Bandarii v. Ngerusebek Lineage, 11 ROP 83 (2004)

ISIMANG BANDARII,
Appellant,

v.

NGERUSEBEK LINEAGE,
Appellee.

CIVIL APPEAL NO. 01-047
Civil Action No. 00-200

Supreme Court, Appellate Division
Republic of Palau

Argued: November 3, 2003
Decided: March 3, 2004
⊥84
Counsel for Appellant: John K. Rechucher

Counsel for Appellee: Raynold B. Oilouch

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

MILLER, Justice:

BACKGROUND

This appeal concerns six parcels of land in Kayangel State for which the Land Claims Hearing Office issued certificates of title in the name of Bandarii Bechab as his individual fee simple property.[1] On February 12, 1994, Bandarii died and in 2000, his natural son, Appellant Isimang Bandarii, petitioned to be named administrator of Bandarii's estate. Notice was issued and both Appellant and Ngerusebek Lineage[2] made claims to the properties at issue in the instant appeal.

A trial was held and the Trial Division found pursuant to 25 PNC § 301(b)[3] that the ⊥85

[1]The certificates were issued over a four-month period in 1993.
[2]Derivative of Ngerusebek Lineage's claim was the claim of the children of Kambalang Bechab. The basis of their claim was that the Lineage gave the land to them at their father's eldecheduch, his death having occurred shortly after that of his brother, decedent Bandarii. Having determined, as we do below, that Ngerusebek Lineage was entitled to settle the property itself, nothing prevented it from thereafter giving it to Kambalang's children.
[3]That statute reads in pertinent part:

> If the owner of fee simple land dies without issue and no will has been made . . . or if

land was not purchased for value and that Ngerusebek Lineage was the Lineage that was related to Bandarii by birth and that was actively and primarily responsible for him prior to his death. Thus, it ruled that the property was to be disposed according to the Lineage's desires and that at Bandarii's eldecheduch the Lineage had expressed the desire that the property be the property of Ngerusebek Lineage.

On appeal Appellant does not dispute the trial court's fact-finding, but instead argues principally that the Lineage was precluded from conferring the land on itself. For the reasons set forth below, we disagree and affirm the trial court.

DISCUSSION

Appellant's principal argument is that it was impermissible under § 301(b) for the Lineage to dispose of land by giving it to itself but was required to choose among Bandarii's heirs which, he says, do not include the Lineage. This is an issue of statutory interpretation and thus is reviewed *de novo*. *See Wenty v. ROP*, 8 ROP Intrm. 188, 189 (2000). Assuming *arguendo* that the statute applies here,[4] we see no error in the way in which the trial court applied it.

In general, intestacy statutes define those who inherit from a person who dies without a will. Section 301(b) is different in that, rather than designating a particular heir or heirs, it confers on a lineage under certain circumstances the power to dispose of a deceased's fee simple land. By its express terms, § 301(b) places no limit that power.[5] It does not limit the lineage's choice to children or relatives or even to natural persons, but says only that "the land . . . shall be disposed in accordance with the desires of the . . . lineage." Given the breadth of the Lineage's power to dispose of property, this Court can see no basis within the statute's plain meaning to conclude that Ngerusebek Lineage was prohibited from giving the property to itself.

Although at one point in his brief Appellant "recognizes that 25 PNC § 301(b) gives unrestricted power to a qualified lineage to dispose [of] decedent's properties as that lineage desires," he nevertheless offers a hodgepodge of arguments that attempts to avoid that result. For example, Appellant devotes a substantial amount of time to discussing the Trust Territory cases that hold that clans and lineages have no reversionary interest in individually owned land. The pertinence of those cases is unclear since they all arose out of circumstances prior to the ⊥86 enactment of Palau's intestacy statute and thus cannot limit the plain meaning of § 301(b). In any event, to the extent the cases provide any guidance, they are not helpful to Appellant's argument. As Appellant acknowledges, in more recent cases we have recognized that it is not

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> such lands were acquired by means other than as a bona fide purchaser for value, then the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death.

[4]While recent case law has left the applicability of § 301(b) somewhat in doubt, *compare Ysaol v. Eriu Family*, 9 ROP 146, 148-49 (2002) (Ngiraklsong, C.J., concurring) *with id.* at 149-52 (Miller, J., concurring), the parties have proceeded both at trial and on appeal under the belief that the statute does apply.

