

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

**EDARUCHEI CLAN OF NGERKEYUKL, rep. by JOSEPH
KOSHIBA,**
Appellant,

v.

**EDARUCHEI CLAN OF NGERDELOLK, rep. by IDESIAR
LESTER NGIRAMEKED,**
Appellee.

**ESTATE OF ITARU KISHIGAWA and CARP
CORPORATION, rep. by MARI KISHIGAWA,**
Appellants,

v.

**EDARUCHEI CLAN OF NGERKEYUKL, rep. by JOSEPH
KOSHIBA, and EDARUCHEI CLAN OF NGERDELOLK,
rep. by IDESIAR LESTER NGIRAMEKED,**
Appellees.

Cite as: 2024 Palau 12
Civil Appeals Nos. 22-018 & 23-016
Appeals from Civil Action No. 20-071

Decided: April 12, 2024

Counsel for Appellant Ngerkeyukl	Allison Nixon
Counsel for Appellant Estate of Itaru Kishigawa	Rachel Dimitruk
Counsel for Appellee Ngerdelolk	Kassi Berg, Tamara Hutzler

BEFORE: JOHN K. RECHUCHER, Associate Justice, presiding
FRED M. ISAACS, Associate Justice
KATHERINE A. MARAMAN, Associate Justice

Appeals from the Trial Division, the Honorable Gregory Dolin and the Honorable Arthur R. Barcinas, Associate Justices, presiding.

OPINION

PER CURIAM:

[¶ 1] The underlying case involves a dispute between two clans that bear the same name but hail from different hamlets in Peleliu State: Appellant Edaruchei Clan of Ngerkeyukl (“Ngerkeyukl”) and Appellee Edaruchei Clan of Ngerdelolk (“Ngerdelolk”). Both Clans claim to be the rightful owners of Ngercheu Island. The Trust Territory High Court determined in *Rusasech v. Trust Territory*, 1 TTR 472 (Palau 1958) (“Civil Action No. 98”) that Ngercheu belonged to “Clan Edaruchei.” The question presented in this case is whether Ngerkeyukl or Ngerdelolk is the “Clan Edaruchei” that won ownership of Ngercheu nearly sixty-six years ago.

[¶ 2] For the reasons set forth below, we **REVERSE and REMAND**.

BACKGROUND

[¶ 3] Ngercheu is an island within the state of Peleliu. In 1927, the Government of Japan declared Ngercheu to be government property and ordered residents to either pay rent or move out. *Rusasech v. Trust Territory*, 1 TTR 472, 475 (Palau 1958) (“Civil Action No. 98”). Residents of Ngercheu paid rent from about 1932 to about 1943, until the Japanese military ordered them to vacate the island so that it could be used for military purposes during World War II. *Id.*

[¶ 4] After the end of hostilities, residents returned to Ngercheu. The United States, then administering Palau as a United Nations Trust Territory, established a system to reclaim land taken by the Japanese Government. On May 25, 1954, Rubasch Fritz (“Rubasch”) filed Claim No. 25 for the return of Ngercheu on behalf of “Clan Edaruchei.” As an attachment to Claim No. 25, Fritz provided a signed “Statement” dated July 25, 1954, typed in English, in which he said, “I am the chief of the clan Edaruchei and have been since 1937 . . . Ngercheu Island belonged to the clan as far back as the rubaks can remember.”

[¶ 5] On July 23, 1954, the District Land Office held a hearing on Claim No. 25 and initially awarded ownership of Ngercheu to the Trust Territory Government. Rubasch and Ngireblekuu, representing “Clan Edaruchei,”

appealed this determination in Civil Action No. 98. The High Court reversed the Determination of Ownership made by the District Land Office and ordered that title to Ngercheu be “confirmed in appellants on behalf of the clan Edaruchei.” This Judgment was acknowledged by a handwritten notation on the “Determination of Ownership and Release No. 25” wherein it states, “Release to the claimant by court judgment civil action #98.”

