IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

MARIANO CARLOS,
Appellant,
v.
FRANO EUSEBIO, FRANCIS VICTOR, CYRILO EUSEBIO, and DAMIANA KYOSHI,
Appellees.

Cite as: 2019 Palau 11
Civil Appeal No. 18-020
Appeal from Civil Action No. 16-034

Decided: March 27, 2019

Counsel for Appellant ..... Mariano Carlos & William Ridpath
Counsel for Appellees ..... Tamara Hutzler

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

Appeal from the Trial Division, the Honorable Kathleen Salii, Associate Justice, presiding.

OPINION[1]

PER CURIAM:

[¶ 1] This appeal arises from the Trial Division's judgment in favor of Appellees, denying Appellant's trespass and ejectment claims.

[¶ 2] The Court now **AFFIRMS** the Trial Division's decision and judgment.

[1] Although Appellees request oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

BACKGROUND

[¶ 3] In 2001, Appellant purchased what is now known as Cadastral Lot 027 A 29, consisting of 289 square meters. It is undisputed that he owns the lot, and Appellees have lived on the land since before Appellant purchased it. It is also undisputed that this lot is part of a property that is known as Itab and that the lot also falls entirely within a larger area called Echang, previously "E-ang." All of Echang, but not all of Itab, is encumbered by the terms of the 1962 Land Settlement and Indenture ("1962 Settlement"), which grants a possession, occupancy, and use right to particular individuals. Appellees claim to be such individuals.

[¶ 4] Appellant filed suit in the Trial Division seeking a determination that the Appellees were trespassing and squatting on his land. Following a trial, the Trial Division determined that Appellees are long-time residents of Itab. Appellees are related to Basilio Rikrik and Baustino.[2] Appellees Frano and Cyrilo Eusebio are siblings. Baustino is their uncle, and Rikrik is their great uncle. Cyrilo is married to Appellee Damiana Kyoshi. Rikrik was also Appellee Francis Victor's great uncle, and Victor was related to Baustino through his mother.

[¶ 5] Appellant states that "[t]he Trial Court found that Rikrik had a lease in Ngarkabesang and on part of Itab." Opening Br. 21. That is not what the Trial Division found. The Trial Division stated in its findings of fact, "Rikrik leased Itab in 1956, and continued to occupy the property up until his death; the map admitted into evidence shows he was using the entire Lot 1587 [Itab], including that portion with is now owned by Plaintiff." Decision 3. The Trial Division determined that both Rikrik and Baustino "were already on the land before the 1962 [Settlement] and both men had a right [under the 1962 Settlement] to occupy the land." Decision 4. Rikrik's house is on Itab land just outside the Echang boundary, but he used the entirety of the Itab property, including the portion in Echang. To support these findings, the Trial Division relied on evidence that Rikrik leased Itab in 1956, which included the later-subdivided portion that is Appellant's lot, and continued to occupy

[2] Some of the documents identify Baustino as "Faustino" and "Paustino," but they do not provide a last name. As the Trial Division did, we refer to him as "Baustino" and to Basilio Rikrik as "Rikrik."

the entire property until his death, as did Baustino, whose house is on Appellant's lot and has been occupied by Appellees since the mid-1980's when Baustino died. It further relied on evidence presented at trial that there were houses on Itab since at least the 1950's "and that those who lived on the land in those structures[] were Baustino, [Rikrik], and their families." Decision 7. As such, it concluded that Appellees were not trespassing on the land and were instead allowed to stay on the land because the 1962 Settlement granted them a use right in the Appellant's property through Rikrik and Baustino's use rights. Appellant now appeals the Trial Division's decision.

STANDARD OF REVIEW

[¶ 6] This Court has previously and succinctly explained the appellate review standards as follows:

> A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. [Conclusions] of law we decide de novo. We review findings of fact for clear error. Exercises of discretion are reviewed for abuse of that discretion.

Kiuluul v. Elilai Clan, 2017 Palau 14 ¶ 4 (internal citations omitted).

[¶ 7] The Court reviews *de novo* the Trial Division's finding that the Appellees are not trespassing, but instead are rightfully on the land through the use right granted in the 1962 Settlement. We apply the clearly erroneous standard to the findings of fact that the Trial Division used to support its legal determination.

ANALYSIS

[¶ 8] Appellant makes several arguments asserting error by the Trial Division, but the crux of his argument is as follows:

> The Echang Covenant of the 1962 Settlement only protects those persons who were residing in the village of Echang at that time in 1962, and their descendants, not the people who did not reside there

> in 1962, or people who were residing in the Southwest Islands and came to reside in Echang or on the land in question, after 1962, such as the Appellees.

Opening Br. 8–9.[3] Specifically, Appellant contends that "the Echang Covenant gave the Appellees no use right in the said land because these Appellees did not reside on this particular part of land or on any land anywhere in Echang in 1962." *Id.* at 10. He further asserts that the Trial Division's tracing Appellees' use right to the land under the 1962 Settlement to Rikrik's and Baustino's use right is clearly erroneous because (1) "Rikrik did not reside in Echang" and therefore "[t]he terms of the Echang Covenant did not even apply to him" and (2) Baustino did not reside on Itab at the time of the 1962 Settlement and "only came to build his house on the land in question in the [sic] late 1969 or early part of 1970." *Id.* at 19.