[5]There may, of course, be other limits to such power. Appellant notes the prohibition within Article XIII, Section 8 against non-citizens acquiring interests in land. He does not, however, suggest that this provision or any other extra-statutory limitation applies in this case.

"inconsistent with the proposition [that individually owned land does not revert to clan or lineage ownership on the death of its owner, but instead becomes the property of the owner's heirs] to give recognition to the actions taken at an eldecheduch in determining who those heirs were." *Remengesau v. Sato*, 4 ROP Intrm. 230, 235 (1994) (citing *Kubarii v. Olkeriil*, 3 ROP Intrm. 39 (1991)). Thus, the holding of those cases is not inconsistent with the role in the inheritance process that § 301(b) assigns to lineages.

Appellant also places special emphasis on the principle that individually owned lands vest immediately in a decedent's heirs at the time of his death. But it is inherent in the operation of § 301(b) that there can be no determination of who a decedent's heirs are until the lineage makes its decision. If there is a conceptual difficulty in squaring the immediate vesting of title with the reality that the lineage must make a selection at some point after the death of the landowner–we see none[6]–then the difficulty arises regardless of how the lineage disposes of the property. It is therefore not a basis for adopting the prohibition proposed by Appellant.

At bottom, Appellant's various arguments, in particular, his suggestion that the Lineage was required to choose among Bandarii's heirs–which he says includes himself "and other heirs" but do not include the Lineage–appears to rest on a misconception about the meaning of the word "heir." Contrary to Appellant's thinking, "heir" has no preset meaning separate from what is provided in an intestacy statute. As this Court has said previously, an heir is "nothing more than the legal successor to the interest of the prior owners of a piece of property . . . . To say that the land is owned by the prior owners' heirs is . . . tautological and conveys no information about what persons now claim to own the land." *Heirs of Drairoro v. Yangilmau*, 9 ROP 131, 133 n.2 (2002). By the same token, it is meaningless to argue, as does Appellant, that Ngerusebek Lineage was required to decide among decedent's heirs. Rather, in this case–and in any case where there is a properly qualified lineage under § 301(b)–the Lineage's choice to whom the properties should go is decedent's heir. We therefore see no basis for limiting that choice as Appellant proposes.

In the midst of his arguments that Ngerusebek Lineage was not permitted to dispose of decedent's properties to itself under § 301(b), Appellant makes the quite different argument that the Lineage did *not* do so and that § 301(b) does not even apply. Even were there a factual basis for this contention,[7] we fail to see how it assists ⊥87 Appellant's case. Incongruously, on the same page of his brief on which he cites the recent decision in *Delbirt v. Ruluked*, 10 ROP 41 (2003), which held that where § 301(b) does not apply, the Court "must turn to customary law to

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[6]For better or worse, it has been commonplace in Palau that a clear determination of who "immediately" inherited a decedent's property has often been delayed, in some cases for decades. *See, e.g., Temaungil v. Ulechong*, 9 ROP 31, 34 (2000) ("The transfers of Temaungil's property to his children vested rights in those children immediately upon the transfer, irrespective of whether there was any official recognition or confirmation of those transfers.").

[7]The record is confusing on the question whether the Lineage's representatives at the eldecheduch recognized that the land belonged to Bandarii and actually exercised its power under § 301(b) or whether, notwithstanding the LCHO's determination that the land was Bandarii's individual property, they believed that the land still belonged to, and should "remain" with, the Lineage. Appellee argues that the record clearly reflects that the Lineage understood that the property was owned by Bandarii individually and that it was going to dispose of the property by giving it to itself. We need not go that far. At best, the record below is contradictory as to this point, and the trial court did not commit clear error in making such a finding.

determine the proper heir of the deceased." *id.* at 43, Appellant argues that the trial court should have determined the decedent's heirs "based on the common law of descent and distribution." Pursuant to 1 PNC § 303, however, the rules of the common-law apply only "in the absence of written law . . . or . . . customary law." Here, there is a statute, and we have held that where that statute does not apply, custom fills the gap.

Insofar as custom is concerned, Appellant does not challenge the Trial Division's finding that because Bandarii gave olmesumech to Appellant's mother upon the dissolution of their marriage, pursuant to custom "there was no further obligation to take care of [Appellant's mother] or her children at [Bandarii's] eldecheduch." Thus, even if this court were not to apply § 301(b), Appellant has not shown that he was entitled to inherit as a matter of custom.

