IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

BENJAMIN YOBECH,
Appellant,
v.
ANGEL ILILAU,[1]
Appellee.

Cite as: 2021 Palau 11
Civil Appeal No. 20-002
Appeal from Civil Action No. 17-219

Argued: January 13, 2021
Decided: April 9, 2021

Counsel for Appellant ..... Rachel A. Dimitruk
Counsel for Appellee ..... Salvador Remoket

BEFORE: JOHN K. RECHUCHER, Associate Justice
GREGORY DOLIN, Associate Justice
KEVIN BENNARDO, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] In this appeal arising from an ejectment suit, Appellant Benjamin Yobech contends that the trial court erred in determining that Appellee Angel Ililau is entitled to continue occupying a house on Yobech's land. For the following reasons, we **VACATE** and **REMAND** the judgment.

[1] We have amended the caption to reflect the remaining parties-in-interest.

BACKGROUND

[¶ 2] On June 16, 2017, Yobech filed an action seeking to eject Angel Ililau, Takeshi Ililau, and ten unidentified relatives living with them from a house in Ngetkib, Airai. The suit claims that Yobech has a leasehold interest in the property based on a 1985 lease agreement with Airai State. The suit further claims that Yobech allowed Angel and Takeshi Ililau to reside in the house after the death of Ililau Bausoch, Yobech's adoptive father and Angel and Takeshi's biological father who built the house, but that Yobech now wants them to leave.

[¶ 3] At trial, the key dispute was whether Bausoch built the house on Yobech's land, or whether the house actually sits on adjacent land properly leased to Bausoch. Yobech contended that he allowed his father to build the house on his leased land and allowed his family to live in the house, but that he had since withdrawn that permission. Angel[2] attempted to prove that the house was not built on Yobech's land, but that even if it was, he now had a property interest in the land the house was built on through adverse possession, or that the ejectment suit was untimely.

[¶ 4] In a post-trial order, however, the trial court requested that the parties address in their written closing arguments "the effect of the decision made at the [ch]eldecheduch of Ililau Bausoch . . . 'that the *rrengodel* (family house) shall be the residence of Bausoch's children,'" an event mentioned at trial by Yobech and another witness. Order at 1 (May 29, 2019). In his written closing argument, Yobech objected to the court "sua sponte . . . rais[ing] an entirely new legal theory after trial was completed," namely, the theory that Angel had an interest in the house itself as a result of a decision made at Bausoch's *cheldecheduch*.[3] Pl.'s Closing Arg. at 11. For his part, Angel argued in his written closing argument that "[t]he property was conveyed to the Children of Ililau at Ililau Bausoch's cheldecheduch" because Yobech

[2] Although the suit was filed against Angel Ililau, Takeshi Ililau, and "Does 1-10," Takeshi died during the pendency of the suit and the "Does" were never specifically identified as parties. Angel Ililau, therefore, is the only remaining defendant in this appeal. It also appears to be undisputed that Angel and his wife are the only individuals currently residing in the house.

[3] We follow the spelling of this term mainly used by the parties and the trial court.

> did not object to the announcement [that the house would be the residence of Bausoch's children], nor did he voice a claim that the property on which the house stood belonged to him and him alone. If property is not previously conveyed by an inter-vivos transfer or a testamentary will, that same property may be conveyed at an cheldecheduch.

Def.'s Closing Arg. at 10-11.

[¶ 5] In its Findings of Fact and Conclusions of Law, the trial court made the following findings:

