NGIRTURONG YAMAZAKI RENGIIL
v.
WILSON ONGOS ET AL.

Civil Appeal No. 14-024
Appeal from Civil Action No. 13-128

Supreme Court, Appellate Division
Republic of Palau

Decided: April 2, 2015

Counsel for Rengiil ..... J. Roman Bedor
Counsel for Ongos et al. ..... J. Uduch Sengebau Senior

BEFORE: KATHLEEN M. SALII, Associate Justice
R. ASHBY PATE, Associate Justice
KATHERINE A. MARAMAN, Part-Time Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne presiding.

[1] **Courts**: Jurisdiction
Justiciability: Political Questions

The political question doctrine does not provide blanket immunity to suit if a political branch is acting contrary to law. Determining whether a question is nonjusticiably political requires analysis of the precise facts and posture of the particular case, and precludes resolution by any semantic cataloguing.

[2] **Custom**: Appellate Review

The Appellate Division cannot review the grant of summary judgment on a traditional issue without findings as to the traditional law governing how a dispute over the question is traditionally resolved.

[3] **Civil Procedure**: Summary Judgment
Custom: Burden of Proof

A party cannot be entitled to judgment as a matter of law if a crucial piece of law—the traditional methods of appointing a chief title bearer and resolving a dispute over such title—is missing.

[4] **Justiciability**: Custom
Custom: Justiciability

For Sole Judgment authority regarding a traditional leader to be valid under the Palau Constitution, it must actually be exercised, because indefinite silence when a genuine

dispute exists serves to "revoke the role or function of a traditional leader" and "prevent a traditional leader from being recognized, honored, or given formal or functional roles at any level of government."

Opinion

Per Curiam:

Appellant Yamazaki Rengiil, claiming the chief title Ngirturong, appeals the Trial Division's June 26, 2014 Order Granting Summary Judgment for the Defendants, whom he alleges are wrongfully denying him the recognition, honorarium, and authority due to Chief Ngirturong. For the reasons set forth below, the judgment of the Trial Division is reversed and the case is remanded for further proceedings consistent with this opinion.[1]

BACKGROUND

Plaintiff-Appellant Yamazaki Rengiil claims the chief title Ngirturong, the highest ranking chief title of Ngeremlengui State. He alleges that he has held it since 2008, but that the State, contrary to law and custom, has denied him the recognition and compensation that is provided to that chief title holder. He contends that he was appointed by the strong senior female (ourrot) members of Ngerturong Clan and accepted by the Ngaraimeong Council of Chiefs. This, he asserts, fulfills the traditional requirements to be recognized as Chief Ngirturong. Documents supporting these claims were admitted in support of his motion for summary judgment in the Trial Division.

Defendants-Appellees have not contested the factual elements of Appellant's claim—that he was appointed by the ourrot members and accepted by the Ngaraimeong Council—but instead, oppose Appellant's request for a declaration and adjudication of who bears the chief title Ngirturong on the basis that (a) the Sole Judge Clause of the Ngeremlengui Constitution reserves the authority to make that decision to the Rubekul Ngeremlengui, the council of chiefs given official government office under the Ngeremlengui State Constitution[2] and (b) in any event, the chief title Ngirturong is also claimed by Hideo Rdialul and Hokkons Baules, both of whom were purportedly also appointed by individuals claiming to be ourrot members of Ngerturong clan, so

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[1] The parties have not requested oral argument. We agree that argument is unnecessary and, pursuant to ROP R. App. P. 34(a), the case is decided on the briefing and the record.

[2] Based this Court's review of the underlying record, it appears that the individually named Defendants in this action—John Does notwithstanding—are all members of the Rubekul Ngeremlengui

the Disputed Title clause of the Ngeremlengui Constitution[3] mandates that the seat remain vacant until the dispute is resolved. Appellant, however, argues that this application of the Sole Judge Clause is contrary to his rights under the Constitution of the Republic, which guarantees that the Government will take no actions to impair the function, role, or recognition of a traditional leader.

The Trial Division indeed concluded that the Sole Judge Clause of the Ngeremlengui Constitution constituted a "textually demonstrable constitutional commitment" of decision-making authority to the Rubekul Ngeremlengui, so it granted Appellees' motion for summary judgment because it determined that the dispute raised a nonjusticiable political issue. It held further that, even were the Sole Judge Clause unconstitutional, Appellant could not prevail on his claims because there were two additional claimants to the chief title Ngirturong and "Article VIII, Section 2 provides that the seat of a chief title within the Rubekul Ngeremlengui remains vacant in case a dispute exists." As such, acting in accordance with the general rule that constitutional questions are to be avoided when they are not necessary to the resolution of the case, it did not rule on the constitutionality of the Sole Judge Clause.