CONCLUSION

For the reasons set forth above, we affirm the judgment of the Trial Division.[8]

NGIRAKLSONG, Chief Justice, concurring:

Because I believe 25 PNC § 301(b) does not apply to the facts of this case, I vote to affirm the trial court on the basis of Palauan custom.[9]

Section 301, with its preamble and subsections (a) and (b), reads in relevant part as follows:

> § 301. Inheritance of land held in fee simple.
>
> Land now held in fee simple or hereafter acquired by individuals may be transferred, devised, sold or otherwise disposed of at such time and in such manner as the owner alone may desire, ⊥88 regardless of established local customs which may control the disposition or inheritance of land through matrilineal lineages or clans.
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> a. In the absence of instruments and statements provided for in [39 PNCA § 403(b)], lands held in fee simple, which were *acquired by the owner as a bona fide purchaser for value*, shall, upon the death of the owner, be inherited by the owner's oldest legitimate living male child of sound mind, natural or adopted, or if male heirs are lacking the oldest legitimate living female child of sound mind, natural or adopted, of the marriage during which such lands were acquired; in the

[8]We note that the Trial Division's judgment appears to contain two typographical errors as to the Tochi Daicho Lot number and Cadastral Lot number referring to the land called Ngerusebek. The court's judgment stated that Ngerusebek was Tochi Daicho Lot No. 235 and Cadastral Lot No. 028 G 01, but decedent's Certificate of Title listed it as Tochi Daicho Lot No. 236 and Cadastral Lot No. 017 G 08. If this was erroneous, the judgment should be amended to reflect the lot designators as they appear in the certificate of title.

[9]An appellate court may affirm or reverse a trial court decision on different grounds. *Inglai Clan v. Emesiochel*, 3 ROP Intrm. 219, 222 (1992); *ROP v. Pacifica Dev. Corp.,* 1 ROP Intrm. 383, 392 (1987). "[A]n appellate court is not limited, in affirming a judgment, to grounds raised by the parties, or grounds relied upon by the court below." 5 Am. Jur. 2d *Appellate Review* § 829 (2001).

> absence of any issue such lands shall be disposed of in accordance with subsection [(b)] hereof.
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> b. If the owner of fee simple land dies without issue and no will has been made in accordance with this section [or 39 PNCA § 403] or the laws of the Republic *or* if *such lands* were *acquired by means other than as a bona fide purchaser for value*, then the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death.

25 PNC § 301 (emphasis added).

I begin my interpretation of § 301(b) with the text of the statute itself. I read subsection (b) of the statute to require three things before it applies. First, the owner of the land dies without issue. Second, the owner of the land dies without a will. And third, the owner got the land by means other than as a bona fide purchaser for value. If any of these three requirements is missing, the statute does not apply.

The words "such lands" can only refer to the land owned in fee simple by the owner who died without issue and without a will. "[T]he meaning of doubtful words may be determined by reference to their relationship with other associated words or phrases." 2A Norman J. Singer, *Statutes and Statutory Construction* § 47:16 at 265 (6th ed. 2000). Since there is no other possible reference for the words "such lands" in the statute, except lands left by a decedent without issue and without a will, I would read the word "or" in § 301(b) as "and." A word "gathers meaning from the words around it." *Jarecki v. G.D. Searle & Co.,* 81 S. Ct. 1579, 1582 (1961). Additionally, it is in fact within the court's "power to change . . . 'and' to 'or' and vice versa, whenever such conversion is required by the context . . . or, in general, to effectuate the obvious intention of the legislature." 73 Am. Jur. 2d *Statutes* § 156 (2001). When interpreting a vague statute, "the all-important or controlling factor is the legislative will." *ROP v. Palau Museum,* 6 ROP Intrm. 277, 278 (Tr. Div. 1995) (citations omitted).

By changing "or" to "and," § 301(b) essentially would read: "If the owner of fee simple land dies without issue, without a will, and acquired such land by means other than as ⊥88A a bona fide purchaser for value, then . . . ." I believe this is the most reasonable interpretation of §301(b) and one that reasonably follows the text of the statute. I also see no conflict between this reading of § 301(b) and other relevant statutory provisions regarding the execution of wills or inheritance.