[¶ 6] Because there are two Edaruchei Clans in Peleliu State, Appellant Edaruchei Clan of Ngerkeyukl Hamlet and Appellee Edaruchei Clan of Ngerdelolk Hamlet, the crux of this dispute revolves around which of these two “Edaruchei Clan[s]” Civil Action No. 98 refers to. On October 19, 1990, the male title-bearer of Ngerkeyukl, *Uchelmekediu* Ichiro Loitang, filed a claim to Ngercheu Island on behalf of Rorow Lineage of Ngerkeyukl. The male title-bearer of Ngerdelolk, *Idesiar* Santos Olikong, also filed a claim to Ngercheu Island on behalf of Ngerdelolk. The Land Claims Hearing Office (LCHO) transferred the aforementioned claims to the Trial Division and the case became Civil Action No. 543-90. The Trial Division determined that it had no jurisdiction to determine “which of the two so-named Edaruchei Clans, from Ngerkeyukl or Ngerdelolk, is actually the Edaruchei Clan” and referred the case to the LCHO to make that determination. No further action was taken by the LCHO and this question was effectively left undecided.

[¶ 7] Finally, on February 15, 2018, Joseph Koshiha executed a Lease Agreement of Ngercheu to a foreign national, purportedly on behalf of “Edaruchei Clan.” He filed, on June 5, 2020, an action to quiet title to Ngercheu against Ngerdelolk and Itaru Kishigawa. In this complaint, Ngerkeyukl sought declaratory relief that Ngerkeyukl owned Ngercheu in fee simple and that the Lease Agreement was valid and enforceable. Itaru Kishigawa, who claimed the Ngerkeyukl male title of *Uchelmekediu*, joined the litigation to support Ngerkeyukl’s claim of ownership to the island, but challenge Koshiha’s authority to enter into the lease without the approval of the strong senior members of Ngerkeyukl and Koshiha’s authority to represent Ngerkeyukl in the lawsuit. Ngerdelolk filed a counterclaim on August 7, 2020, seeking a declaration that Ngerdelolk owned Ngercheu.

[¶ 8] On March 20, 2021, Itaru passed away. Itaru’s counsel filed a motion to continue trial and extend discovery deadlines, in order to appoint a new

Uchelmekediu. The trial court denied this motion on May 12, 2021 and decided to bifurcate the trial, first to hear the dispute between Ngerkeyukl and Ngerdelolk, while holding in abeyance Itaru's claims pending the resolution of the issue of ownership. The Estate of Itaru Kishigawa and Carp Island Corporation were substituted for Itaru. On May 15, 2021, the Estate of Itaru Kishigawa filed a Motion for Reconsideration. A hearing was held, and the trial court maintained the decision to bifurcate while also agreeing to extend the discovery deadlines.

[¶ 9] Trial was held from November 29 to December 7, 2021. Both Clans presented extensive evidence during the trial. Ngerdelolk argued that Rubasch filed Claim No. 25 on behalf of Ngerdelolk because he was a member of the Clan, and later bore the chief title of the Clan. In support of its claim, Ngerdelolk presented several witnesses who testified that in April 1979, Rubasch held his *blengur* and acquired the title of *Idesiar* of Ngerdelolk.

[¶ 10] Critically, Rubasch's granddaughter, Associate Justice Lourdes F. Materne, presented a document she found in Rubasch's safe at his home. This document (hereinafter referred to as "Exhibit F"), titled "Owner of a Certain Right" and dated January 31, 1977, states first and foremost that "Ngercheu Islands are owned by Edaruchei Clan of Ngerdelolk Village." It then recognizes that a previous *Uchelmekediu* of Ngerkeyukl Clan, Ilemelong, cultivated the Western portion of Ngercheu, and purports to grant a use right to Ilemelong's oldest son, Francisco Morei, in exchange for his contributions to the Clan. The signature block contains an X-shaped mark purportedly from the male title-bearer of Ngerkeyukl, *Uchelmekediu* Ngireblekuu, the signatures of two witnesses, including his daughter Christina Ngireblekuu, as well as an empty space for Rubasch as "Acting *Idesear*." Christina testified that she recognized her signature but did not remember signing Exhibit F, and that her father was illiterate. Rubasch did not sign the document.

[¶ 11] On the other hand, Ngerkeyukl maintained that Rubasch was claiming Ngercheu on their behalf despite not being a member of the Clan because he was a highly respected member of the community who had served

as a district court judge and spoke English.¹ In support of its claim, Ngerkeyukl highlighted that it had historically occupied Ngercheu. Witnesses testified that the female title bearer for both Edaruchei Clans, Samoang, lived on the island, as well as *Uchelmekediu* Ngireblekuu and their relatives, in the Quonset huts provided by the Trust Territory Government. Several of these witnesses used to live on Ngercheu themselves. Two witnesses testified about gravesites in Ngercheu and identified them as the graves of their ancestors from Yap. Susumu Mori, eighty years old, testified that he was Samoang's great-grandson and used to live on Ngercheu with her until World War II. Consistent with other testimony, he explained that during World War II, Samoang and her family left Ngercheu and returned after the end of hostilities. He further stated that at one point, Samoang told him to seek out and convince Rubasch Fritz to make a claim for Ngercheu on behalf of Ngerkeyukl.

