

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED

2024 DEC 11 P 1:51

ROMAN YANO and MUDLONG SALVADOR TELLAMAS, ~~Appellants~~
Appellants/Cross-Appellees,
v.
HILARIA IRUNG LAKOBONG, and CLARENCE
SRIDERIO RENGULBAI,¹
Appellees/Cross-Appellants.

SUPREME COURT
OF THE
REPUBLIC OF PALAU

Cite as: 2024 Palau 32
Civil Appeal No. 24-003
Appeal from Civil Action No. 22-096

Decided: December 11, 2024

Counsel for Appellant Vameline Singeo
Counsel for Appellee Johnson Toribiong

BEFORE: FRED M. ISAACS, Associate Justice, presiding
KATHERINE A. MARAMAN, Associate Justice
DANIEL R. FOLEY, Associate Justice

Appeal from the Trial Division, the Honorable Honora E. Remengesau-Rudimch, Associate Justice, presiding.

OPINION

PER CURIAM:

[¶ 1] This dispute over burial rights arose when Appellee/Cross-Appellant Hilaria Lakobong buried her son Brian on the Eteet Clan *odesongel*, located in Idid, Koror State. The parties appeal the Trial Division’s January 12, 2024 Judgment in which the trial court denied both of their claims.

¹ We have altered the caption in this case. Because the trial court found that Roman Yano did not prove he holds the title of Eteet Clan—and is therefore not authorized to bring suit on behalf of the Clan—we have removed Eteet Clan from the list of Appellants. *Etpison v. Obichang*, 2020 Palau 8 ¶ 1 n.1

[¶ 2] For the reasons set forth below, we **AFFIRM**.

BACKGROUND

[¶ 3] Eteet Clan (“the Clan”) is the sixth-ranking clan of Koror State. Within the Clan, the male chief is known as *Ngircheteet* and the female counterpart as *Tmikeu*. The Clan owns a piece of Property known as *Tnger*, located in Idid, Koror State, upon which stands the Clan’s *odesongel*.² *Ngircheteet* is listed as the trustee for *Tnger*.

[¶ 4] Brian Lakobong, the son of Hilaria Lakobong, passed away sometime in August 2022. On September 14, 2022, Lakobong and her relatives dug a grave at the *odesongel* for Brian’s burial. A confrontation occurred between Yano and his men and Lakobong’s daughter, Cecily. The day before the burial, on September 15, 2022, Yano and Tellames filed a complaint in the Trial Division for trespass, a temporary restraining order, a preliminary injunction, and a permanent injunction, arguing that Lakobong could not bury Brian at the *odesongel*. The application for the temporary restraining order was denied and the burial took place on September 16. Shortly thereafter, Lakobong and Rengulbai filed a counterclaim, asserting that Brian could properly be interred in the *odesongel* under custom, and claiming damages for intentional infliction of emotional distress and unlawful interference. They alleged that on September 15, 2022, Yano and other members of his faction came to the grave with shovels and filled the open grave with dirt and two trunks of bananas; the police had to be called to prevent a physical altercation.

[¶ 5] On January 12, 2024, the Trial Division issued a judgment denying the claims of both parties. The trial court found that Yano did not prove that he was the Eteet Clan chief, nor that the sole consent of the clan chief is required to bury someone at the Clan’s *odesongel*. Findings of Facts and Conclusions of Law, *Eteet Clan v. Lakobong et al.*, C.A. 22-096, at 6 (Tr. Div. Jan. 12, 2024) [hereinafter “Trial Court Decision”]. When addressing Lakobong’s counterclaim, the trial court held that Lakobong did not provide sufficient evidence to prove her authority to bury her son on the *odesongel* and that she

² Stone burial platform.

did not prove she suffered damages for her claim of intentional infliction of emotional distress and unlawful interference. *Id.*

[¶ 6] To better understand the parties' claims, one must look to Eteet Clan history. Around the time Germany took control of Palau, the Clan nearly became *ngemed chad*.³ See Judgment, *Eteet Clan et al. v. Blesam*, C.A. 17-228 (Tr. Div. Feb. 13, 2020). The Clan was reduced to a single family of four people when Dr. Augustine Kramer conducted his anthropological studies in Palau. *Id.* This single family proceeded to adopt members from the Milong Lineage of Ikelau Clan, the second-ranking clan of Koror. Ngiracheues and Ngirngeruangel were adopted into Eteet Clan, and their blood relatives from Milong Lineage, including their biological sister Dirraidid, started to play a dominant role in Eteet Clan's affairs, to the point they gained strength and power in Eteet Clan. *Id.* Both Hilaria Lakobong and Yano trace their memberships in the Clan through Milong Lineage. Lakobong is the daughter of Ngiracheues (who was directly adopted in the Clan), and Yano is the grandchild of Dirraidid. *Id.*

STANDARD OF REVIEW

[¶ 7] We have delineated the appellate standards of review as follows:

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 conclusions 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 (internal citations omitted).

³ Also sometime spelled *nguemed a chad*, this term signifies that members of a Clan have died out.

DISCUSSION

[¶ 8] Yano and Lakobong each argue that they hold higher status in Eteet Clan than the other, and that as such, they have authority under custom to decide who gets buried on the Clan’s *odesongel*. Yano maintains that he is an *ochell* senior strong member of the Clan, and that Brian could not be interred in the *odesongel* without his permission. Lakobong maintains that she is a senior strong member of Eteet Clan who was entitled to bury her son in the *odesongel*.