INHERITANCE STATUTE AND THE CASE LAW 1957 to 1975

The legal genesis of 25 PNC § 301 (a) and (b) was § 801 of the then Palau District Code, enacted in 1959 and amended on July 24, 1975. Section 801 of the Palau District Code reads in pertinent part:

> Section 801: Fee Simple Land Transfers; Inheritance. Land now held in fee simple or hereafter acquired by individuals may be transferred, devised, sold, or

> otherwise disposed of at such time and in such manner as the owner alone may desire regardless of established local customs which may control the disposition of inheritance of land through matrilineal lineages or clans.
>
> . . .
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> c. In the absence of instruments and statements provided for in subsection (b) above, lands held in fee simple by an individual shall, upon the death of the owner, be inherited by the owner's oldest living male child of sound mind, natural or adopted, or, if finale heirs are lacking, by the oldest living female child of sound mind, natural or adopted, or, in the absence of any issue, by the spouse of the deceased, provided that such owner and spouse shall have been living as man and wife immediately, prior to and at the time of the death of the owner. . . .
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> d. If the owner of fee simple land dies without issue or eligible spouse and there being no will made in accordance with this Section or the laws of the Trust Territory, then the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death.

Section 801 was the inheritance statute from 1959 until 1975, when it was amended by PL 5-3S-2. During this period, the Trust Territory High Courts consistently held that a person who owned land individually, whether he had purchased the (and as a bona fide purchaser for value or whether the land had been given to him by its lineage or clan, could do whatever he wanted with the land after his death and that his lineage or clan had no control over the land.[10] In most of these cases, which ⊥88B Appellant cited, it was a lineage or clan of the decedent that tried to get the land returned to it, or tried to have the right to dispose of the land according to Palauan custom. In almost all of these cases, there was no will and the decedent did not purchase the land. Yet, the Trust Territory Courts consistently decided in favor of the closest blood

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[10]In *Ngiruhelbad v. Merii*, 1 T.T.R. 367, 369 (1958), an argument was made that under Palauan custom, land given by a lineage or clan to its member should be returned to the lineage or the clan when that member died. The senior members of that lineage or clan should decide what part of the land or what land should go to the children or the widow of the deceased according to Palauan custom. The *Merii* Court explained that the purpose of individual land ownership was to do away with ". . . the complications and limitations of the Palauan matrilineal clan and lineage system and to permit individual control of land and patrilineal inheritance of it." Id.

In the case of *Orrukem v. Kikuch*, 2 T.T.R. 533, 534-35 (1964), a lineage gave land to one of its members. Upon his death, his son, Kikuch, got the land. The lineage, however, wanted the land back because it claimed that Kikuch was not fulfilling his obligations to the lineage. The *Kikuch* Court, without deciding whether Kikuch failed to fulfill his obligations to the lineage, applied the holding of the *Merii* Court. Any failure of Kikuch to fulfill his obligations to his lineage did not impair his ownership o f the land.

In the case of *Watanabe v. Ngirumerang,* 6 T.T.R. 269, 271, 274 (1973), that Court emphatically repeated *Merii's* holding. "It also is appropriate in this decision to again emphasize, as this Court and the appellate division have done in the past, that a clan or lineage has no control over individually owned land upon the death of the individual. . . . [T]his Court agrees that individual ownership means just that, and the owner may do with the land as he wishes without interference or approval of the lineage or clan." Id.; *see also Obkal v. Armaluuk,* 5 T.T.R. 3 (1970); *Ngeskesuk v. Solang*, 6 T.T.R. 505 (1974).

relative of the decedent and against the claims of the lineage or clan under Palauan custom, even ruling out the reversionary interest of a lineage or clan that gave the land to the decedent in the first place.

Such was the case law in 1974. The inheritance statute at the time was § 801 and there was no conflict between the case law and the statute.

Hence, this was the backdrop of PL 5-3S-2. On July 24, 1975, this law amended subsections (c) and (d) of § 801. These amendments are now subsections (a) and (b) of § 301. The preamble remained the same.

The amendments signaled significant policy changes in the law. Under subsection (a), land owned individually does not, in the absence of a will, go to the heirs specified in the order of preference in the statute unless the decedent acquired the land as a bona fide purchaser for value. Subsection (b) assumes that a decedent, who owned land and died without a will and without children, would probably wish his land to go to those who took care of him during his illness prior to his death. Subsection (b) says "yes" to that wish, but only if the decedent did not acquire the land as a bona fide purchaser for value.