[¶ 12] On December 27, 2021, the trial court entered a Memorandum Opinion and Judgment awarding ownership of Ngercheu to Edaruchei Clan of Ngerdelolk. Memorandum Opinion, *Edaruchei Clan of Ngerkeyukl v. Edaruchei Clan of Ngerdelolk et al.*, Civ. Action No. 20-071 (Tr. Div. 27 Dec. 2021) [hereinafter Trial Court Decision]. After trial, several post-trial motions were filed. On January 6, 2022, the Estate of Itaru Kishigawa filed a motion under Rule 7(b)(5) and Rule 59(e) of the Palau Rules of Civil Procedure, requesting that the trial court reconsider its ruling and amend its judgment. Both Ngerdelolk and Ngerkeyukl opposed the Estate's post-trial motion, with Ngerkeyukl filing a partial joinder, arguing the Estate's objections were too late and that neither the Estate nor Carp Corporation had any authority to speak or act on behalf of Ngerkeyukl.

[¶ 13] On August 25, 2022, the trial court issued an order denying all post-trial motions, stating that its reasoning for the ruling would be forthcoming. On September 23, 2022, Ngerkeyukl filed a timely Notice of Appeal against Ngerdelolk. The trial court subsequently issued an order explaining its reasoning on February 23, 2023. The Estate appealed from this order on March 24, 2023.

¹ In that regard, three close relatives of Rubasch testified that he did not speak English: his granddaughter Justice Materne, his biological granddaughter and adoptive daughter Laurinda Waisang Fritz, and his adoptive son Harry Rubasch Fritz.

STANDARD OF REVIEW

[¶ 14] We review a trial court’s findings of fact for clear error and its conclusions of law de novo. *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4. Under this standard, if the lower court’s factual findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made. *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000). The lower court will be reversed only if its findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *Ngerusebek Lineage v. Irikl Clan*, 8 ROP Intrm. 183, 183 (2000). When a lower court chooses between two permissible views of evidence, we will not disturb its factual findings. *Uchelkeukl Clan v. Rudimch*, 17 ROP 162, 164 (2010).

[¶ 15] Where the relevant facts of a case are undisputed and the statutory standard is relatively clear, the issue is a mixed question of law and fact. *Ngiralmaw v. ROP*, 16 ROP 167, 169 (2009) (citing 75A Am. Jur. 2d *Trial* § 604 (2007) (“In a mixed question of law and fact, (1) the historical facts are admitted or established; (2) the rule of law is undisputed; and (3) the issue is whether the facts satisfy the relevant statutory or constitutional standard . . . ”)). We review mixed questions of law and fact de novo. *In re Kemaitelong*, 7 ROP Intrm. 94, 95 (1998); *Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225, 228 (1996).

DISCUSSION

I. CA/APP 22-018

[¶ 16] This case, at its core, concerns a pre-Constitution claim for the return of public lands: Claim No. 25, filed on May 25, 1954. Ultimately, the decision reached by the High Court stems from pre-Constitution legal precedents regarding claims for the return of public lands. *See Kerkur Clan v. Koror State Pub. Lands Auth.*, 2017 Palau 36 ¶18 n.4; *Olsuchel Lineage v. Ueki*, 2019 Palau 3 ¶ 5. Specifically, the High Court relied on Policy Letter P-1, issued on December 29, 1947 by Deputy High Commissioner C. H. Wright. This letter declared, among other things, that:

Land transfers from non-Japanese private owners to the Japanese Government, corporations, or nationals, will be subject to review. Such transfers will be considered valid unless the former owner (or heir) establishes that the sale was not made of free will and the [sic] just compensation was not received. In such cases, title will be returned to [the] former owner upon his paying into the Trust Territory Government the amount received by him.

Trust Terr. of the Pac. Islands, Office of the Deputy High Comm’r, Trust Territory Policy Letter, P-1 ¶ 13 (1947) [hereinafter Policy Letter]; *see also* Antonio L. Cortés, *Land in Trust: The Invasion of Palau’s Land-Tenure Customs by American Law*, 14:3 Asian-Pac. L. & Pol’y J., 167-240 (2013).²

[¶ 17] The High Court made the following relevant factual findings related to Ngercheu:

The land in question is the whole of Ngercheu Island . . . It was owned by the Clan Edaruchei since long prior to the Japanese Administration. Appellants as leaders of the clan make claim on its behalf.

