IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

SURANGEL WHIPPS, SR., DILORES MITSUR,
and MELVIN T. HIGA,
Appellants,
v.
NGILTII IDESMANG, EBUKEL NGIRALMAU,
and SHALLUM ETPISON,[1]
Appellees.

INGLAI CLAN and NGILTII IDESMANG,
Cross-Appellants
v.
SURANGEL WHIPPS, SR.,
Cross-Appellee.

Cite as: 2017 Palau 24
Civil Appeal No. 15-033
Appeal from Civil Action No. 15-054

Decided: June 29, 2017

Counsel for Appellant/Cross-Appellee Whipps.....Yukiwo P. Dengokl
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Counsel for Appellees/Cross-Appellants.....Jeffrey L. Beattie

BEFORE: R. BARRIE MICHELSEN, Associate Justice
DENNIS K YAMASE, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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[1] Notwithstanding the fact that Ngiltii Idesmang died before trial and Shallum Etpison was substituted for him pursuant to Rule of Civil Procedure 25, the parties and the Trial Division continued to caption the case as though Ngiltii Idesmang were still a party. We see no reason at this late stage to amend the caption, but merely note the lack of conformity with Rule 25. Additionally, despite Ngiltii Idesmang's appearance as a cross-appellant in the caption of this appeal, Inglai Clan's briefs make clear that it is only seeking review of the Trial Division's denial of its request for injunctive relief. Our review will be limited accordingly.

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice, presiding.

OPINION

MICHELSEN, Justice:

[¶ 1] This appeal presents another chapter in the dispute over the proper bearer of the title Rekemesik of Inglai Clan.[2] Defendants appeal the Trial Division's decision on the merits while Plaintiff appeals the Trial Division's denial of injunctive relief. The catalyst for the lawsuit was a lease of certain Inglai Clan lands in Ngatpang State. However, as with many disputes involving clan lands, the dispute over the lease raised numerous collateral disputes regarding litigants' customary status within the clan. Those customary disputes, primarily revolving around who was Rekemesik [Inglai Clan's chief title] in 2011, became the central focus of the trial below.

[¶ 2] The action had a long and contentious procedural history, and the decisions challenged on appeal are spread across the Trial Division's pretrial rulings, the trial decision itself, and a post-trial ruling.

[¶ 3] We resolve the appeal as follows:

1. We **AFFIRM** the Trial Division's grant of partial summary judgment that Whipps was not Rekemesik when he signed the lease at issue.
2. We **AFFIRM** the Trial Division's dismissal of the claims against Ebukel Ngiralmau as moot.
3. We **REMAND** to the Trial Division to clarify the basis of its finding that Ngiltii was Rekemesik.
4. We **VACATE** the Trial Division's denial of injunctive relief for reconsideration under the proper standard on remand.

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[2] See *Iyechad v. Rubeang*, Civil Action No. 01-080 (Nov. 3, 2006) ("*Iyechad I*"); *Iyechad v. Rubeang*, Civil Action No. 01-080 (May 15, 2007) ("*Iyechad II*").

I. STANDARD OF REVIEW

A. Customary Law

[¶ 4] Because this action was filed before our decision in *Beouch v. Sasao*, which established a different rule with prospective application, the Trial Division's determinations of custom in this case are treated as factual findings and reviewed only for clear error on appeal. 20 ROP 41, 51 n.10 (2013); *Nakamura v. Nakamura*, 2016 Palau 23 ¶ 15 n.2. Under the clear error standard, we will reverse only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record. *Imeong v. Yobech*, 17 ROP 210, 215 (2010).

B. Findings of Fact

[¶ 5] We review the record in the light most favorable to the trial court's judgment. The trial judge is to determine the meaning and weight to be given to the admitted exhibits and trial testimony, and its determination must be upheld unless clearly erroneous. *Eklbai Clan v. KSPLA*, 22 ROP 139, 145 (2015). However, if the basis for the trial court's determination is not sufficiently clear to allow meaningful appellate review, we may remand for clarification. *E.g. Beouch v. Sasao*, 16 ROP 116, 119 (2009); *Eklbai Clan v. Imeong*, 11 ROP 15, 17-18 (2003).