Given this historical background of PL 5-3S-2, it is clear that the Olbiil Era Kelulau ("OEK") intended to change the case law as it existed in 1974. The corollary to this is that the OEK intended Palauan customary law regarding inheritance to be in effect again where the decedent died without a will and did not acquire the land as bona fide purchaser for value. §301(a). And in cases where an owner purchased land and died without children and without a will, Palauan custom will again decide who inherits the land. § 301(b).

⊥88C It is appropriate for courts, in construing a statute, to consider the attending circumstances or ". . . the history of the times when it was passed." *Great Northern R. Co. v. U.S.*, 62 S. Ct. 529, 533 (1942); *see also* 73 Am. Jur. 2d. *Statutes* § 85 (2001); Singer, § 48:03 at 422-27.

I believe further that the holdings of the *Merii* and *Watanabe* Courts have been superseded to the extent that they conflict with PL 5-3S-2. The Palau National Code provides that inheritance law shall remain in effect until it is changed by subsequent legislation. *See* 1 PNC § 305.

WHAT LAW APPLIES?

Appellant argues that the case law, rules of common law, and 25 PNC § 301(b) apply in this case in various ways. (Appellant's Br. At 6). I do not agree.

If 25 PNC § 301(b) applies, then Palauan customary law does not. For example, the important differences between maternal and paternal lineages in Palauan custom become a non-factor. What becomes significant is the identification of those who, regardless of lineages, took care of the decedent during his illness prior to his death. If, on the other hand, subsection (b) does not apply, then Palauan custom, such as the role of Eldecheduch, becomes the applicable law. The rules of common law only apply when neither statutory nor customary law applies. *See* 1 PNC § 303.

Since subsections (a) and (b) do not apply because Bandarii did not acquire the land as a bona fide purchaser for value and had children at the time of his death, we must look to customary law. It must be noted, however, that both statutory law and customary law are "equally authoritative."[11] ROP Const. art. V, § 2. The customary law shall have full force and effect of law when not in conflict with enactments of the OEK, among other laws, orders, and agreements. l PNC § 302. Only enacted statutes of the OEK may invalidate the existing system of customary law. 1 PNC § 414.

The trial court's findings of fact determine what law to apply. The land in Kayangel was owned by the Ngerusebek lineage. Bandarii, who was an ochell member of the lineage, became the owner of he land. He did not acquire the land as a bona fide purchaser for value.

Bandarii was married several times. One of his wives was Isimang's mother, Ikelau. After Bandarii and Ikelau were divorced, Bandarii and his closest relatives gave land and a house to Ikelau and her children, which included Isimang, the appellant herein. Bandarii remarried after that divorce.

The trial court accepted the testimony of an expert witness on Palauan custom who testified that after the land and house were given to Ikelau and her children, Bandarii and his relatives had ⊥88D discharged their customary obligations and nothing was still due to Ikelau and her children. On this particular Palauan custom alone, Appellant has no claim to the lands.

After Bandarii's death in 1994, his Eldecheduch was held; and the decision-makers of that Eldecheduch decided that the land would return to the Ngerusebek lineage, which had owned the land before it was given to Bandarii. Those who made the decision were Bandarii's siblings and their families, who were members of the Ngerusebek lineage and who also were claiming the lands for the lineage. (Decision at 5). It was not, contrary to Appellant's representation, just the Ngerusebek lineage that decided to take back the lands.

Under Palauan custom, senior family members can transfer individually owned land at the Eldecheduch. *Kubarii & Arbedul v. Olkeriil*, 3 ROP Intrm. 39, 41 (1991). Because the senior family members transferred the land at issue to the lineage at an Eldecheduch, I hold that Ngerusebek lineage is the rightful owner of the land.

Based on the findings of the trial court, I vote to affirm the trial court decision for the reasons set forth here and not for the reasons raised by the parties or the reasons relied upon by the trial court.

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[11]It is a general rule of statutory construction that a statute in derogation of the common law is to be given strict construction. *See C. Dallas Sands, Statutes and Statutory Construction* , § 61.06 at 61 (4th ed.). This rule does not apply in Palau because the rules of common law only become applicable in the absence of both statutes and Palauan custom. Perhaps an appropriate statutory rule to use here, given the equal status of both statutes and Palauan custom, is that a statute should be read in a way to avoid nullifying Palauan custom more than the statute prescribes.