extensive participation of the Dirraikelau Claimants in *Odilang II*, none of the § 31(2) exceptions apply to render preclusion inappropriate. Plaintiffs are therefore entitled to benefit from the preclusive effect of that prior judgment against these claimants, even if these claimants were not parties to it. Thus the Dirraikelau Claimants’ claims fail on this alternative ground as well.

Finally, even were preclusion totally inapplicable to any or all of these claimants, their claims would fail for the simple reason that they have failed to bear their burden of proof. But as the explanation of this conclusion also implicates the claims of the second group of precluded claimants, the Court will return to this issue below. Before temporarily leaving the Dirraikelau Claimants, though, the Court notes that to the extent that Plaintiffs seek a ruling that these claimants are not members of Odilang Clan at all, that claim is also precluded, as *Odilang II* necessarily and finally determined that the Dirraikelau Claimants were indeed members of Odilang Clan, albeit *ulechell* rather than *ochell*, and Plaintiffs were parties to that decision.

The members of the second batch of claimants (hereinafter “the Apolonia Claimants”) who run afoul of the doctrine of issue preclusion are the children of the Dirraikelau Claimants. The Apolonia Claimants also filed their claims and objections on April 6, 2001, and are represented by Apolonia Shiprit Augustine, daughter of Miotel Andres. The Apolonia Claimants, who claim membership in Odilang Clan through their maternal lineage, urge this Court to reject the testimony of their elders in *Odilang II* and effectively to overturn that case. But as the children of the Dirraikelau Claimants, the Apolonia Claimants are obviously in privity with them by both interest and blood. *See Troutt*, 246 F.3d at 1159. As the claims of the Dirraikelau Claimants are precluded, so too are those of the Apolonia Claimants.

The Apolonia Claimants fail on alternative grounds as well. Even in the absence of privity, their claims would still be precluded on § 31(2) grounds in the same manner as discussed above concerning the Dirraikelau Claimants. Nor do any of the § 31(2) exceptions operate to

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alter this conclusion. As Apolonia testified at the hearing (speaking on behalf of herself, her group of claimants and the Dirraikelau Claimants), she and her co-claimants were aware of the *Odilang II* trial and of the substance of the elders' testimony in that case. She also acknowledged that it was only later, when the rest of her family realized they had lost, did they come forward to assert that the testimony of the elders in *Odilang II* was in error. Given this background, Plaintiffs are entitled to assert the preclusive effect of *Odilang II* against them and to prevail on that ground.

Nor would the Apolonia Claimants prevail in this case if the Court were to reach the merits of their claims because they have failed to bear their burden of proof. The evidence presented simply does not support their claims. Because the testimony introduced by these claimants at trial was **L273** intended to be on behalf of the Dirraikelau Claimants as well, the following analysis applies to both groups. These claimants called Sekool Ormengii as a witness. Mr. Ormengii is a brother of the Dirraikelau Claimants, and he testified in the *Odilang II* case. Mr. Ormengii basically testified that he lied during the first trial regarding people's membership in Odilang Clan and, more particularly, about Odilang Clan's connection to Idid Clan, but that he was now telling the truth in this trial – that Odilang Clan is related to Ingeiaol Clan. Leaving aside Mr. Ormengii's confession to having committed perjury in the earlier trial, the Court finds that his credibility is fatally undercut by his telling of diametrically opposed stories from the witness stand in successive cases. Moreover, the testimony of the only expert witness, Wilhelm Rengiil, was consistent with existing case law that an *ulehell* member of a clan is weaker than an *ochell* member. On this record, the Court finds that neither the Dirraikelau nor the Apolonia Claimants established by a preponderance of the evidence that they are strong senior members of Odilang Clan. Their claims, therefore, fail for this reason as well.

The third group of estopped claimants filed their claims and objections on September 7, 2001. Jose Singenari Azuma, Ichiro Rechebei, Anna Rdebangel, Naruo Ngerngemius, Moses Azuma, and Yasko Ramarui (hereinafter "Ramarui Claimants") deny any knowledge regarding either Lease I and amendments thereto or the 2000 Lease. They further deny that the persons named in the 2000 Lease are the proper representatives of Odilang Clan with authority to execute any lease or amendments. Finally, they contend that they are not bound by the findings in *Odilang I*, *Odilang II*, *Gibbons* or *Rimat* with respect to membership in Odilang Clan, because none of them participated in those cases in any way, did not serve as witnesses, did not participate in preparing the pleadings and were not involved in trial strategy discussions or preparations.

But the Ramarui Claimants are mistaken. They were clearly aware of the existence of those prior suits, and of the matters at issue in all of the cases mentioned immediately above. Ramarui Claimant Yasko Ramarui even testified at the trial in *Odilang II* on behalf on the claim of her mother, Rimat Ngiramechelbang. As Rimat's status was necessarily and finally adjudicated in *Rimat*, as Yasko Ramarui's claims are predicated on her mother's clan status, she is in privity with her mother for the purposes of this case and her claims are therefore precluded. As to the remainder of the Ramarui Claimants (and as an alternate ground for the holding that Ramarui herself is precluded), and as discussed at length above, § 31(2) makes clear that parties can be bound to a prior adjudication concerning clan status irrespective of their participation in

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the prior litigation, so long as preclusion is otherwise appropriate. In this case, it is.

