

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

**INABO SECHARMIDAL, RENGIL MEDALARRAK,
IMENGEL SECHARMIDAL, NGIRNGESIS MAD, and
JUNIOR LUKAS,**
Appellants,
v.
**RENGUUL RA MOCHOUANG WILLIAM NGIRAIKELAU,
ROSE MESUBED, and DILNGLODECH ROSANIA
NGIRAIKELAU,**
Appellees.

Cite as: 2019 Palau 35
Civil Appeal No. 18-053
Appeal from Civil Case No. 17-306

Decided: October 23, 2019

Counsel for Appellants Johnson Toribiong
Counsel for Appellees Siegfried Nakamura

BEFORE: JOHN K. RECHUCHER, Associate Justice
DANIEL R. FOLEY, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Associate Justice, presiding.

OPINION¹

PER CURIAM:

[¶ 1] This appeal is the continuation of a long-running dispute over use of a parcel of land known as “Brekong.” Appellees sought a judgment ordering appellants to vacate the land. After a trial, the court ruled in Appellees’ favor. For the reasons set forth below, we **AFFIRM**.

¹ Although the parties request oral argument, we determine that argument is not necessary to resolving this appeal and decide the matter on the briefs pursuant to ROP R. App. P. 34(a).

BACKGROUND

[¶ 2] Brekong is approximately 10,210 square meters and is located in Ngermetengel Hamlet, Ngeremlengui State.² There is no dispute that the land is owned by Mochouang Clan, clan ownership having been determined in an earlier proceeding. In 2016, William Ngiraikelau (“William”) sent letters to Inabo Secharmidal (“Inabo”), Rengiil Medalarrak, Imengel Secharmidal (“Imengel”), Ngirngesis Mad, and Junior Lukas, who all live on Brekong,³ asserting that they needed his permission to continue to occupy the land and asking them to contact him or to vacate. They responded with letters asserting that they had prior permission from people in charge of the land.

[¶ 3] In September 2017, William, Rose Mesubed, and Rosania Ngiraikelau (“Rosania”) filed suit to eject Inabo, Medalarrak, Imengel, Mad, and Lukas from Brekong. Plaintiffs alleged that they are all senior strong members of Mochouang Clan, with William being the strongest senior male member and bearing the male chief title of “Renguul ra Mochouang,” and Rosania bearing the female title of “Dilnglodech.” Plaintiffs further alleged that Defendants are not members of Mochouang Clan and had been living on Brekong without permission to do so. Plaintiffs sought, inter alia, injunctive relief and an ejectment order compelling Defendants to vacate Brekong, as well as an award of trespass damages. In their Answer, Defendants asserted, inter alia, that they are in fact recognized and contributing members of Mochouang Clan; that their use of Brekong was authorized by a previous senior strong member of Mochouang Clan decades ago; that such use rights last “for as long as Defendants and their families need to maintain their traditional residences on such land”; that William does not bear the title of Renguul ra Mochouang and therefore “lacks standing to bring this action”; and that “Plaintiffs at best are *ulechell* [clan] members [who] lack[] authority to undo the previous decisions of the prior strong and senior member.”

² The parcel is identified as Cadastral Lot No. 002 K 18 (TD Lot No. 505), and is shown on the Bureau of Lands and Surveys Cadastral Plat No. 002 K 00, dated April 5, 1993.

³ Imengel Secharmidal and Rengiil Medalarrak, who are married, and Ngirngesis Mad live in separate houses on Brekong. Inabo Secharmidal and Junior Lukas, with their respective families, share residence in an old school building on the property. They have all lived on Brekong, or had close relatives who lived there, for decades.

[¶ 4] After mediation was unsuccessful, Plaintiffs moved for summary judgment on all issues except for the measure of damages and costs. In support of their motion, Plaintiffs requested that the court take judicial notice of the proceedings in a prior civil action, *Asako K. Sasao, Ngirngesis Mad, and Wataru Elbelau v. Ngiraikelau Beouch* (Civil Action No. 04-143) (hereinafter, “*Sasao v. Beouch*”), a dispute over Brekong involving Mad and Plaintiffs’ relation, Ngiraikelau Beouch. In 2015, after multiple trial court decisions and remands, the trial court and this Court determined in that proceeding that Ngiraikelau Beouch was an *ochell*, senior strong Mochouang Clan member; that he held the title of Renguul ra Mochouang; and that he had authority over the use of Brekong. The courts further determined that Mad is an *ulechell* clan member and did not have Ngiraikelau Beouch’s consent to use Brekong. *See Beouch v. Sasao*, 20 ROP 41, 54 (2013); Findings of Fact and Decision (On Remand) at 2-3 (Tr. Div. Apr. 14, 2015). In their Motion for Summary Judgment, Plaintiffs alleged that William now holds the title of Renguul ra Mochouang, having been appointed chief in 2016 by the clan’s senior strong female members, Rosania and Mesubed, after the passing of Ngiraikelau Beouch in 2015. Plaintiffs further alleged that “[n]one of the Defendants are members and/or strong senior members of” the clan. Plaintiffs therefore contended that they were entitled to summary judgment because they are senior strong members with authority over Brekong and have not given Defendants permission to use the land.