- "[O]n January 23, 1985, Yobech and Airai State Government executed a lease agreement in which Airai State Government leased to Yobech a parcel of land in Ngetkib, Airai, adjacent to the land known as *Ngerbeselch*, for a period of 99 years. The actual size and exact boundaries of the land were not reflected in the agreement."
- "On December 8, 1985, nearly eleven (11) months after Yobech's lease, Airai State Government entered into a lease agreement with Yobech's father, Bausoch, in which the State agreed to lease to Bausoch certain land for housing. The agreement, like Yobech's, also failed to provide a description of the land or show its size and location. However, evidence presented at trial revealed that then Governor of Airai State, Roman Tmetuchl, pointed to Bausoch a piece of land next to *Ngerbeselch* where he could construct a new residence and relocate [from a parcel of land that Governor Tmetuchl wanted to acquire for Airai State]. The area that Governor Tmetuchl designated for Bausoch was mostly mangroves and appeared to be well within the parcel of land that was already leased to Yobech."
- "The duration of Bausoch's lease agreement was 25 years. Shortly after the execution of the lease agreement, Bausoch began to make improvements on the land. He cut down the mangrove trees, cleared, and filled the mangrove area. After the clearing was done, Bausoch proceeded to construct his house. Noah Secha[r]raimul [Bausoch's nephew] constructed the house around 1987. Bausoch's relatives paid for the house after it was completed."

- "Bausoch and his family lived in the house until his death in 1992. An *cheldecheduch* was held for Bausoch. At that *cheldecheduch* it was decided that the house, together with Bausoch's lease, shall go to all of Bausoch's children. Yobech attended the *cheldecheduch*. He neither objected to the decision nor informed anyone at the *cheldecheduch* that the land on which the house was located was his lease, and not Bausoch's."
- "Telmetang [Bausoch's wife and Angel's biological mother] and her children continued to live in the house until she passed away in 2005.[4] In 2001, four years before Telmetang died, Yobech brought an ejectment action against his older brother, Takeshi. On January 1, 2008, nearly seven (7) years after the lawsuit was filed, Yobech and Takeshi stipulated to have the case dismissed without prejudice."
- "Sometime in 2016, Angel submitted to Airai State an application for a permit to renovate the house. The State denied the application, stating *inter alia* that Yobech and his wife[5] were the lessees of the property on which the house was located and, therefore, their express permission was required before the State could issue a permit. The State also told Angel and Takeshi that to the extent they were relying on their father's December 1985 lease, that lease had already expired and was not renewed."
- "After the State denied their application for a building permit, Takeshi and Angel wrote to Yobech . . . expressing surprise that Yobech and his wife were the lessees of the land on which the house stood. They also told Yobech and his wife that they will continue to reside at the house, claiming that the lease is theirs because it came from their father."
- "Yobech, through counsel, wrote to Angel and Takeshi to move out of the house within six months and offered them $50,000 to assist in relocating their residence elsewhere. When Angel and Takeshi refused to move out of the house, Yobech filed the instant ejection action."

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[4] The trial court found that, in 1993, the Governor of Airai granted Telmetang a land use right over the land on which the house stood. However, this land use right did not appear to factor into the trial court's ultimate conclusions.

[5] In 2000, the Yobech lease was purportedly amended by Airai State with Yobech's consent to modify the terms and to include his wife as a lessee. At trial, however, Yobech appeared to deny ever agreeing to this amendment.

Findings of Fact and Conclusions of Law at 2-5 (Sept. 13, 2019) (footnotes added).

[¶ 6] Based on its findings, the trial court concluded, "the sum total of evidence adduced at trial established that Yobech holds title to the property in question." Findings of Fact and Conclusions of Law at 7. The trial court further noted that, regardless of the validity of Bausoch's lease, "because Bausoch's lease has since expired and has not been renewed . . . defendants cannot rely on their father's lease to justify their continued occupation of the property." *Id.* at 8. Finally, the court summarily rejected Angel's arguments based the statute of limitations and adverse possession. *Id.*

[¶ 7] However, the court ultimately determined that Angel could not be ejected because of the purported conveyance at Bausoch's *cheldecheduch*. The court acknowledged Yobech's "viable argument" that "the only thing that could have been conveyed to the children at the *cheldecheduch* was their father's interest in the property, and that interest was nothing more than permission to live in the house as long as Yobech permitted." *Id.* at 12. But the court rejected this argument as follows:

