

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED


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DIRRAKLANG NGIRAMETUKER, : CIVIL APPEAL NO. 12-030
: (LC/N 0-0159 and LC/N 02-0160)
: Appellant, :
: v. : **OPINION**
: OIKULL VILLAGE, :
: Appellee. :
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Decided: May 21st, 2013

Counsel for Appellant: Pro Se
Counsel for Appellee: Oldiais Ngirakelau

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

Appeal from the Land Court, the Honorable RONALD RDECHOR, Associate Judge, presiding.

PER CURIAM:

This case concerns an appeal from a Land Court Findings of Fact, Conclusions of Law, and Determination issued on July 6, 2012. For the following reasons, the decision of the Land Court is **AFFIRMED**.

BACKGROUND

This matter concerns an appeal of a Land Court Determination awarding ownership of a parcel of land known as *Emel-Desolch*¹ (“*Emel*”) to Appellee Oikull Village. *Emel* along with another parcel of land known as *Iikl-Desolch* (“*Iikl*”) make up a rock island known as *Ngerdesolch* located in Airai State.

On April 3, 2012, the Land Court convened a hearing to determine ownership of *Emel* and *Iikl*. At the hearing, the Land Court received: (1) claims for *Iikl* by Benancio Blas Sasao; (2) claims for *Emel* and *Iikl* by Airai State Public Lands Authority; (3) a claim for *Emel* by Appellant Dirraklang Ngirametuker; (4) claims for *Emel* and *Iikli* by Obodei Ayar; and (5) claims for *Emel* and *Iikli* by Appellee.

At the hearing, Appellant testified that: (1) a long time ago, before the Spanish administration of Palau, a man named Buikruu landed on *Emel* and acquired ownership of the land; (2) Appellant is the daughter of Merei, who was the son of Ngirachitei Ngiramengior, who was the nephew of Buikruu; (3) upon Buikruu’s death, ownership of *Emel* passed to Ngiramengior; (4) in 1938, the Japanese registered *Emel* as owned by Ngiramengior;² (5) when Ngiramengior died during the American Administration of Palau, ownership of *Emel* passed to Merei; (6) Merei lived on *Emeli* for approximately

¹ The land is identified as Lot Numbers 02N007-011 and 02N007-012 on the Bureau of Lands and Surveys (BLS) Worksheet Number 02 N 007.

² The Land Court’s decision mischaracterized Appellant’s testimony as asserting that *Emel* was registered in Merei’s name.

three years in the mid-to-late 1960s before moving to Ked, Airai; and (7) upon the death of Merei in 1978, ownership of *Emel* came to rest in Merei's children, including Appellant.

Appellant also presented testimony of Marcelino Augustine that in the late 1960s or early 1970s, the Ngirachtei of Oikull Village told the village's youth that *Emel* was owned by Merei and that the youth must ask Merei for permission to travel to the land.

Isabella Florencio also testified on behalf of Appellant. Florencio testified that in 1979 she wanted to plan a picnic for school children at *Ngerdesolch*, and was told by her mother Omtilou that prior to doing so she needed to obtain the permission of Merei's children. Finally, Valeria Mereb and Rolmii Ngiramelkei Merei testified that Merei lived on *Emel*.

Appellee presented the testimony of Risao Rechirei Bausoch, the Iechadrachodelomel for the Odelomel Clan of Oikull Village. Risao testified that the Iechadrachodelomel is the third ranking title of Oikull Village, and that he inherited the title from his father, who also held the position. Risao testified that he did not remember a house on *Emel* and that he was told by his father that prior to fishing near *Emel* or *Iikl*, he needed to ask permission from the Ngirachitei of Oikull Village. Risao recalled an instance where he saw a big pot on *Emel* and that his father told him the pot was used by Merei to boil salt.

Appellee also offered the testimony of Gillian Johanes, the Aderdei (second ranking title) for the Oikull Council of Chiefs. Johanes testified that he had never heard that *Emel* belonged to Merei. Rather, Johanes had been told by previous holders of the Ngirachitei title that *Ngerdesolech* was the property of Oikull Village.