C. Summary Judgment

[¶ 6] We review a lower court's decision on summary judgment de novo. *Llecholch v. ROP*, 21 ROP 70, 71 (2014). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 72. In considering whether summary judgment is appropriate, all evidence and inferences are viewed in the light most favorable to the non-moving party. *Id.*

D. Declaratory Relief

[¶ 7] The decision whether to entertain an action for declaratory relief is committed to the Trial Division's sound discretion, and the Trial Division's decision will not be reversed absent an abuse of that discretion. *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶¶ 5-6 (reaffirming *Filibert v. Ngirmang*, 8 ROP

Intrm. 273, 276 (2001)). A party seeking declaratory relief "must demonstrate the existence of a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant issuance of a declaratory judgment." *The Senate v. Nakamura*, 8 ROP Intrm. 190, 193 (2000) (internal quotations omitted).

E. Injunctive Relief

[¶ 8] The decision to grant or deny injunctive relief is reviewed on appeal for abuse of discretion. *See Andres v. Palau Election Comm'n*, 9 ROP 153 (2002) (reviewing denial of an injunction for abuse of discretion). However, application of the wrong legal standard constitutes a per se abuse of discretion and warrants reversal. *Elilai Clan*, 2017 Palau 14 ¶ 10 (citing *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990)).

[¶ 9] We have addressed the standard for permanent injunctive relief[3] only once, in *The Senate v. Nakamura*. 7 ROP Intrm. 212, 219-20 (1999). There, we reviewed the Trial Division's refusal to grant the two injunctions sought by the Senate. We affirmed the denial of one injunction on the basis that no irreparable harm had been shown and affirmed the denial of the other injunction on the basis that there was an adequate remedy at law. 7 ROP Intrm. at 220. We therefore found it unnecessary to address what other factors might be relevant in considering the propriety of permanent injunctive relief. We take this opportunity to clarify the standard applicable to requests for permanent injunctions.

[¶ 10] Injunctions are governed by Rule 65 of the ROP Rules of Civil Procedure. "[A]s with all of our Rules of Civil Procedure, this Court considers United States authorities when interpreting our Rules." *ROP v. Salii*, 2017 Palau 20 ¶ slip op. at 10 n.7 (2017); *Estate of Tmetuchl v. Siksei*, 18 ROP 1, 5 (2010). "According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief." *eBay Inc. v. MercExchange, LLC*, 547 U.S.

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[3] Preliminary injunctive relief, although similar in some ways, serves different purposes and involves slightly different considerations. *See, e.g.*, *Andres v. Palau Election Comm'n*, 9 ROP 289, 290 (Tr. Div. 2002) (citing *Gibbons v. Etpison*, 5 ROP Intrm. 273, 276 (Tr. Div. 1992)).

388, 391 (2006). A plaintiff seeking permanent injunctive relief must demonstrate:

> (1) that it will likely suffer irreparable injury absent an injunction;
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> (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;
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> (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and
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> (4) that the public interest would not be disserved by a permanent injunction.

Id.

II. BACKGROUND

A. The preexisting dispute within Inglai Clan

[¶ 11] This litigation concerns the long standing rift between two factions of Inglai Clan, the first represented by Plaintiffs (the "Ngiltii Group"), the second represented by Defendants (the "Whipps Group"). Many issues raised by the parties below were also at issue in a prior case, where members of the Whipps Group "challenge[d] the purported appointment of Ngiltii Idesemang to be Rekemesik in early 2001." *Iyechad v. Rubeang*, Civil Action No. 01-080 (Nov. 3, 2006) ("*Iyechad I*") at 2.

[¶ 12] The *Iyechad* court concluded that Whipps had resigned as Rekemesik on December 31, 2000. The reason for the resignation was that Surangel Whipps Sr., upon his election to the Senate, received a letter from the Chairman of the Senate Credentials Committee, stating:

> In order for the Credentials Committee to determine that you no longer hold the title of Rekemesik and that your service as a Senator … would not violate the Constitution, I request that you provide evidence that appropriate steps have been taken to have another

> person appointed and accepted in the traditional manner as Rekemesik….[4]

[¶ 13] In connection with that resignation, the senior female members of the Whipps Group prepared a letter to the Ngaimis[5] [the Ngatpang State Council of Chiefs] naming Whipps's son, Surangel Whipps Jr., as the new Rekemesik. *Iyechad v. Rubeang*, Civil Action No. 01-080 (May 15, 2007) ("*Iyechad II*") at 6. "But they were not the only ourrot to act; … the ourrot led by Riuch then proposed not-yet-Senator Alfonso Diaz to fill the vacancy." *Id.* at 7.