In 1927[,] the Japanese Administration advised the clan that the island had been taken over by the government and that they would have to pay rent or get out. This action was taken without payment of compensation. Suit was filed by the clan to obtain restoration of the land, but pending court action, the clan started to pay rent. These rental payments continued from 1932 to 1943 at which time Japanese soldiers evacuated all of the island inhabitants. Despite efforts on

² As we have expressed before, the Policy Letter is not law, but merely a statement of policy by a former sovereign which did not vest any rights at the time, nor does it vest rights now. *Medalarak v. Ngaraard State Pub. Lands Auth. (Medalarak II)*, 2021 Palau 28 ¶ 6. Nevertheless, the High Court’s decision recognizes the Policy Letter, and took judicial notice of it as “an authoritative statement of administration policy binding on the courts, at least such time as it is rescinded or modified.” Civil Action No. 98 at 5. It further applied the legal principles from *Ngodrii Santos v. Trust Territory*, 1 T.T.R. 463, 465 (1958).

the part of the clan to obtain redress in the courts, they were never able to [have] the case heard and obtain a final decision. When the American forces took the Palau Islands, the Administration permitted the clan to return to Ngercheu Island and they have been there ever since.

[The Trust Territory] concede[s] the land was taken without the owners' consent and without payment of compensation, also that [a] final decision was never obtained in the Japanese courts in the action brought by the clan.

Civil Action No. 98 at 2.

[¶ 18] The trial court thoroughly explained how it characterized the issue before it. The court stated that because Ngerkeyukl had admitted that Rubasch was not a member of its Clan, it would be sufficient, in order for Ngerdelolk to prevail, to establish that Rubasch was a member of Ngerdelolk. On the other hand, Ngerkeyukl needed to show “through expert testimony or otherwise, that Palauan customary or statutory law permits individuals to assert interests of clans in which they do not claim membership.” Trial Court Decision at ¶ 18. The trial court summarized its reasoning as follows:

[I]n the Court's view, the right to claim a Clan property stems from a person's membership to that claimant Clan, or alternatively from the person's position as appointed representative of a Clan. Thus, in order to prevail, [Ngerkeyukl] (and [Ngerdelolk] when it comes to its counter-claims) must show that Rubasch Fritz was either a member of its clan or that he was appointed by that Clan to represent its interests.

Trial Court Decision at ¶ 23.

[¶ 19] It is understandably difficult to reconstitute the events that led to the High Court's decision over sixty years ago. However, a close reading of Civil Action No. 98 and the applicable pre-Constitution legal precedent make clear

that the High Court intended to return Ngercheu to its previous owners. It is with that thought uppermost in mind that we take issue with the trial court's approach. Our disagreement is twofold: first, the trial court clearly erred by focusing its analysis on Rubasch's clan membership, and did so with an impermissible view of the evidence under custom. Second, the trial court failed to consider any evidence as to who were the original owners of Ngercheu before the taking by the Japanese administration. This is the issue that is dispositive of the clans' competing claims of ownership.

A. *Clan Membership or Authority*

[¶ 20] As a preliminary matter, we address the question of whether Rubasch had standing to bring forward a claim for the return of Ngercheu. We find that the trial court's approach focused on Rubasch's membership in Ngerdelolk contrary to our established principles of custom. It is well-established customary law that a clan's chief can administer the clan's lands. *Andres v. Aimeliik State Pub. Lands Auth.*, 2020 Palau 18 ¶ 20. Accordingly, titleholders often represent the clan in its legal claims for land. *See, e.g., Demei v. Sugiyama*, 2021 Palau 2 ¶ 11; *Estate of Remed v. Ucheliou Clan*, 17 ROP 255, 259 (2010). However, "a clan can, by consensus among the senior strong members, choose to forgo traditional arrangements and select who will serve as a trustee of its land" *Demei*, 2021 Palau at ¶ 11; *see also Elbelau v. Beouch*, 3 ROP Intrm. 328, 331 (1993); *Blesam v. Tamakong*, 1 ROP Intrm. 578, 582 (1989); *Ngirudelsang v. Etibek*, 6 T.T.R. 235, 238-39 (Tr. Div. 1973) (finding that who should be named trustee of clan property is for the clan to decide.); *Metecharang v. Sisang*, 4 T.T.R. 469, 472-73 (Tr. Div. 1969) ("Whether the plaintiff becomes the administrator as she seeks to be in this action or whether the senior strong members select someone else is a lineage and clan problem to be settled by them."). We have even noted that, because of the informality of the Land Court's procedures, it is very common for one individual to represent another person or clan. *See, e.g., Andres*, 2020 Palau at ¶ 11; *Rengulbai v. Children of Elibosang Eungel*, 2019 Palau 40 ¶ 21.

