In re Estate of Tellames

Civil Action No. 12-096

Supreme Court, Trial Division
Republic of Palau

Decided: May 6, 2015

Counsel for Gilliam Tellames, Jr. ..... Ronald Ledgerwood
Counsel for Katarina Katosang ..... Rachel Dimitruk
Counsel for Grace Yano ..... J. Roman Bedor

[1] **Property**: Inheritance

25 PNC § 301(b) applies only when the decedent dies without children, without a will, *and* the land owned was not purchased for value. Where decedent clearly died with children, § 301(b) is inapplicable.

[2] **Property**: Inheritance

If neither 25 PNC § 301(a) nor (b) applies—for example, if a decedent died with children and was not a bona fide purchaser for value, as is the case here—then a court should award property based on custom.

[3] **Judgments**: Conclusiveness
Judgments: Collateral Attacks
Property: Certificate of Title

A certificate of title is conclusive upon all persons, so long as notice was given as provided in 35 PNC § 1309, and constitutes prima facie evidence of ownership. Once such prima facie evidence of ownership is in place, any party seeking to collaterally attack the determination of ownership and the subsequently issued certificate of title may do so only in one of two ways: (1) on the grounds that statutory or constitutional procedural requirements were not complied with by the LCHO or other notice-giving body, or (2) on the grounds that the certificate was issued due to another's fraud.

[4] **Evidence**: Presumptions

It is the established policy of this Court to presume that the LCHO followed its procedural requirements, unless otherwise proven.

DECISION

The Honorable R. ASHBY PATE, Associate Justice:

INTRODUCTION

For the reasons outlined below and consistent with the Court's judgment of the same date, the Court hereby determines that, according to Palauan customary principles, Katarina Katosang, as the biological mother and eldest adopted sister of the decedent, shall be granted sole authority over Cadastral Lot No. 035B22, also known as *Meskebesang*, which was previously held by decedent Gillian Tellames in fee simple. Accordingly, it is hereby adjudged that Katarina Katosang shall be the new owner in fee simple of this property and may dispose of and distribute the property in her sole discretion, subject to the terms of the March 12, 2015 stipulation entered into by all parties, which is outlined in greater detail below.

FACTUAL BACKGROUND

On March 2, 2012, Gillian Tellames died. Shortly thereafter, on April 30, 2012, his son, Petitioner Gillian Tellames, Jr., filed a petition to open his estate, which contains personal properties and at least one significant piece of property known as *Meskebesang*.[1] The Court then appointed Gillian Tellames Jr., as Temporary Administrator of his Estate on May 3, 2012.

Shortly thereafter, on June 17, 2012, Grace Yano Sam filed a claim on behalf of Salvador Tellames and Athenacio Tellames (collectively, Salvador Tellames) against the above estate, as well as an objection to the appointment of Gillian Tellames, Jr., as the permanent administrator. Over a year later on October 15, 2013, but well before trial, Katarina Tellames Katosang (Katosang) also filed her claim and objection, which this Court deemed valid in its March 21, 2014 Order Denying Motion to Strike. As the case progressed, it became clear that dominion over the personal properties was essentially a minor issue, but that the control of *Meskebesang* would be the focus of the lawsuit.

A. Summary Judgment

Before trial, parties filed cross motions for summary judgment, which this Court denied in an April 9, 2014 Order. In this Order, this Court provided a clear legal roadmap for trial, articulating the legal standard it expected the parties to address and argue in pursuit of their claims. Specifically, the Court noted that, because the decedent clearly died with children and was not a bona fide purchaser for value of *Meskebesang*, the Court would, at trial, award that property based on custom. *See Koror State Pub. Lands Auth v. Ngirmang*, 14 ROP 29, 33 (2006); *see also Omelau v. Saito*, 19

[1] Cadastral Lot No. 035B22.

ROP 198, 199 (2012); *Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33, 36 (2008) (holding that, absent an applicable descent and distribution statute, customary law applies). Because the case was filed before 2013, the Court thus directed the parties to be prepared at trial to establish their customary claims regarding ownership and inheritance of *Meskebesang* by clear and convincing evidence through expert testimony. *Beouch v. Sasao*, 20 ROP 41, 51, n.10 (2013).