[¶ 9] Appellant's premise that individuals had to *reside* at Echang in order to have a use right under the 1962 Settlement is based on an incomplete assumption. Appellant asserts that "[t]his Court held in *Heirs of Drairoro v. Dalton*, [7 ROP Intrm. 162, 166 (1999),] that the use right in lands of Echang benefited the 1962 residents of Echang and their descendants." *Id.* at 27.

[¶ 10] This Court did not so hold, but rather made the statement in dicta. "Dicta are the parts of an opinion that are not binding on a subsequent court, whether as a matter of *stare decisis* or as a matter of law of the case," because they are not "integral elements of the analysis underlying the decision." *Wilder v. Apfel*, 153 F.3d 799, 803 (7th Cir. 1998). This Court actually held as follows in *Heirs of Drairoro*: "[T]he Trial Division's finding that title to the entire Lot 1587 [Itab] properly resides in the heirs of Jesus Borja is affirmed, and the Trial Division's findings that the 1962 Settlement creates a use right in the lands to Echang is also affirmed." 7 ROP Intrm. at 166. We further explicitly held that "[w]e need make no finding in this case as to who among [a]ppellants or others, is entitled to exercise that right." *Id.*

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[3] Appellant's arguments are all predicated on Appellees not having a use right under the 1962 Settlement. The Court does not address each of Appellant's arguments individually, as they all fail for the same reason: Appellees' use right is supported by the evidence. In addition, the Court does not address the arguments raised regarding Appellant's use right either as owner of the property or under the 1962 Agreement, as those issues are not properly on appeal.

However, to reach that conclusion, we found that the "use right extends to the portion of Lot 1587, [*i.e.*, Itab,] that lies within Echang." *Id.* Even if that were the holding in *Heirs of Drairoro*, the scope of those granted a use right is not so circumscribed.

[¶ 11] The 1962 Settlement contains the following relevant terms:

> And the Grantees hereunder further agree hereby that no provision of this Deed shall be construed to effect, retroactively or otherwise, or to rescind, revoke, cancel, alter, or change in anywise whatsoever, the rights and interests of any person, family, lineage or clan residing on or using or having members residing on or using that part of the premises herein granted known as "E-ang" . . . in and to the continued peaceful possession, occupancy and use of the said lands for an indefinite period in the future, and the Grantees do hereby expressly covenant and agree further with the Government that the said residents shall and may continue for an indefinite period in the future to peaceably possess, occupy and use lands within the area known as "E-ang" without any suit, trouble, molestation, eviction or disturbance by the Grantees, their heirs, successors and assigns, or any other person or persons claiming through, from or under the same, this covenant and agreement to be construed as running with the land.

Trial Div. Pl.'s Ex. 6 at 3.

[¶ 1] Appellant contends that Baustino did not reside on the portion of Itab found in Echang until 1969 or the early 1970s. Opening Br. 3. As noted above, however, Baustino did not need to reside there. By the express terms of the 1962 Settlement, he only needed to have been "using that part of the premises herein granted known as [Echang]" in 1962 to have been granted a use right. Trial Div. Pl.'s Ex. 6 at 3. Nonetheless, the Trial Division found that "Baustino lived both at Itab and in Ngermelis," Decision 3, and that he "was already on the land before the 1962 [Settlement] was drafted," *id.* at 4. Even if the Trial Division was wrong about Baustino living on the portion of Itab that fell within Echang before the 1962 Settlement, the finding that he was using Echang land before and at the time of the 1962 Settlement is not clearly erroneous and is supported by the evidence.

[¶ 2] The Trial Division also determined that the evidence presented showed that Rikrik and Baustino both *used* the portion of Itab that fell within Echang in and prior to 1962. For that reason, the terms of the 1962 Settlement apply to them. The Trial Division further found that the evidence showed that "[e]ach of the [Appellees] can trace their lineage to those who first settled on the land, [Itab], in at least the early 1950's." Decision 3. For that reason, the Trial Division concluded that Appellees "clearly are included in the group of people covered by the 1962 [Settlement]." *Id.* at 8.

[¶ 3] This Court agrees. The 1962 Settlement provides a use right to "any person, family, lineage or clan residing on or using or having members residing on or using that part of the premises herein granted known as [Echang]." Trial Div. Pl.'s Ex. 6 at 3. Appellees are individuals covered by the 1962 Settlement. They are related to individuals who were using Echang in the 1950s, during 1962, and thereafter, with Appellees' own use of Echang overlapping and continuing with Rikrik and Baustino's use since at least the 1970s. The Trial Division's findings of fact relied on to determine that Appellees are not trespassing and instead have a use right under the 1962 Settlement are not clearly erroneous, and applying *de novo* review, this Court determines that Appellees are not trespassing and instead possess a use right to the property, through Rikrik and Baustino, under the 1962 Settlement.

CONCLUSION

[¶ 4] For the foregoing reasons, we **AFFIRM** the Trial Division's decision and judgment.