Ngiraloi v. Faustino, 6 ROP Intrm. 259 (1997)

EBAS NGIRALOI, Representing NGERMERIIL LINEAGE, and EBAS NGIRALOI,
Appellants,

v.

ALFONSO FAUSTINO, KLIU SAKUMA, WILLIAM TABELUAL, KEDEI OIPH, MASAMI ASANUMA, AUGUSTINE MIKEL and CHRISTINA SALII,
Appellees.

CIVIL APPEAL NO. 20-95
Civil Action Nos. 414-91 & 415-91

Supreme Court, Appellate Division
Republic of Palau

⊥260
Opinion
Decided: November 19, 1997

Counsel for Appellants: Mariano W. Carlos

Counsel for Appellee Faustino: Johnson Toribiong

Counsel for Appellee Sakauma: Moses Uludong

Counsel for Appellees Oiph, Asanuma, Mikel and Salii: Carlos H. Salii

Pro se: William Tabelual

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

MICHELSEN, Justice:

The Ngermeriil Lineage, with Mikel Ngermeriil as trustee, was listed as the owner of Lots 1064 and 1065 in the Tochi Daicho. In the late 1950's and early 1960's, Mikel sold separate portions of the two lots to five of the Appellees pursuant to oral agreements. [1] Also, two of the Appellees purported to purchase portions of Lot 1064 from Mikel's children after his death in 1974. The Appellees filed applications for determinations of ownership in the Land Claims Hearing Office based on these transactions. The Appellants opposed the claims. Both the Land Claims Hearing Office and the Trial Division ruled in favor of the Appellees.[2] We affirm.

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[1] There was no Statute of Frauds that required land transactions to be in writing until 1977. *Andreas v. Masami*, 5 ROP Intrm. 205, 206 (1996).

[2] Almost all of the two lots were awarded to the seven Appellees. A small portion of Lot

Appellants challenged the sales by Mikel and later, his children, on the basis that they are ochell members, and hence strong members, [3] of the Ngermeriil Lineage, who did not consent to the transactions. According to Palauan land tenure law, lineage land may not be sold without the consent of the senior strong members of the lineage. *Ngiradilubch v. Nabeyama* , 3 ROP Intrm. 101, 105 (1992).

⊥261 The trial court granted the Appellants' request for a trial de novo, and after a full trial, issued a judgment consistent with the determinations of the LCHO. Specifically, the trial court found that the Appellants were not ochell members of the Ngermeriil Lineage, and therefore their consent was not required to pass title to the land.[4]

There is no dispute that the Appellants are related to Mikel Ngermeriil by blood. However, the Appellees argued at trial that Mikel's mother Kukong was adopted into the Ngermeriil Lineage through a process called oldars a keyai. According to undisputed expert testimony, a person so adopted and her children become members of the lineage; however, that person's other blood relatives do not. The trial court held that the Appellants, while related to Mikel Ngermeriil by blood, were not members of the Ngermeriil Lineage.

The trial court relied primarily on three pieces of evidence to support its finding that Appellants were not members of the Lineage. First, no one represented by the Appellants has held a title in the Ngermeriil Lineage. Instead, non-members have held important titles. The trial court found this evidence to be consistent with the Appellees' argument that Kukong was adopted into the Ngermeriil Lineage because it was nguemed a chad or out of people.

Second, the trial court found that the Appellants did not object when Mikel Ngermeriil's daughters, who were ulechell members of the lineage, assumed the title Ucheliou. Also, there was testimony that appellants' family only recently came to know about their alleged membership in the Ngermeriil Lineage. This raises legitimate questions as to the Appellant's claim regarding their long-standing membership in the Lineage.

Finally, the Appellants had taken positions in prior lawsuits which were inconsistent with the claims in this case. Specifically, in *Uchelious Clan v. Philip Ucherremasech* , Civil Action 56-84, Appellant Ebas had attempted to obtain the title Ngermeriil by claiming that the title automatically went to the titleholder of the Uchelious Clan. Since he claimed to be the ⊥262 titleholder of the Uchelious Clan, he claimed the title Ngermeriil. The trial court noted that the obvious and much more direct argument would have been for Appellant Ebas to have claimed the title Ngermeriil because he is an ochell member of the Ngermeriil Lineage, as he claims in this

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1064 was determined to be owned by the Ngermeriil Lineage with Augustine Mikel as trustee.

[3] Ochell descendants are the strongest members of a clan. *Tet Ra Ollei Uehara et. al. v. Obeketang, et. al.* 1 ROP Intrm. 267, 269 (Tr. Div. 1985). An ochell member is the "natural child of a female member of a clan." *Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225, 226 (1996).

[4] The trial court also found that five of the Appellees obtained possession of specific portions of the land by adverse possession. Since we affirm the trial court's finding regarding the Appellants' membership in the lineage, we do not need to reach the issue of adverse possession.

case. The trial court found that the fact that Appellant Ebas did not make such an argument in 1984 casts doubt on the Appellants' claims in this case.[5]

We have considered the contrary arguments made by the Appellants below, and argued again here. However, the standard of review is whether the trial court's findings of fact were clearly erroneous. *See* ROP R. Civ. P. 52(a). This Court may only reverse the trial court's decision if it is left "with a definite and firm conviction that a mistake has been committed." *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994). In this case, the arguments of the Appellants do not leave us with this conviction.

CONCLUSION

For the reasons set forth above, it is the opinion of the Appellate Court that the trial court's holding be and hereby is AFFIRMED.

[5] The Appellants allege that the trial court improperly reviewed these prior cases. Since the Appellants requested that the trial court take judicial notice of the 1984 case, this argument is without merit.