

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

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In the Matter of the Ownership of Land : CIVIL APPEAL NOS. 11-026,
Identified as Lot No. 2006 B 12-002 : 11-037 & 11-043 (Consolidated)
on Bureau of Lands and Surveys (Case No. LC/B 09-0129)
Worksheet No. 2005 B 07, and located :
in Medalaii Hamlet, Koror State. : **OPINION**
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JOHN T. SUGIYAMA,

Appellant.

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Decided: June 21, 2012

Counsel for Appellant: Roy Chikamoto

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII,
Associate Justice; and ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Land Court, the Honorable ROSE MARY SKEBONG, Associate
Judge, presiding.

PER CURIAM:

John Sugiyama appeals the Land Court's denial of three motions to vacate a
Determination of Ownership in which the Land Court held that Sugiyama failed to
establish that he owned certain land. Sugiyama argues that the Land Court
incorrectly evaluated the evidence in its original decision, applied an inappropriately
onerous burden of proof in its original decision, and abused its discretion when it

denied his subsequent motions to vacate. We affirm the decisions of the Land Court.¹

I. BACKGROUND

In the underlying dispute, Sugiyama claimed that he was the rightful owner of land identified on Bureau of Lands and Surveys Worksheet 2005 B 07 as Worksheet Lot No. 2006 B 12-002 ("Parcel"). He argued that the Parcel was originally owned by Ibai Lineage, and that a Japanese man named Yamaguchi bought the Parcel from Ibai Lineage. Yamaguchi, in turn, allegedly sold the Parcel to Sugiyama's parents just prior to the Second World War, after which either the Japanese or the Americans claimed the Parcel as public land. Thus, Sugiyama argued that he was entitled to the return of the Parcel. In support of his argument, Sugiyama testified at the Land Court hearing and submitted a sketch of the land he claimed. He did not, however, submit any other documentation of ownership. No other private claimant submitted evidence regarding ownership of the Parcel, and only Koror State Public Lands Authority ("KSPLA") filed a competing claim to the land.

On October 29, 2011, the Land Court issued a Determination of Ownership, in which it held that Sugiyama failed to establish by a preponderance of the evidence that he was the rightful owner of the Parcel. Instead, the Land Court awarded the Parcel

Pursuant to ROP Rule of Appellate Procedure 34(a), we find this case appropriate for submission without oral argument.

to KSPLA. The court reasoned that if Sugiyama's narrative were correct, the Tochi Daicho would likely reflect Yamaguchi's alleged ownership of the Parcel during the Japanese administration, but the Tochi Daicho did not reflect such ownership. Moreover, Sugiyama submitted no documentation of any transaction between Yamaguchi and his parents. In light of the fact that Sugiyama's father was a paralegal and likely would have understood the need to document a transaction for the purchase of land, the court wrote that Sugiyama's dearth of corroborating evidence was troubling. Although no other private party claimed an interest in the Parcel, the court held that Sugiyama failed to provide a sufficient quantum of evidence proving that his parents owned the Parcel before it became public land.

Sugiyama's claim to the Parcel was not the only ownership dispute before the Land Court in the case below. The Land Court's Determination of Ownership also addressed claims by Ngarngedchibel and Idid Clan to land located near Sugiyama's alleged Parcel. After the Land Court issued its decision, both Ngarngedchibel and Idid Clan filed appeals within the time allotted to do so. Sugiyama, however, did not. Rather, he waited nearly four months before filing a "Motion to Vacate" the Determination of Ownership with the Land Court on February 17, 2011 ("First Motion to Vacate").

Sugiyama's First Motion to Vacate raised four arguments. He claimed: (1)

that the court erred because it did not take judicial notice of the fact that his claim had been specifically excluded from the Ibai Lineage land claim; (2) that none of the Tochi Daicho descriptions relied upon by the court described Sugiyama's alleged Parcel; (3) that the Parcel could not have been awarded to KSPLA because KSPLA's claim excluded the Parcel; and (4) that, because no other party presented "adverse evidence" to Sugiyama's claim, he presented sufficient proof to prevail. Sugiyama also attached an affidavit to the First Motion to Vacate from Yoshie Shishido, a senior member of Sugiyama's family, in which Shishido suggested that the court should rule in favor of Sugiyama.