> The receipt of these two competing appointments led the Ngaimis to issue its own letter of January 30, 2001, asking the ourrot of Inglai to submit a single candidate as Rekemesik.
>
> Only defendants' group [the Ngiltii Group] responded, submitting the name of Ngiltii Idesemang, and there was abundant evidence presented that Ngiltii *was* accepted by the Ngaimis as Rekemesik, and prepared a blengur to confirm that acceptance.

Iyechad II at 7.

[¶ 14] Although the *Iyechad* court rejected the Whipps Group's challenges, it did not reach the issue regarding whether Ngiltii was properly appointed as Rekemesik. The Whipps Group appealed, but the appeal was subsequently voluntarily dismissed by the parties, who agreed to attempt to

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[4] "A member may not hold any other public office or employment while a member of the Olbiil Era Kelulau." Palau Const. Art IV, § 10. Until 2006 the Rekemesik was, by virtue of the title, Governor of Ngatpang. Ngatpang Const. Art. VI, § 1 (1982). The Governor is now an elected position. Ngatpang Const. Art. VI, § 3 (2006). The *Iyechad* court was careful to note that it took no position on the Credentials Committee's reading of the Constitution, the only relevant question being whether Whipps had in fact resigned following receipt of the letter.

[5] Until 2006, the Ngaimis or Ngatpang State Council was also the legislative body for Ngatpang State. Ngatpang Const. Art. V (1982). The legislative power is now vested in an elected state legislature. Ngatpang Const. Art. IV, §§ 1-2 (2006).

work together within the clan to resolve the matter. Ngiltii apparently continued to act as Rekemesik without further litigation until 2012 when the action below was filed. He died on June 26, 2013 during the of pendency of this case.

B. Events leading to the present action

[¶ 15] In 2011, Defendants Surangel Whipps Sr. and Dilores Mitsur executed a lease of Inglai Clan land to Defendant Melvin Higa (the "Higa lease"). Mitsur's clan title was listed on the lease as "Bechekeldil," the highest female title of Inglai Clan. The document made no representation concerning a traditional title for Whipps. Upon learning of the lease, Plaintiffs Ngiltii Idesemang[6] and Ebukel Ngiralmau brought suit on behalf of themselves and Inglai Clan, disputing the lease's validity. They averred they were the proper holders of the Rekemesik and Bechekeldil titles respectively. The complaint sought ejectment and damages for trespass from Higa. The complaint also requested (1) a declaration that Ngiltii is Rekemesik of Inglai Clan, and Whipps is not; (2) a declaration that Ebukel is Bechekldil of Inglai Clan, and Mitsur is not; and (3) an injunction prohibiting Whipps from holding himself out as Rekemesik of Inglai Clan.

[¶ 16] The Whipps Group counterclaimed for contrary declarations regarding the same issues, as well as (1) a declaration regarding the relative strength of Ngiltii and Whipps within the clan, (2) a declaration regarding the relative strength of Ebukel and Mitsur within the clan, and (3) a declaration identifying all the ourrot of Inglai Clan from 1997 through the present. Whipps also asserted a third-party claim against Shallum Etpison, Ngiltii's chosen morolel [agent chosen by the Rekemesik to act on his behalf, or "acting chief," *Ngiramos v. Dilubech Clan*, 6 ROP Intrm. 264, 265 n.1 (1997)], seeking a declaration that Etpison was not morolel to the true Rekemesik.

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[6] His last name is also spelled "Idesmang" in some documents. The majority of the filings in this case refer to Plaintiffs by their first names. This opinion generally follows suit.

C. Pretrial Motions and Rulings

1. Applicability of *Res Judicata*

[¶ 17] Before trial, the Ngiltii Group moved for partial summary judgment that Whipps is not Rekemesik, arguing that Whipps is bound by the judgment from *Iyechad*, where the court found he had resigned from the Rekemesik title in 2000. After considering all of the elements necessary for application of *res judicata*, the Trial Division agreed that the doctrine barred relitigation of Whipps's 2000 resignation as Rekemesik. Thus, based on *res judicata* principles and the absence of evidence that Whipps was ever reappointed after resigning, the court granted the motion and entered partial summary judgment that Whipps was not Rekemesik at the time of the Higa lease.

