

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

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SUPREME COURT

OF THE
REPUBLIC OF PALAU

INGLAI CLAN represented by **SHALLUM ETPISON**,
Appellant/Cross-Appellee,

v.

SURANGEL WHIPPS, SR.,
Appellee/Cross-Appellant,

v.

DILORES MITSUR represented by **EVA KYOTA** and
MELVIN T. HIGA,
Cross-Appellants.

Cite as: 2019 Palau 24
Civil Appeal No. 18-052
Appeal from Civil Action No. 12-054

Decided: July 16, 2019

Counsel for Appellant/Cross-Appellee	Vameline Singeo, Jeffrey L. Beattie, and Steven R. Marks
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Counsel for Cross-Appellants Dilores Mitsur and Melvin T. Higa.....	Rachel A. Dimitruk

BEFORE: DANIEL R. FOLEY, Associate Justice
DENNIS K. YAMASE, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

OPINION¹

PER CURIAM:

[¶ 1] As this Court noted in the prior appeal in this case, the dispute concerning clan titles and authority over clan land between competing factions of Inglai Clan has a long history. *See Whipps v. Idesmang*, 2017 Palau 24 ¶ 1 n.2; *Rubeang v. Rubeang*, Civ. Act. No. 01-80 (Tr. Div. May 15, 2007), *appeal dismissed per stipulation*, Civ. App. No. 07-032 (June 23, 2008).² In the previous appeal, two issues were remanded to the Trial Division. This Court instructed the Trial Division to provide additional fact-finding and clarification based on the then-existing record regarding its determination that Ngiltii Idesmang was properly appointed Rekemesik. *See Whipps*, 2017 Palau 24 ¶ 38. It further vacated and remanded the Trial Division's denial of permanent injunctive relief to be evaluated under the proper standard. *See id.* ¶ 44.

[¶ 2] Following the Trial Division's revisiting both issues, they are now again on appeal. Appellant appeals the Trial Division's determination with respect to its denial of permanent injunctive relief following remand. It argues that the Trial Division abused its discretion and the factual findings on which it based its decision were clearly erroneous. Cross-Appellants appeal the Trial Division's determination that Idesmang was properly appointed Rekemesik because of a lack of consensus of and notice to the *ourrot* of all lineages of the clan and further argues that the Trial Division's findings on remand are not specific enough to permit meaningful appellate review.

[¶ 3] The Court now **AFFIRMS** the Trial Division's decision and judgment.

¹ Although the parties request oral argument, we resolve this matter on the briefs pursuant to ROP R. APP. P. 34(a).

² In *Whipps*, 2017 Palau 24, the prior Trial Division litigation, *Rubeang v. Rubeang* above, was referred to as *Iyechad v. Rubeang*. *See Whipps*, 2017 Palau 24 ¶ 1 n.2. The November 3, 2006 Decision and Order in that matter was identified as "*Iyechad I*" and the May 15, 2007 Decision as "*Iyechad II*." *See id.* For consistency and ease of reference across cases, we will use the same abbreviated names here for those lower court decisions and will refer to the appeal in that case as the *Iyechad appeal*. Also note that in *Whipps* the Civil Action No. is incorrectly listed as 15-054 in the caption. The correct Civil Action No. is 12-054.

BACKGROUND

[¶ 4] The history underlying the current appeal and cross-appeal is thoroughly described in the preceding appeal and in *Iyechad I* and *II*. See *Whipps*, 2017 Palau 24 ¶¶ 11–30; *Iyechad I* at 2–12; *Iyechad II* at 1–4. Accordingly, this Court will only address background facts as necessary in its analysis.

STANDARD OF REVIEW

[¶ 5] This Court has previously and succinctly explained the appellate review standards 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).

[¶ 6] As this Court explained in the first appeal in this matter, the Court reviews the decision of the Trial Division to grant or deny injunctive relief for abuse of discretion, see *Whipps*, 2017 Palau 24 ¶ 8 (citing *Andres v. Palau Election Comm’n*, 9 ROP 153, 153 (2002)), and because this action was filed before the ruling in *Beouch v. Sasao*, 20 ROP 41 (2013), the proper standard of review regarding the Trial Division’s determinations on customary matters is clear error, *Whipps*, 2017 Palau 24 ¶ 34.

