Sato v. Ngerchelong State Assembly, 7 ROP Intrm. 79 (1998)

SINGICHI SATO and SKESUK SKANG,
Appellants,

v.

NGERCHELONG STATE ASSEMBLY, represented by Speaker TADAO NGOTEL and TAKAO OBEKETANG,
Appellees.

CIVIL APPEAL NO. 37-95
Civil Action Nos. 123-94 and 436-93

Supreme Court, Appellate Division
Republic of Palau

Argued: April 3, 1998
Decided: June 15, 1998

Counsel for Appellants: Yukiwo P. Dengokl, Esq.

Counsel for Appellees: J. Roman Bedor, T.C.

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

BEATTIE, Justice:

The Trial Division entered a partial summary judgment holding that Singichi Sato does not bear the title of Tet, the highest male chiefly title of Techiwood Clan of Ollei Hamlet, Ngerchelong State.[1] After the Trial ⊥80 Division certified its order under Rule 54(b), this appeal was filed. We affirm.

I. BACKGROUND

The title of Tet has been vacant since the last Tet died in 1979. In 1985, a case was tried before Chief Justice Nakamura involving three men who each claimed to be the new Tet. *See Tet Ra Ollei Uehara v. Obeketang* , 1 ROP Intrm. 267 (Tr. Div. 1985). After a three month trial, Justice Nakamura held that none of these men had been appointed in accordance with Palauan custom and found that the Tet position remained unoccupied. *Id.* at 270. Justice Nakamura explained that, to obtain the title, a nominee for the title Tet must be approved by all three lineages of Techiwood Clan and that such uniform approval had not been given to any of the

[1] This appeal consolidates two related civil actions, *Sato v. Ngerchelong State Assembly et al.*, Civ. Act. No. 123-94 and *In re Appointment of the Representative of Ollei Hamlet*, Civ. Act. No.436-93. Because the parties focus exclusively on *Sato*, there is no need to address the other case.

claimants. Although two of the claimants appealed, their appeals were dismissed because they were untimely filed. *Sebaklim v. Uehara*, 1 ROP Intrm. 649 (1989).

In 1994, appellants filed this case seeking a declaratory judgment requiring appellee Ngerchelong State Assembly to pay appellant Sato an honorarium or allowance because he was Tet. Appellants contended that, although only one lineage had approved Sato's appointment, the approval of that lineage was all that was required. The Trial Division concluded that Sato was collaterally estopped from challenging the findings reached in *Uehara*[2], 1 ROP Intrm. 267, and that therefore he was not properly appointed as Tet because his appointment was not approved by all three lineages of the Techiwood Clan.

II. DISCUSSION

Appellants' primary contention is that the Trial Division erred by applying collateral estoppel to this case. First, they contend that the issues in *Uehara* and the instant case are different. We disagree. In order to render its judgment, the *Uehara* court had to resolve the issue of what is required under custom for a person to be installed as the bearer of the title of Tet. The *Uehara* court found that, under Palauan custom, a candidate for the title becomes the title bearer only if all three lineages of Techiwood Clan agree that he will bear the title. Here, appellants contend that only the Olleb Lineage needs to approve the selection. The issue is identical in both cases-do all three lineages have to agree on the selection? The issue was resolved adversely to appellants' contention in *Uehara*.

> It is a fundamental principle of jurisprudence that material facts or questions which were directly in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions . . . may not again be litigated in a subsequent action between the same parties or their privies . . . .

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46 Am. Jur. 2d *Judgments* § 539 at 807-808.

Appellants contend, however, that the doctrine of collateral estoppel is inapplicable to cases in which its application would "defeat the ends of justice." Appellants believe that this is such a case. Some circumstances have been held to justify a refusal to apply collateral estoppel. *See Restatement of Judgments* 2nd, § 28. However, appellants do not argue that any of those circumstances apply here. Essentially, appellants are telling us that they will lose if they are bound by *Uehara*, that such a result will be a substantial injustice and that therefore we should not apply it.

But appellants are in no different position than other litigants to which the principles of

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[2] Although Sato was not a party in *Uehara*, the Trial Division found that he was in privity with his brother Inao Sebaklim, who had been a party in that case. The court determined that Sato was in privity with his brother because they both represented the position of Olleb lineage in this dispute and that position had not changed since the first lawsuit. Appellants do not challenge the court's privity determination.

issue preclusion apply. Appellants or their privies brought these same claims thirteen years ago and lost. They appealed, but their appeals were dismissed. Appellants do not contend that they or their privies were not given a full and fair opportunity to present their claims in *Uehara*. In short, there is nothing unfair about applying the doctrine of collateral estoppel in this case.

This means that the dispute about the rightful holder of the Tet title will continue. But that does not mean we should refuse to apply well settled principles of issue preclusion. The selection of a title bearer is the Clan's responsibility, not the Court's. Although we have the authority to step in to resolve disputes concerning customary matters, this Court opts for the exercise of the least supervision necessary and the provision of the greatest freedom of customary action as possible. *See Blesam v. Tamakong* , 1 ROP Intrm. 578, 581-82 (1989). The Clan is the most appropriate entity to make this decision; court supervision should play a very limited role.

Accordingly, the decision of the Trial Division is AFFIRMED