It is undisputed that the Ramarui Claimants claim membership in Odilang Clan through Dirrengewis. *Odilang II* and *Rimat* held that the descendants of Dengir, daughter of Dirrengewis, are *mechut el yars* of Odilang Clan. But these claimants are now arguing that despite the fact that the Court in *Odilang II* found that Dengir and all her descendants are strong members of Esuroi Clan, and that Rimat is *ochell* of Esuroi Clan, this Court should re-examine the evidence based on the Ramarui Claimants' trial testimony. But this is simply an attempt by these litigants to revisit an issue actually and necessarily determined in a prior, final judgment of which they had notice and an opportunity to participate. Therefore, the Court finds that the **L274** Ramarui Claimants are precluded from litigating the issue of the strength of the descendants of Dirrengewis in relation to Odilang Clan. Their relation and connection to Odilang Clan has been established in the earlier cases, and, as a matter of law, they are bound thereby.

Claims of Ingeiaol Clan

Ingeiaol Clan, through its chief title holder Rubasch Santos Olikong, filed its claim and objection on September 7, 2001. Ingeiaol Clan contends that it "owns" Odilang Clan, that as the owner of Odilang Clan, it administers and makes decisions regarding the affairs of the Clan, including appointment of title-bearers and transactions relating to Clan property. Ingeiaol Clan opposes Plaintiffs' claim on the basis that it has not given its approval to the 2000 Lease between Odilang Clan and UMDA.

[7] As its claim is grounded on custom, Ingeiaol Clan must prove the existence of such a custom by clear and convincing evidence. *See Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225, 227 (1996). This it has failed to do. Ingeiaol Clan presented neither constitutional nor statutory authority in support of its claim, nor did it present any customary expert testimony to establish the existence of the custom of one clan owning another clan. Moreover, the only customary expert witness called by any party, Wilhelm Rengiil, testified that, based on his knowledge of Palauan custom, one clan could not own another. The evidence presented by Ingeiaol Clan in support of its claim consisted of the testimony of Siprit Sechardimal⁷, the September 23, 2001, Affidavit of Dirraklei Trolii, and the September 21, 2001, Statement Supporting Ingeiaol Clan's Claim Of Ownership And Authority Of And Over Odilang Clan, purportedly signed by individuals who also claim membership in Odilang Clan through Melimarang Obakrakelau, or their representatives. The Court takes into account the fact that Ingeiaol Clan was proceeding *pro se* when it sought to rely on the testimony of Mr. Sechardimal in support of its claim rather than calling an expert witness on Palauan custom. But Mr. Sechardimal's testimony was confused at times; at one point during cross-examination, he testified that Odilang Clan is not owned by Ingeiaol Clan, but that the two were *kaukebliil* or related to each other. He also testified that Melimarang was mistaken when he testified in the *Odilang II* case that Odilang Clan was related to Ucheiliou and Idid Clans rather than Ingeiaol Clan. On this record, the Court finds that Ingeiaol Clan failed to establish that Ingeiaol Clan owns Odilang Clan. Accordingly, its claim fails as well.

⁷Siprit Sechardimal is the father of Claimant Apolonia Augustine.

Conclusion

In light of the foregoing discussion, judgment will be entered for Plaintiffs Odilang Clan and UMDA and against claimants as follows:

1) All the claimants and all persons claiming under and through them have no estate, right, title, lien, or interest in, to or over Cadastral Lot No. 013 A 02, land traditionally known as Desomel, and have no authority whatsoever with respect to such land or to the 2000 Lease Agreement.

2) As *Odilang II* determined, Plaintiffs Rechebei Singichi Katosang, Odilang Becheserrak Rengechel, and Joe Ngirachelchong Rengechel are the strong, senior members of Odilang Clan with the **1275** authority to lease Odilang Clan property to UMDA, and therefore the 2000 Lease between Odilang Clan and UMDA is valid.

3) Dirraikelau Obakrakelau, a.k.a. Dirraikelau Kitalong, and those represented by her are *ulechell* not *ochell* members of Odilang Clan, and are not strong senior members of Odilang Clan.

4) Apolonia Shiprit Augustine and those represented by her are *ulechell* not *ochell*, members of Odilang Clan, and are not strong senior members of Odilang Clan.

5) Jose Singenari Azuma, Ichiro Rechebei, Anna Rdebangel, Naruo Ngerngemius, Moses Azuma, and Yasko Ramarui are *ulechell* not *ochell* members of Odilang Clan, and are not strong senior members of Odilang Clan.

6) Ingeiaol Clan does not own Odilang Clan, and Ingeiaol Clan has no authority over Odilang Clan's administration of its properties.