[¶ 5] In their Response to Plaintiffs’ Motion for Summary Judgment, Defendants specifically alleged, via affidavits, that they were granted customary use rights to Brekong by a prior clan representative, Techechur Kuad, who was their maternal relation (except for Medalarrak) and who passed away in 1996. Defendants further alleged that they are clan members. They attached to their Response a 1993 Certificate of Title for Brekong listing Mochouang Clan as the owner with Kuad as trustee, as well as a letter in which Ngiraikelau Beouch recognized Kuad’s status as trustee. Of greatest relevance to this appeal, Defendants contended that summary judgment should be denied because the customary use rights they allegedly had been granted by Kuad cannot be set aside “without cause.” They also argued that Plaintiffs’ suit was barred by the statute of limitations and the equitable doctrine of laches; that the suit was barred by the doctrine of waiver and

estoppel; and that the suit could not proceed because the children of a deceased female senior strong clan member had not joined it. Finally, Defendants contended that the title of Renguul ra Mochouang is claimed by a Noel Ngiratmab, “cast[ing] a cloud over” William’s authority to evict them.⁴ In their Reply, Plaintiffs contended, inter alia, that any customary use right granted by Kuad was invalid because he never bore the Renguul ra Mochouang title and the other senior strong clan members did not approve of the grant of any such use right. Plaintiffs also noted that there was no evidence, other than Defendants’ affidavits, that Defendants had been granted any use right by Kuad, nor was there any documentation of any grant, as required by the Statute of Frauds: “Defendants have not shown that the purported conveyance of use right by [Kuad] either orally occurred before [the statute’s date of enactment], or was documented after said date.”

[¶ 6] The trial court orally denied Plaintiffs’ summary judgment motion based on the existence of material factual disputes, and the case proceeded to trial. At the outset, discussing the trial’s scope, counsel for Defendants stated, “most of the facts are undisputed[;] however there is an issue of the right of clan members to remain on the property based upon the prior arrangements with those responsible for the clan.” Plaintiffs called each Defendant to testify. Through sometimes confusing testimony, a few major points emerged. Defendants are all related, most of them explicitly claim membership in Mochouang Clan, and they all contend that they were granted permission to live on Brekong, primarily by Kuad, but other names were mentioned. It also became clear that none of the Defendants could produce a document memorializing any grant of permission to use Brekong. William then testified about his family tree and Plaintiffs’ status within Mochouang Clan, explaining that he and Rosania were both adopted by clan matriarch Ngeruangel; that Ngiraikelau Beouch, Ngeruangel’s son, raised him and “became like [his] father”; and that Mesubed is Ngeruangel’s biological granddaughter.

[¶ 7] Defendants called Haruo Willter (also spelled “Wilter”) who testified that he is the descendent of a deceased female member of

⁴ With their amended pre-trial statement, Defendants submitted an affidavit by Ngiratmab claiming that he was properly appointed Renguul ra Mochouang in 2017.

Mochouang Clan, and that he was previously unaware of the eviction suit. Defendants also called an expert witness on custom, Floriano Felix, who testified that a chief cannot evict a clan member who was properly given permission to live on clan land for reasons other than serious misconduct. Lastly, Defendants called Emiwo Mad, a close relative of Defendants, who testified to their status as clan members. In his closing, Defendants' counsel focused his argument on the contention that "if persons got approval to live on the land through the approval of those who were in charge at the time[,] [they] should not be easily evicted."

[¶ 8] In its written Decision, the trial court took judicial notice of the proceedings in *Sasao v. Beouch*, as well as the Land Court records and proceedings for Brekong going back through the 1980s, and made the following relevant findings of fact: Brekong had been the subject of competing claims of individual ownership between Kuad and Ngiraikelau Beouch, resulting in the award of Brekong to Mochouang Clan, with Kuad as trustee. Following Kuad's death, Ngiraikelau Beouch wrote to the Land Court to request that a new Certificate of Title for Brekong be issued listing him as trustee. A new Certificate of Title was issued in 1999 listing the clan as owner but not naming a trustee. All three Plaintiffs are senior strong members of the clan, being descendents of Ngeruangel, and William is bearer of the title Renguul ra Mochouang. Mad is not an *ochell* or senior strong member of the clan, and Defendants generally have never had any authority over Brekong. In finding that William bears the Renguul ra Mochouang title, the trial court noted Defendants' claim that Ngiratmab bears the title but stated, "[t]his claim was never pursued at trial and no evidence was presented to establish the details of such an appointment and whether such appointment was made by those with the authority to appoint." Decision at 3 n.2 (Tr. Div. Oct. 9, 2018).