B. Pre-trial stipulation

On the first day of trial, Petitioner Gillian Tellames, Jr., withdrew his request to be appointed permanent administrator of the *Meskebesang* property, as well as any claim for outright ownership or inheritance of *Meskebesang*. In doing so, he entered into a joint stipulation with the other parties, which this Court now accepts and incorporates into this judgment and decision.

The stipulation provides that Petitioner Gillian Tellames, Jr., shall be empowered to administer and distribute *only* the personal property of the estate, namely: (a) the 1993 Toyota Hilux SUV with Koror State License Plate No. 0011, which is to be transferred to Garry Tellames; (b) the Bank of Hawaii Checking Account No. 0037-099724 and the associated Bank of Hawaii proceeds from the insured loan, which is to be transferred to Petitioner Gillian Tellames, Jr.; (c) the Republic of Palau Post Office Box Number 319, which is to be transferred to Petitioner Gillian Tellames, Jr.; (d) any claim to the Topside House in which Decedent resided, situated on Koror State Lease Lot No. 021 B 04-002, a Lot which was recently awarded to Katey Ngiraked over the claim of Koror State, along with any claim to any or all of the household furnishings, which claims are to be transferred to Petitioner Gillian Luis Tellames, Jr., as Trustee for Garry Tellames; (e) any claim to the house in which Gillian Luis Tellames, Jr., now resides, which was awarded to Decedent's then-minor children (namely, Petitioner, Garry, Glen and Eldora) at the time of Decedent's divorce from Masae Kumangai and which was constructed on the subject land parcel known as *Meskebesang* in Meketii, Koror, Lot No. 036 B 22, 994-part, along with the house-hold furnishings; and (f) any other personal property and interests of decedent.

The stipulation further provides that Petitioner Gillian Tellames, Jr., and his brothers Garry and Glen, shall be entitled to continue to reside on and use *Meskebesang* for a period of five years from the date of the stipulation, any extension of which will be negotiated as the parties may agree. In exchange, Petitioner Gillian Tellames, Jr., withdrew his request to be appointed permanent administrator for *Meskebesang*. The Court hereby accepts and incorporates this stipulation and all of its rights and obligations into this judgment and decision.

After filing the above stipulation with the Court, Salvador Tellames and Katarina Katosang proceeded to trial on the remaining issue, that is, the right to inherit, own, and exercise authority over *Meskebesang* under Palauan customary principles.

APPLICABLE LAW

The Appellate Division has previously noted that the "precise duty of the Trial Division in closing and supervising probate matters is largely undefined by the decisional law in the Republic." *Kee v. Ngiraingas*, 20 ROP 277, 283 (2013). However, to aid the Trial Division in determining the heirs in an intestate proceeding concerning land held in fee simple, as in the case currently before the Court, it directed the Trial Division to examine 25 PNC § 301(a) – (b), as well as *Marsil v. Telungalk re Iterkerkill*, 15 ROP 33 (2008). The relevant provisions of 25 PNC § 301(a) – (b) read:

> (a) In the absence of instruments and statements provided for in [39 PNCA § 403(b)], lands held in fee simple, which were acquired by the owner as a bona fide purchaser for value, shall, upon the death of the owner, be inherited by the owner's oldest legitimate living male child of sound mind, natural or adopted, or if male heirs are lacking the oldest legitimate living female child of sound mind, natural or adopted, of the marriage during which such lands were acquired; in the absence of any issue such lands shall be disposed of in accordance with subsection [(b)] hereof.
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> (b) If the owner of fee simple land dies without issue and no will has been made in accordance with this section [or 39 PNCA § 403] or the laws of the Republic or if such lands were acquired by means other than as a bona fide purchaser for value, then the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death. Such desires of the immediate maternal or paternal lineage with respect to the disposition of the land in question shall be registered with the Clerk of Courts pursuant to [39 PNCA § 403(a)].