The Land Court summarily denied the First Motion to Vacate. With respect to Sugiyama's first argument, the court held that even if it erred in failing to take judicial notice of the fact that Sugiyama's claimed Parcel was specifically excluded from the Ibai Lineage land claim, the decision did not rely on the Ibai Lineage claim, so the outcome would have been the same. Sugiyama's second, third, and fourth arguments also failed because, as the court noted, they were essentially disagreements over the Land Court's evaluation of the evidence, a complaint not properly addressed in a post-judgment motion for relief. As for the Shishido affidavit, the court refused to consider it because it was not presented at trial. Ultimately, the Land Court simply was not persuaded that any of Sugiyama's arguments would have changed its

determination that Sugiyama failed to meet his burden to establish ownership. In response, Sugiyama filed a timely notice of appeal of the Land Court's denial of his First Motion to Vacate. That notice of appeal spawned Civil Appeal Number 11-026.

Nevertheless, Sugiyama was not finished with the Land Court. Despite the fact that his first appeal was pending before the Appellate Division, Sugiyama filed another motion to vacate with the Land Court on August 29, 2011 ("Second Motion to Vacate"). This time, Sugiyama attempted to submit new evidence allegedly proving (1) the existence of Yamaguchi, the man from whom Sugiyama claimed his parents purchased the Parcel, and (2) that his father's business was located in Koror Town. He also rehashed many of his earlier arguments with which the court had already dispensed. On September 14, 2011, the Land Court denied his Second Motion to Vacate, holding once again that the newly discovered evidence would not have changed the outcome of the case. Sugiyama appealed the denial of his Second Motion to Vacate, thus generating Civil Appeal Number 11-037.

With two appeals pending, Sugiyama took one final shot at the Land Court. On November 1, 2011, Sugiyama filed a third motion to vacate the Determination of Ownership ("Third Motion to Vacate"). He argued that, when the Land Court denied his Second Motion to Vacate, the court was mistaken in its failure to acknowledge Yamaguchi's existence in the face of documentary evidence proving that Yamaguchi

did, in fact, exist. The problem, however, was that the court's denial of the Second Motion to Vacate was based not on a disbelief of Yamaguchi's existence, but rather on the conclusion that even if Yamaguchi did exist, Sugiyama still failed to overcome his burden. Accordingly, the Land Court denied Sugiyama's Third Motion to Vacate on November 2, 2011, and he promptly appealed that denial as well. The result was Civil Appeal Number 11-043. Later, we granted Sugiyama's motion to consolidate all three appeals so we could address them together.

Across all three appeals, Sugiyama raises two primary arguments. First, he claims that the Land Court applied a burden of proof more onerous than the "preponderance of the evidence" standard because the court refused to award him the Parcel without documentary evidence corroborating his story. Second, Sugiyama quarrels with the Land Court's evaluation of the evidence. For both those reasons, Sugiyama argues that the Land Court abused its discretion when it denied all three of his motions to vacate.

II. PROCEDURAL POSTURE

As a predicate matter, this case presents a number of procedural irregularities that warrant specific discussion. Fidelity to our Rules of Appellate Procedure is necessary for the efficient administration of our Court. Sugiyama's counsel's abject failure to adhere to them is cause for sanction.

Sugiyama's first error was that he failed in all three of his appeals to specify the party against whom his appeals were filed. *See* ROP R. App. P. 3(c). Because KSPLA was awarded ownership of the Parcel Sugiyama claims, Sugiyama should have named KSPLA as Appellee and served it with his notices of appeal and attendant briefs. *See* ROP R. App. P. 3(d). "Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Appellate Division deems appropriate, which may include dismissal of the appeal." ROP R. App. P. 3(a). **In this case, we** exercise our discretion to entertain Sugiyama's appeals despite his error.

Second, after failing to appeal the original Determination of Ownership—a step which would have allowed Sugiyama to seek direct review of the Land Court's decision—he chose to appeal the lower court's denial of three successive motions for post-judgment relief, the last two of which Sugiyama pursued after his first appeal was already pending. **Technically, this practice is permitted.** The Land Court has jurisdiction to entertain motions for post-judgment relief even when an appeal of an earlier order is pending before the Appellate Division. *Tmetuchl v. Ngerketiit Lineage*, 6 ROP Intrm. 29, 30 (1996) (discussing the Trial Division's jurisdiction to rule upon a post-appeal motion to vacate judgment under ROP R. Civ. P. 60(b)). This is true even though the Land Court is not subject to the Rules of Civil

Procedure.² See 35 PNC § 1318; L.C. Reg. 1-2. In turn, we have jurisdiction to review the Land Court's denial of a motion for post-judgment relief independently of an appeal targeting the merits of a judgment in the court below. See 15B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3916 (discussing appellate jurisdiction under American federal rules of appellate and civil procedure directly analogous to our civil and appellate rules). While technically proper, Sugiyama's successive appeals are nevertheless troubling insofar as they cause Sugiyama to incur additional expense while raising no new arguments. His successive appeals do not advance his cause.³

Third, Sugiyama filed a "Designation of Partial Transcript as Part of Record on Appeal" on August 29, 2011, without following the procedure required for obtaining and filing a transcript set forth in Rules of Appellate Procedure 10(b) and (c). He was able to do so because he allegedly obtained a copy of a transcript of the

² The Land Court's inherent authority to correct its own mistakes—and thus to entertain motions for post-judgment relief in certain, limited circumstances—is likely less expansive than the Trial Division's authority to reconsider a decision under Rule of Civil Procedure 60(b). *Masang v. Ngerkesouaol Hamlet*, 13 ROP 51, 53 & 53 n.2 (2006).

