

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

BESECHEL KIULUUL and NGESENGES NAKAMURA,
Appellants/Cross-Appellees,
v.
ELILAI CLAN, rep. by AUGUSTA RENGIL and NATHAN YUJI,
Appellees/Cross-Appellants.

Cite as: 2023 Palau 11
Civil Appeal No. 22-017
Appeal from Civil Action No. 13-018

Decided: March 22, 2023

Counsel for Appellants Augusta Rengiil and Nathan Yuji Johnson Toribiong
Counsel for Appellees Besechel Kiuluul and Ngesenges Nakamura..... Sigfried B. Nakamura

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
FRED M. ISAACS, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] This case is currently on its third trip up the appellate ladder. We remanded the matter to the Trial Division for the second time on March 25, 2022, and both parties now appeal the Trial Division’s latest decision. The underlying dispute concerns the rightful bearers of the Elilai Clan’s titles. In our prior remand order, we directed the Trial Division to consider four questions through which it would provide adequate reasoning for its prior findings and decision. Because the parties, who each claim the titles, presented

two conflicting ancestral histories, we asked the Trial Division to determine which ancestral history was more credible.

[¶ 2] Because the Trial Division failed to answer the questions we asked, we **VACATE** and **REMAND** for additional proceedings consistent with both this opinion and our prior decisions in this matter.

PROCEDURAL HISTORY

[¶ 1] The dispute in this case involves the male and female titles and membership in Elilai Clan of Aimeliik, respectively Melachelbeluu and Obaklubil. Elilai Clan is the second ranking clan in Ngchemiangel Hamlet in Aimeliik State.

[¶ 2] On March 8, 2013, Wilhelm Rengiil and Alberta Rechirei filed a complaint asking the Trial Division to declare that they, and not Besechel Kiuluul and Ngesenges Nakamura, held the male chief title Melachelbeluu and the female chief title Obaklubil of Elilai Clan. Defendants counterclaimed, alleging that they, instead of the Plaintiffs, were the proper title holders of the Clan's male and female titles.

[¶ 3] On March 30, 2015, the Trial Division issued its decision in which it declined to entertain the parties' dispute. Both parties appealed.

[¶ 4] On March 16, 2017, we remanded the matter to the Trial Division. Following the remand, a second trial was held in early December 2019. Before the second trial commenced, Augusta Rengiil and Nathan Yuji were substituted for the original Plaintiffs, who had died in the interim.

[¶ 5] On May 31, 2021, the Trial Division issued a decision in which it found, among other things, that the parties were all *ulechell* members of Elilai Clan (meaning they descended from a male line in the Clan) and possessed equal strength within the Clan. Further, the Trial Division held that none of the parties held the Clan's titles because the appointments did not receive both parties' consent. Both parties appealed.

[¶ 6] On March 25, 2022, we remanded the matter to the Trial Division a second time, finding that the trial court did not sufficiently support its factual findings that the parties are *ulechell* members, have equal strength within the

Clan, and that their consent is needed for the appointment of the Clan's title-bearers.

[¶ 7] On July 21, 2022, the Trial Division issued a decision on remand in which it found that both parties presented credible ancestral history, and maintained its findings that both parties are *ulechell* and of equal strength within the group. In addition, it recognized two *ourrot* members within Elilai Clan, Ngesenges Nakamura and Augusta Rengiil, and stated that “similarly situated persons” were also *ourrot*. The Trial Division concluded that because Ngesenges Nakamura did not consent to Nathan Yuji's appointment as Chief, and Augusta Rengiil did not consent to Besechel Kiuluul's appointment as Chief, neither of the parties held the Clan's titles.

FACTUAL BACKGROUND

[¶ 8] The parties all trace their membership in the Clan back to the same man and head of Elilai Clan, Melachelbeluu, who lived alone in Ngchemiangel. Nonetheless, the parties have different explanations for their connection to Melachelbeluu.