[¶ 21] The trial court proceeded on the assumption that clan membership is necessary to be able to represent a clan's legal claims. While this may very well be the usual case under custom, our precedent so far has not elucidated the question, nor did the trial court make findings on the existence of a custom under the framework of *Beouch v. Sasao*, 20 ROP 41 (2013). In the absence of

a proven custom one way or another, the trial court erred in putting the sole burden on Ngerkeyukl to prove that the Clan had agreed to appoint Rubasch, without putting a similar burden on Ngerdelolk. Although Rubasch was admittedly not a member of Ngerkeyukl, he was also not *Idesiar* at the time he filed the claim on behalf of “Edaruchei Clan.”

[¶ 22] We do know, however, the identity of the Ngerkeyukl titleholder at the time: *Uchelmekediu* Ngireblekuu. Ngireblekuu appeared in Claim No. 25 as a witness,³ signed the statement in support of Claim No. 25,⁴ joined Civil Action No. 98 as a party and represented Edaruchei Clan alongside Rubasch in the proceedings. In addition, Ngireblekuu filed a complaint against Rubasch on August 16, 1976, which explicitly stated that Edaruchei Clan of Ngerkeyukl owned the entire island of Ngercheu.⁵ Ngireblekuu and Rubasch finally filed a joint motion to dismiss the action, stating that “the ownership or useright [sic] of the island of Ngercheu, by consensus, is not in issue” and agreeing to share the compensation equally between the two of them.⁶

³ Claim No. 25 listed five (5) persons as witnesses: Ngireblekuu, Arbedul, O-chob, Brenges, and Uchel Torwal. Ngireblekuu held the highest male title of Ngerkeyukl, *Uchelmekediu*. O-chob was Samoang’s title in Ingaol Clan, which she held at the time, as well as Ngerkeyukl and Ngerdelolk’s highest female titles. Arbedul was Samoang’s son. Brenges was the mother of Francisco Morei whose father, Ilemelong, held the title *Uchelmekediu* before Ngireblekuu.

⁴ The statement in support listed seven (7) persons as witnesses, all identified as “chief of the family”: Ngireblekuu, Arbedul, Francisco Morei, Ngradelemel, Aibetang, Bululong, and Uchelkemur.

⁵ The complaint stated that Rubasch, chief of Ingaol Clan, gained access to the compensation money for war damages to Ngercheu, “under false pretense and unlawful misrepresentation.” The complaint requested the payment of this money to Ngireblekuu and that Rubasch cease to interfere with the free and peaceful use and enjoyment of Ngercheu. In his response, Rubasch acknowledged that he was chief of Ingaol and claimed “that he is strong member and leader in the clan of Edaruchei and is having full control over Ngercheu Island” and that “under legal procedures and practice of old he represented the clan of Edaruchei in filing claims for the damages sustained to Ngercheu.”

⁶ The parties to this motion agreed to share the compensation money equally so they could be disposed “under the Palauan system of clanship and kinship” under which “in the Palauan custom this loose organization is generally grouped into two major groupings of lineages and families, namely Chief *Uchelmekediu* and others, as here represented by Ngireblekuu and Chief *Idesyar*, as to be represented by Fritz Rubasch herein.” As the trial court noted, “given that all three clans have had, at one point or another, overlapping titleholders, the existence of some relationship cannot be denied. Given such a relationship, it would not be implausible for

[¶ 23] We have previously determined that statements or findings made in prior adjudications between related parties may be relevant when determining the current litigants' relative standing in the clan and/or their authority to act on behalf of the clan. *See Aitaro v. Mengerkur*, 14 ROP 71, 72 n.1 (2007). In fact, such evidence may be even more persuasive than the later testimony of their younger relatives based on ancient events. *Id.* While Ngireblekuu himself did not file Claim No. 25, he was greatly involved in every step of the process. Altogether, the evidence depicts an understanding between Rubasch and Ngireblekuu to claim Ngercheu on behalf of Ngerkeyukl.⁷ This suffices as a matter of law and custom to show that Ngerkeyukl filed Claim No. 25.