25 PNC § 301.

Subsections (a) and (b) govern different scenarios for the disposition of the property in an estate depending, in part, on whether the decedent died with children and was a bona fide purchaser of the land. Subsection (a) applies if the decedent died with children *and* the decedent purchased the land as a bona fide purchaser for value. If these requirements are met, then the land will be inherited by the owner's oldest child. *See* 25 PNC § 301(a). Because it appears from the affidavit testimony, the judicial record, and Gillian Tellames, Jr.'s own March 19, 2014 response to the cross motion for summary judgment that decedent Gillian Tellames did not purchase the land at issue but rather obtained title by judicial determination, the Court finds that the decedent was not a bona fide purchaser of the property and section 301(a) consequently is inapplicable.

[1] Subsection (b), which this Court has previously noted "is not the model of clarity," has been interpreted to apply only when the decedent dies without children, without a

will, *and* the land owned was not purchased for value.[2] *Marsil,* 15 ROP at 36. In the event that subsection (b) is implicated, the land passes in accordance with the wishes of the decedent's immediate maternal or paternal lineage. *See Ngirmang*, 14 ROP at 33 (holding that a lineage meeting the statutory requirements must come forward). But because decedent Gillian Tellames clearly died with children (Petitioner Gillian Tellames, Jr., being one of them), section 301(b) is also inapplicable.

[2] If neither § 301(a) nor (b) applies—for example, if a decedent died with children and was not a bona fide purchaser for value, as is the case here—then a court should award property based on custom. *See Ngirmang,* 14 ROP at 33; *see also Omelau*, 19 ROP at 199; *Marsil*, 15 ROP at 36 (holding that, absent an applicable descent and distribution statute, customary law applies). In cases filed before January 3, 2013, like this one, custom must be established by clear and convincing evidence through expert testimony at a hearing. *Beouch*, 20 ROP at 51, n.10.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Because this case turns on the application of custom in an inheritance dispute, it is important to note the undisputed familial ties among the parties here at the outset. Specifically, the following relationships were undisputed at trial:

1. Katarina Katosang is the only living biological child of Luis Tellames;
2. Katarina Katosang is the biological mother of Salvador Tellames and the decedent Gillian Tellames;
3. The decedent, Gillian Tellames, was also an adopted son of Luis Tellames, making Katarina Katosang not only his biological mother but also his adopted sister;
4. Luis Tellames also adopted Salvador Tellames and Athenacio Tellames, making them Katarina Katosang's adopted brothers; and
5. Katarina Katosang is the oldest living member of the family.

With this family tree in mind, the Court now turns to its findings of fact and conclusions of law, addressing the two primary questions necessary to resolve this dispute.

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[2] The main confusion with the interpretation of § 301(b) is that the introductory clause, which is written in the disjunctive, has been interpreted by this Court actually to be read in the conjunctive. That is, "in order for 25 PNC § 301(b) to apply, the decedent must die without issue, without a will, and must have acquired his lands other than as a bona fide purchaser for value. In effect, the 'or' becomes an 'and.'" *Marsil*, 15 ROP at 36.

A. Ownership of *Meskebesang* at the time of Decedent's death

At trial, both parties agreed that *Meskebesang* was originally purchased in fee simple by Luis Tellames. They also acknowledged that decedent Gillian Tellames later claimed and was awarded the property as his individual property after Land Claims Hearing No. 12-29-95, and the subsequent Certificate of Title was issued in his name on January 5, 1998. Salvador Tellames, however, now asserts that the property was always intended to be set aside as an anchor lot for the entire Luis Tellames family, and that Gillian Tellames claimed the property over twenty years ago without the consent and knowledge of his family. Importantly though, Salvador Tellames failed to prove—or really even sufficiently allege at any point—that the family's lack of knowledge about Gillian Tellames' individual claim to the land was the result of any institutional failure to follow statutory notice requirements or some putative scheme to defraud them.

[3][4*] This failure to prove how the alleged notice failure occurred is critical, and dispositive, because the law is clear that a certificate of title "shall be conclusive upon all persons so long as notice was given as provided in section 1309, and shall be prima facie evidence of ownership . . . ." 35 PNC § 1314(b); *Wong v. Obichang*, 16 ROP 209, 212 (2009) ("a certificate of title is prima facie evidence of land ownership."); *Irikl Clan v. Renguul*, 8 ROP Intrm. 156, 158 (2000) (same); *see also Nakamura v. Isechal*, 10 ROP 134, 136 (2003) ("An unappealed determination of ownership issued by the Land Commission precludes a later claim to the subject property."). Once such prima facie evidence of ownership is in place, any party seeking to collaterally attack the determination of ownership and the subsequently issued certificate of title may do so *only* in one of two ways—(1) on the grounds that statutory or constitutional procedural requirements were not complied with by the LCHO or other notice-giving body, *see Nakamura,* 10 ROP at 136 (citing *Ucherremasech v. Wong*, 5 ROP Intr. 142, 147 (1995));[3] or (2) that the certificate was issued due to another's fraud, *see Wong v. Obichang*, 16 ROP at 212-213.[4] Under either approach a claimant may not even even address the land

