

LIPANCY

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED 

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

**NGERBACHESIS KLOBAK, UCHELKIUK CLAN, UCHELKIUK
CLAN, BENJAMIN YOBECH, DAVID ORAK, SANTY ASANUMA,
and KRISPIN TERMETEET,**

Appellants,

v.

**MINORU UEKI, DEMEI OTOBED, PAUL UEKI, ELIA
YOBECH, ISAIAS OITERONG, BASKASIO OITERONG,
JAMES YALAP, TARKONG ELLIS, KAMILUS
NGIRMERIL, DEBEDEBEK MONGAMI, and REMELIHK**

NGCHAR,

Appellees.

**MINORU UEKI, DEMEI OTOBED, PAUL UEKI, ELIA YOBECH,
ISAIAS OITERONG, and BASKASIO OITERONG**

Cross-Appellants,

v.

**NGERBACHESIS KLOBAK, UCHELKIUK CLAN, UCHELKIUK
CLAN, BENJAMIN YOBECH, DAVID ORAK, SANTY ASANUMA,
and KRISPIN TERMETEET,**

Cross-Appellees.

Cite as: 2020 Palau 22
Civil Appeal No. 20-012
Appeal from Civil Action Nos. 14-043 & 14-165, consolidated

Decided: October 20, 2020

Counsel for Appellants/Cross-Appellees Pro Se
Counsel for Appellees/Cross-Appellants Lalii Chin Sakuma

BEFORE: GREGORY DOLIN, Associate Justice
KATHERINE A. MARAMAN, Associate Justice
KEVIN BENNARDO, Associate Justice

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

OPINION¹

BENNARDO, Associate Justice:

[¶ 1] We previously remanded this matter to the Trial Division to determine whether either party had demonstrated that it was entitled to control of Ngerbachesis Bai in Ngermid Hamlet in Koror. *See Ngerbachesis Klobak v. Ueki*, 2018 Palau 17 ¶ 28. On remand, the Trial Division found that neither party had proven a legal right to control the bai. *See Decision, Ngerbachesis Klobak v. Ueki*, Civ. Nos. 14-043 & 14-165 (Feb. 6, 2020). Indeed, the Trial Division found that the building was not a traditional bai at all, but rather a public community center that is sometimes used as a bai. *See id.* at 5 & n.7 (“[T]his is not a bai being used for other purposes, this is a building constructed for other purposes being used as a bai.”). To support this determination, the Trial Division credited testimony that the building was constructed using public funds and that neither of the parties contributed financially to the construction of the building. *Id.* at 4.

[¶ 2] As part of its decision, the Trial Division found that Ngermid had created a new, localized custom through the “unique circumstances” underlying the funding and construction of the building. *Id.* at 5-6. Additionally, the Trial Division found that none of the parties had sufficiently proven that they had the right or authority to restrict others from accessing the community center building. *Id.* at 6-7. The Trial Division did not, however, declare who does control the building.

[¶ 3] Neither party was satisfied with the Trial Division’s decision, and both appealed. On appeal, the parties argue that the Trial Division erred in finding that the building was the product of a new, localized custom. They also argue that the Trial Division failed to carry out its judicial duty by declining to adjudicate who has legal control of the building.

¹ Both parties waived oral argument. This appeal is submitted on the briefs in accordance with ROP R. App. P. 34(a).

Analysis

[¶ 4] We first find that the Trial Division erred in finding the existence of a new, localized custom surrounding the development of the building at issue. Customary law must be found based on four requirements: “(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.” *Beouch v. Sasao*, 20 ROP 41, 48 (App. Div. 2013). The existence of customary law is reviewed de novo. *Id.* at 50.

[¶ 5] Here, the Trial Division conclusorily referenced the *Beouch* test once in its decision when it said, “In essence, because this Court finds clear and convincing evidence that this building is a community center, the Court finds that Ngermid has created a new (and localized) customary law under *Beouch v. Sasao*, 20 ROP 41 (2013).” Decision at 6. However, the Trial Division did not engage of any discussion of its analysis of the *Beouch* requirements. Indeed, the Trial Division’s decision fails to clearly identify or describe the allegedly new custom. Instead, the analysis preceding this conclusion all centered on evidence that demonstrated, in the Trial Division’s opinion, that the building was funded with public money and intended to be used as a community center. *Id.* at 4-5. In short, the Trial Division did not sufficiently support its determination that Ngermid created new customary law.

[¶ 6] Nevertheless, we affirm the Trial Division’s ultimate resolution because the finding of new customary law was unnecessary to its core determination on remand. We need not adopt a trial court’s reasoning in order to affirm its judgment. *See, e.g., Ochedaruchei Clan v. Thomas*, 2020 Palau 11 ¶ 12. Simply put, we find support for the Trial Division’s determination that neither of the parties sufficiently demonstrated an entitlement to legally control access to the building. Here, we review issues of law de novo and findings of fact for clear error. *E.g., Sugiyama v. Han*, 2020 Palau 16 ¶ 15.

[¶ 7] In their appellate briefs, the parties attack the Trial Division’s determination from various angles. They complain that all of the parties agree that the bai belongs to the Ngerbachesis chiefs and that the Trial Division simply needs to determine which of the two parties are the rightful chiefs. By not declaring an owner for the bai, one party complains that the Trial Division has created a vacuum in which the bai is left without management and

maintenance. The other party complains that the Trial Division failed to support its determination that the building is a community center because no witnesses testified as to the specific agreements underlying the building's construction.

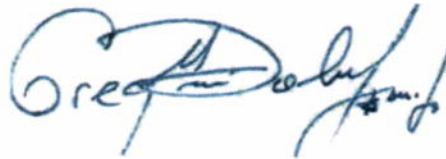
[¶ 8] The parties neglect a simple premise that underlies our adversarial system. Here, the Trial Division was not tasked with determining who, out of all the entities in the world, controls the building. The Trial Division was tasked with adjudicating a dispute between the parties before it. Each party claimed a right to control the building and an entitlement to exclude the other party from the building. The Trial Division simply found that neither party had sufficiently proven its claim and accordingly did not award control of the building to either party. If there was a lack of credible evidence to support a determination of who controls the building, the responsibility for that lies with the parties rather than with the Trial Division.

[¶ 9] In its decision, the Trial Division specifically acknowledged that determining who controls the building would not be appropriate "because the necessary parties are not before the Court." Decision at 6. The Trial Division did not fail to carry out its judicial duty; rather, it was the parties who failed to sufficiently prove their claims.

Conclusion

[¶ 10] We **AFFIRM** the Trial Division's determination that neither party sufficiently demonstrated a legal right to control the building. As explained above, our decision does not rely on the Trial Division's seemingly unsupported finding of a new customary law.

SO ORDERED this 20th day of October, 2020.



GREGORY DOLIN
Associate Justice



KATHERINE A. MARAMAN
Associate Justice



KEVIN BENNARDO
Associate Justice