[¶ 9] Based on its findings, the trial court concluded that Plaintiffs, as senior strong clan members, have authority over Brekong, and that any conveyance of use rights to Defendants by Kuad was invalid because "he never bore the title Renguul ra Mochouang with the authority to grant any use right [a]nd the strong senior members of Mochouang Clan did not and do not approve of any use right to Defendants." Decision at 6. The trial court further concluded:

Even assuming for the sake of argument that [Kwad] had some authority to give such a use right, without the consent of other senior strong members, Defendants have failed to provide evidence of any such oral conveyance prior to the enactment of the Statute of Frauds, or documentation as required after the enactment thereof. Defendants' claim to be on Brekong through a use right therefore is denied.

Id. The trial court therefore granted judgment in Plaintiffs' favor.⁵

[¶ 10] After denying Defendants' motion for reconsideration,⁶ the trial court entered a final judgment ordering them to vacate Brekong within a year; enjoining them from interfering with Plaintiffs' use of the land; and awarding Plaintiffs \$7,142.50 in costs and fees.⁷

STANDARD OF REVIEW

[¶ 11] Our standard of review is well established:

A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusion of law, findings of fact, and matters of discretion. Matters of law we decide *de novo*. We review findings of fact for clear error. Exercises of discretion are reviewed for abuse of that discretion.

Kiuluul v. Elilai Clan, 2017 Palau 14 ¶ 4 (citations omitted). "Under the clear error standard, findings will be reversed only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record." *Otei v. Smanderang*, 2018 Palau 4 ¶ 10. This standard of review recognizes that "[t]he trial court is in the best position to weigh evidence, determine credibility of witnesses, and make findings of fact." *Ngiraingas v. Tellei*, 20 ROP 90, 94 (2013). We may affirm the trial court's decision on "any basis

⁵ We pass over the trial court's subsidiary conclusions not directly relevant to Appellants' main arguments or to our disposition of this appeal.

⁶ Because Appellants do not base their arguments on appeal on the denial of their motion to reconsider, or the materials they included with it, we do not discuss this motion further.

⁷ The court declined to award trespass damages.

apparent in the record.” *Idid Clan v. Palau Pub. Lands Auth.*, 2016 Palau 7 ¶ 7 n.7 (quoting *Inglai Clan v. Emesiochel*, 3 ROP Intrm. 219, 222 (1992)).

DISCUSSION

[¶ 12] The crux of the dispute is whether Appellants have a right to use Brekong.⁸ On appeal, Appellants’ primary argument for reversing the trial court rests on two alternative premises. Either (1) they have a valid use right, conveyed to them by Kuad, which cannot be set aside without cause; or (2) their asserted status as Mochouang Clan members means that they have an inherent right to use clan land of which they cannot be deprived, regardless of whether they were previously granted permission to use the land. The first contention, that they were granted a use right, was the argument that Appellants consistently relied on in the proceedings before the trial court. In addressing this contention, the trial court concluded that Kuad did not have the authority to grant Appellants use rights to Brekong because he never held the title of Renguul ra Mochouang, and because the clan’s senior strong members never approved of such grant. But the trial court also concluded that, even assuming Kuad had the authority to grant use rights to Brekong, Appellants had “failed to provide evidence of any such oral conveyance prior to the enactment of the Statute of Frauds, or documentation as required after the enactment thereof.”

[¶ 13] The trial court’s factual finding that there is insufficient evidence that Kuad orally conveyed use rights to Appellants, or insufficient evidence of any conveyance that complies with the Statute of Frauds, is not clearly erroneous. The Statute of Frauds provides that any conveyance of an interest in land exceeding one year must be in a properly executed, signed writing if the conveyance was made after April 1, 1977. 39 PNC § 501(a); *Ibelau Clan v. Ngiraked*, 13 ROP 3, 5 (2005). It is undisputed that Appellants did not present any written conveyance of the indefinite use rights they are claiming in this case. Thus, to the extent any conveyance was made by Kuad after

⁸ The parties do not dispute the relevant elements of Appellees’ trespass and ejectment claims based on Appellants’ alleged trespass. *See* 75 Am. Jur. 2d Trespass § 22 (“The elements of trespass to real property are possession of the property by the plaintiff when the alleged trespass was committed, an unauthorized entry by the defendant, and damage to the plaintiff from the trespass.”).