2. Withdrawal of Claims Regarding the Bechekeldil Title

[¶ 18] Dilores Mitsur—the Whipps Group's claimant to the Bechekldil title—died on December 28, 2012. On April 7, 2013, citing health-related reasons, Ebukel Ngiralmau—the Ngiltii Group's claimant to the title—relinquished any claim to the Bechekldil title by formally resigning. Consequently on May 6, 2013, the Ngiltii Group moved for dismissal of all claims relating to the Bechekldil title, arguing that the controversy was now moot. While the motion was pending, the Trial Division allowed Mitsur's daughter to substitute as a party to replace Mitsur with respect to the declaratory judgment claims relating to (1) Mitsur's status within the clan, (2) Ngiralmau's status within the clan, and (3) the identities of the ourrot in the Clan. The court delayed ruling on the Ngiltii Group's motion to dismiss, noting that it would address the mootness issue in a separate order.

3. Substitution of Shallum Etpison

[¶ 19] After Ngiltii's death in 2013, the Trial Division allowed Shallum Etpison (named by Ngiltii as his morolel) to be substituted for Ngiltii. Neither party raised the question of what effect Ngiltii's death would have on the claims brought by Ngiltii on behalf of Inglai Clan. Because the Trial Division's did not dismiss Inglai Clan's claims following Ngiltii's death, it appears that Etpison was treated as Ngiltii's substitute with respect to his individual claims and as the representative of Inglai Clan. The Trial Division

delayed ruling on any mootness issues that might have been raised by Ngiltii's death. The pleadings were never amended to encompass any new disputes that may have arisen as to the Bechekldil or Rekemesik titles after Mitur's and Ngiltii's deaths.

4. Bifurcation of Trial

[¶ 20] On July 12, 2013, the Trial Division issued a procedural order bifurcating the trial. *See* ROP R. Civ. P. 42(b). The court noted that it had discretion whether to entertain the parties' claims for declaratory relief, and that, in light of its earlier ruling that Whipps was not Rekemesik, resolving the remaining declaratory judgment claims might not be necessary to determining the Higa lease's validity. Accordingly, the court ordered that "[a] trial will be held regarding the validity of the Lease. If the Lease is invalidated, this Court will consider whether additional declaratory relief is necessary or warranted." On July 24, 2013, the Trial Division clarified that it would address the parties' customary disputes "insofar as the validity of the Lease depends on resolution of the customary disputes."

D. Trial

[¶ 21] At trial, the Ngiltii Group's argument was straightforward: a lease of Inglai Clan land requires the Rekemesik's consent in order to be valid and Whipps was not Rekemesik when he signed the Higa lease on behalf of Inglai Clan.

[¶ 22] The Whipps Group argued that during periods when the Rekemesik title is vacant, the clan's senior female members have the authority to dispose of clan land. Therefore, even if Whipps was not Rekemesik, the lease was valid if the Rekemesik title was vacant and the lease was signed by Bechekeldil. The parties presented conflicting testimony from different experts on whether such a rule exists. The Whipps Group further contended, assuming arguendo that Whipps was not Rekemesik, that the Rekemesik title was vacant at the time the Higa lease was signed because Ngiltii's appointment process violated certain aspects of the required customary appointment procedure. The parties presented conflicting evidence regarding the customary appointment. The Whipps Group argued that if the male title was vacant, Mitsur had the authority as Bechekldil to lease the land.

E. Trial Decision

[¶ 23] In its findings of fact and conclusions of law, the Trial Division agreed with the Ngiltii Group that any disputes regarding the Bechekldil title or Ebukel's status in the clan were now moot following Mitsur's death and Ebukel's withdrawal of any claim to the Bechekldil title.

[¶ 24] Turning to the lease, the Trial Division agreed with the Ngiltii Group's position, finding that "[t]he chief of a clan's consent is required in the leasing of clan land" and that the "Rekemesik did not consent to the Higa Lease."

[¶ 25] The Trial Division then turned to the Whipps Group's argument that a vacancy in the Rekemesik title gave Mitsur the authority to lease clan lands. The Trial Division rejected this argument on the basis that there was no vacancy, noting that "Whipps and his relatives openly recognized [Ngiltii] Idesmang as Rekemesik." The Trial Division found "overwhelming evidence that [Ngiltii] was Rekemesik from 2001 to his death in 2014," but did not specifically discuss the appointment process or the Whipps Group's arguments that certain procedural defects rendered the appointment invalid. Because the Trial Division found that there was no vacancy in the Rekemesik position, it did not address whether the Whipps Group sufficiently proved that the ourrot have authority to lease clan land when the Rekemesik position is vacant. Based on the above, the Trial Division concluded that Ngiltii was Rekemesik when the Higa lease was signed and that the lease was therefore invalid because Ngiltii did not consent to the lease. The Trial Division accordingly awarded nominal damages against Higa for trespass.