Appellant timely appeals.

STANDARD OF REVIEW

We review a lower court's grant of summary judgment de novo. *Ngotel v. Duty Free Shoppers Palau, Ltd*, 20 ROP 9, 13 (2012). In considering whether summary judgment is appropriate, all evidence and inferences are viewed in the light most favorable to the non-moving party, and summary judgment is inappropriate if genuine issues of material fact exist. *Id.* We may affirm or reverse a decision of the Trial Division for any reason apparent in the record. *Inglai Clan v. Emesiochel*, 3 ROP Intrm. 219, 222 (1992).

DISCUSSION

Appellant's only clearly articulated legal argument on appeal is that the Sole Judge Clause of the Ngeremlengui Constitution, contained within Article VIII, section 2,

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[3] We note at this point that Article VIII, section 2 of the Ngeremlengui State Constitution contains two clauses with discrete, if related, legal effects. The parties at times appear to treat them interchangeably, but we do not. The "Sole Judge Clause," as we use the term and as it appears the Trial Division used it, states that "the Rubekul Ngeremlengui shall be the sole judge of the qualifications of its members in accordance with traditional laws." Ngeremlengui State Const. art. VIII, § 2. The next clause, however, which we call the "Disputed Title Clause," states that "in case of a dispute for a chief seat, the seat shall remain vacant until settled in accordance with traditional or statutory laws." *Id.* The Trial Division separately invoked both of these clauses in finding for Appellees.

violates the Constitution of the Republic. His point is simple, even if the conclusion is not: because of the Supremacy Clause, Palau Const. art. II, § 2, the Ngeremlengui Sole Judge Clause is invalid if it conflicts with an element of the Constitution of the Republic, either on its face or as applied to him. Appellant contends that it does—that, as prohibited by Article V, section 1 of the Constitution of the Republic, the Sole Judge Clause serves to "prohibit or revoke the role or function of a traditional leader as recognized by custom and tradition" and "prevent[s] a traditional leader from being recognized, honored, or given formal or functional roles at any level of government." Palau Const. art. V, § 1. If Appellant indeed is a traditional leader, as recognized by custom and tradition, then the state, by its constitution or any other means, may not expressly or constructively strip him of his authority or prevent his recognition.

Appellant's argument, though undeveloped and unfinished, has led this Court to unearth a lurking tautology in the trial court's decision. That is, unless traditional law allows for some unknown and lengthy customary process to formally appoint Chief Ngirturong and resolve the dispute, which process is currently ongoing but simply not on the record below, it would appear that the Rubekul Ngermenlengui (or its members) cannot lawfully invoke both the Sole Judge Clause and the Disputed Title clause concurrently and for the same reason, because to allow such action would allow the Rubekul Ngeremlengui to assume sole authority to resolve a dispute and then to rely on its own failure or refusal to resolve it to render the dispute nonjusticiable in a court of law. If this is the case—and there is just not enough evidence in the record below to determine this—such action, or rather, inaction, would almost certainly run afoul of the Constitution of this Republic, which guarantees that the Government will take no actions to impair the function, role, or recognition of a traditional leader. We cannot determine whether this occurred or is occurring—and neither could the trial court—without inquiring into the relevant traditional law governing the process of resolving the disputed title.

To explain in greater detail, implicit in the Disputed Title Clause is an unanswered question: under traditional law, who *resolves* the dispute when a chief title is claimed by two different persons?[4] The trial court failed to inquire or develop the record to address this implied question. Rather, it simply determined that the Sole Judge Clause represents a textually demonstrable constitutional commitment to the Rubekul Ngeremlengui to adjudicate the chief title dispute and that Appellant's claim was nonjusticiable, while simultaneously holding that there was no need to resolve the question of the constitutionality of the Sole Judge Clause because the Disputed Title

[4] The Court is unaware of, and the parties have not provided, any statutory law outlining how a traditional chief title dispute shall be resolved. Given that traditional law and statutes stand as equally authoritative in Palau and that traditional law predates the statutory structure, it seems that this question must be answered under traditional law. *See* Palau Const. Art V, § 2.

Clause required the seat be held open either way. The consequence of doing so was that the Trial Division granted judgment as a matter of law in favor of Defendants without developing or invoking the controlling traditional law applicable to the resolution of the title disputes.

