FILED

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

SUPREME COURT

PETER MIKEL,	:	CIVIL APPEAL NO. 12-032
	:	(Civil Action No. 11-041)
Appellant,	:	
	:	
v.	:	**OPINION**
	:	
ISEBONG SAITO	:	
	:	
Appellee.	:	

Decided: February 28, 2013

Counsel for Appellant: Pro se
Counsel for Appellee: Yukiwo Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and LOURDES F. MATERNE, Associate Justice.

Appeal from the Trial Division, the Honorable ALEXANDRA F. FOSTER, Associate Justice, presiding.

PER CURIAM:

This is an appeal of a Trial Division decision awarding ownership of land known as *Metuker* to Isebong Saito, Appellee in this matter. For the following reasons, the decision of the Trial Division is **REVERSED and REMANDED.**

BACKGROUND

On September 6, 1995, the Land Claims Hearing Office ("LCHO") held a hearing regarding claims to the land known as *Metuker* made on behalf of: (1) John O. Ngiraked, as the representative "for all the children of Techeboet;" (2) Ana Timarong; (3) West U.

Saiske; (4) Tewid Ongebei; (5) Christian Ngiraked; and (6) Kelau Gabriel. Although filed as individual claims for ownership, the claims of Christian Ngiraked (a male) and Kelau Gabriel (a female) were consolidated with the claims of "all the children of Techeboet," as represented by John Ngiraked. Approximately three weeks after the hearing, the LCHO issued an Adjudication and Determination ("the Determination") awarding *Metuker* to "Ongalek ra Techeboet and John O. Ngiraked [as] the trustee." Specifically, the LCHO decision found:

> Metuker was originally owned by Ngemelas clan and became listed in the Tochi Daichio as owned by Kubarii during the time he held chief title Riumd of said clan . . . . Techeboet as the oldest adopted daughter of Kubarii and natural daughter of Ngowakl from Ngemelas clan is found to have assumed control of Metuker property after Kubarii's death . . . . After Techeboet's death control of said property continued with her children. Hence, the claim of Ongalek ra Techeboet is found to have merit.

(emphasis omitted).

After the Determination was affirmed on appeal, a Certificate of Title for *Metuker* was issued to "Ongalk ra Techeboet" on September 29, 2004. On February 23, 2010, Isebong Saito purchased the interests in *Metuker* of Kelau Gabriel, John O. Ngiraked, Moses Sam and Kristian Ngiraked through a judicial sale of the Estate of John O. Ngiraked. On March 23, 2010, the Land Court issued Certificate of Title for *Metuker* to "Ongalk ra Techeboet and Isebong Saito – who owns the interests of John O. Ngiraked, Moses Sam, Kristian Ngiraked and Kelau Gabriel Renguul."

On February 11, 2011, Saito filed an action to quiet title to *Metuker*. Appellant, appearing pro se, filed a timely Notice of Objection on behalf of himself through his mother Maria Paulis, as a daughter of Techeboet; and on behalf two other female children of Techeboet Rosania—Olgeriil (represented by her eldest child, Jeff Olgeriil) and Irene Obeketang (represented by her eldest child, Gilham Obeketang). In his objection, Appellant argued that Paulis, Rosania Olgeriil, and Irene Obeketang (collectively, "Female Children"), as children of Techeboet, held title to *Metuker* as "ongalk" of Techeboet.

Noting that Appellant did not dispute the sale of *Metuker* and that Appellee did not dispute Paulis, Rosania, and Irene were Techeboet's children, the Trial Division conducted a trial on whether the Female Children maintained valid claims to *Metuker*. During the trial, the Trial Division took testimony from Jeff Olgeriil, Gilham Obeketang, and Moses Uludong, the latter of whom testified as a Palauan customary expert. On September 1, 2011, the Trial Division issued a Decision and Judgment finding Appellee to be the sole owner of *Metuker*.

