

Eterochel v. Children of Rdechhor; 15 ROP 133 (2008)

**UMAI ETEROCHEL,
Appellant,**

v.

**CHILDREN OF RDECHOR,
Appellees.**

CIVIL APPEAL NO. 07-029
LC/E 07-45

Supreme Court, Appellate Division
Republic of Palau

Decided: September 16, 2008¹

Counsel for Appellant: Johnson Toribiong

Counsel for Appellees: Raynold B. Oilouch

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice.

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

PER CURIAM:

Appellant Umai Eterochel appeals from the Land Court decision holding that Appellees, the Children of Rdechhor, are the rightful owners of the land called *Ikekerung*, which is located in Ngaraard State. Appellant argues that the Land Court erred when it inappropriately relied on Section 801(c) of the Palau District Code (“Section 801 (c)”) in deciding this matter. We affirm the Land Court’s determination regarding the ownership of *Ikekerung*, because the Land Court did not err when it found that Siangeldeb inherited the contested land under Section 801(c).

BACKGROUND

This appeal concerns ownership of the land known as *Ikekerung*. This land was individually owned by a man named Eterochel, as reflected in the Tochi Daicho for Ngaraard. Eterochel went through different marriages and had children from a previous marriage. His children included Kerradel, Ngirablosech, and Appellant. Appellant was adopted to Eterochel and his wife, Waisang.

At the time of his death, Eterochel was married to Waisang and had the following

¹ The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

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children: Siangeldeb, Hiroko, Hinami, Sizue, Kerradel and Ngirablosch. Eterochel's oldest son alive when he died was Kerradel followed by Ngirablosech and then Siangeldeb. Appellees are the children of Siangeldeb.

When Eterochel passed away, there was a customary eldecheduch held for him. The eldecheduch was held at Talambulang in Koror. The parties dispute who was given *Ikekerung* at the eldecheduch of Eterochel.

There were a number of individuals who filed written claims of ownership to *Ikekerung*. First, Ngirablosech filed a written claim, asserting ownership of *Ikekerung* upon grounds that he was the son of Eterochel, the Tochi Daicho owner. Second, Felix Gaag claimed ownership of the land upon the grounds that a meeting was held between certain people and it was decided that all properties and titles of Ngerchau Clan will be owned by Felix Gaag and his brother, Becheserrak Tmilchol. Third, Sizue Yamanguchi claimed the land upon the grounds that she is a child of Eterochel, that she was not given any property at the eldecheduch of Eterochel and, therefore, she is claiming ownership of the land. Fourth, Appellant claimed ownership of *Ikekerung* upon the grounds that it was given to her at the eldecheduch of Eterochel. Fifth, the heirs of Siangeldeb claimed ownership of the land upon two alternate grounds: that the land was given to Siangeldeb at the eldecheduch and he received it pursuant to statute, Section 801(c), which was in effect at the time of Eterochel's death.

On the eve of the hearing, Ngirablosech's **L135** son, Matheus Ngirablosech, filed a Withdrawal of Claim on behalf of his father, who was already deceased. Thus, when the hearing commenced, Appellees' counsel asked the Land Court to formally dismiss or withdraw the written claim of Ngirablosech. The parties agreed and the claim was withdrawn.

After the hearing, the Land Court issued its Findings of Fact, Conclusions of Law and Determination ("Determination") in favor of Siangeldeb. The Land Court issued ownership of *Ikekerung* in the names of the Appellees as heirs of Siangeldeb. Appellant filed a timely appeal

STANDARD OF REVIEW

The Appellate Division reviews the Land Court's findings of fact for clear error. *Pierantozzi v. Ueki*, 12 ROP 169, 170 (2005). Under that standard, factual findings will not be set aside as long as they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion. *Tmiu Clan v. Hesus*, 12 ROP 156,157 (2005). The trial judge is best situated to make credibility determinations and the Appellate Division will generally defer to the lower court's findings regarding the credibility of witnesses and evidence. *Id.* at 158; *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 37 (1999). The Land Court's conclusions of law are reviewed *de novo*. *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 93 (2006).

DISCUSSION

At the outset, Appellant argues that Appellees did not sufficiently raise the claim that they are entitled to *Ikekerung* pursuant to Section 801(c). Consequently, Appellant argues that the claim is waived, and the Land Court inappropriately raised the matter sua sponte.