In addition to the foregoing, Appellee offered three documents for the proposition that, prior to the arrival of the Spanish, *Emel* was public land and was not amenable to private ownership. Exhibit 1 was a two page photocopy purporting to be from the volume *Land Tenure Patterns: Trust Territory of the Pacific Islands*, which stated that “[i]n aboriginal Palau, land was divided into public domain and clan lands. [For Airai] the public domain consisted of . . . the numerous islands of the Chelebacheb complex, the mangrove swamps and the sea and reefs.”³ Exhibit 2 was a photocopy of our decision in *PPLA v. Salvador*,⁴ which emphasized our citation to *Land Tenure Patterns* for the proposition that “[t]raditionally, mangrove swamps, the reef, and the sea were considered public domain, usually under the control of an appropriate village klobak, and members of the village could . . . use the area.”

Exhibit 3 was a photocopy of page 691 of the digest from the first Trust Territory Reporter. Under the heading “Individual Ownership,” the digest set forth two cases that noted that the concept of individual ownership of land was not a part of Palauan Custom.

³ 1 OFFICE OF THE HIGH COMMISSIONER TRUST TERRITORY OF THE PACIFIC ISLANDS, LAND TENURE PATTERNS: TRUST TERRITORY OF THE PACIFIC ISLANDS 296 (1958)

⁴ 8 ROP Intrm. 73, 75 n.2 (1999)

(citing *Ngiruhelbad v. Merii*, 1 TTR 367 (1958) and *Asanuma v. Flores*, 1 TTR 458 (1958)).

The hearing closed on April 4, 2012. On July 5, 2012, the Land Court issued a Determination of Ownership, finding that *Emel* and *Iikl* belonged to Appellee. In its Determination, the Land Court noted that Appellant derived her claim of ownership to *Emel* through a purported chain of title dating back to Buikruu, who allegedly acquired ownership when he landed on the property before the time of the Spanish. Although it credited the testimony that Merei resided on *Emel*, the Land Court rejected Appellant's claim because she failed to show that at the time Buikruu allegedly made land-fall an individual could acquire ownership of a rock island by landing on it. Additionally, notwithstanding the fact that Appellant testified that *Emel* was registered in the name of Ngiramengior, the Land Court wrote that Appellant's testimony that Ngiramengior owned the land until American times was contradicted by her (nonexistent) testimony that *Emel* was registered in Tochi Daicho the name of Merei.

Having found that rock islands were publicly owned before the Spanish arrival, the Land Court credited the testimony of Appellee's witnesses and concluded that title to *Emel* and *Iikl* lay with Appellee. Appellant appealed.

STANDARD OF REVIEW

On appeal, Appellant contends "the Land Court abused its discretion when it rejected probative evidence from disinterested witnesses . . . and instead . . . accepted self-

serving testimonies and irrelevant documents presented by Appellee.” In essence, Appellant submits that the evidence she presented required a finding that she held title to *Emel*.

We review the Land Court’s factual findings for clear error and its conclusions of law de novo. *Azuma v. Ngirchechol*, 17 ROP 60, 63 (2010). Where a Land Court litigant asks us to “reweigh the evidence in the record and to reach a conclusion different from the Land Court . . . reversal . . . is warranted only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.” *Ngerukebid Lineage v. KSPLA*, 9 ROP 180, 182–83 (2002).

ANALYSIS

As a general rule, litigants in a Land Court proceeding may advance two types of claims: (1) a superior ownership claim under which the litigant pursues ownership based on the strength of his title; and (2) a return of public lands claim under which a private party “admits that title to the land is held by a public entity, but seeks its return.” See *Koror State Pub. Lands Auth. v. Wong*, Civ. App. 12-006, slip op. at 4–5 (Oct. 31, 2012) (emphasis omitted). Where, as here, parties assert competing claims of superior ownership, the Land Court must award ownership to the claimant advancing the strongest claim. See *Ngirumerang v. Tmakeung*, 8 ROP Intrm. 230, 231 (2000) (“The Land Court can, and must, choose among the claimants who appear before it and cannot choose someone who did not, even though his or her claim might be theoretically more sound.”).