In its decision, the Trial Division found that the phrase "Ongalk ra Techeboet," as it was used by the LCHO, meant "children of Techeboet," but that "[s]ince the parties and the [LCHO] used the Palauan version and not the English version . . . Palauan custom is applicable." On the issue of custom, the Trial Division credited the expert testimony "that under Palauan custom, male children get dry land, and female children get the msei or taro

patch." Because *Metuker* is dry land, the Trial Division found title to the land passed only to Techeboet's male children and that, therefore, Appellant's objection was without merit. Title to *Metuker* was thus awarded solely to Appellee.

On November 7, 2011, Appellant, once again acting pro se, appealed the Trial Division's decision to this Court. On appeal, Appellant raised two issues: (1) the Trial Division "err[ed] in construing the meaning of 'ongalk' to exclude female children;" and (2) the Trial Division "err[ed] in its procedural changes to the detriment of Appellant." Of relevance, here, Appellant argued "it is obvious the LCHO and Land Court construed the term [ongalk] to mean 'all of the children.'" We held there was no error in the Trial Division's application of procedural rules, but remanded the case because the lower court applied the wrong evidentiary standard in reaching its conclusion regarding the custom of inheritance. *Mikel v. Saito*, Civ. App. 11-041, slip op. at 5 (May 15, 2012).

On remand, the Trial Division asked the parties to file proposals on how the matter should proceed. Appellee filed a notice asking the court to "proceed to issue its judgment based on the Appellate Court's Opinion and . . . the evidence admitted during the trial or hearing before [the Trial Court]." Appellant filed a notice "request[ing] that a hearing be scheduled at which he could present evidence relating to the inheritance of land pursuant to Palauan custom."

The Trial Division elected to decide the matter on the record before it, and issued a second Decision and Order in which it found the custom of male children inheriting dry land had been proven by clear and convincing evidence. Noting Appellant did not "contest" the previous determination regarding the applicability of inheritance custom to the Land Court's Decision, the Trial Division again awarded *Metuker* to Appellee. Appellant appealed again.

STANDARD OF REVIEW

Appellant raises one overarching issue on appeal – that the Trial Division "erred in construing the meaning of 'ongalk' to exclude female children." In this regard, Appellant argues the Trial Division improperly used custom to interpret the Determination and, in the alternative, that even if customary law applied, the Trial Division misapplied such law.

"The existence of a claimed customary law is a question of fact that must be established by clear and convincing evidence and is reviewed for clear error."[1] *Koror State Pub. Lands Auth. v. Ngirmang*, 14 ROP 29, 34 (2006). Interpretations of documents are reviewed de novo. *Western Caroline Trading Co. v. Philip*, 13 ROP 28, 30 n.3 (2005). More generally, we review determinations of law de novo and determinations of fact for clear error. *Estate of Tmetuchl v. Siksei*, 18 ROP 1, 5 (2010) (legal determinations

[1] This standard was revised in *Beouch v. Sasao*, Civ. App. 11-034, slip op. at 10-14 (Jan. 3, 2013). However, because the *Beouch* decision has been given purely prospective effect, it does not apply to cases, such as the one at bar, filed before January 3, 2013. *Id.* at 17.

reviewed de novo); *Melekeok State Gov't v. Megreos*, 18 ROP 29, 33 (2011) (factual determinations are reviewed for clear error).

DISCUSSION

As explained above, Appellant challenges: (1) the Trial Division's recourse to custom in its interpretation of the Determination; and (2) the Trial Division's conclusion regarding the effect of the customary law. We address each contention in turn.

I. Reliance on Customary Law

A certificate of title issued pursuant to a Land Court Determination of Ownership is conclusive as to all persons who had notice of the proceedings. 35 PNC § 1314(b). This preclusive rule applies to successors in interest of persons who had notice of such proceedings. *See* Restatement (Second) of Judgments § 43 (1982) ("A judgment in an action that determines interests in real or personal property . . . [h]as preclusive effects upon a person who succeeds to the interest of a party to the same extent as upon the party himself."). Succession in interest is defined as "succession by purchase (including a mortgage), gift, devise, and involuntary transfer[] . . . ." *Id.* at cmt. f.