[¶ 9] According to Nakamura and Kiuluul, their membership in Elilai Clan is through Melachelbeluu and his wife, a woman named Mausei. Mausei had a daughter, Dirusong, whom she brought into her marriage with Melachelbeluu. The couple had two children together, whom they named after the Clan titles, Melachelbeluu and Obaklubil, because they were the last remaining Clan members. When Melachelbeluu died, Mausei inherited the property and titles of the clan because there were no other Clan members alive. Kiuluul and Nakamura assert that they descend from Dirusong and Obaklubil, respectively.

[¶ 10] Contrastingly, Rengiil and Yuji assert that Melachelbeluu married a woman named Etor at a time when there were no other Clan members alive, and that they descend from this marriage. We once again note that the trial court found that Rengiil and Yuji “presented conflicting testimonies of their origin within the Clan[,]” as well as “conflicting family trees.” As we stated in our prior decision:

By the trial court's retelling, one version of events is the one testified to by Berenges at the

first trial in which their ancestor Etor married into the clan by marrying Melachelbeluu. *Id.* at 2; see also Tr. 129–30. The second version, testified to at the second trial, does not trace their connection to Elilai Clan through Etor’s marriage to Melachelbeluu, but rather traces the lineage back to a great ancestor who landed in Aimeliik, named the area Ngchemiangel, and became the first Melachelbeluu. Dec. Remand 2. There is also a family tree prepared by Wilhelm Rengiil and admitted at the trial below as Defendants’ Exhibit A, in which their connection to Elilai Clan is not through Etor’s marriage to Melachelbeluu. The trial court did not state which, if either, of Rengiil and Yuji’s stories or family trees it found credible.

[¶ 11] Therefore, three ancestral histories were presented to the Trial Division: two different versions from Rengiil and Yuji, and one from Nakamura and Kiuluul.

STANDARD OF REVIEW

[¶ 12] Clan membership and status are questions of fact, and we review the trial court’s findings for clear error. *Oseked v. Ngiraked*, 20 ROP 181, 183 (2013); *Imeong v. Yobech*, 17 ROP 210, 215 (2010). By this standard, the trial court’s findings will be upheld if, based on the evidence, a reasonable trier of fact could have reached the same conclusions as the trial court. *Isechal v. Umerang Clan*, 18 ROP 136, 142 (2011). To set the trial court’s findings aside, we must have a “definite and firm conviction that an error was made.” *Id.* (citing *Ngirutang v. Ngirutang*, 11 ROP 208, 210 (2004)).

[¶ 13] Demonstrated inconsistencies in reasoning are a sufficient basis for a “firm conviction” that the trial court erred. *Camacho v. Osarch*, 19 ROP 94, 97 (2012). Such inconsistencies may arise when a trial court does not provide sufficient detail to allow for meaningful appellate review. See *Whipps v. Idesmang*, 2017 Palau 24 ¶ 37; *Edward v. Suzuky*, 19 ROP 187, 193 (2012). In

the court's analysis, it "need not discuss all the evidence relied on to support its conclusion, [but] the court's decision must 'reveal an understanding analysis of the evidence, a resolution of the material issues of fact that penetrate beneath the generality of ultimate conclusions, and an application of the law to those facts.'" *Eklbai Clan v. Imeong*, 13 ROP 102, 107 (2006) quoting *Fritz v. Blailles*, 6 ROP Intrm. 152, 153 (1997).

DISCUSSION

[¶ 14] Upon our second remand, we found that the Trial Division had not provided sufficient evidence to support its findings. We asked the Trial Division to answer the following four questions: (1) Which presented ancestral history, if any, does the court find credible? And on what basis does it make this finding? (2) If the court maintains the finding that both parties are *ulechell*, then how does the court reconcile this finding with the conflicting ancestral narratives? (3) If the court maintains the finding that the parties are of "equal strength" in the Clan, then what is the specific basis for this finding? Is this senior strength? If so, what evidence does the court rely upon in making this finding? (4) Who are the *ourrot* members or members who have achieved *ourrot* status with appointment powers of Elilai Clan? On what basis is this status established?