Below, the Land Court concluded that Appellee presented a stronger claim of ownership to *Emel* than any of the other litigants. Appellant contends that the evidence she presented required a finding that Buikruu obtained title to *Emel*, and then passed ownership to Ngiramengior, who passed it to Merei, who passed it to Appellant and her siblings.

Appellant based her claim to *Emel* on the argument that her ancestor Buikruu obtained title to the land pursuant to the custom of *kerdelel*, under which an individual who first lands on land acquires ownership over the property. Accordingly, under the pre-*Beouch* rule, she bore the burden of proving the existence of such custom by clear and convincing evidence. *Tellames v. Isechal*, 15 ROP 66, 68 (2008). Appellant presented no evidence as to the existence of *kerdelel* and thus failed to meet her burden. Accordingly, the Land Court properly held that she could not rely on the doctrine of *kerdelel* to show Buikruu acquired title to *Emel* when he landed. Thus, the sole evidence supporting Appellant's claim was: (1) her testimony that the Tochi Daicho listed Ngiramengior as the owner of *Emel*,⁵ and (2) the testimony of various witnesses that Merei lived on *Emel* and that, over the years, numerous people (including at least one chief of Oikull Village) expressed the belief that Merei (and later his children) owned *Emel*.

⁵ As a general matter, “[t]he Tochi Daicho is presumed to be accurate, and a party seeking to rebut it must present clear and convincing evidence.” *Children of Masang Marsil v. Napoleon*, 18 ROP 74, 78 (2011). However, it is undisputed that the Tochi Daicho for Airai State was lost or destroyed during World War II and thus is not entitled to the “standard presumption of accuracy.” *Rechucher v. Lomisang*, 13 ROP 143, 148 (2006).

In contrast, Appellee contended that prior to the Spanish arrival, rock islands were publicly owned. In support of this proposition, Appellee introduced uncontested documentary evidence stating explicitly that in aboriginal Airai State the *chelebacheb* (rock islands) were considered public domain.⁶ Appellee also presented testimony to the effect that *Emel* had been the property of Oikull Village for an extended period of time.

Simply put, the Land Court was faced with two competing claims of title based on customary laws. One customary law was proven while the other was not. Based on this evidence of record, the Land Court concluded that Appellant's claim to title of *Emel* was without merit and that Appellee controlled the property since pre-colonial times. The Land Court's decision was not clearly erroneous and must be **AFFIRMED**.⁷

⁶ *Chelebacheb* translates to "rock island." LEWIS S. JOSEPHS, NEW PALAUAN-ENGLISH DICTIONARY 42 (1990).

⁷ We note the Land Court mischaracterized Appellant's testimony as stating that Merei was listed as owner in the Tochi Daicho. This error was compounded by the Land Court's observation that such testimony conflicted with Appellant's testimony that Ngiramengior owned the property until American times. However, such error was harmless insofar as it was unrelated to the Land Court's ultimate conclusion that Appellant's claim to title of *Emel* must fail because she failed to show Buikruu (through whom Ngiramengior and Merei claimed title) acquired ownership of *Emel*. See *Rengiil v. Debkar Clan*, 16 ROP 185 (2009) (A Land Court's error is harmless when it is unrelated to the Determination's ultimate conclusion).

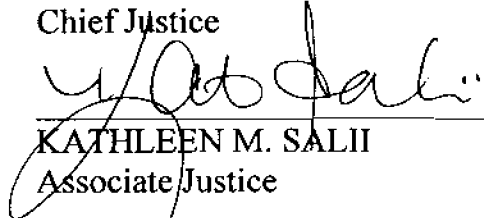
CONCLUSION

For the reasons set forth above, the Land Court's Determination of Ownership is
AFFIRMED.

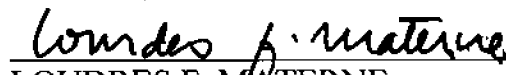
SO ORDERED, this st 21 day of May, 2013.



ARTHUR NGRAKLSONG
Chief Justice



KATHLEEN M. SALII
Associate Justice



LOUDRES F. MATERNE
Associate Justice