There is no dispute the 2004 certificate of title to *Metuker* was issued pursuant to the LCHO determination and that both parties here are successors-in-interest to parties who received notice of the LCHO proceedings. Thus, the 2004 Certificate of Title to *Metuker* is conclusive in this matter. 35 PNC § 1314(b).

As explained above, the 2004 Certificate of Title was issued to "Ongalk ra Techeboet." Appellant contends the document created property rights to *Metuker* in his mother and the other female children of Techeboet. Appellee submits the Certificate of Title was limited to Techeboet's male children. Put differently, the sole issue on appeal is what "Ongalk ra Techoet," as it was used in the Certificate of Title and Determination, meant.

Because a certificate of title arising from a determination must be issued "pursuant" to such determination, *see* 35 PNC § 1314(b), it follows any ambiguity as to the meaning of a certificate must be resolved by reference to the underlying determination. Accordingly, the question becomes whether the LCHO's Determination granted Appellant—through his mother, as a daughter of Techeboet—ownership rights to *Metuker*. *Id.* In resolving this question in the negative, the Trial Division held "Ongalk ra Techeboet" translated to "Children of Techeboet," but that the use of the Palauan words was an indication the LCHO intended to limit rights in the property to children entitled to inherit the land under Palauan custom. Appellant submits the plain meaning of "ongalk" controls and that, therefore, the Determination was meant to grant rights in *Metuker* to all of Techeboet's children.[2]

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[2] Appellee submits that Appellant failed to raise this argument on remand and should not be permitted to raise it now. "There is a long standing . . . tradition in the United States and here in Palau of courts employing a heightened duty to . . . pro se litigants . . . . [T]his tradition serves the interest of justice in helping to ensure meaningful access to the courts of Palau to all Palauan citizens, regardless of their socio-economic status." *Whipps v.*

> As a general rule, judgments are to be construed like other written instruments, and the legal effect of a judgment must be declared in light of the literal meaning of the language used. The unambiguous terms of a judgment, like the terms in a written contract, are to be given their usual and ordinary meaning. The determinative factor in interpreting a judgment is the intention of the court, as gathered, not from an isolated part thereof but from all parts of the judgment itself.

46 Am. Jur. 2d Judgments § 74 (footnotes omitted). However, "[i]n construing a judgment, it may be presumed that the court intended to render a valid, and not a void, judgment. Hence, if a judgment is susceptible of two interpretations, one of which would render it legal and the other illegal, the court will adopt the interpretation which will render the judgment legal." 46 Am. Jur. 2d Judgments § 75 (footnotes omitted).

We have held the phrase "Ongalk ra," when used in a determination, may create "individual ownership interests in the various members of [the class] or [may] designate a form of communal ownership similar to clan or lineage ownership." *Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 152–53 (2003). We conclude the Determination created the latter type of interest.

It is a practice in the Land Court to grant ownership of lands to a clan or lineage, but to name a person as a trustee of the land. *See e.g. Estate of Remed v. Ucheliou Clan,*

Nabeyama, 17 ROP 9, 12 n.2 (2009). Commensurate with this duty, courts must construe pro se filings liberally. *Suzuky v. Petrus*, 17 ROP 244, 244 n.1 (2010). Throughout this litigation, Appellant has advanced one argument: that Ongalk ra Techeboet, as the phrase was used in the Determination and Certificate of Title, means all children. This position was articulated at trial and both appeals and has not been waived.