> [A]t the *cheldecheduch* the decision-makers and the children, except Yobech, believed that the land on which the house stood was Bausoch's lease, and it was publicly announced as such. It was therefore incumbent on Yobech to object, since he was the only person at the *cheldecheduch* who possessed the information relating to the permission he granted to his father to build a house on his lease. Rather than object, he sat quietly and received his Palauan money. Having failed to object, he may not now attempt to alter the decision made at the *cheldecheduch*, a decision that he was content with and accepted at the time.[6]

Id. at 13-14. The court therefore rejected Yobech's suit for ejectment because "Yobech has failed to prove that the Defendants are trespassing on his property, or that they have no right to reside and occupy the house and that part of the property formerly designated as Ililau Bausoch's lease." *Id.* at 14. The court concluded that although Yobech "is the owner of the property . . . the Defendants are entitled to possession of the house and the portion of Plaintiff's

[6] At trial, Yobech testified that when his relatives announced that "[t]he house is for the children," Yobech "fe[lt] okay because [he] was one of the children." Trial Tr. at 23:12-18.

property formerly designated as Ililau Bausoch's lease." Judgment at 1 (Sept. 13, 2019).

[¶ 8] Yobech moved for reconsideration, again objecting to the court's reliance on the *cheldecheduch* conveyance theory. In its order denying Yobech's motion, the court again emphasized that its decision was not based on any leasehold interest held by Bausoch. Indeed, the court reiterated its finding that the house "was within the plot of land leased to Yobech." Order Denying Mot. for Recon. at 4 (Jan. 2, 2020). However, the court remained steadfast in its conclusion that "[a]t the very least Bausoch held an ownership interest in the house" and that this interest was validly transferred to his children at his *cheldecheduch*. *Id.* at 7. This appeal timely followed.

STANDARD OF REVIEW

[¶ 9] We review the trial court's legal conclusions de novo and its findings of fact for clear error. *Kiuluul v. Eliliai Clan*, 2017 Palau 14 ¶ 4. We will vacate and remand a judgment where the trial court's decision is not sufficiently developed to permit meaningful appellate review. *See, e.g.*, *Estate of Tmilchol v. Kumangai*, 13 ROP 179, 182 (2006).

DISCUSSION

[¶ 10] On appeal, Yobech attacks the procedural and substantive underpinnings of the trial court's judgment. Regarding procedure, Yobech contends the trial court erred when it introduced a new legal theory post-trial—conveyance of the house and the land that was part of Bausoch's lease at the *cheldecheduch*—and ultimately based its ruling on that theory.[7] Yobech's contention that this theory was not litigated "by express or implied consent of the parties," *see* ROP R. Civ. P. 15(b), is a close question. However, we need not get into the weeds on this issue because Yobech's substantive attack on the trial court's judgment has more purchase, and we ultimately return the matter to the trial court on that basis.

[¶ 11] The trial court's orders are difficult to parse. However, we understand the trial court to have ruled that (1) Bausoch possessed some sort of valid interest in the house and the underlying property (2) that was validly

[7] Contrary to Appellant's contention that the trial court's judgment separated the house from the land on which it sits, we read the trial court's judgment as allowing Angel to occupy and use both the house and the land that was part of the Bausoch lease.

transferred to his children at his *cheldecheduch*.[8] Our review thus would start with assessing the validity of Bausoch's interest. However, multiple close readings of the trial court's orders leave us unsure as to the precise nature of this interest, which the trial court characterizes as an "ownership interest in the house." *See* Order Denying Mot. for Recon. at 7 ("At the very least Bausoch held an ownership interest in the house."). We know that the trial court did not view Bausoch's interest as a leasehold interest because the trial court repeatedly disclaimed any reliance on the validity of Bausoch's lease from Airai State. *See id.* ("[E]ven if the [c]ourt ruled that Bausoch's lease was void, such a ruling would not affect the [c]ourt's . . . decision."). And we know that Bausoch did not gain an interest through adverse possession. Aside from the fact that the trial court also disclaimed reliance on adverse possession, and assuming adverse possession can operate in this type of interfamilial situation where the land is merely leased from a governmental entity, the twenty-year statutory period required for adverse possession had not run by the time of Bausoch's death. *See Petrus v. Suzuky*, 19 ROP 37, 39 (2011).