[¶ 7] The Trial Division’s determinations under a clear error standard “will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless the Court is left with a definite and firm conviction that a mistake has been made.” *Idid Clan v. Palau Pub. Lands. Auth.*, 2016 Palau 7 ¶ 6 (discussing clear error standard of review with respect to trial court’s factual determinations). “Where admissible evidence supports competing versions . . ., the trial court’s choice between them is not clear error.” *Beches v. Sumor*, 17 ROP 226, 272 (2010) (citation omitted).

ANALYSIS

I. Permanent Injunctive Relief

[¶ 8] Appellant sought to prevent Surangel Whipps, Sr. from holding himself out as Rekemesik. In addition to enjoining his use of the title, Appellant sought to prevent Whipps, Sr. from engaging in functions traditionally reserved for the Rekemesik title holder, such as attending meetings of the Palau Council of Chiefs, causing funeral notices to issue, and signing documents and attending functions as Rekemesik.

[¶ 9] As we said in the first appeal of this matter, a four-factor test must be satisfied before a court may grant such relief. *See Whipps*, 2017 Palau 24 ¶ 10 (outlining test). We remanded the Trial Division’s decision to require it to apply that test. On remand, the Trial Division applied the four-factor test and determined that Appellant did not show irreparable harm and that it could not “gauge any disservice to public interest by the denial of the permanent injunction.” July 31, 2018 Decision 3. As a result, it denied Appellant’s requested relief.

[¶ 10] A permanent injunction is “extraordinary relief.” *Andres*, 9 ROP at 153. “Under the abuse of discretion standard, a Trial Division’s decision will not be overturned on appeal unless the decision was arbitrary, capricious, or manifestly unreasonable or because it stemmed from an improper motive.” *Rengulbai v. Azuma*, 2019 Palau 12 ¶ 8 (quoting *W. Caroline Trading Co. v. Kinney*, 18 ROP 70, 71 (2011)). Although the Trial Division did not elaborate on its findings and did not cite the possible harms that Appellant argued, its decision is not arbitrary, capricious or manifestly unreasonable,³ as it determined that “[Appellant has] not articulated and the Court is not clear as to what *irreparable harm*” would occur without an injunction. July 31, 2018 Decision 3 (emphasis in original). Its emphasis indicates that, although Appellant argued harm, the Trial Division did not see the harm it posed as irreparable. Furthermore, the Trial Division noted that Appellant argued that “the Clan and its true title bearers would suffer irreparable injury caused by the confusion, embarrassment and humiliation” of Whipps, Sr. continuing to

³ Appellant does not argue that the Trial Division’s conclusion stemmed from an improper motive, and this Court does not see any evidence of such a motive.

hold himself out as Rekemesik. Order Denying Plaintiff Inglai Clan’s Motion to Alter or Amend Judgment on Remand 1 (Oct. 31, 2018). With respect to its claim that the true title bearers would suffer harm, the Trial Division noted that “Idesmang [who it determined held the Rekemesik title until his death] is deceased and Ebukel Ngiralmaw withdrew her claim to the female title.” *Id.* Resultingly, the Trial Division explained that it “is not at all sure who the true title bearers are who would suffer embarrassment and humiliation.” *Id.* at 1–2. That remains the case today.

[¶ 11] Appellant argues inaccurately that “[a]lthough the court may not know who the current Rekemesik is, *it certainly knows who is not Rekemesik*. The trial court found that Whipps is not the Rekemesik, and this court affirmed.” Appellant Opening Br. 14 (emphasis in original). Actually, what this Court affirmed in the first appeal is the Trial Division’s grant of partial summary judgment, applying the principle of *res judicata* to bar relitigation of Whipps, Sr.’s resignation from the Rekemesik title in 2000. *Whipps*, 2017 Palau 24 ¶¶ 31–32. This Court further noted in its first opinion that “[t]he pleadings [in this matter] were never amended to encompass any new disputes that may have arisen as to the Bechekldil or Rekemesik titles after [Delores] Mitur’s and [Idesmang]’s deaths.” *Id.* ¶ 19. Therefore, this Court has not affirmed, nor has the Trial Division made, a determination on who is *not* Rekemesik currently. In its brief, Appellant makes vague reference to “the true Rekemesik,” Appellant Opening Br. 13, but as we have just noted, the current status of the Rekemesik position did not become an issue in this case, apart from Appellant’s seeking a permanent injunction to prevent Whipps, Sr. from holding himself out as Rekemesik.