[¶ 26] The Trial Division held that Whipps and Mitsur were both ochell [strong members by birth] of Inglai Clan. The court also found that Ngiltii was a member of Inglai Clan, but could not make a determination regarding his status as ochell or ulechell [weak member by birth], citing prior inconsistencies in his family tree. However, it determined that the issue was not crucial to the lease agreement's validity. The Trial Division further found that "any member can achieve strong senior status and become an ourrot (if female) or okdemaol (if male) through services and contributions to the clan."

[¶ 27] The Trial Division next turned to the Whipps Group's argument that Ngiltii was only a techetuchel dui, which the Whipps Group defined as a non-member or a weak member chosen to temporarily hold title, with authority over clan lands remaining with the clan's senior female members. The court found this argument unconvincing. It found that the Whipps Group failed to prove the customary law surrounding its version of the concept of techetuchel dui, noting that too many questions remained unanswered.

[¶ 28] Finally, the Trial Division turned to the Ngiltii Group's request that the Trial Division enjoin Whipps from holding himself out as Rekemesik and from performing any functions or roles normally performed by the Rekemesik. The Trial Division denied the request, reasoning: "Ngiltii Idesmang is dead and Ebukel Ngiralmau withdrew her claim to the Bechekldil title. Who will suffer the irreparable harm if the injunction is not granted? [The] Court will not enter an injunction against Whipps in the face of this uncertainty."

F. Post-Trial Motion and Ruling

[¶ 29] Following the entry of judgment, Plaintiffs filed a motion to alter or amend the judgment under ROP R. Civ. P. 59(e), arguing that the Trial Division's denial of injunctive relief against Whipps had only addressed irreparable harm to Ngiltii and Ebukel. The motion argued that the Trial Division had overlooked Inglai Clan as a separate plaintiff that would suffer irreparable harm if an injunction is not entered.

[¶ 30] The Trial Division agreed with Plaintiffs that it had failed to analyze Inglai Clan's independent claim for injunctive relief against Whipps. However, upon turning to the claim, the court decided to deny relief. It declined to apply the usual test governing injunctive relief. "Instead, the Court conclude[d] that an injunction is improper under the rule … that Palauan courts should employ restraint in exercising judicial authority when litigants ask the courts to decide disputes over customary matters."

III. ISSUES APPEALED

A. *Res Judicata*

[¶ 31] Although Appellants argue that *res judicata* should not be applied in this case to bar relitigation of Whipps's resignation from the Rekemesik title, all of the elements of issue preclusion are met, as the Trial Division correctly found. In 2001, Surangel Whipps Jr., appointed by Whipps to represent his interest in the Rekemesik title, brought suit against Ngiltii and others, arguing that Whipps still held the title. The court in that case rejected the claim on the basis that Whipps had vacated the title in 2000. Application of the doctrine of *res judicata* is therefore appropriate. *See* Restatement (Second) of Judgments § 27 (1982) ("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."); *id.* § 41 ("A person who is not a party to an action but who is represented by a party is bound by … a judgment as though he were a party."); *Azuma v. Odilang Clan*, 10 ROP 16, 18-19 (2002).

[¶ 32] We have considered Appellants' other arguments related to *res judicata*, but they are unpersuasive and do not merit further discussion. Whipps is bound by the Trial Division's decisions in *Iyechad I* and *II* regarding whether a vacancy was created in the title of Rekemesik when he became a national senator. The holding was that he did vacate the position in 2000. The Trial Division's grant of partial summary judgment is therefore **AFFIRMED**.

B. The trial court's conclusion that Ngiltii was Rekemesik

[¶ 33] The Whipps Group appeals the Trial Division's conclusion that Ngiltii was Rekemesik. It first seeks an outright reversal on this issue by the Appellate Division and a finding in its favor that Ngiltii was not Rekemesik. In the alternative, it requests that the action be remanded to the trial court with directions to more specifically address the customary underpinnings of Ngiltii's appointment.