[¶ 24] We also note that the trial court interpreted Exhibit F as a document through which Ngireblekuu, who stayed on the island “pursuant to some license from the true owner,” sought to transfer a portion of his right to use Ngercheu to someone who performed “faithful deeds . . . to the Clan and its members.” Trial Court Decision at ¶ 77. While this interpretation may very well be accurate under principles of common law, it does not cohere with the well-established principle of custom under which clan land can only be alienated with the consent of the senior strong members of the clan. *Arbedul v. Emaudiong*, 7 ROP Intrm. 108, 109 (1998). Proceeding under the assumption that Ngercheu belonged to Ngerdelolk, and that Ngireblekuu was granted a license to stay on Ngercheu, it necessarily follows that the island would be Ngerdelolk clan land. Such land could only be alienated with the consent of the senior strong members of Ngerdelolk Clan. Ngireblekuu, as a licensee, would have had no authority to transfer a use right to Francisco Morei. At best,

the clans to assist each other with litigation or other dealings with governmental agencies.” Trial Court Decision at ¶ 70.

⁷ Appellee Ngerdelolk maintains that a single claimant filed Claim No. 25, Rubasch Fritz, and that Ngireblekuu's involvement as a party to Civil Action No. 98 has little significance. Ngerdelolk specifically notes that the Determination of Ownership was “accordingly amended to read that the land was released to the claimant by court judgment in Civil Action No. 98.” We note, however, that Ngireblekuu was repeatedly involved in the proceedings, and that Civil Action No. 98 ordered that title to Ngercheu was confirmed “in appellants on behalf of the clan Edaruchei.”

Exhibit F is internally inconsistent and certainly not dispositive of the question before us.⁸

B. Ownership of Ngercheu Island

[¶ 25] We next turn to question of whether the trial court erred in failing to consider evidence on who previously owned Ngercheu. The High Court relied on the factual record made before the Land Office. While its analysis focused on the timeliness of the claim,⁹ the High Court acknowledged that the Land Office had determined that “Edaruchei Clan” was the owner of Ngercheu before the Japanese taking. In fact, the High Court expressly held:

With respect to the merits of appellants’ claim, there can hardly be two views. The lands were taken without consent and without payment of compensation. Possession was not disturbed despite the taking in 1927, until military considerations required the evacuation of all inhabitants in 1943. Possession was restored by the Navy Administration in 1946, and has not been disturbed since.

Civil Action No. 98 at 4.

[¶ 26] Therefore, evidence relating to the occupation of Ngercheu before the Japanese taking was relevant. The trial court record is replete with evidence

⁸ In addition, Ngireblekuu did not speak English and was illiterate, which sows great doubt as to his ability to understand the contents of Exhibit F when he signed it. The same is true of his daughter Christina, whose signature also appears on the document but does not speak English. Of course, we recognize that such a statement is applicable to all the documents signed by Ngireblekuu—Claim No. 25, the statement in support, the appeal to the High Court, and the claim for war monies. Nevertheless, the trial court specifically relied on Exhibit F in order to reject the substance of Susumu Mori’s testimony and found that it “weigh[ed] heavily against” Mori’s testimony. Trial Court Decision at ¶ 76. The trial court also gave weight to the statement in support of the claim, which identified Rubasch as a “chief of the clan [Edaruchei],” without acknowledging that Rubasch was not a chief of either Ngerdelolk or Ngerkeyukl at the time.

⁹ The Policy Letter concerns land transfers after March 27, 1935. Ngercheu was taken by the Japanese administration in 1927. Consistent with the pre-Constitution precedent, the High Court determined that although the taking of land occurred prior to March 27, 1935, it was considered to be “in suspense during the entire period of the controversy” because such taking had been protested and such protest was pending and undisposed of in the courts up to the end of the Japanese occupation. *See* Civil Action No. 98 at 6; *see also Esebei v. Trust Territory*, 1 TTR 495, 502 (1958).