[¶ 9] At the outset, the parties are precluded from relitigating their respective status in Eteet Clan where a prior case has already decided the issue. “Res judicata generally bars a subsequent claim that concerns ‘any issue actually litigated and determined’ by an earlier final judgment between the same parties.” *Carlos v. Carlos*, 19 ROP 53, 58 (2012). On the other hand, collateral estoppel, or issue preclusion, applies “when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.” *Salii v. Terekiu Clan*, 19 ROP 166, 170 (2012).

[¶ 10] In 2020, this Court issued an opinion affirming the trial court’s decision on who was the rightful *Ngircheteet* between Sriderio Rengulbai and Henry Blesam. See Judgment, *Eteet Clan et al. v. Blesam*, C.A. 17-228 (Tr. Div. Feb. 13, 2020), *aff’d*, *Lakobong v. Blesam*, 2020 Palau 28 ¶ 1. Hilaria Lakobong was a party to the appeal alongside Rengulbai; Roman Yano, although not a party to the appeal, was a defendant in the trial court. The Appellate Division affirmed the trial court’s finding that Yano was not *Ngircheteet* because the *Tmikeu* at the time, Katrina Katosang, had properly appointed Blesam. It also affirmed the finding that Lakobong is a senior strong member of Eteet Clan. See *Lakobong*, 2020 Palau at ¶ 2 (“In 2010, Blesam was appointed *Ngircheteet* by *Tmikeu* Katosang, in consultation with other senior female clan members, including Appellant Hilaria Lakobong. In 2012, Rengulbai was purportedly appointed *Ngircheteet* by another group of senior female clan members from Eteet Clan of Koror and Eteet Clan of Ngatpang, including Lakobong, who claimed to be acting as *Tmikeu*.”). Furthermore, Civil Action No. 17-228 expressly stated that “[E]vidence adduced at trial

established that even though Defendant Yano and his blood relatives are members of Milong Lineage of Ikelau Clan of Koror, they have gained strength and power within Eteet Clan through their services, contributions, and participation in customary obligations and activities.” See C.A. 17-228 at 11.

[¶ 11] The 2020 Opinion clearly sets out that Lakobong is a senior strong member of Eteet Clan and that Yano, although a member of Milong Lineage of Ikelau Clan, acquired strength and power within Eteet Clan. These issues were actually litigated and determined by a valid and final judgment. Because the 2020 Opinion revolved around the appointment of the rightful *Ngircheteet* by the female title-bearer, these determinations were essential to the judgment. Finally, Yano and Lakobong were both parties to Civil Action No. 17-228. Therefore, the trial court did not err in finding that the parties were precluded from relitigating these two issues.

[¶ 12] We then turn to Yano and Lakobong’s dispute as to what the proper burial custom is. Yano argues that *ochell* senior strong members are the ones who have authority to make decisions about a clan’s *odesongel*, and that Brian should have been buried in Ngiwal, where Lakobong is an *ochell* member. Lakobong maintains that she had authority to bury her son on the Eteet *odesongel* as a senior strong member and that members of Milong Lineage, such as Yano, have no authority to determine who is buried on the *odesongel* because they are not members of Eteet Clan.

[¶ 13] We have established that “there is no controlling precedent as to which clan members have the authority to decide who can be buried on clan burial land.” *Imetuker v. Ked Clan*, 2023 Palau 16 ¶ 19. To determine whether a customary law exists on this issue, the trial court must assess whether the requirements of *Beouch v. Sasao*, 20 ROP 41 (2013) have been met. To do so, the parties must introduce sufficient evidence to prove that (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*, 20 ROP at 48.

[¶ 14] We cannot credit either Yano or Lakobong’s assertions as to burial custom when neither party presented the trial court with sufficient evidence on who has authority to decide who gets buried in the *odesongel*. Yano argued below that he was the chief of Eteet Clan, and that the clan chief’s consent is

necessary to bury someone on the *odesongel*. Yano failed to prove that he is the chief, so he now argues on appeal that *ochell* senior strong members are the ones who have authority over burials. Because he never pursued this theory below, this argument is waived.⁴ He cannot reframe his argument on appeal merely because it failed in the first instance.⁵

[¶ 15] Finally, our review of the record indicates that the trial court did not err in denying Lakobong’s claims when insufficient evidence was provided to support her arguments. Lakobong merely made her own conclusory statements about burial customs. Similarly, we find no error with the trial court’s determination that Lakobong failed to prove that she suffered damages on her claims of intentional infliction of emotional distress and “unlawful interference.” The trial court was entitled to deny Lakobong’s claims.

CONCLUSION

[¶ 16] We **AFFIRM** the Trial Division’s judgment.

⁴ “No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited that issue.” *Ochedarucheï Clan v. Oilouch*, 2021 Palau 33 ¶ 11.

⁵ Yano also argued below that Brian should have been buried in Ngiwal because Lakobong is an *ochell* member of a Ngiwal clan. Yano introduced one expert on Palauan custom, Floriano Felix, who testified that when a person dies, he or she will usually be buried where his or her mother is from, following the custom of returning to his maternal roots (*mo er a kotel*, or *mora kotel*). However, Yano still failed to prove that he has authority over the burial decisions in Eteet Clan.

SO ORDERED, this 11th day of December 2024.



FRED M. ISAACS
Associate Justice, presiding



KATHERINE A. MARAMAN
Associate Justice



DANIEL R. FOLEY
Associate Justice