[¶ 34] Insofar as the Whipps Group seeks outright reversal and a determination in their favor, most of its arguments are undermined by two

things. First, their arguments are premised on an incorrect standard of review. Because this action was filed before our ruling in *Beouch v. Sasao*, 20 ROP 41 (2013), the trial division's customary determinations will only be overturned if clearly erroneous; the de novo standard of review only applies to actions filed after *Beouch*. *See Nakamura v. Nakamura*, 2016 Palau 23 ¶ 15 n.2 (Nov. 2, 2016). Second, the Whipps Group's briefs only mention the favorable evidence, while completely ignoring any evidence that is contrary to its desired outcome. The Trial Division heard evidence that members of both Groups signed a document in 1983, purporting to agree that they all held strong status within Inglai Clan. It also heard conflicting evidence regarding whether Ngiltii's appointment comported with custom. It was certainly within the Trial Division's discretion to credit the Ngiltii Group's evidence on these issues over the Whipps Group's evidence.[7] Thus, to the extent the Whipps Group argues that no reasonable trier of fact could have concluded that Ngiltii was validly appointed Rekemesik, it failed to show that, in light of all the evidence, the court's ruling was clearly erroneous.

[¶ 35] In a related challenge, the Whipps Group characterizes the Trial Division's decision as supplanting customary law on appointment of title-bearers with evidence of instances in which "Whipps and his relatives openly recognized [Ngiltii] as Rekemesik." They argue that individual clan members do not have the authority to "unilaterally grant a title, so … their statements could not bind Inglai Clan." Of course, if the Trial Division had found that these instances of recognition had *effectuated* Ngiltii's appointment as Rekemesik, such a finding would be clearly erroneous—neither party disputes the necessity of adhering to the customary appointment process. But we do not think the Whipps Group's characterization of the Trial Division's decision is reasonable. Read in context, the Trial Division's finding—that "Whipps and his relatives openly recognized [Ngiltii] as Rekemesik"—was clearly being considered merely as a factor in determining which party's evidence to credit regarding Ngiltii's appointment, not as a substitute for the customary appointment process itself. The Trial Division has broad discretion

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[7] However, as explained below, it is unclear from the trial court's decision exactly what factual findings it reached based on this evidence, making a limited remand necessary for purposes of clarification.

to "make credibility determinations based on a rational weighing of conflicting evidence," and we do not think the Trial Division's consideration of this evidence was irrational or otherwise unreasonable so as to warrant reversal. *Omenged v. UMDA*, 8 ROP Intrm. 232, 234 (2000); *Eklbai Clan v. KSPLA*, 22 ROP 139, 145 (2015).

[¶ 36] Notwithstanding the trial evidence supporting the Ngiltii Group's position, the Whipps Group argues in the alternative that the Trial Division's finding that Ngiltii was Rekemesik cannot be sustained absent more specific findings that his appointment was done in accordance with customary law. Citing *Eklbai Clan v. Imeong*, 11 ROP 15 (2003), the Whipps Group argues that a general finding of "overwhelming evidence that [Ngiltii] was Rekemesik" is not specific enough to allow for meaningful appellate review. With respect to this argument, we agree.

[¶ 37] In *Eklbai Clan*, as here, "[t]he vast majority of the evidence before the trial court concerned the customs surrounding the selection of a senior title-holder…." *Eklbai Clan*, 11 ROP at 17. We there concluded that a general finding that a particular claimant was the titleholder did not provide sufficient detail to allow for meaningful appellate review:

> A trial court's decision must reveal an understanding analysis of the evidence, a resolution of the material issues of "fact" that penetrate[s] beneath the generality of conclusions, and an application of the law to the facts. Where custom is applied it must be reduced to written form by the record at trial. The trial court's finding that Joseph established by a preponderance of the evidence that he is [the title-holder] is not specific enough for us to adequately review it. Both parties presented evidence…. Obviously, the trial court accepted Joseph's evidence, but we are uncertain as to how it reached that finding.

Id. (internal quotations and citations omitted)

[¶ 38] The Ngiltii Group points to what it considers sufficient evidence to support a finding that Ngiltii's appointment comported with custom, and the Trial Division definitely appears to have found Ngiltii's evidence more credible—indeed, it found that there was "overwhelming evidence" in support of Ngiltii as Rekemesik. However, the mere characterization of the

evidence as "overwhelming" does not comport with what we have said we need for review. For example, the Whipps Group challenged the process by which Ngiltii was appointed as Rekemesik. The Trial Division may have found their evidence of custom unconvincing, or it may have accepted their assertions of custom while finding that the custom was followed in this case. The Trial Division's decision simply does not specify, making meaningful appellate review impossible. We therefore will **REMAND** for additional fact-finding and clarification based on the present record.