[¶ 15] Under our recently amended Rules of Appellate Procedure, we may issue a mandate to the trial court on remand, through which it vests the trial court with jurisdiction to hear the case only to the extent conferred by the dictates of the appellate court. *See* ROP R. App. P. 36, *see also Francisco v. Ngeuch Clan*, 2022 Palau 22 ¶ 18. If a matter is remanded with specific instructions, those instructions are not subject to interpretation and must be followed exactly to ensure that the lower court's decision is in accord with the appellate court's mandate. *Tengoll v. Tbang Clan*, 11 ROP 61, 65 (2004) (citing *Litman v. Mass. Mut. Life Ins. Co.*, 825 F.2d 1506, 1511 (11th Cir. 1987)). Therefore, a lower court must strictly comply with the appellate court's mandate on remand. *See Kumangai v. Isechal*, 3 ROP Intrm. 43, 45 (1991). Crucially, an appellate court's mandate cannot be addressed piecemeal, nor should it be ignored. "On remand, a lower court may generally consider and decide any matter left open by the appellate court, as long as that decision is

not inconsistent with the appellate court’s opinion.” *Rengulbai v. Klai Clan*, 22 ROP 56, 61 (2015).

[¶ 16] We stated in our 2022 opinion that the two ancestral histories presented by the parties directly contradict each other. Nonetheless, the Trial Division still determined that both ancestral histories are credible, as a man could have sired children from two different women.

[¶ 17] The Trial Division misconstrued the mandate we provided in our previous decision. The parties presented the Trial Division with two views of the evidence, each clearly conflicting with the other. Berenges Rengiil testified to a first version, and stated that when Etor married Melachelbeluu, “he was the only, alone, this man.” *Kiuluul v. Rengiil*, 2022 Palau 3 ¶ 18. She elaborated that Etor “completed this clan” and her children became the members of Elilai, that they made the Clan “whole” because there was no one else. *Id.* Kiuluul testified that Mausei heard about Melachelbeluu “who was alone with no wife and no children and no relatives” and she went to him and married him, and that they named their children the traditional titles because there were no other relatives. *Id.* Both narratives specifically relate that there was no other woman and there were no other children. Moreover, both histories of how the Clan came to be *rely* on the absence of other relatives. Because the two narratives so clearly oppose each other, it is necessary to choose between these two versions.

[¶ 18] We understand the Trial Division’s position that a man may marry twice in his lifetime, or sire children with two different women. We did not assume otherwise, but simply explained that while this could objectively be true, the Trial Division needs evidentiary support to reach this conclusion.¹ None of the evidence presented by the parties in this case corroborates this view of the evidence. There is nothing to indicate that Melachelbeluu married twice or that he sired children from both Mausei and Etor. *See Hanpa Indus.*

¹ Upon our previous remand, we asked ourselves: “if Etor married Melachelbeluu, how can Mausei have also married the same person?” after explaining in detail why the two ancestral narratives were mutually exclusive. The Trial Division stated that this question operates from the assumption that a man cannot sire children from two different women at the same time, or that a man cannot marry a second time. This takes our question out of its context. We made no such assumption, but merely tried to make plain that both ancestral narratives explicitly excluded the existence of a second wife or additional children from another marriage.

Dev. Corp. v. Asanuma, 10 ROP 4 (2002) (“[T]he trial court’s decision to credit one proffer of evidence over another is not clearly erroneous, so long as one view of the evidence supports the factfinder’s decision.”). As a result, it cannot be a permissible interpretation and we reject the trial court’s reasoning that “[I]t is more probable than not from the evidence that Melachelbeluu sired children from both Etor and Mausei.” Decision on Remand at 2.

[¶ 19] To support its decision to credit both ancestral histories, the Trial Division pointed to evidence that the parties have a “close familial relationship”² and are both active in the Clan. It found that Kiuluul and Nakamura used to attend meetings at Wilhelm Rengesuul Rengiil’s house; that they recognized him as Melachelbeluu for some time, and that each side received money as compensation for Clan properties. Absent a logical leap, none of this evidence is sufficient to prove that both parties are descendants of Melachelbeluu. The parties could very well be part of the same Clan through other means than a common ancestor. When presented with two conflicting views of the evidence, a trial court can choose to credit one version, or the other, or neither, but cannot combine the two views unless there is support in the record to do so. We expressed in our previous appellate decision that there is no such evidence in the record.

