

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

KEBLIIL RA UCHELKEYUKL, et al.,
Appellants,
v.
KOKICHI NGIRAINGAS,
Appellee.

Cite as: 2018 Palau 15
Civil Appeal No. 17-024
Appeal from Civil Action No. 14-106

Decided: August 14, 2018

Counsel for Appellant..... Johnson Toribiong
Counsel for Appellees..... Vameline Singeo

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

Appeal from the Trial Division, the Honorable Oldiais Ngiraikelau, Presiding Justice,
presiding.

OPINION

RECHUCHER, Justice:

[¶ 1] This appeal concerns the traditional male chief title, Aderkeroi, of the Uchelkeyukl Clan of Ngerkeyukl Hamlet in Peleliu State. Per the Peleliu State Constitution, the holder of this title is a member of the Peleliu State Legislature. The trial court concluded that Appellee was the proper title holder. The Appellants, senior strong members and a would-be title holder, appeal that decision.

FACTUAL BACKGROUND

[¶ 2] Uchelkeyukl Clan is the first ranking clan of Ngerkeyukl Hamlet in Peleliu State, with the male chief title of Aderkeroi and the female chief title of Obechad ra Telbudel. After the death of Aderkeroi Yashinto Isechal, the Clan's female senior strong members appointed Appellant Postol Remeliik,

and gave his name to the Klobak for acceptance around June 1, 2017. The Appellant had a formal blengur with many members of the Ngaraikelau, the Ngerkeyukl Counsel of Chiefs, where he was accepted as their friend. However, the second ranking chief from Uchelkeyukl Hamlet, Adelbeluu Augustine Mesebeluu, was absent from the blengur, and was represented by Mark Mabel, who signed the document accepting the Appellant on behalf of Mesebeluu. Later in June, Obechad ra Telbudel Elbaed P. Johnson, the female chief title holder, appointed Appellee Kokichi Ngiraingas, who was then accepted by the Ngaraikelau as their friend.

[¶ 3] At trial, Florian Felix, an expert on Palauan custom, testified that there is a two step process for the appointment of male chiefs. First, the female chief title holder appoints the “would-be” title bearer and submits his name to the Klobak. Only the female chief title holder may make the appointment. In addition, the “would-be” title bearer usually comes from the strongest lineage. Next, the Klobak accepts the appointee as their friend in order to complete the appointment. This acceptance must come from the higher ranking chiefs. According to Mr. Felix, a lower ranking chief may not substitute for an absent higher ranking chief. Tr.2. 129:27-28.

[¶ 4] The trial court took notice of a 1977 case, in which the Court heard a dispute dealing with the distribution of proceeds of an award made by the Micronesian Claim Commission to Yashinto Isechal as the representative of Uchelkeyukl Clan (Civil Action No. 84-77). The Appellee participated in this case, and so did many of the Appellants’ parents. However, Postol Remeliik and his immediate family did not participate. In 1979, the Court adjudicated who were members of the Clan and determined that there were four lineages within the Clan. The lineages were ranked in descending order as Kolebas, Modngerur, Telbudel, and Ngeraol. The Appellants are from the Ngeraol lineage, while the Appellee is from the Modngerur lineage. The Master’s Report concluded that the Appellee was an ochell member of the Clan, and the Appellants were ulechell members.

[¶ 5] The trial court concluded that Appellee was the proper appointee, and thus holds the Aderkeroi title. The Appellants timely appealed.

STANDARD OF REVIEW

[¶ 6] The trial court's findings of fact are reviewed for clear error, and its conclusions of law are reviewed de novo. *Minor v. Rechucher*, 22 ROP 102, 105 (2015). This Court will review a lower court's determination as to what the customary law in Palau under a de novo standard. *Beouch v. Sasao*, 20 ROP 41, 50 (2003).

DISCUSSION

[¶ 7] The Appellant asserts that he is an ochell member of Uchelkeyukl Clan and a stronger and more senior member than the Appellee. He also asserts that his appointment as Aderkeroi was proper, and the trial court's decision on custom was improper.

