

RDIALUL RENGIL, Appellant
v.
SECHARMIDAL DERBAI, Appellee
Civil Action No. 536
Trial Division of the High Court
Palau District
May 24, 1973

Dispute over rightful holder of principal title, *Rengiil*, of Eluil clan of Ngerkebasang hamlet of Arkabesang Island, Palau District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that judgment was sustained by the evidence and applicable custom.

1. Appeal and Error—Scope of Review—Weight of Evidence

Reweighting evidence is not a function of an appellate court.

2. Appeal and Error—Evidentiary Error—Hearsay

In dispute over who was rightful holder of chief's title, testimony offered by defendant to effect that plaintiff's sister declared at a public meeting that plaintiff only wanted the title so he could sell the clan lands, not denied by sister, who claimed she could not remember what she said, if hearsay, was not of such a nature as to warrant upsetting judgment for defendant.

3. Appeal and Error—Evidentiary Error—Prejudice

Absent a showing of specific prejudice, evidentiary error does not warrant reversal of a judgment.

Assessor:

PABLO RINGANG, *Presiding
Judge, District Court*

Interpreter:

AMADOR D. NGIRKELAU

Counsel for Appellant:

FRANCISCO ARMALUUK

Counsel for Appellee:

BAULES SECHELONG

TURNER, Associate Justice

The principal, or chief's, title, *Rengiil*, of Eluil clan of Ngerkebasang hamlet of Arkabesang Island, Palau Dis-

trict, was at stake in this litigation. Appellant, who was plaintiff in the trial proceedings, had asked the District Court to order appellee to cease exercising the "responsibilities" of the clan title bearer and to pay to the appellant, as the clan title bearer, proceeds allegedly received from sale of timber from clan lands. No evidence was offered on this second claim and the trial court did not pass on it. This court need not consider it in view of the holding on the major issue.

The District Court, in a detailed and well considered opinion, ruled the appellee bore the title *Renguil*, and that the appellant's claim was invalid. Pursuant to 6 T.T.C. Sec. 355(2) this Court may review the facts as well as the law in the record of an appeal from the District Court. *Soilo v. Trust Territory*, 2 T.T.R. 368. The pleadings, the transcript of testimony at the trial, the documentary evidence introduced and the judgment constitute the record reviewed on appeal. No additional evidence was taken but both sides, through their counsel, presented oral argument.

Appellant's grounds for appeal were (1) that the evidence was insufficient to support the judgment, (2) that the judgment was contrary to Palauan custom applicable to the facts, and (3) there was error in receipt of evidence. As to the sufficiency of the evidence, we adhere to the many decisions in the Trust Territory on this question. In *Ladore v. Rais*, 4 T.T.R. 169, 170, it was said:

"Where there is any evidence from which the trial court might properly have drawn its conclusion as to the facts that conclusion will not be disturbed."

To the same effect we said in *Calvo v. Trust Territory*, 4 T.T.R. 506, 516:

"It is the function of this court to ascertain whether there is any probative evidence in support of the trial court's findings and conclusions. If there is any evidence in support, the findings of the trial court will not be disturbed."

[1] In appellant's argument it was urged that the trial court did not adopt the evidence that showed appellant had represented his clan as *Rengiil* in dealing with land claims with the Trust Territory government and was a party, again as clan title holder, in connection with these same land matters on Arkabesang Island in *Torul v. Arbedul*, 3 T.T.R. 486. Appellant, in effect, asks us to reweigh the evidence. This is not the function of an appellate court. *Arriola v. Arriola*, 4 T.T.R. 486, and cases cited, states the rule that an appellate court may not reweigh the evidence and "decide whether in its opinion it should reach the same or different conclusions as the trial judge did as to the facts."

The trial court held, and there is ample evidence in support, that the defendant was confirmed in the title at a public meeting in 1932 held in connection with the death of the predecessor *Rengiil*. The announcement was made by the Espangel of Omrekongel clan. Espangel is the title of the highest chief or *rubak* of the highest ranking clan of Arkabesang.

In conflict with this testimony the appellant declared that the Ibedul, the high chief of Koror; the Ngiraikelau, the chief of Ikelau clan of Koror, and the Espangel of Arkabesang appointed him *Rangiil* in 1935. This conflict in testimony, which the trial court resolved in favor of appellee, relates to Palauan custom involving selection of successor chiefs of a clan.

The appellee's confirmation as successor chief was made at the funeral meeting of the predecessor. Under the custom this was the normal time for the announcement of the successor. Appellant's claim that he was appointed three years later by the Koror and Arkabesang *rubaks* could not be in accordance with the custom except under special circumstances involving the removal of an existing chief for failure to perform his obligations to the clan. If that were

the situation, the senior female members of the clan would appoint the new chief, subject to approval or veto by the *rubaks*, who are the clan chiefs and senior males of the community.

Plaintiff did not, nor did any of his witnesses, say that the defendant had been removed. Plaintiff also admitted the defendant at "one time" was the *Renguil*.

Appellant's argument that the trial court's decision was in conflict with Palauan custom was an argument contrary to that custom. Upon the facts, the judgment was in accordance with, rather than contrary to custom.

There was some discrepancy in the testimony as to who were the senior female members of the Eluil clan. In any event, appellant's sister, Ucheliei Gibbons, recently deceased, was a strong member of the clan. Appellee offered testimony that she declared at a public meeting that her brother, the appellant, was not the *Renguil* and that his only purpose in claiming title was to sell the clan lands. When called as a witness to rebut this testimony, Ucheliei did not deny she had made the statement. When asked, she said she didn't remember what she had said.

[2, 3] Finally, appellant argued the admission of testimony as to what Ucheliei said was in error because of its nature as hearsay. Even if this were so, and this court does not hold it to have been an erroneous admittance of testimony, it is not of such a nature as to warrant upsetting the trial judgment. Under the statute, 6 T.T.C. Sec. 351, erroneous admission or exclusion of evidence is grounds for disturbing a judgment only when it amounts to a denial of substantial justice. *Borja v. Trust Territory*, 1 T.T.R. 280; *Oingernong v. Trust Territory*, 2 T.T.R. 385. Absent a showing of specific prejudice, evidentiary error would not warrant reversal, and in the present case the appellant's argument therefore must fail. It is the court's conclusion the judgment of the trial court is sustained by

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the evidence, is in accordance with applicable custom, and the conclusion that defendant Secharmidal is *Rengil* of Eluil clan, Arkabesang Island, Palau District, is affirmed.