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[*] [3] It is not proper to "infer that [a party] did not receive notice of the LCHO hearing. Such an inference would run contrary to the established policy of this Court to presume that the LCHO followed its procedural requirements, unless otherwise proven." *Becheserrak v. Eritem Lineage,* 14 ROP 80, 83 (2007).

[4] "To prove fraud, a plaintiff must establish that defendant (1) made a fraudulent misrepresentation of a fact, opinion or law, (2) with the purpose of inducing the plaintiff to act upon the representation, (3) that the plaintiff justifiably relied on the representation, and (4) was damaged as a result of that reliance." *Beches v. Sumor*, 17 ROP 266, 273 (2010). Alternatively, "to demonstrate fraud where the defendant fails to disclose information (as opposed to an affirmative misstatement), the plaintiff must demonstrate (1) a fiduciary, confidential, or similar relationship creating a duty to disclose; (2) actual concealment of a material fact, that is, one that defendant [knew might] justifiably induce the plaintiff to act or refrain from acting, with an intent to

ownership issue until after the certificate of title is rebutted, which must done by clear and convincing evidence. *See id*.

Here, Salvador Tellames offers testimony that *Meskebesang* was intended to be set aside as an anchor lot for the entire Luis Tellames family because the property was always very important to the family members as a place in Idid, Koror, to which the family could identify. Thus, by implication, he asserts that Gillian Tellames' individual claim to the property was in derogation of familial wishes and should be somehow discredited. His argument also presumes that, had he received notice of Gillian Tellames claim to *Meskebesang*, he and his family would have appeared at the hearing, claimed it on behalf of the family, and won the day. But he failed to offer any meaningful evidence—much less clear and convincing evidence—that this alleged failure to receive notice of Gillian Tellames' individual claim was a result of a statutory or constitutional notice failure or because Gillian Tellames defrauded them in some way. All he asserted at trial was that Gillian Tellames claimed the property without the family's knowledge and consent, asserting that this was wrongful without even attempting to explain why, or even if, Gillian Tellames was in fact required by law to tell them at all or obtain their consent. He simply asks the Court to assume that his lack of knowledge about the claim is tantamount to some notice failure or some intent to fraud, an assumption that is contrary direct appellate precedent. *See Becheserrak v. Eritem Lineage*, 14 ROP 80, 83 (2007). The Court declines to assume something so fundamental, and the Court, in fact, rejects his claims of ignorance of the claims process altogether because the Court finds them to be inherently self-serving, unsupported by corroborating evidence, and highly suspect given how important this plot of land allegedly was to the family.

Accordingly, the Court finds that, because Gillian Tellames was awarded *Meskebesang* as a result of Land Claims Hearing No. 12-29-95, after which a Certificate of Title issued in his name on January 5, 1998, and because the parties have failed to collaterally attack this determination of ownership, *Meskebesang* belonged to Gillian Tellames in fee simple at the time of his death.[5]

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mislead another; and (3) justifiable reliance by the plaintiff to his or her detriment." *Estate of Remed v. Ucheliou Clan*, 17 ROP 255, 260 (2010).

[5] Later, in 2003, Gillian Tellames split the parcel and granted a portion of *Meskebesang* to his daughters. The remaining portion of *Meskebesang* consists of only 1,205 square meters of property and it is on this remaining portion of the property that Gillian Tellames, Jr., now lives with his brothers and where, as a result of the above stipulation, he shall be entitled to live for the next five years.