1977, it would violate the Statute of Frauds and is therefore void. To the extent Appellants are relying on any claimed oral conveyance before 1977, the trial court correctly noted that they did not present any evidence, other than their own assertions, that they had been granted a use right to live on Brekong.⁹ It was within the trial court's discretion to not credit Appellants' own assertions, and the court was in the best position to make such a credibility determination. *See Tellei*, 20 ROP at 94. In short, we cannot say that "no reasonable trier of fact could have reached the same conclusion based on the evidence in the record." *Smaderang*, 2018 Palau 4 ¶ 10. There was no clear error.¹⁰

[¶ 14] This leaves Appellants' alternative assertion that they cannot be evicted because they are clan members with an inherent right to use clan land, regardless of whether they were given permission to live on Brekong. However, Appellants never adequately presented this argument to the trial court. Rather, their briefing consistently asserted a right to remain on the land based on the conveyance of use rights by Kuad. At trial, although Appellants' counsel hinted at the argument being made on appeal, his focus plainly was on the purported use right, not on a clan member's inherent right to occupy clan land. *See* ¶ 6 *supra*. Indeed, counsel emphasized to the trial court that the important point for it to consider is that "a person cannot be easily evicted from a land that he occupied through an approval from a long time back." In light of the arguments that were actually presented to the trial court, it is hardly surprising that the court did not address many of the arguments Appellants now raise on appeal. As we have repeatedly stated, arguments not raised before the trial court are deemed waived on appeal. *Elilai Clan v. Ngaratulau Council of Chiefs*, 2019 Palau 13 ¶ 11. Deeming Appellants' arguments waived is especially appropriate considering that

⁹ Emiwo Mad's testimony, in which he described how various members of his family came to live on Brekong through their familial relationship with Kuad, is ambiguous, at best, as to the central question of whether *Kuad gave permission to Appellants* to live on Brekong.

¹⁰ Appellants assert that the trial court clearly erred when it stated that Appellants "are not members of Mochouang Clan." *See* Decision at 5. Assuming that the trial court did in fact find that none of the Appellants are members of the clan – not merely that they are *weaker members* than Appellees – this finding is ultimately irrelevant to the trial court's key determination that Appellants had not demonstrated that Kuad conveyed valid use rights to them.

Appellants ask us to take a deep dive into complex theories of customary law that were not aired in the trial court proceeding. We therefore do not address Appellants' various arguments concerning their purported customary right to remain on Brekong based solely on their alleged status as clan members, or concerning their alleged right to be given use of substitute land. By not raising it below, Appellants also waived the argument that their eviction would violate a chief's duty to protect and provide for clan members.¹¹

[¶ 15] Finally, Appellants contend that the trial court's award of costs and fees was erroneous "[b]ecause of the previous discussions of the issues on [a]ppeal." We take Appellants to mean that the award of costs and fees should be reversed because the trial court's judgment should be reversed. Because we affirm the judgment, Appellants' challenge to the award of costs and fees fails.¹²


CONCLUSION

[¶ 16] We recognize the stakes of this appeal. The trial court's decision means that elderly people will have to vacate their long-time homes. Undoubtedly, it would have been better if a compromise between the parties could have been reached outside court. But when a dispute proceeds through our court system, the parties must be held to the same legal principles and procedures that govern every dispute, no matter how difficult the outcome. Presented with no preserved reason to reverse, we **AFFIRM** the Trial Division's judgment.

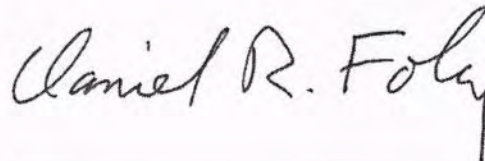
¹¹ Appellants argue, as they did in the trial court, that William has not been proven to bear the title Renguul ra Mochouang, which conceivably bears upon his authority to pursue eviction even with the support of the clan's female senior strong members. The trial court did not think much of the claimed title controversy, stating, first, that no evidence was presented to establish that Ngiratmab properly bears the title and, second, that the undisputed evidence actually presented establishes that William was properly appointed chief. Reviewing the trial court's factual determinations for clear error, we again cannot say that "no reasonable trier of fact could have reached the same conclusion based on the evidence in the record." *Smanderang*, 2018 Palau 4 ¶ 10. The trial court's finding that William bears the title of Renguul ra Mochouang was not clearly erroneous. Further, Appellants have provided no authority in customary law to support their suggestion that William cannot bear the chief title because Haruo Willter was not involved with his appointment.

¹² Appellants do not argue that there was no legal basis for the award of attorney's fees—statutory, contractual, or otherwise—and we do not address this issue further.

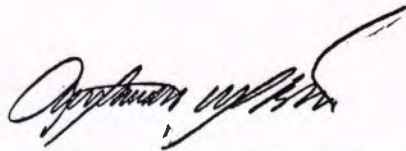
SO ORDERED, this 23rd day of October, 2019.



JOHN K. RECHUCHER
Associate Justice



DANIEL R. FOLEY
Associate Justice



ALEXANDRO C. CASTRO
Associate Justice