Matlab v. Melimarang, 9 ROP 93 (2002)

NGERIUT MATLAB,
Appellant,

v.

KLERANG MELIMARANG,
Appellee.

ROBERT NGIREBLEKUU and
KLERANG MELIMARANG,
Cross-Appellants,

v.

NGERIUT MATLAB,
Cross-Appellee.

CIVIL APPEAL NO. 99-19
Civil Action No. 173-97

Supreme Court, Appellate Division
Republic of Palau

Argued: December 26, 2001
Supplemental Briefs: February 18, 2002
Decided: April 25, 2002

[1] **Civil Procedure:** Declaratory Judgments

Declaratory relief is appropriate where it will serve a useful purpose in clarifying the legal relations of the parties or terminate the uncertainty and controversy giving rise to the proceeding.

[2] **Civil Procedure:** Declaratory Judgments

Although the availability of other remedies does not bar declaratory relief, the court should not issue declaratory judgments where an available alternative remedy is better or more effective.

[3] **Civil Procedure:** Declaratory Judgment; **Custom:** Title Holders

Although the selection of a title bearer is the clan's responsibility, not the court's, and it remains true that disputes over customary matters are best resolved by the parties involved rather than the courts, it is within the Trial Division's discretion to issue a declaratory judgment regarding a clan title.

[4] **Appeal and Error:** Standard of Review

The decision to issue a declaratory judgment is reviewed *de novo*.

[5] **Custom:** Judicial Intervention; Title Holders

It cannot be disputed that, in Palauan custom, a decision of a council of chiefs to accept or reject the *ourrot*'s choice of title holder is final and not subject to outside review, and the Constitution effected no change in this regard.

[6] **Civil Procedure:** Declaratory Judgments

Rather than ending uncertainty or terminating controversy, court involvement in a decision to seat a chief prolongs the dispute by permitting dissatisfied persons to seek review.

[7] **Civil Procedure:** Declaratory Judgments; **Custom**: Judicial Intervention; Title Holders

When parties seek a declaratory judgment that asks the court only to review a decision of a traditional council to seat a person, courts should decline when the resulting judgment does not clarify the issues or terminate the controversy.

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BEFORE: R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice; DANIEL N. CADRA, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

MICHELSEN, Justice:

Both parties appeal different portions of a declaratory judgment issued in this decade-long dispute over the highest female title, Ubad, and the highest male title, Chief Ngiraked, of the Tmeleu Clan in Airai State. We note that requests for declaratory judgments regarding customary titles – independent of any request for any other legal or equitable relief – seem to be increasing.[1] However, declaratory judgments reviewing traditional council membership are problematic. First, because any declaratory judgment will not be binding upon parties who are

[1] *See, e.g.*, *Arbedul v. Ikluk*, Civil Action No. 01-269; *Iyechad v. Rubeang*, Civil Action No. 01-80; *Ngerureor Clan v. Tellei*, Civil Action No. 00-228; *Tmong Clan v. Delmau*, Civil Action No. 00-185; *Antonio v. Koto*, Civil Appeal No. 00-26.

[Editor's Note: The Appellate Division opinion in *Antonio v. Koto*, is reported at page 116 of this volume.]

not part of the litigation (for example, the members of the relevant traditional council), any declaratory judgment concerning a title holder takes on the attributes of an advisory opinion. Second, when litigants proceed to court because of dissatisfaction with a decision by a traditional council of chiefs to seat (or not to seat) a particular person, any resulting declaratory judgment gives the impression that we sit as a court of review over the traditional councils, which is incorrect. In light of these considerations and for the reason set forth herein we affirm the trial court's decision to decline to declare who holds the title of Ubad of the Tmeleu Clan. In all other respects, we remand the case to the Trial Division with direction to vacate the judgment.

