FILED

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

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| SANTOS IKLUK,<br><br>Appellant,<br><br>v.<br><br>KOROR STATE PUBLIC LANDS AUTHORITY<br><br>Appellee. | CIVIL APPEAL NO. 12-020<br>(LC/B 04-137 and LC/B 04-138)<br><br>**OPINION** |

Decided: March 21, 2013

Counsel for Appellant: Mariano W. Carlos
Counsel for Appellee: Debra B. Lefing

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

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 May 7, 2012. For the following reasons, the Determination of the Land Court is **REVERSED and REMANDED.**

## BACKGROUND

This appeal concerns two parcels of land in Ngerkesoaol Hamlet, Koror, known as *Olang*.[2]On July 20, 2000, Appellant Santos Ikluk, acting pro se, filed a Claim of Land Ownership for land known as *Torimong*. Ikluk claimed the land based on the assertion that "Ngmilskak a Adelbai Ollaol ma Aot Ollaol ea Betkii Dirraingel a kilengei."[3] In the area on the form for "Ownership listed in the Tochi Daicho," Ikluk wrote "(None) Traditional owner Ollaol." In the space for "Names of other known claimants," Ikluk wrote "None." Appellee Koror State Public Lands Authority (KSPLA) claimed the land as public lands.

The claims for *Torimong* were consolidated with claims for other parcels of land and a hearing on the consolidated claims began on October 10, 2011. The hearing continued from January 23, 2012, through January 26, 2012, and concluded on February 24, 2012.

At the hearing, Ikluk clarified his claim was for a parcel of land within *Torimong*, known as *Olang*. Ikluk further testified that *Olang* had been owned by Ollaol and that Ikluk received the land from Ollaol's children, in return for the performance of customary services. Although Ikluk heard stories the land was taken for the construction of a nearby Japanese shrine, he testified he filed his claim because he saw a home and a "private

[2]The land is identified as Worksheet Lots 181-12073 and 181-12074.

[3] This translates roughly to "Adelbai Ollaol and Aot Ollaol gave it to me and Betkii Dirraingel agreed."

property" sign on the land. However, when asked whether *Olang* was government property at the time he received it, Ikluk stated he did not know.

At the conclusion of the hearing, Ikluk filed a written closing argument in which he argued "that [KSPLA] has no interest whatsoever in/to the subjected property." In support of this contention, Ikluk cited Determination of Ownership and Release Number 162 of the National Land Commission, which he asserts "determined that one, Adelbai Ollaol, had the absolute right and power over the subjected property . . . ." It is undisputed that Release Number 162, which was never presented to the Land Court, released *Olang* from Trust Territory control and granted ownership in the land to Ngerketiit Lineage.

On May 7, 2012, the Land Court issued its Findings of Fact, Conclusions of Law, and Determination ("Determination"), in which it granted ownership of *Olang* to KSPLA. In reaching this conclusion, the Land Court noted only that *Olang* was listed as public land, and that Ikluk had "provided no evidence to show it was wrongfully taken or taken by force."

**STANDARD OF REVIEW**

We review the Land Court's conclusions of law de novo. *Rengchol v. Uchelkeiukl Clan*, Civ. App. Nos, 10-018 & 10-024, slip op. at 6 (Oct. 7, 2011) (citing *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007)).We review the Land Court's factual determinations for clear error and will reverse its findings of fact "only if

the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion." *Ngirakesau v. Ongelakel Lineage*, Civ. App. No. 10-037, slip op. at 5-6 (Nov. 11, 2011) (citing *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 165 (2004)).

## ANALYSIS

Ikluk raises two issues on appeal: (1) the Land Court erred when it evaluated Ikluk's claim under the return of public lands standard; and (2) the Land Court lacked jurisdiction to adjudicate ownership of the lots under the return of public lands standard.

### I. Did the Land Court Err When it Applied a Return of Public Lands Standard to Ikluk's Claim?

Ikluk challenges the Land Court's decision to apply the return of public lands standard to his claim. Ikluk asserts this was error because *Olang* was not public lands.In support of this argument, Ikluk relies on two documents mentioned only in his written closing argument at trial: (1) Determination of Ownership and Release Number 162, and (2) a record of hearing Number 69 from the Palau National Land Commission.