17 ROP 255, 260, 265 (2010) (affirming determination of ownership in favor of clan with named trustee); *Estate of Rdiall v. Adelbai*, 16 ROP 135, 136 (2009) (noting LCHO awarded ownership of land to lineage, with person serving as trustee). Here, the decision awarded ownership of *Metuker* to Ongalk ra Techeboet, with John O. Ngiraked to serve as the trustee for such ownership.

Furthermore, where ownership rights to a decedent's property are to be adjudicated amongst heirs, a court must consider the applicable statutory and customary laws relevant to inheritance. *See Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33, 36 (2008) ("Absent an applicable decent and distribution statute, customary law applies."); *see also Ruluked v. Skilang*, 6 ROP Intrm. 170 (1997). Here, the Determination did not discuss statutory or customary laws of inheritance and did not attempt to identify the nature of the interests granted.

Taken together, the identification of a trustee and the lack of any discussion of inheritance law convince us the LCHO intended to create in *Metuker* a form of communal ownership in the children of Techeboet similar to that of clan or lineage ownership. This conclusion is consistent with the Land Court practice of granting determinations of ownership to clans with trustees.

Having found the Determination created a communal ownership in the nature of lineage or clan ownership, the question becomes what rights in the communal ownership

the individual children of Techeboet possess. The LCHO did not consider this question and we turn to it now.

As explained above, inheritance rights are governed by statutes and, in the absence of applicable statutes, by customary law. *Marsil*, 15 ROP at 36 (2008); *see also Temael v. Tobiason*, 18 ROP 53, 55 (2011). Here, there is no applicable statute regarding inheritance of *Metuker*. Accordingly, the rights of the children of Techeboet must be determined by reference to customary law. Thus, the Trial Division did not err when it considered customary law in resolving this matter.

II. The Application of Customary Law

Having found rights to *Metuker* to be dependent on customary law, we turn to Appellant's remaining enumeration of error—that the Trial Division erred in its application of the customary law standard. For cases filed before January 3, 2013, customary law must be proven by clear and convincing evidence. *Beouch*, slip op. at 5, 17 n. 10. A party seeking to rely on a customary law bears the burden of proof of establishing the existence of such law. *Tellames v. Isechal*, 15 ROP 66, 68 (2008). Thus, as the proponent of the customary law in question, Appellee bore the burden of establishing its existence by clear and convincing evidence.

In considering the issue of custom, the Trial Division took testimony from a customary law expert who testified that the Palauan custom under which men would inherit land, unless the land was a taro patch, "has evolved in the last forty years . . . .

where . . . the female children of [a decedent] take the land or distribute the land to their children . . . ." No additional evidence was presented on the issue of the alleged customary law.

Dating back to the Trust Territory days, we have recognized "custom in the legal sense" is defined as "[s]uch a usage as by common consent and uniform practice has become the law of the place, or of the subject matter, to which it relates [and which has been] established by long usage." *Lalou v. Aliang*, 1 TTR 94, 99–100 (Palau Tr. Div. 1954) (internal punctuation omitted). We conclude Appellee failed to establish that the purported customary law regarding male inheritance was supported by uniform practice. *Id.*; *see also Ngiraremiang v. Ngiramolau*, 4 ROP Intrm. 112, 116–17 (1993) (holding previous custom no longer applied). Accordingly, we **VACATE** the Trial Division's holding that Appellee met her burden of establishing the existence of the claimed customary law by clear and convincing evidence.

CONCLUSION

For the foregoing reasons, we conclude the LCHO Determination created a form of communal ownership in *Metuker* amongst the children of Techeboet. We further conclude the children's rights vis a vis the Determination are governed by customary law. Finally, we conclude the custom of dry land inheritance claimed by Appellee was not proven by clear and convincing evidence.

This matter is **REVERSED and REMANDED** for proceedings consistent with this opinion.

SO ORDERED, this 20th day of Feb., 2013.

ARTHUR NGIRAKLSONG
Chief Justice

KATHLEEN M. SALII
Associate Justice

LOURDES F. MATERNE
Associate Justice