I. FACTS AND PROCEDURAL BACKGROUND

In 1990, Ngeriut Matlab ("Ngeriut"), acting as Ubad of Tmeleu Clan, appointed Roman Tmetuchl (now deceased) to be the Chief Ngiraked. The appointment was accepted by Ngara-Irrai, the appropriate council of chiefs. The acceptance of Tmetuchl triggered a protracted dispute over the female title Ubad. Klerang Melimarang ("Klerang") brought an action that same year, seeking a declaratory judgment that she, and not Ngeriut, held the title Ubad. Ngeriut responded by asserting that the late Ngiraked Matlab had removed the title of Ubad from Klerang, had appointed Ngeriut to bear the title of Ubad, and that she had the right to nominate Tmetuchl as Ngiraked. In February 1997, the Trial Division issued a decision, holding that the title, Ubad, was still vested in Klerang. Immediately after the issuance of the trial court's opinion, Ngeriut prepared a letter and collected fifty supporting signatures from persons saying they were senior members of the Tmeleu Clan, in an attempt once again to remove Klerang as Ubad. Klerang responded by producing a letter signed by twenty other purported *ourrot* of the Tmeleu Clan, denying the validity of her removal as well as challenging the ⊥95 appointment of Roman Tmetuchl as Ngiraked. During this period, the Ngara-Irrai continued to recognize Tmetuchl as Ngiraked.

In 1997, Ngeriut filed the instant suit, claiming, among other things, that the strong *ourrot* of the Tmeleu Clan properly removed Klerang as Ubad as witnessed by the 1997 letter and had properly bestowed the title upon her and therefore she had the authority under Palauan custom to appoint the Ngiraked. Ngeriut also asserted that Klerang's appointment of Robert Ngireblekuu ("Ngireblekuu") as Acting Chief Ngiraked was without force because it violated Palauan custom.

In 1999, the Trial Division held that "the Court believes that [Ngeriut] did have the authority to make the appointment [of Roman Tmetuchl as Ngiraked]," but declined to declare who held the title, Ubad. The Trial Division found that "Tmetuchl was duly accepted as chief in 1990, and no evidence [has] been presented of his removal at any time thereafter . . . ." With respect to the title of Ubad, the Trial Division held that the specific argument that the title Ubad was removed from Klerang by Ngiraked Matlab in 1988 was barred by collateral estoppel since it had already been considered and rejected in the earlier case. The court also declined to accept the 1997 letter with its fifty signatures as conclusive proof of the removal of Klerang as Ubad.

On appeal, Ngeriut argues only that the trial court erred in not declaring her Ubad. Klerang cross-appeals, arguing that the trial court erred in finding that Ngeriut was the stronger

female and hence erred in declaring that Tmetuchl was Ngiraked by virtue of the appointment by Ngeriut. Ngireblekuu argues that the trial court's judgment that Tmetuchl is Ngiraked was not supported by the evidence and that he is Ngiraked since he was appointed by Ubad Klerang, whose title was never removed.

II. THE NATURE OF DECLARATORY RELIEF

ROP R. Civ. Pro. 57 provides:

> In a case of actual controversy within its jurisdiction, the court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for declaratory judgment and may advance it on the calendar.

[1] Although a number of previous appeals to the Appellate Division of this court concerned declaratory judgments,[2] there was no occasion to discuss the applicable standards for such cases until *Senate v. Nakamura*, 7 ROP Intrm. 212 (1999). There, the court noted that "the availability of ⊥96 declaratory relief does not depend on the existence of any other remedy." *Id.* at 214 (citing 14 PNC § 1001, Palau's Declaratory Judgment Act). Later that same year, in *Fanna Mun. Gov't v. Sonsorol State Gov't*, 8 ROP Intrm. 9 (1999), the Court noted the similarity in the language of the Act with federal procedure in United States federal courts. Because of that similarity, when *Senate* litigation returned to the Appellate Division the next year, the Court utilized those federal court standards to determine when declaratory relief should be granted. *See Senate v. Nakamura*, 8 ROP Intrm. 190, 192 (2000). The Court suggested that such relief would be "appropriate where it will serve a useful purpose in clarifying the legal relations of the parties or terminate the uncertainty and controversy giving rise to the proceeding." *Id.* at 193 (citing *Aetna Cas. & Sur. Co. v. Sunshine Corp.*, 74 F.3d 685, 687 (10th Cir. 1996)).

