FILED

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

HEIRS OF ADACHI and KATEY GIRAKED, Appellants, v. KOROR STATE PUBLIC LANDS AUTHORITY, Appellee;	CIVIL APPEAL NOS. 12-022 & 12-023 (Consolidated) LC/B Nos. 04-0119, 04-0134, 04-0135, & 04-0136
KOROR STATE PUBLIC LANDS AUTHORITY, Appellant, v. MARIANO TELLEI and MEROL NGIRMERIIL, Appellees.	**OPINION**

Decided: August 12, 2013

Counsel for Heirs of Adachi: J. Roman Bedor
Counsel for Katey Giraked: Ernestine K. Rengiil
Counsel for KSPLA: Debra B. Lefing
Counsel for Mariano Tellei and Merol Ngirmeriil: Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and KATHERINE A. MARAMAN, Part-Time Associate Justice.

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

PER CURIAM:

This case concerns three appeals from the same consolidated Land Court Findings of Fact, Conclusions of Law, and Determination issued on May 7, 2012. For the following reasons, the decision of the Land Court is **AFFIRMED.**[1]

BACKGROUND

The appeals by the Heirs of Adachi, Katey Giraked, and Koror State Public Lands Authority concern six parcels of land in Ngerkesoaol Hamlet, Koror, each of which KSPLA claimed as public lands. The Land Court matter from which Appellants now appeal consolidated the claims of numerous parties to the six parcels in dispute.

In resolving the competing claims before it, the Land Court held hearings on October 10, 2011; January 23-26, 2012, and February 24, 2012. The Land Court issued its Findings of Fact, Conclusions of Law, and Determination on May 7, 2012.

The Land Court determined, among other things, that (1) Appellant Heirs of Adachi failed to meet their burden to show wrongful taking of Worksheet Lots 181-12062, 181-12063, 181-12072, and PK-26, (formerly a part of Tochi Daicho lot 239) and, therefore, failed to prove their return of public lands claims as to those lots; (2) Appellant

[1] Although Appellant Koror State Public Lands Authority requests oral argument, we determined pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

Giraked failed to meet her burden of proof to show wrongful taking of Worksheet Lots 181-062 and 181-12072 (also formerly a part of Tochi Daicho Lot 239), and, therefore failed to prove her return of public lands claim as to those lots; (3) Appellee Mariano Tellei met his burden to prove his return of public lands claim with respect to Worksheet Lots 181-12056 and 181-12061 and, therefore, was granted ownership of those lots; and (4) Appellee Merol Ngirmeriil met his burden to prove his return of public lands claim with respect to Worksheet Lot 181-12063 and, therefore, was granted ownership of that lot.

Heirs of Adachi and Giraked each appeal, asserting the Land Court erred in awarding the claimed lands to KSPLA. KSPLA also appeals the Land Court's award of lands to Tellei and Ngirmeriil.

STANDARD OF REVIEW

Appellants each assert factual challenges to the Land Court's Findings of Fact, Conclusions of Law, and Determination.

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. Nos. 10-037, slip op. at 5-6 (Nov. 11, 2011) (citing *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 165 (2004)). We will not substitute our view of the evidence for the Land Court's, nor are we obligated to reweigh the evidence

or reassess the credibility of witnesses. *See Rengchol v. Uchelkeiukl Clan*, Civ. App. Nos. 10-018 & 10-024, slip op. at 9 (Oct. 7, 2011) (citing *Ebilklou Lineage v. Blesoch*, 11 ROP 142, 144 (2004). *See also Ngarngedchibel v. Koror State Pub. Lands Auth.*, Civ. App. Nos. 10-047 & 11-002, slip op. at 5 (Feb 23, 2012). "Where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous." *Rengchol*, slip op. at 6 (citing *Ngirmang v. Oderiong*, 14 ROP 152, 153 (2007)).

With respect to appeals that challenge a court's factual findings, this Court recently held:

> Empirically, 'appeals challenging the factual determinations of the Land Court . . . are extraordinarily unsuccessful.' *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007). Given the standard of review, an appeal that merely re-states the facts in the light most favorable to the appellant and contends that the Land Court weighed the evidence incorrectly borders on frivolous.

