*Children of Matchiau v. Klai Lineage*, 12 ROP 124 (2005)

**CHILDREN OF ELCHESEL MATCHIAU,**
**Appellants,**

**v.**

**KLAI LINEAGE,**
**Appellee.**

CIVIL APPEAL NO. 03-059
LC/P 00-350

Supreme Court, Appellate Division
Republic of Palau

Decided: April 26, 2005[1]

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Counsel for Appellants: J. Roman Bedor

Counsel for Appellee: Ernestine K. Rengiil

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Senior Land Court Judge, presiding.

MILLER, Justice:

This appeal involves land located in Irrai Village, Airai State, and designated as Worksheet Lot No. N001-21. The land is commonly known as *Smoll*. Reklai is the registered owner in the Tochi Daicho. Reklai died without a will in 1944.

There were only two claimants to *Smoll*: Klai Lineage, represented by Reklai's sister, Ngetwai Ngiracheriang ("Ngetwai"), and the children of Elchesel Matchiau ("Elchesel"), Reklai's natural daughter who was adopted by his parents, Medelmang and Iechad. During the hearings, experts on Palauan custom testified that Elchesel's right as Reklai's child to inherit his properties was severed by adoption. The same experts, however, also testified that because Elchesel was adopted by Reklai's parents, she could inherit from him as his customary sister. Pursuant to these customs, the Land Court awarded undivided one-half interests to Ngetwai and Elchesel. The Court then ordered that Ngetwai's fee simple ownership would go to Klai Lineage (based on her claim) and Elchesel's ownership would go to her children (because she was

[1]The parties waived oral argument, and the Court agrees that oral argument would not materially advance the resolution of this appeal.

deceased).

## STANDARD OF REVIEW

Land court decisions are reviewed under a clearly erroneous standard. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). A lower court's conclusions of law are reviewed *de novo*. *See Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). The existence and content of a claimed custom must be established by clear and convincing evidence. *Ngeribongel v. Gulibert*, 8 ROP Intrm. 68, 70 (1999). The trial court's findings as to a custom's terms, existence, or nonexistence are reviewed for clear error. *Id.*

## ANALYSIS

Appellants Children of Elchesel ⊥126 ("appellants") do not contest any of the facts as found by the Land Court, nor the application of the above-mentioned Palauan customs. They only assert that the Land Court erred in awarding Ngetwai's co-ownership interest to Klai Lineage after it found that Ngetwai was personally a proper heir. Appellants argue there was no basis for the Lineage to be named as the co-owner, because (a) under Palauan customary law, consent of the children of Elchesel as co-owner is required to convey any interest in *Smoll* to the Lineage or anyone else, and (b) any purported conveyance must be in writing as required by the Statute of Frauds, 39 PNC § 501.

Appellants' arguments have no merit. First, appellants made no showing of this purported custom at the hearing below. Moreover, they only cite one case, *Riumd v. Tanaka*, 1 ROP Intrm. 597 (1989), and *Riumd* clearly does not support their proposition that a "co-tenant, under Palauan customary law, cannot divest or transfer an interest on the land without the consent of all the co-owners." [Appellants' Brief, at 4]. In *Riumd*, we affirmed the trial court's holding that the property in dispute was family-owned and noted that "the oldest male of the family does not have the authority to dispose of the family's land without the consent of the family." 1 ROP Intrm. at 604-05. It is clear from that holding that we viewed family ownership as a form of communal ownership, akin to clan or lineage ownership, and as to which no individual can transfer the land or any portion of it. By contrast, where, as here, communal ownership is not involved, and a land is owned instead by two more co-owners, we have held that "a co-owner may sell his undivided *share* of the land, [but] he may not sell *the land or a portion of it* without the agreement of all co-owners." *Wally v. Sukrad*, 6 ROP Intrm. 38, 41 n.9 (1996) (emphasis added); *see also Obak v. Bandarii*, 7 ROP Intrm. 254, 255 (Tr. Div.1998) ("[W]hile a joint owner of a piece of land cannot transfer the whole land without the agreement of all joint owners, she has the ability to transfer her undivided interest in the property to another person or persons.") (footnote omitted). Whether or not it might be possible to prove otherwise as a matter of Palauan custom, it is plain that appellants have not done so here.

Turning to appellants' second contention, they assert the Land Court violated the Statute of Frauds by allowing the transfer of Ngetwai's interest in *Smoll* without the existence of a "deed of conveyance or other instrument in writing signed by the person." 39 PNC § 502(a). We question whether the Statute of Frauds has any role to play in these circumstances. It is not

uncommon for a successful claimant before the Land Court to designate who should be named on a determination of ownership. *E.g.*, *Basilius v. Basilius*, 12 ROP 106 (2005) (successful claimant designated himself and siblings as co-owners). Furthermore, since the purpose of the Statute of Frauds is to "prevent a fraudulent claim of an interest in land resting on parol evidence," *Williams v. Moodhard*, 19 A.2d 101, 104 (Pa. 1941), it makes little sense to invoke it to prevent Ngetwai from executing her stated wishes as to the disposition of her interest in *Smoll*.[2] In ⊥127 any event, since, as we have just stated, she does not need appellants'consent to transfer her interest, appellants have made no showing how they will be prejudiced in any way. It would therefore be a waste of judicial resources to remand this matter back to the Land Court and require that Ngetwai then transfer her interest in writing to the Lineage – something she would surely do given that she did not appeal the Land Court decision, and in fact, filed a response to appellants' brief asking that the decision be upheld.

**CONCLUSION**

For the foregoing reasons, the determination of the Land Court is AFFIRMED.

[2]Obviously distinguishable are situations where, at the time of the hearing, a claimant changes his claim or attempts to transfer land to the detriment of absent parties. *E.g., Shmull v. Ngirirs Clan*, Civil Appeal No. 03-33 (July 26, 2004) (upholding grant of new hearing where claim of clan ownership was changed to claim for individual ownership without notice to or consent of other clan members); *Tmarsel v. Ngerdelang Lineage*, 10 ROP 13 (2002) (affirming rejection of claimant's attempt to transfer lineage land in the course of hearing).