[1][2][3] To risk being redundant, another way of saying this is that the Trial Division's decision was simply premature. Defendants/Appellees did not contest the factual elements or the traditional legal basis of Appellant's claim, but instead argued that they were entitled to judgment as a matter of law under the State Constitution, which purports to commit the decision solely to the Rubekul Ngeremlengui,[5] and thus implicates the political question doctrine. *See Palau Civil Serv. Pension Plan v. Udui*, Civ. App. Nos. 14-008/14-018, slip-op at *8 (December 23, 2014). But the political question doctrine does not provide blanket immunity to suit if a political branch is acting contrary to law. *Id.* Determining whether a question is nonjusticiably political "requires analysis of 'the precise facts and posture of the particular case,' and precludes 'resolution by any semantic cataloguing.'" *Nixon v. United States*, 506 U.S. 224, 252, 113 S. Ct. 732, 747 (1993) (Souter, J., concurring) (quoting *Baker v. Carr*, 369 U.S. 186, 217, 82 S. Ct. 691, 710 (1962)). The basis of Appellant's underlying claim is that, (1) according to traditional law, he *is* Chief Ngirturong, and (2) that the Rubekul Ngeremlengui, which claims to be the Sole Judge of the qualifications of its members, is unlawfully refusing to seat him and pay him his honorarium. By not developing the relevant traditional law on the record to determine whether or not he is Chief Ngirturong, or at least whether the Rubekul Ngeremlengui was the proper body to decide the title dispute, the trial court committed plain error. *See* ROP R. App. P. 26(a)(6). We recognize this error as plain because it disposed of Appellant's entire claim without adjudication, a clear violation of his substantial rights, and because we simply cannot review the grant of summary judgment on a traditional issue without findings as to the traditional law governing how a dispute over this traditional chief title is resolved. More simply, a party cannot be entitled to judgment as a matter of law if a crucial piece of law—the traditional methods of appointing a chief title bearer Ngirturong and resolving a dispute over such title—is missing. *See Beouch v. Sasao*, 20 ROP 41, 47 (2013) (holding that traditional law is a source of law itself, and not a question of fact).

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[5] Despite this argument, Appellees, in their Responsive Brief, assert that the title dispute can be resolved if "the clan agrees to one person bearing the title of chief Ngirturong," suggesting that the matter is subject to traditional resolution and entirely contradicting their argument that the Rubekul Ngeremlengui, alone and exclusively, may answer this question. Indeed, Appellees' answer to the Complaint in the Trial Division pleads both Sole Judgment authority *and* that "Defendants Beches, Uchelrutechei, Ngiradilubch, and Adelbeluu are members of Rubekul Ngeremlengui *and they are without authority to decide who bears the title of Chief Ngirturong of Ngerturong Clan.*" Answer at 4 (emphasis added).

It is important to note here that we recognize that the Trial Division did not actually grant judgment on the merits; it held that, under the Sole Judge Clause, this case was nonjusticiable.[6] But the nuances of traditional title disputes include exactly the type of precise issues that preclude categorical resolution of this case as nonjusticiable. *See Nixon*, 506 U.S. at 252, 113 S. Ct. at 747 (Souter, J., concurring). As with summary judgment, the record before the Court is insufficient to answer this question, because the constitutionality of the Sole Judge Clause, and thus its availability as an affirmative defense, depends on whether it comports with the traditional law. To the extent that the Clause might echo tradition, it would not revoke the role or function of a traditional leader, but if it is in conflict with the traditional law (on its face or as applied to Appellant) it is without legal effect. *See* Palau Const. art. V, § 1; *Obeketang v. Sato*, 13 ROP 192, 198–99 (2006) (recognizing that if a sole judge clause were applied in an unconstitutional fashion, this Court might intervene). Appellees would have us simply assume that the State Constitution is in accordance with traditional law, something we cannot and will not do, particularly in review of a grant of summary judgment where "all evidence and inferences are viewed in the light most favorable to the non-moving party." *See Ngotel*, 20 ROP at 13. Absent findings of traditional law and a factual basis for evaluating whether that traditional law is being followed (which may well preclude judicial resolution), a holding of nonjusticiability was premature.