Where land is claimed by a governmental entity, a person desiring to claim such land may assert two types of claims.*Ngarameketii v. Koror State Pub. Lands. Auth.*, 18 ROP 59, 63–64 (2011). First, under the authority of Article XIII of the Constitution and 35 PNC § 1304(b), its implementing provision, a litigant may assert a claim for return of public of lands. "In a return of public lands case pursuant to Article XIII and § 1304, the claimant acknowledges that an occupying power acquired the land but attempts to prove

that the acquisition was wrongful." *Espong Lineage v. Airai State Pub. Lands Auth.*, 12 ROP 1, 5 (2004). Alternatively, the claimant may bring a "quiet title claim asserting that [he] has superior title to [the] piece of property than the governmental entity claiming ownership of it."*Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 167 (2004).

Superior title and return of public lands claims may be asserted individually or together.*Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185, 185–86 (2002) ("While the Land Court was correct in determining that Appellant should be barred from filing an untimely claim for the return of public lands, Appellant is nevertheless entitled to proceed on his claim of superior title.").Where distinct claims are asserted for the same parcel, the Land Court must consider such claims separately. *See Airai State Pub. Lands Auth. v. Seventh Day Adventist Mission*, 12 ROP 38, 41 (2004) ("[T]he Land Court must consider any Article XIII claims as analytically separate from determinations of ownership under the land registration program."). If the Land Court fails to consider an argument before it, the case must be remanded to allow the Land Court an opportunity to address the issue.*See Espong Lineage*, 12 ROP at 5–6(remanding case where opinion did"not appear to address their contention that the Japanese had not acquired title to pass on to ASPLA.").

Below, the Land Court denied Ikluk's claim to *Olang* because "he provided no evidence to show it was wrongfully taken or taken by force." The Determination did not perform a superior title analysis with regard to *Olang*. Accordingly, if Ikluk presented a

superior title claim, then remand is warranted to allow the Land Court to consider such a claim. *Id.*

In analyzing whether Ikluk presented a superior title claim, we begin by recognizing "[t]here is a long standing, and oftentimes unspoken, tradition in the United States and here in Palau of courts employing a heightened duty to its pro se litigants." *Whipps v. Nabeyama*, 17 ROP 9, 11 n. 2 (2009). Keeping with this duty, the Land Court Rules of Procedure must "be construed to ensure fairness in the conduct of hearings and presentation of claims with or without assistance of legal counsel." L.C. R. of Proc. 2.When interpreting what type of claim a pro se litigant has raised, a court should read "the [pleadings] to raise the strongest claims that [they] suggest[]." *Hill v. Curcione*, 657 F.3d 116, 122 (2nd Cir. 2011).

Upon consideration, we conclude Ikluk asserted a superior title claim below. Unlike other claims addressed in the consolidated hearing, Ikluk's claim was not filed on a return of public lands form; it was filed as a Claim of Ownership. Furthermore, insofar as Ikluk's claim was filed more than a decade after the expiration of the statute of limitations for return of public lands claims,[4] a superior title claim is Ikluk's strongest possible claim to *Olang*. Finally, while Ikluk's testimony was ambiguous (he expressed uncertainty as to whether the land was in fact public), any ambiguity was dispelled by his closing argument, which stated explicitly his claim was for superior title. Keeping with

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[4] Pursuant to 35 PNC § 1304(b), all claims for return of public lands must have been filed prior to January 1, 1989.

its duty to construe pro se claims in the broadest sense possible, the Land Court should have deemed Ikluk's claim to be one for superior title, and considered it as such. The failure to do so warrants remand. *See Espong Lineage*, 12 ROP at 5–6.

### II. Did the Land Court Have Jurisdiction to Consider Ikluk's Claim as a Return of Public Lands Claim?

In his second enumeration of error, Ikluk, pointing to Release Number 162, asserts that "[s]ince the land in question ceased to be part of the public lands . . . the Land Court had no jurisdiction to adjudicate ownership of the said land pursuant to 35 PNCA §1304(b)." Because we conclude the Land Court erred in treating Ikluk's claim as one for public lands, we decline to address this issue.

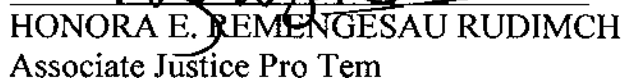
## CONCLUSION

For the reasons set forth above, this matter is **REVERSED and REMANDED**. On remand, the Land Court should re-evaluate Ikluk's claim under the superior title standard.

**SO ORDERED,** this 21 day of March, 2013.

ARTHUR NGIRAKLSONG
Chief Justice

KATHLEEN M. SALII
Associate Justice



HONORA E. REMENGESAU RUDIMCH
Associate Justice Pro Tem