[2, 3] In its most recent pronouncement on this issue, this Court stated that "[a]lthough the availability of other remedies does not bar declaratory relief, the court should not issue declaratory judgments where an available alternative remedy is better or more effective." *Filibert v. Ngirmang*, 8 ROP Intrm. 273, 276 (2001). Specifically, with respect to the application of declaratory relief to issues of clan titles, the Court emphasized that "[t]he selection of a title bearer is the clan's responsibility, not the courts" (quoting *Sato v. Ngerchelong State Assembly*, 7 ROP Intrm. 79, 81 (1997)), and "it remains true that disputes over customary matters are best resolved by the parties involved rather than the courts." *Filibert*, 8 ROP Intrm. at 276. The *Filibert* court concluded that, guided by those principles, it is within the Trial Division's discretion to issue a declaratory judgment regarding a clan title. *Id.*

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[2] *Kruger v. Soc. Sec. Bd.*, 5 ROP Intrm. 91 (1995); *Seid v. ROP*, 2 ROP Intrm. 137 (1990); *Basilius v. ROP*, 1 ROP Intrm. 417 (1987); *Gibbons v. Salii*, 1 ROP Intrm. 333 (1986).

A. STANDARD OF REVIEW

A majority of the federal appellate courts in the United States review declaratory judgments *de novo*. *See, e.g.*, *Nucor v. Aceros Y Maquilas de Occidente* , 28 F.3d 572, 577 (7th Cir. 1994). "[T]he decision whether to allow a declaratory judgment action to proceed is one which calls for 'discretion hardened by experience into rule.' In order to achieve this, appellate courts must be able to review decisions of the district court *de novo* ." *Tempco Elec. Heater Corp. v. Omega Eng'g, Inc.*, 819 F.2d 746, 749 (7th Cir. 1987) (citation omitted).

[4] We hereby adopt that standard, and will review the Trial Division's decision to issue a declaratory judgment *de novo.*

B. ANALYSIS

The trial court, ably assisted by a qualified assessor, put significant effort into reaching its carefully-considered conclusion that Mr. Tmetuchl was the duly appointed Ngiraked. But we focus on one of its findings that should be considered dispositive:

> It appears to be undisputed that Roman Tmetuchl had served for many years as Acting Ngiraked, during the time of both Ngiraked Tmewang and Ngiraked Matlab, that he was appointed to bear the title in his own right by Ngeriut after the death of Matlab in 1990, and that he was accepted by the Ngara-Irrai as their friend at a feast soon thereafter.

In a footnote on the same page the trial court elaborated:

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> As to this latter point, the assessor stresses the importance of the testimony of Rurcherudel Iyechad Yaoch, who has served as the messenger among the Ngara-Irrai for decades. His testimony is significant both because of his longevity, which puts his possession of the title beyond legitimate question, and because of the role he plays. As messenger, it is his job to know and communicate the thoughts of all of the members of the council. As such, he is uniquely qualified to say who has and has not been accepted by them.