[4] Finally, as we labeled a tautology above, the availability of the Disputed Title Clause does not save Appellees' argument for nonjusticiability when invoked concurrently with the Sole Judge Clause. Appellees would have us accept that they alone may judge this title dispute and that, so long as they have not so decided, the seat in the Rubekul Ngeremlengui must remain vacant. Such an argument is inherently circular, however, and fails to appreciate the purpose of the Disputed Title Clause. The Disputed Title Clause simply allows that, while the Rubekul Ngeremlengui (or some other body perhaps) is in the process of exercising Sole Judgment authority, the seat remains vacant—that is, while a decision is pending, no title claimant will hold the seat. But this presumes that someone will actually judge the dispute, something that, based on the record before the Court, does not appear to have happened despite Appellant's claim that he has held this title since 2008. For Sole Judgment authority to be valid under the Palau Constitution, the Rubekul Ngeremlengui (again, or at least some party under the controlling traditional law) must *actually* judge, because their continued silence on this issue when a genuine dispute exists serves to "revoke the role or function of a traditional leader" and "prevent a traditional leader from being

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[6] Nonjusticiability is not a basis for summary judgment under Rule 56—it is a basis for dismissal. Summary judgment is a decision on the merits, awarded as a matter of law when the facts are not in dispute. Cases disposed of as nonjusticiable, however, are dismissed (usually on a party's Rule 12 motion) precisely because they cannot or should not be decided. Such dismissal disposes of the case, but does not resolve the underlying claims.

recognized, honored, or given formal or functional roles at any level of government." Palau Const. art. V, § 1. The Palauan Constitution does not allow Appellees to rely on the Sole Judge and Disputed Title Clauses concurrently—and indefinitely—without exercising their professed sole judgment authority.

Because the record lacks the traditional law required to evaluate whether Appellant's claim presents a justiciable question, the judgment of the Trial Division is reversed. On remand, the Trial Division must determine, under traditional law, (1) the requirements to appoint a new Chief Ngirturong; and (2) who or what body, if any, is responsible for resolving a dispute over chief title Ngirturong. Having established the necessary legal framework, and with the understanding that the Sole Judge Clause is only valid to the extent that it comports with traditional law, the Trial Division must then resolve any justiciable claims presented (including, potentially Appellant's constitutional arguments and Appellees' state constitutional defenses). The traditional legal framework must be established before a decision resolving Appellant's claims—including, potentially, whether Appellant Rengiil is, or has ever been, Chief Ngirturong—may be reached. The record before the Court at this time is simply insufficient to make such determinations.

On remand, the parties are to heed our instructions from *Beouch v. Sasao*, 20 ROP 41, 48 (2013). If precedent exists having recognized the relevant traditions or customs, such as for appointing or recognizing a new Chief Ngirturong, the parties may raise it and the court shall treat it as it would any other legal precedent.[7] *See id*. If, however, there is no precedent recognizing the relevant traditional law (or a party argues that the custom has changed), a court must engage in fact finding and apply the four-factor test articulated in *Beouch*: whether "(1) the custom is engaged voluntarily; (2) the custom is practiced uniformly; (3) the custom is followed as law; and (4) the custom has been practiced for a sufficient period of time to be deemed binding." *Id.* Were we able to determine the controlling traditional law today, we would not hesitate to do so. However, no *Beouch* traditional legal argument has been presented here or below, insufficient evidence appears in the record on which to evaluate the *Beouch* factors, and neither party has cited any significant authority—constitutional, statutory, judicial, or traditional—for the arguments they espouse.[8] They must do so on remand.

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[7] There is precedent recognizing the common custom of a chief title being filled by appointment by the lineage or clan and acceptance by the Council of Chiefs. *See, e.g.*, *Beouch*, 20 ROP at 54; *Ngardmau Trad. Chiefs v. Ngardmau State Gov't*, 6 ROP Intrm. 192, 193, n.5 (1997). The specific details, however, differ between clans and lineages, so the parties should address these details on remand. *See Beouch*, 20 ROP at 53–54 (noting one such difference, the requirement in Ngatpang that a blengur must be held before a chief title is conferred).

[8] Indeed, were the threshold question in this case and its constitutional significance not clearly apparent from the decision of the Trial Division and from the scant briefing,

CONCLUSION

For the aforementioned reasons, the decision of the Trial Division is **VACATED**. The case is **REMANDED** for further proceedings consistent with this opinion.

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this appeal may very well have been dismissed without a substantive decision. As we explained in *Soaladaob v. Remeliik*, 17 ROP 283, 292 (2010), we note with some disappointment, to the very same counsel appearing in this case:

> This Court has previously refused to address arguments lacking sufficient support. *See Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 50 (2006). In *Ngermeriil*, we stated emphatically that the "premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions argued by the parties before them. Thus, [appellate rules] require[] that the appellant's brief contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on. *Id.* at 50 n.10 (quoting *Carducci v. Regan*, 714 F.2d 171, 177 (D.C. Cir. 1983) (quotations omitted)). "It is not the Court's duty to interpret this sort of broad sweeping argument, to conduct legal research for the parties, or to scour the record for any facts to which this argument might apply." *Idid Clan v. Demei*, 17 ROP 221, 229 n.4 (2010).