Koror State Pub. Lands Auth. v. Tmetbab Clan, Civ. App. No. 11-014, slip op. at 6 (July 2, 2012). *See also Estate of Dingilius v. Peleliu State Pub. Lands Auth.*, Civ. App. No. 11-005, slip op. at 5 (June 5, 2012) (citing *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007)).

In addition, Heirs of Adachi raise a single legal issue on appeal, which we review 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)).

ANALYSIS

Heirs of Adachi contend the Land Court erred by failing to hold KSPLA to the burden to prove the land at issue is public land and by concluding that Heirs of Adachi failed to meet their burden to prove a wrongful taking of their land as a part of their return-of-public-lands claims to Lots 181-12062, 181-12063, 181-12072, and portions of PK-26. Giraked argues the Land Court erred when it concluded she failed to meet her burden to prove a wrongful taking as a part of her return-of-public-lands claims to Lots 181-12062 and 181-12072.[2] Finally, KSPLA appeals the Land Court's award of lands to Appellees Tellei and Ngirmeriil and contends the Land Court erred on the grounds that (1) Tellei failed to meet his burden to prove he filed timely claims for Lots 181-12056 and 181-12061, and (2) Ngirmeriil failed to meet his burden to prove a wrongful taking of Lot 181-12063 as a part of his return-of-public-lands claim.

To prevail on return-of-public-lands claim under section 1304(b), a claimant must prove:

> (1) he or she is a citizen who has filed a timely claim; (2) he or she is either the original owner of the land, or one of the original owner's 'proper heirs;' and (3) the claimed property is public land which attained that status by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration.

Palau Pub. Lands Auth. v. Ngiratrang, 13 ROP 90, 94 (2006).

[2] Although Giraked included Lot PK-26 in her Notice of Appeal as a part of her challenge to the Land Court's Decision, she withdraws that portion of her appeal in her Opening Brief.

I. Heirs of Adachi Appeal.

Attendant to their factual challenge on appeal, Heirs of Adachi initially argue that KSPLA failed to prove that Lots 181-12062, 181-12063, 181-12072 are, in fact, public lands. The Court need not elaborate on this basic point of law any more than to repeat two well-established legal principles relating to return-of-public-lands claims: (1) the burden is at all times on the claimant to prove each of the elements of their claim, including that the claimed land became public land, *see Salii v. Koror State Pub. Lands Auth.*, 17 ROP 157, 160 (2010); and (2) government ownership of the claimed land is conceded in return-of-public-lands claims, *Airai State Pub. Lands Auth. v. Seventh Day Adventist Mission*, 12 ROP 38, 41 (2004). Accordingly, the Land Court did not err in failing to require KSPLA to prove the claimed lands are public lands.

Heirs of Adachi also contend the Land Court erred when it concluded that Heirs of Adachi did not meet their burden to prove that the claimed lots were wrongfully taken. As an initial matter, Heirs of Adachi appear to contend that the mere fact that KSPLA claims it owns the lots at issue is itself, ipso facto, evidence of a wrongful taking from the Heirs of Adachi. That is plainly not the case. As noted, Heirs of Adachi bear the burden to prove the lands they claim were taken by force or fraud or were obtained without just compensation or adequate consideration. *Ngiratrang*, 13 ROP at 94. The fact that the

lands were acquired by a previous occupying power does not itself prove anything wrongful occurred.

Heirs of Adachi also argue they provided sufficient evidence to meet their burden to demonstrate their claimed lands were wrongfully taken. The transcript, however, is largely bereft of any testimony by Heirs of Adachi as to the circumstances under which their claimed lands were publicly acquired, wrongful or otherwise. The only testimony Heirs of Adachi identifies in the record is the statement by Satoru Adachi that it is his "understanding" the lands at issue were "not bought." Even if such testimony was unrebutted and credited by the Land Court, it is not necessarily sufficient to establish a wrongful taking, because the property may have been acquired by lawful means other than a purchase. In any event, without any details about the nature of the public acquisition of the claimed lands, we cannot say that the Land Court clearly erred in finding that Heirs of Adachi did not provide sufficient evidence to meet their burden to show the claimed lands were wrongfully taken. *See, e.g., Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth.*, 12 ROP 148, 150-51 (2005) ("[W]e find that there was sufficient evidence to support the Land Court's finding that Rimat did not establish a wrongful taking. Rimat provided the court with no details about who took the land or how the land was taken, other than to state that the land was taken without compensation. . . . Rimat's suggestion that the Land Court could not discount her testimony because it was undisputed ignores the clearly established precedent that a judge may choose to

disbelieve even uncontroverted evidence."). Accordingly, we affirm the Land Court's conclusion that Heirs of Adachi did not prove their claimed lands were wrongfully taken.

