Dokdok, et al., v. Rechelluul, et al., 14 ROP 116 (2007).

MENGETUL RIKEL DOKDOK, MINER NGIRASECHEDUI, SANTOS NGIRASECHEDUI, MARTHA NGIRASECHEDUI, DIRRAKLANG NGIRAMETUKER, NGOTEL SUKRAD, OSIAOL MEREI, MENGEKONG SUGAR, SEKLII NGIRALMAU, DENGELEI NGIRALMAU, MERESEBANG NGIRALMAU, ANEMARY NGIRALMAU, EMILIANA NGIRASECHEDUI, NGIRANGEANG NGIRALMAU, SISANG NGIRALMAU,
Appellants,

v.

KERKAR RECHELLUUL, ROLMII EMESIOCHEL, & WILHELM RECHELLUUL,
Appellees.

CIVIL APPEAL NO. 06-003
Civil Action No. 00-106

Supreme Court, Appellate Division
Republic of Palau

Argued: April 17, 2007
Decided: June 7, 2007
⊥117
Counsel for Appellants: John K. Rechucher

Counsel for Appellees: Moses Y. Uludong

BEFORE: LARRY W. MILLER, Associate Justice; JANET HEALY WEEKS, Part-Time Associate Justice; J. UDUCH SENIOR, Associate Justice Pro Tem.

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

MILLER, Justice:

This appeal concerns a decision regarding the strength and authority of members of the Mechei Lineage. Appeallants, all undisputed ochell members of the Mechei Lineage, appeal from the Trial Division's determination that they failed to establish that the Appellees are weak members of Mechei Lineage with no authority or power under Palauan custom to appoint an individual to bear a title of the Mechei Lineage. For the reasons stated below, we affirm.

BACKGROUND

Appellants brought the original complaint seeking a declaratory judgment that Adolf Kuartei did not hold the title of *Ringang* in the Mechei Lineage, and that, because he did not hold this title he could be evicted from the Mechei Lineage house located in Ngeraus Hamlet of

Ngchesar State. When Mr. Kuartei subsequently died in 2001, the complaint was amended to susbstitute Kerkar Rechelluul, Rolmii Emesiochel, and Wilhem "Bill" Rechelluul as defendants, as Bill Rechelluul had allegedly taken up the title *Ringang* upon appointment by his co-defendants, mother Kerkar and maternal aunt Rolmii.

The Trial Division found that Appellants failed to establish that Appellees were without authority to appoint title bearers or administer Lineage Properties. This decision was based on evidence showing that Appellants, compared to Appellees, had not participated in as many significant customs of the Mechei Lineage and that they had chosen to maintain their residences in the neighboring state, Airai. These facts stood in contrast with the contention that Appellees needed to seek ⊥118 Appellants' permission prior to occupying or using Lineage properties.

Several principles of Palauan custom were indisputably established at trial. In Palau, lineages are made up of several families. Clans are composed of several lineages working together. Birth and adoption determine an individual's rank within the lineage with ochell members (children of female members of the lineage) holding the highest ranking, followed by ulechell members (children of male members of the lineage), rrodel members (children adopted through blood relations), mlotechakl (drifters who end up within the lineage with no blood relationship), and terruaol (people taken up by a member of the lineage with no blood relationship). An individual's strength in the lineage refers to the relative authority of that individual to participate in the lineage's decision-making process. These processes determine the administration of lineage affairs, the distribution of lineage property, and the appointment of title bearers. Appellants are comprised of several ochell members of the Mechei Lineage, while the Appellees are ulechell and children of ulechell members.

The Trial Division explicitly recognized that Appellants, as ochell members of the Mechei Lineage, would always hold a higher rank than Appellees. However, in terms of relative strength, the Trial Court found that other factors could be considered, such as strength through participation in the lineage affairs and general community knowledge or awareness. Considering all of these factors, the Trial Division found that Appellants had failed to prove that Appellees Kerkar Rechelluul, Rolmii Emesiochel, and their siblings, are weak members of Mechei Lineage.

STANDARD OF REVIEW

Clear and convincing evidence must establish the existence and content of a claimed custom. *Children of Matchiau v. Klai Lineage*, 12 ROP 124, 125 (2005); *Ngirutang v. Ngirutang*, 11 ROP 208, 210 (2004). The trial court's findings as to a custom's terms, existence, or nonexistence are reviewed for clear error, and the Appellate Division will not reweigh the evidence, test the credibility of the witnesses, or draw inferences from the evidence. *Children of Matchiau*, 12 ROP at 125; *Omenged v. UMDA*, 8 ROP Intrm. 232, 233 (2000). Where there are two permissible views of the evidence as to proof of custom, the fact finder's choice between them canot be clearly erroneous. *Saka v. Rubasch*, 11 ROP 137, 141 (2004).