B. Katarina Katosang has the right to inherit, own and exercise authority over Meskebesang pursuant to Palauan custom

At the time of decedent Gillian Tellames' death, *Meskebesang* was held by him in fee simple. At that time, it was no longer family property, as Salvador Tellames continues to argue. It was no longer the property of Luis Tellames, and it was not a set-aside anchor property for the entire family. Rather, *Meskebesang* was the individual property of Gillian Tellames at the time of his death. Thus, the question that must be answered is how, pursuant to customary principles, fee simple property like this is distributed upon the death of an individual.

As outlined above and in this Court's Order denying the cross motions for summary judgment, because Gillian Tellames died with children and because he was not a bona fide purchaser for value (he acquired the land through the claims process), the Court is bound to award the property based on custom. *See Ngirmang,* 14 ROP at 33; *see also Omelau*, 19 ROP at 199; *Marsil*, 15 ROP at 36 (holding that, absent an applicable descent and distribution statute, customary law applies). And, in cases filed before January 3, 2013, like this one, custom must be established by clear and convincing evidence through expert testimony at a hearing. *Beouch*, 20 ROP at 51, n.10.

The Court made this standard very clear to both parties prior to trial. Nonetheless, at trial and in his written closing argument, Salvador Tellames has apparently chosen to disregard this instruction and has expended extensive time crafting his arguments based on the premise that the land is still family land and, thus, that custom requires the consent of Salvador and Athenacio to dispose the land. *See Armaluuk v. Orrukem*, 4 T.T.R. 474 (1969); *Ngirchongerung v. Ngirturong* 1 T.T.R. 71 (1953).[6] He has also argued, at least in the alternative, that 25 PNC § 301(b) should control—i.e., that the Court should award the property in accordance with the wishes of the decedent's immediate maternal or paternal lineage who cared for him at the time of his death, despite the fact the Court explicitly informed the parties that this statute was inapplicable over a year ago. Accordingly, the Court will not spend additional time here outlining the irrelevant arguments and irrelevant expert testimony Salvador Tellames adduced at trial regarding the customary disposition of family land.[7] Again, the land

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[6] To be clear, Salvador Tellames was free to offer proof sufficient to collaterally attack the determination of ownership, and then, after doing so, attempt to prove that the land should still be family land. He did not do so, perhaps because it presents an extremely high bar, and rather has attempted to argue the issues in reverse order. The Court declines to entertain this approach as it is in derogation of the controlling law.

[7] For example, Salvador Tellames' expert customary witness, Iyechadribukel Ted Itaro, testified—as did Katrina Katosang's expert witness, Wataru Elbelau, on cross-examination—that disposing of family land requires the consent of the members of the family. While this makes perfect sense and is rather uncontroversial from a customary

was individual land owned by the decedent at the time of his death and Salvador Tellames has failed to collaterally attack the Certificate of Title evidencing that fact. Accordingly, the Court will address the expert customary testimony regarding how, pursuant to customary principals, fee simple property like this is distributed upon the death of an individual who owns it as his own property.

Shortly after Gillian Tellames died, Grace Yano and Salvador Tellames organized his funeral[8] where they, along with some other members of the family including the decedent's ex-wife, arranged to pay some of his outstanding debts and medical bills and distributed some money to his children. Importantly, they also purported to make a decision regarding *Meskebesang*, namely that it should be retained as an anchor land for the entire Louis Tellames family. In exchange for this, Grace Yano agreed to give another piece of land in Babeldaob to the decedent's children. However, Katarina Katosang, decedent's own mother and adopted oldest sister, and the oldest member of the family, was not present for this event—and the Court accepts her testimony that she was never even invited.

Wataru Elbelau, who testified as an expert customary witness on behalf of Katarina Katosang, testified unequivocally that, at an cheldecheduch, the close relatives of the decedent are the only ones who can make decisions about distribution of his property and that the decedent's sister and biological mother would *have* be part of that process. He testified that decisions without her are "not valid. You cannot have an cheldecheduch without the mother or the sister." Mr. Elbelau was then given a hypothetical scenario, identical to the facts here, in which the eldest living relative of a decedent is his sister, who is also his biological mother, and that the decedent has property that he received from his father through the claims process. He testified unequivocally that the person who must decide the fate of the property is the oldest relative, who, in this case, is the sister—referring obviously to Katarina Katosang. He went on to state that an adopted sister, who is also the biological mother of the decedent, has more far more power than the brothers and that "it's the sister who would be in charge." When asked if the sister making the decision could give the property away to the children of the decedent, Mr. Elbelau stated "that's up to her. If she says she gives it, she gives it" and agreed that it was completely up to her and no

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perspective, it is simply inapplicable here because the land in question is not family land.