that Ngerkeyukl occupied and used Ngercheu before and after the Japanese administration of the island. Roman Ridep, sixty-nine years old, testified that he visited Ngercheu twice, and that relatives of Samoang, the matriarch of both Edaruchi Clans, lived on the island at the time. Joshua Koshiba, seventy-eight years old, testified that he had visited Ngercheu and while doing so stayed with Arbedul, Samoang's son. Joshua Koshiba testified that Ngireblekuu's family stayed on the island and that there were eight Quonset huts on the island at the time, consistent with the evidence which states that the Trust Territory Government provided nine Quonsets to various families in exchange for the use of Ngercheu. Brownny Simer, fifty-seven, testified that he used to live on Ngercheu with his grandfather Ngirchomtilou (Samoang's son), and that he was a member of Ngerkeyukl through his grandfather. Monica Ichiro, sixty-six years old, testified that Samoang was her adoptive mother and that she was raised on Ngercheu until she turned eight. She stated that the residents of the island were Samoang, Samoang's daughter Dirreblekuu, and their families. She explained that Samoang and Dirreblekuu had been evicted by Japanese authorities, then returned to their residences on Ngercheu after the war. Jackson Ngiraingas, seventy-three years old, testified that he visited Ngercheu starting at about age five, and recalled that there were Quonset huts on the island and that Ngireblekuu's family lived in one of them. According to Ngiraingas, he and his grandfather would ask Ngireblekuu for provisions as a sign of respect for the people whom they believed owned the island. Susumu Mori, who claims to currently hold the *Uchelmekediu* title, testified that he used to live on Ngercheu with Samoang until he was about nine years old, and stated that Samoang and her family left Ngercheu during WWII, but returned after the end of the hostilities. In addition to this testimony, Ngerkeyukl's witnesses identified the gravesites of their ancestors on Ngercheu.¹⁰

¹⁰ The Palau Society of Historians has given us some insight on the customary rules governing funeral customs. *Imetuker v. Ked Clan*, 2023 Palau 16 ¶ 19 n.3. Specifically, the Society found that “[i]t was a well-maintained tradition not to permit burial of a deceased in a grave other than his original family’s burial place (*kotel*) or the seat of the *kebliil* (clan).” Palau Soc’y of Historians, *Deaths, Funerals and Associated Responsibilities*, in *Traditional and Customary Practices English Series 2*, Ministry of Community and Cultural Affairs (1998). Their research also touches on the practice of *oretech*, a payment made to secure the right to bury a deceased person within the burial place of the *kebliil*. As explained, “[o]*retech* traditionally applied to *ulechell*, adoptee or any individual whose mother was of another *kebliil* who came into the *kebliil* to hold a *kebekuul* or *teleuechel* title. . . . This practice did not apply in the case of a

[¶ 27] On the other hand, only two of Ngerdelolk’s witnesses testified about who had occupied and used Ngercheu before and after WWII: Harry Rubasch Fritz, sixty-eight years old, testified that he is Rubasch’s adoptive son and used to stay with Samoang when visiting Ngercheu. Olympia Morei, sixty-four years old and daughter of Francisco Morei, testified that she would spend summers in Ngercheu at *Uchelmekediu* Ngireblekuu’s house and still maintained a house there. She stated that having seen the Certificate of Title, she believed Ngercheu belonged to Ngerdelolk, but also stated that she was connected to Ngercheu through her grandfather *Uchelmekediu* Ilemelong, who maintained a residence on Ngercheu.

[¶ 28] With the benefit of a full and thorough record, we find that Ngerdelolk did not provide evidence that Rubasch had been empowered to represent Ngerdelolk. Ngerkeyukl, on the other hand, provided ample evidence that *Uchelmekediu* Ngireblekuu had been involved in Claim No. 25. In addition, Ngerkeyukl provided sufficient evidence that the members of Ngerkeyukl Clan were the previous owners of Ngercheu until the Japanese administration took Ngercheu in 1927.

[¶ 29] Therefore, we **REVERSE** the Trial Division’s Judgment and Memorandum Opinion. We **REMAND** Civil Action CA/APP 22-018 to the trial court for further proceedings consistent with this Opinion.

II. CA/APP 23-016

[¶ 30] Having addressed the first of these consolidated appeals, we now turn to the remaining case, an appeal filed by the Estate of Itaru Kishigawa and Carp Corporation on March 24, 2023. The Estate maintains that the trial court erred in bifurcating the trial to first hear the dispute between Ngerkeyukl and Ngerdelolk, and holding in abeyance the Estate’s claims. The trial court stated that the “dispute between the two Edaruchei Clans can be resolved irrespective of who bears the title of *Uchelmekediu*” “and that “separate trials will be conducive to expedition and economy.” *See* Order on Mot. to Cont. Trial,

deceased *ochell* titleholder, as the *kebliil* was his original *kebliil (kotel)*.” *Id.* Although the proper way to determine whether a customary law exists remains the duty of the Trial Division, through the *Beouch* framework, we find this information relevant.