THE STATUS OF APPELLANTS AND APPELLEE IN UCHELKEYUKL CLAN

[¶ 8] The Appellants claim it was an error to disregard the Appellant's ochell status versus the Appellee's ulechell Clan membership status. They argue it was an error to bind the Appellants by the previous case, Civil Action No. 84-77, in which they personally did not participate. Specifically, the Appellants question the previous case's finding that Appellee is an ochell member of the Clan. However, this finding was not appealed and the Appellants are bound by the decision as many of their relatives were participants, even if they were not personally involved in the case. "A person who is not a party to an action but who is represented by a party is bound by and entitled to the benefits of a judgment as though her were a party." *Azuma v. Odilang Clan*, 10 ROP 16, 19 (2002).

[¶ 9] The Appellants have not shown how they overcome the 1979 Master's Report, which lists their relatives as ulechell members as they claim membership through the paternal line. The Appellants argue that lineages within clans are not ranked, and that a lineage may become stronger over time as others weaken. They claim it was an error to use the almost 40 year

old case to determine the strength of the parties. However, the Appellants have not actually shown that they are stronger members of the Clan. They have not presented any legal or factual basis that would negate the 1979 findings. Therefore, the Appellants are bound by the Court's previous rulings in matters dealing with membership of Uchelkeyukl Clan and fail to show clear error by the trial court.

THE PROPER METHOD FOR CHOOSING THE NEXT ADERKEROI

[¶ 10] The Appellants also claim the trial court erred when finding that the Appellee was the proper appointee to the Aderkerroi title. However, the Appellants explicitly contradict the expert witness's testimony in an effort to find that error. The Appellants claim again that the decision regarding appointment of male chief titles must be made by all the senior strong women from all of the Clan's Lineages.

[¶ 11] The only case they have presented in support of this position is *Uehara v. Obeketang*, 1 ROP Intrm. 267 (Tr. Div. 1985). This case dealt with the male chief title, Tet, of the Techiwod Clan in Ngarchelong State. The trial court ultimately concluded that none of the potential title holders had been appointed pursuant to custom, and that male chief title holders were appointed by "senior female members (ourrot) of the Clan." *Id.* at 269. The Appellants are attempting to bind the trial court to the decision of another trial court. Even if the trial court were to consider this case, the Appellants have not shown how this particular case furthers their argument. The case does not say that all senior female members must agree on the choice for the next male chief title holder. If that were the case, the Appellants' argument would fail, as not all senior female members of the Clan agreed to appoint the Appellant. This court has previously recognized that it is the female chief title holder who ultimately chooses the male chief title holder. See *Soaladob v. Remeliik*, 17 ROP 283 (2010) ("[W]e know from expert customary testimony that *only* the proper [female chief] possesses the power to nominate a male title holder..."); See also *Edward v. Suzuky*, 19 ROP 187 (2012), in which the Appellate Division upheld a Trial Division decision concluding that the female chief title holder had the authority to appoint the male chief

title holder. Thus, the Appellants have failed to show that the trial court erred in its decision.

[¶ 12] The Appellants also make a series of arguments with little support. They claim that Ms. Johnson “waived” her right to appoint any one as Aderkeroi when she refused to meet with the other strong members of the Clan. The Appellants have no legal support for this argument. The Appellants also claim that the Appellee has never shown that the individuals who accepted him as their friend at the Ngaraikelau were, in fact, the true bearers of their purported chief titles. If this is the case, the Appellant’s appointment would also fail, as the same individuals first accepted the Appellant.

[¶ 13] Additionally, the Appellants only make a passing reference to the standard put forth in *Beouch*. They make no effort to apply that standard to any of their arguments. Therefore, their arguments must be rejected. See *Riumd v. Mobel*, 2017 Palau 4 ¶ 38 (“Even if the Trial Division erred under *Beouch*, it is [Appellant]’s burden to identify that error and provide legal authority in support of reversal. [Appellant] has failed to meet that burden.”).

CONCLUSION

[¶ 14] Because Appellant failed to show clear error by the Trial Division, we **AFFIRM** the trial court’s decision.