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“In determining who shall inherit a decedent’s property, we apply the statute in effect at the time of the decedent’s death.” *Wally v. Sukrad*, 6 ROP Intrm. 38, 39 (1996). The parties do not contest that Section 801(c) was the prevailing law at the time of Eterochel’s death. Section 801 (c) provides 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, or if male heirs are lacking 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.

Before the Land Court, Appellant had the opportunity to argue against the application of Section 801(c) in favor of Appellees. In fact, Appellant had the opportunity and used such opportunity to raise her argument that Kerradel, not Siangeldeb, was Eterochel’s oldest surviving son at the time of his death. Thus, Appellant’s assertion that she was unaware that Section 801(c) was an issue in this matter is disingenuous.

In addition, Appellant argues that Appellees are not entitled to the contested land in this matter because they have failed to satisfy the elements defined in Section 801(c). Specifically, ¶136 Appellant maintains that Kerradel, not Siangeldeb, was Eterochel’s oldest surviving son at his death. Thus, Kerradel should have inherited the land at issue. Appellees do not contest Appellant’s argument regarding the ages of Kerradel and Siangeldeb, however they maintain that Kerradel waived his claim to the contested land.

The Land Court considered this issue in its Determination. There the court explained that although Kerradel was the oldest surviving son at Eterochel’s death, he failed to file a claim to the land. In addition, the Land Court found that Eterochel’s next oldest son, Ngiraclosech, filed a claim to the land but ultimately withdrew his claim. Thus, the Land Court concluded that both Kerradel and Ngiraclosech had waived their claims, and, pursuant to Section 801(c), Siangeldeb was entitled to the land.

In *Ngirchokebai v. Reklai*, 8 ROP Intrm.151,152 (2000), the Appellate Division held that:

If the eldest male child or his heirs did not claim the property, under § 801(c) the property passed to the next oldest male child and so on down the line. The statute provided that the eldest female child only inherited “if male heirs are lacking,” and that the deceased’s relatives only determined who inherited if he died “without issue or eligible spouse.” The failure of [the oldest son’s] heirs to claim the property must be construed as a waiver of [the oldest son’s] claim. That being the case, the next oldest male child . . . inherited the property.

A similar ruling was made in *Ngirumerang v. Tmakeung*, 8 ROP Intrm. 230 (2000). There, the Appellate Division held that “[t]he Land Court can, and must, choose among the claimants who

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appear before it and cannot choose someone who did not, even though his or her claim might be theoretically more sound.” *Id.* at 231. Thus, since Kerradel and Ngirablosch failed to pursue their claims to *Ikekerung*, the next oldest male child of Eterochel alive at the time of his death was Siangeldeb. The Land Court did not err in concluding that, pursuant to Section 801(c), Siangeldeb was the rightful owner of *Ikekerung*.

Finally, Appellant asserts that regardless of who is deemed the appropriate inheritor of *Ikekerung* under Section 801(c), because the contested land was distributed at the eldecheduch of Eterochel, Section 801(c) does not apply. The Land Court found this argument to be without merit. We agree.

The decision in *Ngiraswei v. Malsol*, 12 ROP 61, 64 (2005), is instructive on this issue. Although *Ngiraswei* is factually dissimilar to the case at bar, the principles regarding custom and Section 801 (c) remain relevant. In *Ngiraswei*, the Appellate Division reviewed the question of whether the oldest son of a decedent continues to inherit the decedent’s land if the son was adopted by another family. Pursuant to Section 801(c), the son could inherit the land, however under Palauan custom, the son could not. The court concluded that custom cannot prevail over “the clear wording of Section 801(c).” The court noted the following:

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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].

Id. Consequently, the court concluded that “[b]ecause the application of custom would award the land in question to someone other than the decedent's oldest living . . . son . . . it conflicts with the statute and must be displaced.” *Id.* The same analysis is appropriate here, where allowing the alleged distribution of *Ikekerung* at the eldecheduch to stand would award the land to someone other than the decedent's oldest living son who claimed the land. Accordingly; the Land Court did not err in concluding that Section 801(c) was the applicable law in this matter.

CONCLUSION

In light of the foregoing, we affirm the Land Court’s decision.