[8] The testimony at trial was unclear whether this custom was, in fact, a formal cheldecheduch, but there is no question that those who organized it purported to dispose of certain properties of the decedent, consistent with the practice at an cheldecheduch.

one else to make this decision. The Court credits Wataru Elbelau's testimony as credible, neutral, and based on his expertise and experience with Palauan customs.[9]

Even on cross-examination, when presented with a slightly different scenario, Mr. Elbelau testimony was consistent, despite Salvador Tellames' attempts to discredit it. That is, he testified that it is true that the strong female relatives of person who died without a will can settle the issue of the properties of the deceased, and that such settlement is legally recognized and binding under custom. Salvador Tellames argues that Grace Yano's actions at the funeral suffice to satisfy this custom, despite the fact that Katarina Katosang—the oldest living female family member, and the mother and sister of the decedent—was not there. The Court discredits this suggestion and finds that Mr. Elbelau's testimony is quite clear: Katarina Katosang's absence from the event, because she is the authorized decision maker under Palauan custom, renders void the dispositions at that event.[10]

Ted Itaro, Salvador Tellames' customary expert, spent much of his time discussing the customary disposition of family land—which, as this Court has already addressed, is simply irrelevant here. He testified that, because the land was family land, the property should be given to the siblings of the decedent, with Katarina Katosang named as administrator. But he failed to substantially discuss the disposition of land held in fee simple by a decedent. Accordingly, Salvador Tellames' failure to adduce any relevant expert testimony on this fact speaks loudly indeed. The Court views this as evasive and as a tacit acknowledgment that he could not provide customary testimony to contradict Mr. Elbelau on the issue that is before the Court—and so, rather than challenge Elbelau's testimony, he attempted to change the issue. The Court finds that

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[9] On cross-examination, when presented with a scenario regarding the disposition of family land with a slightly different familial relationship, as opposed to individual property and a scenario in which the oldest living relative is the sister and mother of the decedent, Mr. Elbelau testified that the other family members must be involved in the decision. However, on re-direct, Mr. Elbelau distinguished the two scenarios and unequivocally stated that "the truth is the women are higher" and agreed that, where the adopted brothers are the biological children of the sister, the woman would still have the authority to make the decisions about the property by herself.

[10] As noted above, Salvador Tellames also argued quite incorrectly—despite this Court's admonitions regarding the controlling law—that, even if we assume that the decedent owned the property in fee simple at the time the of his death, title would pass to the close relatives of Gillian who were primary responsible to him prior to and at the time of his death to dispose since he died without a will in accordance 25 PNC § 301(b). The Court does not doubt that Grace Yano and Salvador Tellames—as well as many others—did help care for the decedent prior to his death, but this standard is inapplicable under the controlling law and the Court will not expend more time discussing this argument.

Mr. Itaro provided expert testimony predominantly on the narrow, and irrelevant, issue of the distribution of family property, opining that custom requires family property go to the remaining siblings and that the eldest female of the siblings does not have unfettered power to dispose of the property. As counsel for Katarina Katosang points out, unfortunately for Salvador Tellames, this expert opinion comes nearly twenty years too late, as *Meskebesang* became the sole property of Gillian Tellames pursuant to Land Claims Hearing No. 12-29-95.

CONCLUSION

The Court finds that Katarina Katosang has established by clear and convincing evidence that, pursuant to custom, as the biological mother and eldest adopted sister of the decedent, she should be granted sole authority over *Meskebesang*, which was previously held by decedent Gillian Tellames in fee simple. The Court credits the testimony of Mr. Elbelau, and finds the testimony of Mr. Itaro to be largely irrelevant. The custom established at trial warrants the grant of this property to Katarina Katosang. Accordingly, it is hereby adjudged that Katarina Katosang shall be the new owner in fee simple of this property and may dispose of and distribute the property in her sole discretion, subject to the terms of the March 12, 2015 stipulation entered into by all parties.