³ "[A]ppeals challenging the factual determinations of the Land Court . . . are extraordinarily unsuccessful," *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007), in part because we must apply a deferential "clear error" standard of review. As discussed below, the procedural posture of this case requires us to apply a standard of review even more deferential to the Land Court than "clear error," thus making success even more unlikely.

proceedings below from other parties who separately appealed the Land Court's original Determination of Ownership. This is improper, and it subverts our capacity to verify the authenticity of the transcript.

Finally, Sugiyama attempted to file a "Supplemental Opening Brief" in his first appeal, Civil Appeal 11-026. He did so without seeking permission to file additional briefing. Appellate Procedure Rule 28 constrains appellants to one opening brief filed within a specific time period. An appellant may also file a reply brief to answer arguments raised in the appellee's response brief, ROP R. App. P. 28(b), but because Sugiyama failed to name KSPLA as appellee, KSPLA never filed a responsive brief to which Sugiyama could have replied. We will not foreclose the possibility of an appellant filing a supplemental opening brief in all cases, but an appellant seeking to do so must request leave from this court, which we may or may not grant in our discretion.

In light of Sugiyama's counsel's repeated disregard for our Rules of Appellate Procedure, we find that we must sanction him to deter such conduct in the future. *See, e.g., KSPLA v. Diberdii Lineage*, 3 ROP Intrm. 77, 80, 82 (1992) (sanctioning counsel \$500.00 for failing to "conduct basic legal research," and discussing an earlier order in which counsel was sanctioned \$500.00 for failing to "research the appellate rules"); *ROP v. Singeo*, 1 ROP Intrm. 428A, 428D (1987) (sanctioning counsel

\$500.00 pursuant to the Court's "inherent power to discipline attorneys" for failing to adhere to the Rules of Appellate Procedure). In this case, Sugiyama's counsel, Roy Chikamoto, will be sanctioned \$300.00, payable to the Clerk of Courts within fourteen days of the date of this Opinion.

III. STANDARD OF REVIEW

In certain circumstances, the Land Court has discretion to grant or deny post-judgment motions to vacate. *Shmull v. Ngirirs Clan*, 11 ROP 198, 202 (2004). We review discretionary decisions by the court below for abuse of that discretion.⁴ *W. Caroline Trading Co. v. Leonard*, 16 ROP 110, 113 (2009). "Under this standard, a trial court's decision will not be overturned unless it was arbitrary, capricious, or manifestly unreasonable, or because it stemmed from improper motive." *Id.* (internal quotation omitted).

IV. ANALYSIS

Both of Sugiyama's arguments on appeal attack the Land Court's evaluation of the evidence. He submits that the Land Court required a burden of proof more onerous than the preponderance of the evidence standard, and that it relied too heavily

⁴ Sugiyama did not appeal the original Determination of Ownership. If he had, we would have reviewed the Land Court's factual findings for clear error. Because he appealed only the Land Court's denials of his motions to vacate, we review only the orders that denied those motions. And because the Land Court has discretion to deny motions to vacate, we review such denials only for an abuse of that discretion. As such, we do not engage in a clear error analysis of the Land Court's factual findings.

on certain assumptions while simultaneously failing to credit other facts that Sugiyama finds persuasive. In essence, he cannot conceive how the Land Court could have denied his motions for post-determination relief when no other claimant, including KSPLA, presented evidence contradicting his claim.

Typically, “the only remedy provided to parties aggrieved by a Land Court’s determination of ownership is to appeal that determination directly to the Appellate Division of the Supreme Court.” *Shmull*, 11 ROP at 201 (citing 35 PNC § 1312 and L.C. Reg. 16). Nevertheless, the Land Court has inherent discretion to correct its own decisions in certain extraordinary circumstances. *Id.* at 202 & 202 n.3; *see also Masang*, 13 ROP at 53. Specifically, the Land Court may correct a decision when “there is an intervening change in the law, a discovery of new evidence that was previously unavailable, or a need to correct clear error or prevent manifest injustice due to the court’s misapprehension of a fact, a party’s position, or the controlling law.” *Shmull*, 11 ROP at 202. Requests for post-determination relief based on new arguments or supporting facts that were available at the time of the original briefing and argument cannot be granted. *Id.* at 202 n.2. As such, the threshold of proof demonstrating error required to obtain post-determination relief before the Land Court is exceedingly high.