II. Giraked Appeal.

Giraked raises a similar factual challenge to the Land Court's determination, arguing the Land Court clearly erred in reaching the conclusion that she failed to meet her burden to prove a wrongful taking as a part of her return-of-public-lands claims to Lots 181-12062 and 181-12072. Specifically, Giraked contends the Land Court erred in its finding that Giraked "denied the land was ever taken by the government" and that she "provided no evidence to establish the land . . . was wrongfully taken."

Giraked's testimony regarding the wrongful taking aspect of her return-of-public-lands claim is extremely thin. Her relevant testimony on this aspect of her claim, for which she carries the burden of proof, was: (1) despite limited use by the Japanese during the war, she continued to use the property even after the war had ended and after her father, Ngiraked, had died; (2) her father never told her that the Japanese purchased the property, and (3) she never found out how the land was acquired but only "hear[d] that it is a government property." In her Opening Brief, Giraked contends this testimony shows she "did not know that the Japanese or TT government bought the lots she is claiming."

The analysis here is no different than for the Heirs of Adachi, above, based on the Court's holding in *Ngiramechelbang*. A mere statement that a person is unaware of how

the claimed land was acquired by the government and that she had not been told that the land was purchased, at least under these circumstances, can barely be construed as supporting the contention that the claimed lands were wrongfully taken. Indeed, as with the Heirs of Adachi, on this record it is unclear as to how, when, or by whom the claimed lots were taken. To the extent Giraked requests this Court to reweigh the evidence or to reevaluate the credibility of her testimony in order to find in her favor, we decline to do so. *See Rengchol*, slip op. at 9. A reasonable trier of fact could have reached the same conclusion as the Land Court in finding that Giraked's evidence was insufficient to carry her burden to prove her claimed lands were wrongfully taken. Accordingly, we affirm the Land Court's decision.

III. KSPLA's Appeal.

KSPLA raises two arguments on appeal. First, KSPLA contends the Land Court clearly erred as a matter of fact when it found that Appellee Tellei filed a timely claim to Lots 181-12056 and 181-12061. Second, KSPLA maintains the Land Court committed clear error when it found that Appellee Ngermeriil proved a wrongful taking of Lot 181-12063.

A. Tellei's Claims.

During the underlying proceedings on September 20, 2011, Tellei filed a Notice of Additional Claim in which he sought to include Lots 181-12056 and 181-12061 in his initial claim for Lot 181-12063, and the Land Court took testimony concerning the scope

of Tellei's claims. KSPLA contends that it was error for the Land Court to conclude that those additional claims were timely because they were not filed as a part of Tellei's original claim before the January 1, 1989, deadline for return-of-public-lands claims. In other words, KSPLA maintains on appeal that Tellei's claims to Lots 181-12056 and 181-12061 were untimely, and it was error to conclude otherwise.

Before addressing the merits of KSPLA's argument, Tellei notes that KSPLA did not raise this argument during the underlying proceedings, and, therefore, the Land Court did not have an opportunity to rule on any such objection. As Tellei points out, the Court postponed the hearings in this matter to resolve KSPLA's objection to Tellei's claim based on the concern that the claims had not properly been registered and noticed and that there might be additional claimants to the lots. On Order of the Land Court, the proceedings were postponed, and Chamberlain Ngiralmau, Land Registration Officer with the Bureau of Land and Surveys, investigated the claims to those lots. Based on his investigation, Ngiralmau testified the claimed lots were properly registered, noticed, and monumented and that there were not any new claims to those lots beyond those before the Land Court at the time of his testimony. Tellei testified at length that his timely-filed original claim was associated initially with the pre-Tochi Daicho designation "Lot 167" and encompassed both Lots 181-12056 and 181-12061, which became associated with Tochi Daicho Lot 239. According to Ngiralmau and as evidenced by the record, the claims by Tellei were apparently sufficient for BLS to register the land, provide public