C. The Trial Division's determination that the Bechekldil title dispute is moot

[¶ 39] Dilores Mitsur passed away on December 28, 2012, and Ebukel Ngiralmau resigned for health-related reasons on April 7, 2013. Although Ebukel voluntarily dismissed her claims in this action following her resignation, Mitsur's daughter attempted to continue to pursue Mitsur's claims against Ebukel after Mitsur's death. The Trial Division ultimately concluded that the Whipps Group's declaratory judgment claims against Ebukel were moot.

[¶ 40] In *Antonio v. Koto*, 9 ROP 116, 117 (2002), during the appeal from a declaratory judgment resolving a title dispute, the two parties claiming the title died, and we vacated the declaratory judgment on mootness grounds. That case controls here. There are no live disputes in this case regarding the claims of Mitsur to have been Bechekeldil at the time of the Higa lease. The Trial Division was therefore correct that no further judgment regarding that issue was required, and its dismissal of the claims against Ebukel is **AFFIRMED**.

D. The Trial Division's denial of injunctive relief

[¶ 41] Inglai Clan appeals the Trial Division's denial of its request for an injunction prohibiting Whipps from holding himself out as Rekemesik. The denial of injunctive relief occurred in a post-judgment order issued in response to Inglai Clan's Rule 59(e) motion seeking to alter or amend the judgment. In its order, the Trial Division first determined that it had "failed to address a key legal argument—the merits of a claim for relief set forth in the amended complaint—that was suitably presented to the Court by the

Plaintiffs." We agree with this conclusion. A court's failure to address a claim for relief properly presented for adjudication is an adequate basis on which to alter or amend a judgment pursuant to Rule 59(e). Accordingly, we find no error in the Trial Division's decision to alter or amend the judgment to include a disposition of Inglai Clan's claim for injunctive relief.

[¶ 42] The Trial Division also rejected Whipps's argument that Inglai Clan was not a proper party because Ngiltii (and later, Shallum Etpison) lacked the authority to represent Inglai Clan in the litigation. We agree. As the Trial Division correctly noted, any challenges to Inglai Clan as a plaintiff should have been raised in the pleadings by specific negative averment, and the failure to do so waived the objection. ROP R. Civ. P. 9(a) ("When a party desires to raise an issue as to … the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment…."). Whipps's attempt to characterize this as a jurisdictional issue by claiming that Ngiltii and Shallum Etpison lacked "standing" to represent Inglai Clan in litigation is meritless. Standing to sue is a distinct issue from authority to sue in a representative capacity, and the latter is indisputably subject to waiver. We therefore agree with the Trial Division that Inglai Clan is a plaintiff in the present action, independent of the individually named plaintiffs, due to Whipps's failure to challenge its presence in the litigation at the pleading stage.

[¶ 43] However, we hold that the Trial Division erred when it declined to apply the usual standard for permanent injunctions, and instead denied relief solely on the ground that "Palauan courts should employ restraint in exercising judicial authority … over customary matters." We find this issue to be governed by our recent decision in *Elilai Clan*. *Elilai Clan*, 2017 Palau 14. In that case, we held that the trial court had erred when it "applied a more rigorous standard to the parties' declaratory judgment claims based on the fact that they involve customary law." *Id.* at ¶ 15. We therefore remanded to the trial court for consideration under the standard normally governing declaratory relief. *Id.* We see no basis to distinguish injunctive relief from declaratory relief in this regard, and hold that the Trial Division erred in departing from the usual standard governing injunctive relief.

[¶ 44] In reaching this conclusion, we do not mean to imply that any of the analysis contained in the Trial Division's order is irrelevant. Many of the considerations noted in the court's order, including the need to tread lightly when intervening in customary matters, might appropriately be considered as factors under the usual standard for injunctive relief. We simply hold that it was error to consider them to the exclusion of the usual standard governing injunctive relief, thereby effectively giving them dispositive weight. Because the Trial Division failed to apply the proper standard to determine a request for a permanent injunction, we **VACATE** the Trial Division's denial of injunctive relief and **REMAND** for consideration under the proper standard.

IV. CONCLUSION

[¶ 45] For the reasons above, we **AFFIRM** in part, **VACATE** in part, and **REMAND** for proceedings consistent with this opinion.

SO ORDERED, this 29th day of June, 2017.