A claimant seeking the return of public land must show, *inter alia*, “that prior

to the acquisition [by previous occupying powers] the land was owned by the [claimant] or [claimants] or that the [claimant] or [claimants] are the proper heirs to the land.” 35 PNC § 1304(b)(2). “At all times, the burden of proof remains on the claimants, not the governmental land authority, to establish, by a preponderance of the evidence, that they satisfy all the requirements of the statute.” *Palau Pub. Land Auth. v. Ngiratrang*, 13 ROP 90, 93-94 (2006). A claimant meets his preponderance of the evidence burden “when the [court] is satisfied that the fact is more likely true than not true.” 29 Am. Jur. 2d *Evidence* § 173 (2d ed. 2008). If the claimant fails to convince the court that all requisite elements of his claim are more likely true than not true, then the court cannot rule in his favor. *See id.* In a case where a claimant seeks the return of public land, the land authority will prevail if the claimant cannot overcome his burden, regardless of whether the land authority presses its claim before the court. *Masang v. Ngirmang*, 9 ROP 215, 216-17 (2002).

When evaluating evidence, the Land Court is “best situated to make credibility determinations.” *Kotaro v. Ngotel*, 16 ROP 120, 123 (2009) (quotation omitted). The court is not required to find uncontroverted testimony credible if the court does not trust its veracity. *Ngetelkou Lineage v. Orakiblai Clan*, 17 ROP 88, 92 (2010). Because the court has broad discretion to evaluate witness credibility, to weigh all the evidence submitted in a case, and to grant or deny a motion for

post-determination relief, it cannot be an abuse of discretion to deny a motion for post-judgment relief on the basis that the movant failed to overcome his evidentiary burden, provided that the court diligently weighed all properly submitted evidence. This is true even when all of the available evidence is uncontroverted.

In this case, the Land Court considered every piece of evidence properly submitted by Sugiyama. At each turn—in the court’s findings of fact and in each of its denials of Sugiyama’s motions to vacate—the court explained its interpretation of the evidence that Sugiyama submitted, including the evidence he submitted after the Determination of Ownership was issued. And every time, the result was that the court did not find Sugiyama’s narrative credible, and that Sugiyama failed to establish by a preponderance of the evidence that he was entitled to the return of the Parcel. The result was the same even when the court considered Sugiyama’s newly submitted evidence because the court concluded that the new evidence would not change the outcome.

Moreover, in contrast to Sugiyama’s assertion on appeal, the Land Court did not apply an improper evidentiary burden, and it did not imply that claimants before the Land Court must have documentation supporting their claim to prevail. Rather, even a cursory reading of the court’s orders reveals that the court, based on a totality of the evidence, simply did not find Sugiyama’s story plausible. His failure to

produce documentary evidence was only one factor among many that led the court to its conclusion.

The record below is devoid of any glaring factual or legal inaccuracies that would render the court's denial of Sugiyama's motions to vacate an abuse of discretion. Given the procedural posture of this case and the deference we afford the court's decision, our analysis need not delve any further.

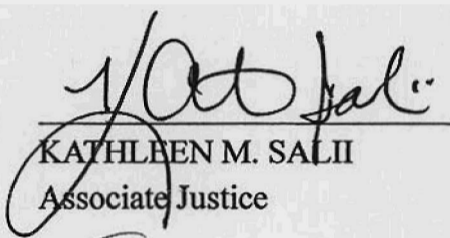
V. CONCLUSION

For the foregoing reasons, we **AFFIRM** the decisions of the Land Court. Furthermore, Roy Chikamoto is hereby **ORDERED** to pay \$300.00 to the Clerk of Court within fourteen days of the date of this Opinion. Mr. Chikamoto must pay the sanction from his personal funds, and he is not permitted to pass the sanction onto his client.

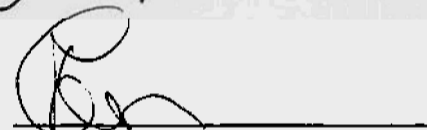
So ORDERED, this st 21 day of June, 2012.



ARTHUR NGIRAKLSONG
Chief Justice



KATHLEEN M. SALII
Associate Justice



ALEXANDRA F. FOSTER
Associate Justice