Edaruchei Clan of Ngerkeyukl v. Edaruchei Clan of Ngerdelolk et al., Civ. Action No. 20-071, at 3 (Tr. Div. May 12, 2021).

[¶ 31] The timeliness of this appeal is at issue because of the unique circumstances of this case: On August 25, 2022, the trial court issued an order denying all post-trial motions, stating that its reasoning would be forthcoming. *See Order, Edaruchei Clan of Ngerkeyukl v. Edaruchei Clan of Nderdelolk, et al.*, Civ. Action No. 20-071 (Aug. 25, 2022) [hereinafter First Order]. On September 23, 2022, Ngerkeyukl filed its Notice of Appeal against Ngerdelolk, in what became CA/APP 22-018. The trial court issued an order explaining its reasoning six months after its ruling and five months after Ngerkeyukl filed its Notice of Appeal. *See Order, Edaruchei Clan of Ngerkeyukl v. Edaruchei Clan of Nderdelolk, et al.*, Civ. Action No. 20-071 (Feb. 23, 2023) [hereinafter Second Order]. The Estate then appealed from this second Order, in what became CA/APP 23-016.¹¹

[¶ 32] Rule 4 of our Rules of Appellate Procedure sets forth the time for filing a notice of appeal and states in part that “[t]he notice of appeal must be filed within 30 days after . . . entry of judgment or order appealed from . . . unless otherwise provided by law.” ROP R. App. P. 4(a). We have held that untimely appeals must fail because of the clear, inflexible time limits contained in our rules. *Henry v. Shizushi*, 21 ROP 52, 55 (2014).

[¶ 33] Under Appellate Rule 4(a)(d), if a party files a motion for relief under Rule of Civil Procedure 59, “the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion[.]” “The rationale behind the tolling principle of the Rule is the same as traditional practice: A timely petition for rehearing tolls the running of the [appeal] period because it operates to suspend the finality of the . . . court’s judgment, pending the court’s further determination whether the judgment should be modified so as to alter its adjudication of the rights of the parties.” *Browder v. Director, Dept. of Corrections of Ill.*, 434 US 257, 267 (1978).

¹¹ On April 14, 2023, we consolidated these two cases because they concerned the same underlying Civil Action, and held that the Notice of Appeal in CA/APP 23-016 was timely because our preliminary research into the question had not yet shown any clear principles to the contrary under Palauan law.

[¶ 34] The language of Rule 4(a)(d) is clear and inflexible. Even assuming that the suspension of Rule 4’s time requirements is permissible, it is inappropriate in this case. *See Henry*, 21 ROP at 56. The time for appeal is tolled until an order *disposing* of the last motion under Rule 59 is issued.¹² The First Order expressly stated that it denied the Estate’s motions—as such it was a final judgment, and the Estate had to appeal within 30 days of the First Order.¹³ Because the Notice of Appeal was filed by the Estate seven months after the order, it was untimely under our Appellate Rules. *Cf. Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 61 (1982) (finding that an untimely filed notice of appeal is a nullity). Therefore, the appeal is **DISMISSED** without prejudice.¹⁴

CONCLUSION

[¶ 35] We **REVERSE** the Trial Division’s judgment in favor of Edaruchei Clan of Ngerkeyukl and **REMAND** for further proceedings consistent with this Opinion. We **DISMISS** without prejudice the Estate’s appeal.

¹² The last sentence of the First Order, which states that “[a]n order with the [trial] court’s analysis of these decisions will follow” could mislead a party into believing that the time for appeal was tolled. To avoid such confusion in the future, trial courts should make their rulings sufficiently clear for parties to know the time to appeal.

¹³ After filing a timely notice of appeal, parties could have filed a motion in front of the Appellate Division asking the Supreme Court to stay the proceedings and grant a limited remand for the sole purpose of allowing the trial court to issue its explanation.

¹⁴ In addition, we question whether the Estate of a clan titleholder has standing to represent a clan. Because this issue was not briefed by the parties and the appeal is dismissed, we defer this question to a future case, and raise it only here because standing is an element of a court’s subject matter jurisdiction. *See Gibbons v. Seventh Koror State Legislature*, 11 ROP 97 (2004).