[¶ 20] Therefore, the Trial Division did not strictly comply with the appellate mandate. Its factual findings that both parties are related to Melachelbeluu lack evidentiary foundation.

[¶ 21] As a result, we also cannot accept the Trial Division’s findings that both parties are *ulechell* and of equal strength. These findings will ultimately be affected by the determination of ancestral history, and the analysis will have to shift accordingly. While there is *some* evidentiary support for each party’s claimed *ulechell* status, that evidence is contradictory and mutually exclusive, and to decide that both parties are *ulechell* is untenable in light of the record below. Matters of *ulechell* status and strength within a clan are typically determined by bloodlines and ancestry. More often than not, there can be no

² Ngesenges Nakamura and Augusta Rengiil are cousins, because Ngesenges mother’s Ngeaol and Augusta’s mother Imerab are sisters. Dec. Remand, *Elilai Clan v. Kiuluul et al.*, Civil Action No. 13-018, at 3 (Tr. Div. July 21, 2022). Additionally, the mother of Imerab and Ngeaol, whose name is Telbong, raised Tkedam, mother of Besechel Kiuluul. *Id.*

ties in matters such as these. *See Yobech*, 17 ROP at 218 (finding the same regarding *ochell* status). As we have previously stated, each party's ancestral history explicitly relied on the fact that there were no other Clan members at the time Melachelbeluu married and had children. The evidence used by the Trial Division, regarding the familial relationship between the parties and their participation in Clan customs, does not logically result in a conclusion that they both descended from Melachelbeluu.

[¶ 22] Similarly, we cannot accept the Trial Division's identification of the *ourrot* members. For the sake of clarity, we request that the Trial Division identify all the *ourrot* members of Elilai Clan. While the appointment of the female titleholder requires the consensus of the *ourrot* of all lineages of a clan, *Demei v. Sugiyama*, 2021 Palau 2 ¶ 7, it is the female title holder who ultimately chooses the male title holder, *Keblil ra Uchelkeyukl v. Ngiraingas*, 2018 Palau 15 ¶ 11. Therefore, we specifically reject the determination that Ngesenges Nakamura's consent was necessary to Nathan Yuji's appointment as the male title holder, and that Augusta Rengiil's consent was necessary to Besechel Kiuluul's appointment.

[¶ 23] Therefore, with this additional clarification, the Trial Division's directive remains the same. The Trial Division must choose which of the ancestral histories it finds most credible,³ then make conclusive determinations as to the remaining three questions we previously issued. The Trial Division must also reconsider whether any of the parties hold Chief titles. Throughout, the Trial Division must articulate its reasoning explicitly. We realize that this case has been ongoing for a decade, and we are loath to remand this matter yet

³ There are three ancestral narratives in this case. The two different versions brought by Rengiil and Yuji, and the one presented by Nakamura and Kiuluul. As to the different versions of ancestral history brought by Rengiil and Yuji, we note that the Trial Division's Opinion on Remand implicitly validates the version in which their connection to Elilai Clan is through Etor's marriage to Melachelbeluu. The Trial Division did not explain why it credited this version over the other version and the family tree presented by Wilhem Rengiil, in which they descended directly from the first Melachelbeluu. In its May 31, 2021 decision, the Trial Division noted the two conflicting versions and family trees and remarked that the conflicting family trees served "to minimize the credulity of their evidence." The Trial Division must adequately articulate how and why it decided between the two versions presented by Rengiil and Yuji. The Trial Division must then choose between this prevailing narrative from Rengiil and Yuji and the ancestral history presented by Nakamura and Kiuluul.

again. Be that as it may, we find ourselves obliged to do so where the evidence at trial does not support the trial court's conclusion.

CONCLUSION

[¶ 24] We **VACATE** and **REMAND** the Trial Division's Judgment. We **DIRECT** the Trial Division to determine which of the two ancestral histories is more credible. We then **DIRECT** the Trial Division to reconsider its other findings in light of this opinion.


SO ORDERED, this 22nd day of March, 2023.



OLOVAIS NGIRAIKELAU
Chief Justice



JOHN K. RECHUCHER
Associate Justice



FRED M. ISAACS
Associate Justice