

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

**NGERMEU CLAN, Represented by Antonina Rubasch, Isidora
Rubasch, Emiko Renguul, Marciana Rubasch, and Ilapsis
Vicente Ito,
*Appellant,***
v.
**SMENGESONG LINEAGE OF ELOKLSUMCH CLAN,
Represented by Martha Iechad, Anemary Edeyaoch, and
Emiliana Ngirkiklang,
*Appellee.***

Cite as: 2019 Palau 20
Civil Appeal No. 18-002
Appeal from Civil Action No. 15-058

Decided: July 3, 2019

Counsel for Appellant Johnson Toribiong
Counsel for Appellee Ebil Y. Matsutaro

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
ALEXANDRO C. CASTRO, Associate Justice
KEVIN BENNARDO, Associate Justice

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

OPINION¹

PER CURIAM:

[¶ 1] This case arises out of a dispute surrounding the membership of Ngermeu Clan and the 2015 burial of Santos Ngirasechedui on Ngermeu Clan land. In its complaint, Ngermeu Clan’s representatives (plaintiff’s representatives below) requested declaratory and injunctive relief regarding

¹ The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

the identity and status of Ngermeu Clan membership. They also sought an order for the exhumation and removal of Ngirasechedui's remains from Ngermeu Clan's burial platform (*odesongel*), arguing that he was interred there without the consent of Ngermeu Clan's *ochell* members, and an injunction prohibiting Smengesong Lineage's members from trespassing on Ngermeu Clan property.

[¶ 2] The Trial Division found that Ngermeu Clan was entitled to the following specific declaratory relief: that Ngermeu Clan is a clan rather than a lineage and is the fifth-ranking clan of Ordomei Hamlet of Airai State, with Ilapisis as its male chief title and Dirremeu as its female chief title. Decision 7. It further found that Ngermeu Clan's representatives – Antonina Rubasch, Isidora Rubasch, Emiko Renguul, and Marciana Rubasch – are *ochell* members of Ngermeu Clan and that Vincent Ito is a member of Ngermeu Clan. *Id.* at 7–8. The Trial Division denied Ngermeu Clan's remaining claims for declaratory relief for failure of proof. *Id.* It further denied granting injunctive relief and damages to Ngermeu Clan and concluded that it could not “be said that members of Smengesong Lineage are not members of Ngermeu Clan.” *Id.* at 8.

[¶ 3] Ngermeu Clan appeals the Trial Division's denial of injunctive relief regarding trespass on Ngermeu Clan property and the exhumation and removal of Ngirasechedui's remains, as well as the denial of its request for damages.² It contends the Trial Division erred “when it disregarded the evidence that Appellant[’s representatives,] who are *ochell* of Ngermeu Clan[,] objected and have a continuing objection to the burial of Appellee’s [representatives’] relative, Santos Ngirasechedui, at the traditional *odesongel* of Ngermeu Clan[,] regardless of the traditional title that he bore at the time of his death.” Appellant's Br. 1.

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

² Although Ngermeu Clan mentions that it is appealing the lack of an award of damages and seeks to hold a hearing on damages, it does not provide any substantive argument regarding the Trial Division's purported error with respect to damages evidence, if any, presented at trial. As a result, the Court does not consider this argument as Ngermeu Clan does not properly pursue this argument on appeal. See *Etpison v. ROP*, 2017 Palau 32 ¶ 13 (“Undeveloped arguments are waived.”).

FACTS AND TRIAL CONCLUSIONS

[¶ 5] The Trial Division’s relevant findings of fact and conclusions follow. Ngermeu Clan is the fifth-ranking clan of Ordomei Hamlet, Airai State. Its male chief title is Ilapsis and its female chief title is Dirremeu. Eloklsunch Clan is the first-ranking clan of Ordomei Hamlet. Its male and female chief titles are Obak ra Tkar and Ebil, respectively.

[¶ 6] The Rubasch representatives of Ngermeu Clan are senior strong (*ochell*) members of Ngermeu Clan.³ They trace their membership through Obengedang, a woman whose mother was Etumelai, an *ourrot* member of Ngermeu Clan. Etumelai held the female title, Ebil, which is a title of Smengesong Lineage. Etumelai is buried on the Ngermeu Clan *odesongel*.

[¶ 7] Vincent Ito, another representative of Ngermeu Clan, traces his family history to Leleng, an ancestor common with Smengesong Lineage’s representatives. In addition, Ito’s father held the Ilapsis title, was a member of Ngermeu Clan, and held a title in Smengesong Lineage. Ito’s father is descended from Ngirduais, one of Leleng’s sons, and Smengesong Lineage’s representatives descend from Sukrad, Leleng’s other son (and her daughter through her daughter’s adoption of one of Sukrad’s daughters). Ito is a member of Ngermeu Clan through his father—they “have assimilated to Ngermeu Clan over the years, with their services and contributions to the Clan.” Decision 3.