notice, monument the lots, and map them on a Worksheet Map. After Ngiralmau's testimony, the Land Court proceeded with Tellei's claims to Lots 181-12056 and 181-12061 without any objection by KSPLA as to the timeliness of those claims. In its written closing arguments, KSPLA continued to maintain those lots were not properly registered and that Tellei's claim to Lot 181-12063 was outside of his original claim because it corresponded to Tochi Daicho Lot 240. Both of those arguments have been abandoned on appeal in favor of the argument that the claims for Lots 181-12056 and 181-12061 were not timely filed.

It is important to clarify that KSPLA's argument is presented solely as a clear error review of the Land Court's factual finding that Tellei presented a timely claim, rather than as a legal challenge to the conclusion that Tellei's "additional claims" were properly considered as a part of Tellei's original claim. The Court notes KSPLA elected not to file a reply to Tellei's argument and, therefore, did not take the opportunity to point to any portion of the trial record showing that it preserved this issue for appeal, nor does KSPLA state any evidentiary basis on which to base its present argument. As set out above, the Court has reviewed the relevant portions of the record, which do not reflect that KSPLA raised this argument for the Land Court's consideration either during the hearing or in its written closing. Having found no record of KSPLA's preservation of this issue, the Court deems it waived. *See Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004) ("No axiom of law is better settled than that a party who raises an issue for the

first time on appeal will be deemed to have forfeited that issue, even if it concerns a matter of constitutional law.").

B. Ngirmeriil's Claim.

KSPLA also challenges the Land Court's award of Lot 181-12063 to Ngirmeriil on the ground that the Land Court committed clear error when it found Ngirmeriil proved a wrongful taking. Specifically, KSPLA argues Ngirmeriil's testimony was too vague and general to be sufficient to carry his burden.

In contrast to the claims by Heirs of Adachi and Giraked already discussed, the Land Court noted Ngirmeriil's testimony that his grandfather, Yaoch Ngirametuker, sold some of the surrounding lots but maintained ownership of and continued farming on the claimed lot until the Japanese told Ngirametuker they were going to farm pineapples on his property, that he could no longer use the land, and that he would not receive compensation. Ngirmeriil's testimony at the hearing echoes the Land Court's findings, explaining that the Japanese told Youch he could no longer farm the land near a Japanese shrine that was in the area and that they used Yaoch's land to farm pineapples. Tr. 42-43, 64.

KSPLA cites *Ngiramechelbang* for the general proposition that a statement that land was taken without compensation is insufficient to carry a claimant's burden of proof as to a wrongful taking. 12 ROP at 150-51. We did not, however, make such a general statement of law in *Ngiramechelbang*. Instead, we held that we could not say the Land

Court erred in finding that the testimony of the claimant lacked credibility because it was so lacking in detail as to the nature of the alleged wrongful taking. *Id.* We did not preclude the possibility of finding such limited testimony both credible and sufficient under other circumstances. Nevertheless, we note the crucial distinctions between the testimony of Giraked and Heirs of Adachi discussed above and Ngirmeriil's testimony. In contrast to the testimony in *Ngiramechelbang*, Ngirmeriil was able to identify: who gave him the information about how the land was taken (his mother and maternal uncle, Olkeriil), who took the land (the Japanese), for what purpose the land was taken (to farm pineapples and to make a buffer around a nearby shrine), that there was an order given to abandon the land, to whom the Japanese issued their instruction to abandon the land (Yaoch Ngirametuker), and that no compensation was paid. This testimony is more detailed than that discussed in *Ngiramechelbang* and is far from KSPLA's description as "vague" and "general." KSPLA does not identify any contrary testimony in the record but merely maintains this testimony is insufficient. We disagree and conclude that a reasonable trier of fact could have reached the same conclusion as the Land Court in finding the claimed lot was wrongfully taken.

CONCLUSION

For the foregoing reasons, the decision of the Land Court is **AFFIRMED**.

SO ORDERED, this 12th day of August, 2013.

ARTHUR NGIRAKLSONG
Chief Justice

KATHLEEN M. SALII
Associate Justice

KATHERINE MARAMAN
Part-Time Associate Justice