[5] On these facts, we believe the decision of the Ngara-Irrai to seat Tmetuchl as Ngiraked is final and not amenable to review by declaratory action. It cannot be disputed that, in Palauan custom, a decision of a council of chiefs to accept or reject the *ourrot*'s choice of title holder is final, and not subject to outside review. The enactment of the Constitution effected no change in this regard. This creates no injustice. The members of the Ngara-Irrai are in a better position to evaluate the relevant historical and factual issues than this court. They are the community leaders, and possess personal and historical knowledge that cannot be replicated outside that community. In making its decision concerning who to recognize as Ngiraked, the Council was required to weigh a variety of factors, including a consideration of community history, and an assessment of whether the selection of Tmetuchl was properly made under custom. It also had to decide, as it must in every case, whether the nominee of the *ourrot* is an appropriate choice to

assume a community leadership role in the council. This multi-faceted, collective decision is not subject to review by this Court under any manageable standards, which means that if the Court is not going to give deference to the Council's decision, it must conduct an identical, intricate review of history and clan membership – except that this second review is performed from the outside and not by the community's leaders. There is no certainty that this outside review results in a better decision, or finds greater acceptance in the community.

[6] We also question whether a declaratory judgment issued after a traditional chief has been seated serves any useful purpose. In fact, rather than ending uncertainty or terminating controversy, court involvement prolongs the dispute by permitting dissatisfied persons to seek review of a traditional council decision concerning membership. This case is the best example. The litigation began twelve years ago, and despite the careful, detailed attention of the trial judge and the assessor, neither side was satisfied with the result and both have appealed.

Finally, the issuance of declaratory relief concerning the seating of a title holder is at odds with this Court's repeated insistence that the selection of a title bearer is not the courts' responsibility. When we asked the parties to file supplemental briefs on this issue both counsel, upon reflection, now question the propriety of this Court issuing declaratory judgments purely on matters of custom.

We do not mean to suggest that the Court can always avoid issues concerning traditional titles. For instance, because the Angaur Trust Fund distributions were to be made by the government to clan leaders, the court had to determine who the clan leaders ⊥98 were for purposes of disbursing the money. *See, e.g.* , *Delemel v. Tulop* , 3 TTR 469 (Tr. Div. 1968); *Risong v. Iderrech*, 4 TTR 459 (Tr. Div. 1969); *Ngeribongel v. Gulibert*, 8 ROP Intrm. 68 (1999). The most recent example of required court involvement is *Filibert*, 8 ROP Intrm. at 276. There, the court was required to determine the proper holder of the title, Reklai of Uudes Clan of Melekeok State. The holder of that title exercises state executive constitutional authority. *See* Melekeok Const. art. VIII. The Court was therefore required to issue a declaratory judgment so that there was legal certainty regarding who wielded those state constitutional powers. By contrast, in this case no discrete legal or equitable issues are presented. The parties simply want a ruling on an application of customary law, which can be fairly summarized as whether the Ngara-Irrai erred as a matter of custom in seating Mr. Tmetuchl as Ngiraked and whether Robert Ngireblekuu holds the title Ngiraked even though he has never been recognized as such by the Ngara-Irrai.

With respect to the title of Ubad, the trial court acted with restraint:

> The existence of those non-parties – who remain non-parties here – leads the Court to conclude that it would not be proper, on the current record, to issue a declaration that Ngeriut is now Ubad . . . . To issue a declaration that Ngeriut is Ubad would be tantamount to a declaration that none of the people who signed Klerang's letter have any say in choosing the titleholders of Tmeleu Clan . . . . Thus, at the risk of sounding metaphysical, while the reality may be that Ngeriut is entitled to be called Ubad, the Court is not able to issue a legal declaration to

that effect.

The Trial Division's decision not to declare who holds the title of Ubad resonates with the themes we identify here. The court perceived the difficulties that could be created by a declaratory judgment, and properly declined to grant such relief.

III. CONCLUSION

[7] This Court has jurisdiction over "all matters in law and equity." Palau Const. art. X, § 5. We are often required to consider and apply custom and traditional law in cases arising in law and equity. Nevertheless, when parties seek a declaratory judgment that asks the Court only to review a decision of a traditional council to seat a person, this Court should decline when the resulting judgment does not clarify the issues or terminate the controversy. We believe such is the case here. Accordingly, we affirm the trial court's decision not to declare who holds the title of Ubad. In all other respects, we remand the case to the Trial Division with direction to vacate the judgment.