[¶ 8] All of Smengesong Lineage’s representatives are senior strong members of Smengesong Lineage of Eloklsunch Clan, and representative Anemary Edeyaoch bears the title Dirremeu of Ngermeu Clan. The members of Smengesong Lineage of Eloklsunch Clan and Ngermeu Clan have traditionally participated in and contributed to each other’s customary matters.⁴ “[M]embers of Smengesong Lineage have held [Ngermeu Clan]

³ The Trial Division did not make any finding naming Ngermeu Clan’s representative Emiko Renguul specifically. However, Renguul is identified in testimony as a sibling to the Rubasch representatives and is, therefore, also a Rubasch representative, though she does not carry the Rubasch name. *See* Testimony of Josephine Uleingchong 10:10–18.

⁴ The Trial Division previously discussed this type of customary relationship between clans in *Ngiramechelbang v. Katosang*, 8 ROP Intrm. 333, 336 (Tr. Div. 1999) (stating that *kaukebliil* “means there is some relationship between members of the two clans. Under Palauan custom,

titles and performed obligations on behalf of Ngermeu Clan based on the understanding that some members of Ngermeu Clan moved away from Airai and left their properties and titles with [Appellee’s representatives’] ancestors.” *Id.* at 8. The Trial Division noted that “[b]ased on the conflicting evidence,” it could not say that “[Appellee’s representatives] are not members of Ngermeu Clan.” *Id.* at 7.

[¶ 9] The parties do not dispute that Ngirasechedui was a member of Smengesong Lineage. The Trial Division determined that Ngirasechedui held the male chief title of Ilapsis of Ngermeu Clan until his death in 2015. Ngirasechedui is the only member of Smengesong Lineage buried on Ngermeu Clan property. The Trial Division determined that Ngirasechedui was buried at Ngermeu Clan’s *odesongel* because he held the title Ilapsis of Ngermeu Clan. Given these facts, the Trial Division determined that Ngirasechedui’s burial on Ngermeu Clan’s *odesongel* could not be trespass and denied injunctive relief. *Id.* at 8.

STANDARD OF REVIEW

[¶ 10] “The decision to grant or deny injunctive relief is reviewed on appeal for abuse of discretion.” *Whipps v. Idesmang*, 2017 Palau 24, ¶ 8 (citation omitted). “Under the abuse of discretion standard, a Trial Division’s decision will not be overturned on appeal unless the decision was arbitrary, capricious, or manifestly unreasonable or because it stemmed from an improper motive.” *W. Caroline Trading Co. v. Kinney*, 18 ROP 70, 71 (2011) (citation omitted).

ANALYSIS

[¶ 11] Ngermeu Clan argues that the Trial Division erred in denying its request for injunctive relief. First, Ngermeu Clan points to statements in the Trial Division’s 2015 order denying its motion for a temporary restraining order. *See* Appellant’s Br. 1–2, 6. In its 2015 order, the Trial Division stated that “[i]f after the trial on the merits takes place and the Court rules in favor of [Ngermeu Clan] then the Court may order the removal of Mr.

when two clans are *kaukebliil*, their members assist each other in funerals, contributions of money, *eldecheduchs* and *ocheraols*.”).

Ngirasechedui from the odesongel.” In addition, the Trial Division stated that Smengesong Lineage conceded at a hearing on the motion that it would pay for damages that resulted from the burial of their relative.

[¶ 12] On appeal, Ngermeu Clan claims that the Trial Division has not honored the statements from its 2015 order. According to Ngermeu Clan, it prevailed on the merits and is therefore entitled to the removal of Ngirasechedui’s remains from its land. Ngermeu Clan’s argument neglects an important truth: while Ngermeu Clan prevailed on the merits in some respects, it did not prevail on the merits in at least one important respect. The Trial Division declined to issue all of the declarations and injunctions that Ngermeu Clan sought because it found that Ngermeu Clan had failed to prove certain claims beyond a preponderance of the evidence. Importantly, the Trial Division found that Ngermeu Clan’s evidence did not establish that members of Smengesong Lineage were not members of Ngermeu Clan.⁵ Thus, Ngermeu Clan’s effort to enforce the statements from the Trial Division’s 2015 order must fail.

[¶ 13] Second, Ngermeu Clan cites to several cases involving a male titleholder’s authority over clan property. *See* Appellant’s Br. 7–8. It does not cite to any case law or expert witness testimony introduced at trial regarding customs related to male titleholders’ burials at a clan’s *odesongel*, when the titleholder is a clan member or not. It argues, without supporting citation to the trial record, that “as *ochell* members of Ngermeu Clan, [Appellant]’s consent is required for the burial of Appellees’ relative in the *odesongel* of Ngermeu Clan.” *Id.* at 9. Given the dearth of supporting evidence for its argument, Ngermeu Clan has not shown that the Trial Division’s decision was arbitrary, capricious, manifestly unreasonable, or stemmed from an improper motive. As a result, this Court cannot say that the Trial Division abused its discretion in denying Ngermeu Clan’s request for injunctive relief.

CONCLUSION

[¶ 14] We **AFFIRM** the Trial Division’s decision and judgment.

⁵ The Trial Division did not hold that members of Smengesong Lineage *were* members of Ngermeu Clan; it simply held that Ngermeu Clan had failed to prove that they were not.