[¶ 12] This leaves us with two possibilities hinted at by the trial court. First, the trial court suggests that Bausoch may have developed his interest in the house by preparing the ground, commissioning its construction, and accepting funds from his relatives. *See, e.g.*, Order Denying Mot. for Recon. at 7 (noting that Bausoch "had a house built on the parcel of land in question that his relatives paid for after it was completed"). Second, the trial court in some places appears to suggest that Bausoch developed an ownership interest through reliance on his invalid lease. *See* Findings of Fact and Conclusions of Law at 13-14 (casting doubt, at length, on Yobech's testimony that Bausoch knew he was building on Yobech's lease). But we ultimately cannot discern from these mere hints the basis of the trial court's determination regarding Bausoch's "ownership interest." This uncertainty also applies to the basis for the trial court's decision that any such ownership interest was validly transferrable at the *cheldecheduch* and to the question of how such an "ownership interest" became a mere possessory right when transferred to Bausoch's children. *See id.* at 14 (describing "[t]heir *right to occupy the house* and that part of Yobech's lease that was formerly designated for Bausoch") (emphasis added).

[8] We do not understand the trial court to have reached the radical conclusion that a property interest can be created out of thin air at an *cheldecheduch* simply because property is orally transferred and the putative owner does not object. That is, we do not understand the trial court to have determined that Bausoch's children have a property interest in the house by virtue of the purported transfer at the *cheldecheduch* even if Bausoch himself did not have a valid interest.

[¶ 13] Collectively, these ambiguities mean that "we cannot discern the legal and factual basis for the trial court's" decision and are therefore "unable to conduct a full and fair review." *Kumangai*, 13 ROP at 182. In such situations, it is our usual course to "remand for further elaboration." *Id.* That is what we must do here. On remand, the trial court may, in its discretion, take additional evidence from the parties. And the trial court may choose to revisit or affirm its initial conclusion that Yobech cannot eject Angel from the property. However, if the court determines that Bausoch had a valid interest in the house and property that was transferred to his children at his *cheldecheduch*, the court must precisely identify the nature of Bausoch's interest, the exact contours of the interest as now held by his children,[9] and the facts and law supporting these conclusions.[10]

CONCLUSION

[¶ 14] We **VACATE** the Trial Division's judgment and **REMAND** for proceedings consistent with this opinion.

[9] The trial court stated that, "[a]s long as the house remains on the property, the children of Bausoch have the right to reside and occupy it." Findings of Fact and Conclusions of Law at 14. Based on this statement and the court's judgment, it is unclear whether Angel could be ejected if, for example, the house was destroyed in a storm, or if he could rebuild and continue to live in it.

[10] We note that the trial court cited a single case, *In re Estate of Debelbot*, 3 ROP Intrm. 364, 369-70 (Tr. Div. 1990), in support of its conclusion that Bausoch's interest was transferred at his *cheldecheduch*. *See* Findings of Fact and Conclusions of Law at 12. But to the extent that Trial Division case supports the claimed proposition that "what is discussed and settled at the *cheldecheduch* is settled," *id.*, we do not think that case, or any other, stands for the proposition that whatever is done at an *cheldecheduch* is legally binding no matter the surrounding circumstances.

DOLIN, Associate Justice, concurring:

[¶ 15] As the Court holds, on remand, the Trial Division "must precisely identify the nature of Bausoch's interest, the exact contours of the interest as now held by his children, and the facts and law supporting these conclusions." *Ante* ¶ 13. I agree with that conclusion. I write separately to express my view that in identifying the interest in question, the Trial Division must be limited only to those types of interests known to common law or recognized by Palauan custom and tradition.