A party claiming to be a strong senior member of a clan has the burden of proving such status by a preponderance of the evidence. *Ngiramechelbang v. Katosang*, 8 ROP Intrm. 333 (Tr. Div. 1999); *Filibert v. Ngirmang*, 8 ROP Intrm. 273 (2001). Where a party seeks to prove not

that it is a strong member, but that instead another individual is a weak member, the burden of proof is placed on the party that would lose if no evidence were presented. *Ngirmang v. Filibert*, 9 ROP 226 (Tr. Div. 1998). Appellants brought this action seeking a declaratory judgment that Appellees are weak members of Mechei Lineage. In the absence of any evidence, Appellants would not be able to obtain such a judgment. Accordingly, Appellants bore the burden of proving that the Appellees are, in fact, weak members. ⊥119 Applying this standard, the Trial Division concluded that Appellants did not shoulder the burden of proving that Appellees are weaker members of the Lineage.

ANALYSIS

Although divided into various subheadings, the bulk of Appellants' appellate brief and oral arguments were devoted to the assertion that by putting ulechell members of a lineage on the same plane with ochell members, the trial court's judgment upends, and indeed subverts, Palauan custom. We disagree.

To be sure, firmly established custom presented by expert witnesses at trial demonstrated that, by birth, Appellants hold a higher rank within the lineage than Appellees do. The trial court so found. Yet in evaluating the membership and activities of Mechei Lineage, the court also found that custom supported a finding that Appellees are not weak members of the Lineage, notwithstanding their rank according to birth. The question before us is whether that finding was supported by the evidence before the court.

We begin by reiterating that matters of custom are resolved according to the record presented in each case. *Saka v. Rubasch*, 11 ROP 137, 141 (2004). Our practice in this regard allows for judicial recognition of the evolution of custom and ensures that, whatever the result in any particular case, the issue may be addressed anew in subsequent cases and not be strictly determined by precedent, as are matters of law. Treating custom as a factual matter also limits the depth of appellate review. If the trial court's findings as to custom are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be disturbed on appeal unless the Court is left with a definite and firm conviction that a mistake was committed. *Omenged v. UMDA*, 8 ROP Intrm. 232, 233 (2000). In our view, on the record before the trial court, its findings were not clearly erroneous.

Notwithstanding the evidence of Appellants's rank, expert evidence presented to the trial court supports its conclusion that, by moving away from the physical location of their lineage, failing to bear the lineage titles for several generations, and deciding not to play in active and significant role in the affairs of the community, Appellants have voluntarily relinquished some of the strength related to their rank. Indeed, in allowing ulechell members to hold titles over several generations, Appellants themselves thrust ulechell members into a central role in the functioning of the Lineage, effectively handing over the very strength and rights Appellants now claim. As one expert testified,

> That's the reason why there's so many conflicts in the Court because they come with no respect to the people who already maintained the integrity of the clan. If

> they come and have a discussion and explanations, and uh, come with respect that they have been at the center of the clan for so many years then no conflicts would arise. But because they come claiming ⊥120 that they are ochell while the people who have maintained the clan are ulechell, they come and try to override everything or most of the things that have been settled. *To my belief, I still maintain that they should come under those who were at the center of the clan for so many, many years.*

Transcript, Vol. 2, page 38-39. (Emphasis added).

Viewed in this context, the trial court's judgment is in no way a dilution of the basics of Palauan custom, but a recognition of the equally basic customary principle that when the members of a clan or lineage move away and begin to bear titles elsewhere, those left behind will bear the titles, carry out the responsibilities, and earn strength within that clan or lineage.

Appellants also contend that the trial court erred by refusing to give adequate deference to evidence showing that Madraisau, the last undisputed *Ringang*, failed to list Appellees as strong members of the Mechei Lineage in a 1979 land proceeding before the Ngchesar Land Registration Team. The trial court clearly understood the import and significance of this testimony, but determined that this evidence was insufficient to compel a different result. The Trial Division is best situated to determine the credibility and relevancy of testimony given over 20 years ago and the court appropriately exercised its discretion here. *Ngirasechedui v. Whipps*, 9 ROP 45, 47 (2001).

CONCLUSION

The judgment of the Trial Division is hereby affirmed.