

Beouch v. Sasao, 16 ROP 116 (2009)
NGIRAIKELAU BEOUCH,
Appellant,

v.

ASAKO K. SASAO, et al.,
Appellees.

CIVIL APPEAL NO. 07-046
Civil Action 04-143

Supreme Court, Appellate Division
Republic of Palau

Argued: January 14, 2009
Decided: January 21, 2009

Counsel for Appellant: Raynold B. Oilouch

Counsel for Appellees: Salvador Remoket

p.117

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Trial Division, Palau Supreme Court, LARRY W. MILLER, Associate Justice, presiding.

PER CURIAM:

BACKGROUND

This is an Appeal from the September 21, 2007 Judgment and the August 29, 2007 Decision and Order by the Honorable Associate Justice Larry W. Miller of the Trial Division, Palau Supreme Court. The case concerns a dispute as to the membership and status of the parties in Mochouang Clan of Ngermetengel Hamlet of Ngeremlengui State. The case came before the trial court when Appellees, ulechell members of Mochouang Clan, sued to prevent Appellant Ngiraikelau Beouch (“Appellant”) from using clan land called “Brekong,” alleging that Appellant was not a member of the Clan.

The Complaint sought declarations that Appellant was not a member of Mochouang Clan and had no right to enter Brekong, an injunction preventing Appellant from entering Brekong, and damages from the illegal entry and use of the land. Appellant’s cross-complaint sought declarations that Appellant is the senior strong ochell member of Mochouang Clan and that he has rights to and authority over the Clan’s properties, as well as declarations that Appellees are not strong members, or members at all, of Mochouang Clan and have no rights or authority over the Clan’s properties.

A. Trial Court Determinations

The trial court determined that Appellant is a member of Mochouang Clan and granted an injunction preventing Appellees from interfering with Appellant's use and occupation of Brekong. Beyond that finding, the trial court refused to issue several declarations requested by Appellant: declarations that Appellant bears the title Renguul ra Mochouang, that Appellees are not strong members of Mochouang Clan, that Appellees are weaker members of the Clan than Appellant, and that Appellees have no authority over the affairs of the Clan. The appeal is based on the trial court's refusal to make these declarations.

The trial court explained why it would not decide the issues presented. With regard to the title Renguul ra Mochouang, the trial court stated that Appellant did not present evidence that he met all the requirements for obtaining a chief's title. Additionally, the court accepted testimony and documentary evidence showing that Masami Elbelau ("Masami") bears the title Renguul ra Mochouang. Trial Ct. Order at 4, n.3.¹ While the trial court would not find that Appellant bears the title, the court also declined to find that Masami rightfully bears that title. The court's refusal was not because Masami had not shown p.118 that he bears the title, but because Masami was not a party to the suit and because the court did not believe that the title-bearer issue was relevant to the conflict at the heart of the case. *Id.* at 4 (noting that, because decisions as to land use are made by consensus of the senior strong members of a clan, not by a chief or chiefs, the identity of the title-bearer does not help resolve the case).

The trial court recognized that the crucial controversy was the identity of the senior strong members of a clan, but declined to decide who are strong members of the Mochouang Clan, who has more power over Clan affairs and, crucially, who has authority over the land. Trial Ct. Order at 7-8. The court credited evidence in the record which shows that Appellees' older relatives recognized Appellant as a strong member of the Clan. Trial Ct. Order at 5-6; *see also* Def.'s Ex. N. Also, the court found that the evidence before it established Appellees' membership in the Clan. The trial court noted that Appellees are, by birth, ulechell members of the Clan, but declined to rule that Appellees are of lower status than Appellant. Trial Ct. Order at 7-8. The court explained that Appellees' "relatives and family seemed to be the ones who protected the interests of the Clan—claiming and serving as trustees for the Clan's lands, including the very land at issue here." *Id.* at 8. Because of this background, the court chose not to "relegate [Appellees] to second-class status." *Id.*

While the trial court decision is clear as to what declarations it refused to make, it is ambiguous what the refusal to make those declarations means as to the parties' relative status and authority over Brekong. As a result, the trial court's decision failed to resolve the conflict between the parties.

¹In addition to the testimony of Masami and Waturu Elbelau, Emiwo Mad, and Ngirgnesis Mad who described Masami as Renguul ra Mochouang, Plaintiff's Exhibit 6 is a document, dated in 1985, signed by the ten self-described chiefs that make up Ngarabedechal, the council of chiefs, including Masami as Renguul ra Mochouang.

DISCUSSION

It is proper for a court to intervene in customary affairs, such as title and clan status, if such intervention is necessary “to quiet controversy, bring peace, and settle differences’ among the participants in the customary matter.” *Filibert v. Ngirmang*, 8 ROP Intrm. 273, 276 (2001) (quoting *Espangel v. Diaz*, 3 ROP Intrm. 240, 244 (1992)). The trial court’s intervention did not adequately meet these goals; not only is there still controversy between the parties about the use of the land, but there is controversy as to what exactly the trial court held. The parties on appeal disputed what the trial court found as to the parties’ relative status, trying to infer conclusions from the vague language of the trial court decision. This is unfair to the parties, who have come to court seeking clarity and resolution.

Supreme Court precedent is clear that a trial court is required to issue a decision that “reveals an understanding analysis of the evidence, a resolution of the material issues of ‘fact’ that penetrate beneath the generality of conclusions, and an application of the law to the facts.” *WCTC v. Meteolechol*, 14 ROP 58, 61 (2007) (quoting *Cura v. Salvador*, 11 ROP 221, 223 (2004)). Additionally, Rule 52(a) of the Rules of Civil Procedure for the Courts of Palau requires a court to “find the facts specially and state separately its conclusions of law thereon.” ROP R. CIV. P. 52(A); see also *Melekeok Gov’t Bank v. Adelbai*, 13 ROP 183, 191 (2006) (stating that a trial court’s findings are adequate if “they are sufficiently comprehensive and p.119 pertinent to the issue to form a basis for the decision and whether they are supported by the evidence.”) (internal citations and quotations omitted).

While the trial court’s decision shows a thoughtful analysis of the evidence before it, it does not meet its obligation to resolve the material issues before it. Additionally, the decision does not clearly link findings of fact to the court’s conclusions of law; the court does not state which testimony it finds to be credible, and does not make explicit findings as to the parties’ relative status in the Clan or the bearer of the Renguul ra Mochouang title. Without sufficient information as to the trial court’s factual findings or credibility determinations, the Appellate Court lacks an adequate basis for review. “In situations such as these, ...remand for further elaboration is appropriate.” *Estate of Tmilchol v. Kumangai*, 13 ROP 179, 182 (2006). The trial court did not fulfill its duty to resolve the parties’ disputes and did not provide enough information to allow for meaningful appellate review. Accordingly, it is necessary to remand the case so the trial court can make the factual findings necessary to resolve the conflicts between the parties.²

CONCLUSION

For the foregoing reasons, we VACATE the Judgment and Decision of the trial court and REMAND the case for further proceedings to make all necessary determinations.

²The author of the original trial court decision, Justice Miller, is no longer on the bench. Accordingly, the case will be remanded to Justice Lourdes F. Materne.