[¶ 12] The Trial Division also did not abuse its discretion in failing to determine that Inglai Clan as a group would suffer irreparable harm if no permanent injunction were to issue. Appellant argues that “[t]here is no doubt that the confusion caused by Whipps[, Sr.’s] conduct concerning the identity of Inglai Clan’s title bearer constitutes irreparable injury to the Clan.” Appellant Opening Br. 11. To support its position, Appellant relies on the following testimony from Sauluai Salvador: “Right now, there are just so many things that people say about . . . the house of Inglai, so they are just, so many things tangled right now.” *Id.* (citation to trial transcript omitted). This testimony, however, does not show that Whipps, Sr.’s conduct causes

confusion or causes irreparable injury. Without a sitting Rekemesik, Inglai Clan remains in a state of flux, or leaves, as Salvador put it, “so many things tangled right now.” To resolve this matter, Inglai Clan must gather its *ourrot* and properly nominate an individual to the Rekemesik title.

[¶ 13] This Court finds that the Trial Division did not abuse its discretion in denying permanent injunctive relief to Appellant.

II. Rekemesik Idesmang

[¶ 14] Cross-Appellants challenge the Trial Division’s finding that Idesmang held the Rekemesik title at the time of the Higa lease. In the first appeal, this Court determined that the Trial Division’s findings regarding Idesmang’s appointment as Rekemesik were “not specific enough to allow for meaningful appellate review.” *Whipps*, 2017 Palau 24 ¶ 36. For that reason, this Court remanded the issue to the Trial Division “for additional fact-finding and clarification based on the present record.” *Id.* ¶ 38.

[¶ 15] Following remand, Cross-Appellants contend, as they did in the first appeal, that the Trial Division erred in the legal reasoning it used to determine that Idesmang held the Rekemesik title. They argue that the Trial Division’s conclusion that Idesmang was appointed by some, but not all of the *ourrot* members of Inglai Clan was clearly erroneous.

[¶ 16] Based on testimony from some, but not all of the expert witnesses, the Trial Division determined that the appointment of Rekemesik is a two-step process, whereby the *ourrot* select a candidate to be presented to the *klobak*, and the candidate must then be accepted by the *klobak*. “If all *ourrot* cannot agree, the candidate supported by the female title hold[er] prevails.” July 31, 2018 Decision 2.⁴ Using this statement of customary law, the Trial Division determined that Idesmang was appointed Rekemesik pursuant to custom. Referring to various witnesses’ testimony, the Trial Division made

⁴ The Trial Division did not cite to the expert testimony in the record. Upon review of the record, however, we find that two of the expert witnesses, one from Cross-Appellant’s side and another from Cross-Appellee’s side, testified that, in the face of disagreement from the *ourrot*, the Bechekldil appoints the Rekemesik. See Cross-Appellee witness Demei Otobed Testimony 645:3–11 (same testimony reflected in other transcript at Vol 3. 213:13-21); Cross-Appellant witness Floriano Felix Testimony 1812:27–1813:24 (same testimony reflected in other transcript at Vol. 9 92:19–93:16).

the following findings: Riuch Ngiruchelbad held the female title, Bechekldil, Ngiruchelbad appointed Idesmang as Rekemesik, and the Ngaimis (the Ngatpang *klobak*) accepted him. *Id.* The Trial Division further supported its position with evidence that Surangel Whipps, Sr. publicly recognized Idesmang as Rekemesik in 2008. This Court notes that that recognition occurred following voluntary dismissal and settlement of the *Idechad appeal* on June 23, 2008.