[¶ 16] A strong and predictable system of property rights is a fundamental requirement for democratic stability, civil society, and the rule of law. *See* Palau Const. art. VI; John Locke, Second Treatise of Government, Chap. VII, §§ 87-88 (1690). Predictability, in turn, requires that all parties to a property transaction, and the world at large, know what rights over what piece of property have been vested in which individual. It is only when armed with such knowledge that society can ensure that these rights are protected. This knowledge also gives outsiders to a specific property transaction adequate notice of the legal claims over a particular parcel of land or piece of personal property, thus enabling these individuals to protect and exercise their own rights. *See generally* Thomas W. Merrill & Henry E. Smith, *Optimal Standardization in the Law of Property: The Numerus Clausus Principle*, 110 Yale L.J. 1, 26-27 (2000) (explaining how non-parties to a transaction may be affected by the uncertainty created by that particular transaction).

[¶ 17] Over centuries, common law judges have devised a method to deal with the predictability and certainty problem. Whether explicitly or implicitly, courts in nearly all common law jurisdictions have adhered to what is known as the *numerus clausus* principle—a rule that the law will recognize only certain forms of property (*e.g.*, fee simple, life estate, certain defeasible estates, etc.). *See Helferich Pat. Licensing, LLC v. New York Times Co.*, 778 F.3d 1293, 1307 (Fed. Cir. 2015) (noting the common law "legal tradition's general disfavoring of judicial, flexibility-introducing changes in the 'forms' or 'dimensions' of property rights") (citing Merrill & Smith, *supra*). This rule, though often unnamed, is of long-standing and near-uniform application. Indeed, it is followed in some form even in non-common law countries such as Germany, France, and Japan. *See* Merrill & Smith, *supra* at 4-5.

[¶ 18] Palau, of course, is unusual. In our Republic, certain types of property rights unknown to the common law but deriving from customary law exist and thrive. *See, e.g.*, *Shih Bin-Fang v. Mobel*, 2020 Palau 7 ¶¶ 23-24. Though under the Palauan dual system of law the universe of recognized property rights is broader than that under the common law, it is not unlimited. Instead, Palauan law recognizes the types of property rights known at common law, *see* 1 PNC § 303 (requiring the courts of the Republic, in the absence of statutory or customary law, to apply "[t]he rules of the common law . . . as generally understood and applied in the United States"), and traditional forms of property rights that Palauan society has adopted by custom. Common law property right forms are well known and can be readily ascertained from almost any treatise on the subject. Customary property rights, though perhaps complex and not readily understood by those unfamiliar with Palauan culture, are well known to the people to whom they matter most—Palauan citizens. After all, a custom is established only when it "is practiced uniformly," "is followed as law," and "has been practiced for a sufficient period of time to be deemed binding." *Beouch v. Sasao*, 20 ROP 41, 48 (2013).

[¶ 19] Our law is sufficiently flexible to allow individuals to structure the transfer and bestowal of property rights in a variety of ways, but it still requires that the interest be of a type the law recognizes, rather than one "tailor made" for a specific transaction. True enough, unlike in the common law where property interests have been set for centuries, customary law may evolve as new customs are adopted, thus allowing for the creation of property interests previously unknown in law. But because a custom is only recognized when it "has been practiced for a sufficient period of time to be deemed binding," *id.*, it is unlikely that the emergence of a new type of property right will trip up strangers to the initial transaction.

[¶ 20] On remand, the Trial Division should not only explicitly articulate the nature of the interest (if any) that Angel Ililau has in the house, but must ground its holding either in common or customary law. To the extent Angel wishes to argue that Palauan customary law recognizes a right to continuous occupation of a family home even absent any right to the land on which the home stands, he will need to prove the existence of the customary right in accordance with the principles we set forth in *Beouch*. To the extent that he wishes to rely on common law doctrines (*e.g.*, easement by estoppel,

irrevocable license, or the like), he will need to show that the requirements of the relevant common law doctrine have been met in this case. I express no view on whether any such arguments are procedurally or substantively sound.

[¶ 21] The record clearly establishes that Yobech has a specific, well-defined property right long recognized in common law, to wit, a term of years leasehold interest from Airai State. To the extent Angel has an interest in any part of the property, such interest needs to be established with similar clarity. I hope that this opinion will be of assistance to the parties and the Trial Division in assessing whether Angel holds any property interest in the house, and if so, in describing the same.