*Ngiraswei v. Malsol*, 12 ROP 61 (2005)

**REMOKET NGIRASWEI,**
**Appellant,**

**v.**

**FRANK MALSOL, ESTHER SKANG, JOHANES NGIRASWEI, MOSES NGIRASWEI, MARIA NGIRASWEI, LUCY MATSUTARO, and ROCKY NGIRASWEI,**
**Appellees.**

CIVIL APPEAL NO. 03-08
LC/E 02-65 & 02-67

Supreme Court, Appellate Division
Republic of Palau

Argued: November 22, 2004
Decided: January 24, 2005

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Counsel for Appellant: Raynold Oilouch

Counsel for Appellee: J. Roman Bedor

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

Appeal from the Land Court, the Honorable J. UDUCH SENGEBAU SENIOR, Senior Land Court Judge, presiding.
PER CURIAM:

This appeal involves competing claims between siblings to lands located in Choll County, Ngaraard State, commonly known as *Oleb el Blai* and *Tmekum*, and identified as Tochi Daicho Lots Nos. 242 and 250-part.[1] The Tochi Daicho lists the lots in the name of their father, Ngiraswei. Ngiraswei died without a will on February 17, 1971. Appellant, Remoket Ngiraswei ("Appellant"), is the oldest living child from Ngiraswei's first marriage, but according to his testimony in earlier proceedings and as found by the Land Court here, was adopted by another family when he was six months old. Appellees, Frank Malsol, Esther Skang, Johanes Ngiraswei, Moses Ngiraswei, Lucy Matsutaro, Maria Ngiraswei and Rocky Ngiraswei, are the children of Ngiraswei from his second marriage. The Land Court awarded the lots in question to Appellees based on the Palauan custom that adoption severs the right to inherit from the natural father. For the reasons stated below, we reverse.

[1]There were also individuals who claimed Lot Nos. 242 and 250-part in the name of the Ongelakl Clan at the Land Court hearing below. However, all of these claims were dismissed by the Land Court judge and none of those claimants filed an appeal.

## STANDARD OF REVIEW

Land Court decisions are reviewed under a clearly erroneous standard. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). A ⊥63 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

Appellant argued at the hearing that (1) he was never actually adopted by another family, and (2) even if he had been adopted, he was still Ngiraswei's "oldest living male child of sound mind, natural or adopted" under Palau District Code Section 801(c). The Land Court, however, quickly dismissed Appellant's first contention, noting that he had personally testified under oath at two separate hearings that he had been adopted by Kuartel and Ngesechemong.[2] After applying the doctrine of judicial estoppel to bar Appellant from denying his adoption, the Land Court judge turned to his second argument. The court noted that both experts testified at the hearing that, pursuant to Palauan custom, a child customarily adopted by another family loses the right to inherit individual properties from his natural father. The court then rejected the argument that Section 801(c) was intended to completely displace custom, finding that the cases replied upon by Appellant were factually dissimilar. Accordingly, the court found that Frank Malsol Ngirawswei, and not Appellant, was the "oldest, living [natural] male child" of Ngiraswei under Section 801(c).[3]

"In determining who shall inherit a decedent's property, we apply the statute[s] in effect at the time of the decedent's death." *Wally v. Sukrad*, 6 ROP Intrm. 38, 39 (1996). *See also id.* ("Palau District Code [Section] 801 was enacted in 1959."). At the time of Ngiraswei's death, Section 801(c) of the Palau District Code stated in pertinent part that "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 . . ." PDC § 801(c) (emphasis added). This Court starts with the principle that words used in a statute are presumed to be used in their ordinary and usual sense, and with the meaning commonly attributed to them. *Ngirengkoi v. ROP*, 8 Intrm. 41, 43 (1999). "[W]here the language of a statute is plain and admits of no more than one meaning, the duty of interpretation does not arise[.]" *Yano v. Kadoi*, 3 ROP Intrm. 174, 182 (1992) (quoting *Caminetti v. United States*, 242 U.S. 470, 485-86 (1917)). Based on these universal rules of statutory interpretation, we conclude that the word "natural" as used in Section 801(c) refers to a blood or biological relationship between the decedent and the oldest living male child. *See, e.g.,*

[2]Although Appellant briefly raises the issue of whether he was in fact adopted in a footnote toward the end of his brief, we find his showing is clearly insufficient to conclude that the Land Court's factual finding was clearly erroneous.

[3]Frank Malsol Ngiraswei is deceased and none of his heirs appeared to claim his right of exclusive ownership. Thus, the court construed the consolidation of the claims of Frank Malsol Ngiraswei, Johannes Ngiraswei, and Moses Frank for the Children of Ngiraswei as a waiver of Frank Malsol Ngiraswei's right to exclusive ownership of the lands at issue.

*Jenkins v. Palmer*, 62 F.3d 1083, 1086 (8th Cir. 1995) ("The 'natural father' of a child commonly is understood to mean the child's biological father.").

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In this case, it is undisputed that Appellant is Ngiraswei's oldest living biological son. The Land Court, however, disregarded Appellant's blood relationship because of the aforementioned Palauan custom. We find this was erroneous as a matter of law. Although we agree that the relevant custom was established by clear and convincing evidence, we disagree that it can prevail over the clear wording of Section 801(c). In addressing the relationship between statutory and customary law in the Trust Territory, Section 21 of the Trust Territory Code stated:

> The recognized customary law of the various parts of the Trust Territory, in matters in which it is applicable, as determined by the courts, shall have the full force and effect of law, *so far as such customary law is not in conflict with the [acts of legislative bodies convened under the charter from the High Commissioner]*.

TTC § 21 (1966), *later recodified as* 1 TTC § 102 (emphasis added). Therefore, because the application of custom would award the land in question to someone other than the decedent's oldest living biological son -- in this case the Appellant -- it conflicts with the statute and must be displaced. *See Wasisang v. Remeskang*, 5 ROP Intrm. 201, 203 (1996) ("[custom] cannot affect our interpretation of Section 801(c), which was plainly intended to displace custom"); *Arbedul v. Mokoll*, 4 ROP Intrm. 189, 193 n.3 (1994) (Section 801(c) "was plainly intended to displace custom"). There is simply no room in the language of Section 801(c) for custom to carve out an exception because a child was adopted out to another family.[4] *See*, *e.g.*, *Ngiradilubech v. Nabeyama*, 5 ROP Intrm. 117, 120 (1995) (rejecting trial court's finding that, pursuant to custom, child could not inherit from uncle who adopted him, stating, "[t]he problem with that conclusion is that, no matter how [decedent]'s adopted child may be viewed under Palauan custom, section 102(c) [successor to Section 801(c)] displaces custom.").

## CONCLUSION

Under Palau District Code Section 801(c), Appellant is Ngiraswei's "oldest living male child of sound mind, natural or adopted." Because custom conflicts with Section 801(c), it does not apply. Accordingly, we REVERSE the determination of the Land Court and REMAND for the entry of a new determination declaring that Appellant Remoket Ngiraswei is the owner of the lands in dispute.

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[4]Although not directly instructive in this case, we note that the general rule in the United States is that adoption does not sever the right to inherit from the natural parents. *See, e.g.,* 2 C.J.S. Adoption of Children § 63c, p. 454 ("In the absence of a statute to the contrary, although the child inherits from the adoptive parent, he still inherits from or through his blood relatives, or his natural parents."); 80 A.L.R. 1403 ("The general rule, sometimes embodied in express statutory provisions, is that the right of a child to inherit from its natural parent is not affected by the fact of its having been adopted by another.").