[¶ 17] This Court has been presented in the past with cases with a similar factual history. *Edward v. Suzuki*, 19 ROP 187 (2012), for example, involved a dispute regarding the identity of the highest male chief title holder in Orakiblai Clan in Angaur State. There, one person was appointed to the title directly by the strongest senior female member of the clan and another was appointed by three *ourrot* members of the Clan, including one who thought she had power of attorney to act regarding all clan matters on behalf of the strongest senior female member.

[¶ 18] The parties in that case agreed that the appointment of the chief title position was a two-step process where the *ourrot* first select and appoint a candidate and then the *klobak* must accept the candidate by holding a *blengur*, welcoming the candidate as the *klobak*'s friend. *Id.* at 192–93.

[¶ 19] In *Edward*, the Trial Division determined that the candidate appointed by the strongest senior female title holder was the proper title holder. In reaching its decision, the Trial Division reasoned that “the ‘female title bearer is the most senior member of the clan and as such her decision must be followed.’” *Id.* at 192 (citing lower court decision). It further reasoned that “the oldest ‘who happens to be the title bearer is responsible for the clan and is entrusted to make the best decision for the clan,’” and that the person appointed “to act as her proxy cannot ‘go off on her own.’” *Id.* Instead, the strongest female title holder’s decisions “are to be respected by the *ourrot*.” *Id.* This Court determined that the Trial Division’s decision was not clearly erroneous.

[¶ 20] A similar scenario played out in *Keblil ra Uchelkeyukl v. Ngiraingas*, 2018 Palau 15, where one individual was appointed to the male chief position by the clan’s senior strong female members, and later the same month, the chief female title holder appointed someone else. *Id.* ¶ 2. This

Court affirmed the Trial Division's decision holding that the chief female title holder's appointment was valid, relying on both *Edward* and *Soaladob v. Remeliik*, 17 ROP 283 (2010). In *Soaladob*, we stated that "[b]ecause we know from expert customary testimony that *only* the proper [female title holder] possesses the power to nominate a male title holder . . . , then any nomination from someone who is, by definition, not the proper [female title holder] is defective from the start." *Soaladob*, 17 ROP at 291 (emphasis in original).

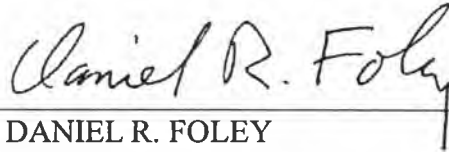
[¶ 21] The same can be said here. We find that the customary law, as the Trial Division found it to be, is based on expert testimony evidence in the record. Two experts stated that, in the event of disagreement among the *ourrot*, the female chief title holder makes the male chief title holder nomination. The Trial Division based its decision on relevant evidence from which "a reasonable trier of fact could have reached the same conclusion." See *Rengulbai v. Baules*, 2017 Palau 25 ¶ 5. As such, the Trial Division did not commit clear error in identifying Idesmang as then-Rekemesik of Inglai Clan.

[¶ 22] Given the history of intra-clan conflict in Inglai Clan, going forward, the Clan must engage the *ourrot* of all of its lineages to attempt to come to consensus on its title holder nominations. Only following input of all *ourrot* of Inglai Clan and in the clear presence of an irreconcilable difference of opinion should it turn to the Bechekldil for her singular nomination.

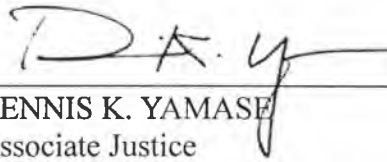
CONCLUSION

[¶ 23] For the foregoing reasons, we **AFFIRM** the Trial Division's decision and judgment.

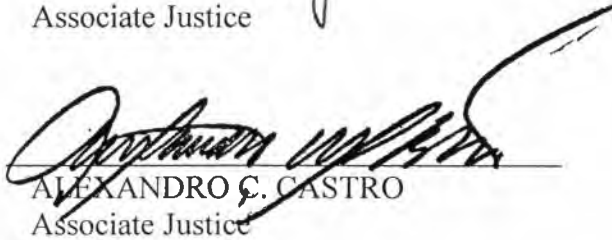
SO ORDERED, this 16th day of July, 2019.



DANIEL R. FOLEY
Associate Justice



DENNIS K. YAMASE
Associate Justice



ALEXANDRO C. CASTRO
Associate Justice