

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED

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IDID CLAN,

Appellant,

v.

CHILDREN OF SINZI AND SATSKO
NAGATA and SATSKO S. NAGATA,

Appellees.

SUPREME COURT
CIVIL APPEAL NO. 15-006
(LC/B 08-00016 & 07-00531)

OPINION

Decided: July 15, 2016

Counsel for Appellant: Salvador Remoket
Counsel for Appellee: Raynold B. Oilouch

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

Appeal from the Land Court, the Honorable C. Quay Polloi, Senior Judge, presiding.

PER CURIAM:¹

This appeal arises from the Land Court's award of two lots located in Idid Hamlet, Koror State, together known as *Ngerbas*, to Appellees, the children of Sinzi and Satsko Nagata ("the Nagatas"). Appellant Idid Clan, a claimant in the case below, now appeals, arguing that the Land Court erred by reforming its return-of-public-land ("ROPL") claim into a superior title claim and by determining that the Tochi Daicho listings for the lots comprising *Ngerbas* were erroneous. For the reasons that follow, we affirm.

¹ We determine that oral argument is unnecessary to resolve this matter. ROP R. App. P. 34(a).

BACKGROUND

Ngerbas, identified as Cadastral Lot No. 054 B 06, is listed in the Tochi Daicho as comprising Lots 700 and 701 and being owned by Omtilou Lineage, which is a lineage of Idid Clan. The parties agree that Omtilou Lineage leased *Ngerbas* to Japanese nationals during much of the Japanese administration, including up until late in the summer of 1943, when the Japanese administration began relocating large numbers of Palauans in preparation for Allied attacks. At this point, the parties' versions of events diverge. Idid Clan asserts that *Ngerbas* continued to be owned by Omtilou Lineage, which continued to lease the land to Japanese nationals until they were expelled after World War II ended. The Nagatas assert that in 1943 Omtilou Lineage sold *Ngerbas* to a Japanese national; that, pursuant to a 1951 order,² the land was vested to the Trust Territory government; and that the Trust Territory government conveyed *Ngerbas* to a private party, who then transferred it to Sinzi and Satsko Nagata.

In December 1988, Idid Clan, represented by Ibedul Yutaka Gibbons and Bilung Gloria Salii, filed an ROPL claim for *Ngerbas*. Nearly 20 years later, in early November 2005, the Bureau of Lands and Surveys ("BLS") issued notices that *Ngerbas* would be monumented and surveyed. On November 21, 2005, Salii filed a "Claim of Land Ownership" for Lot 700 and a "Land Claim Monumentation Record" for all of *Ngerbas*, which she identified as Cadastral Lot No. 054 B 06. When Land Court proceedings began

² See 27 TTC §§ 1-5 (recodified as amended at 37 PNC §§ 1001-04) (codifying vesting order); see generally *Wasisang v. Trust Territory*, 1 TTR 14 (1952) (discussing the vesting order).

in 2008, the Nagatas noticed an appearance. The only other claimant to appear below, Koror State Public Lands Authority (“KSPLA”), withdrew its claim to *Ngerbas* in February 2014.

At the Land Court hearing in December 2014, both remaining claimants presented evidence supporting their respective version of events. The crucial inquiry was whether Omtilou Lineage had sold the land to a Japanese national, in which case the Nagatas held superior title, or instead had retained ownership of the land and merely continued leasing it to Japanese nationals, in which case Idid Clan held superior title. Notably, at the conclusion of the hearing, the Nagatas offered into evidence the Land Court’s decision in *In re Ilengelang*, LC/B Nos. 08-00187 & 08-00188 (July 3, 2014), *aff’d*, *Ngiraked v. Koror State Pub. Lands Auth.*, Civ. App. No. 14-029 (Jan. 5, 2016). (Nagata Ex. 17.)

In its decision in this case, the Land Court first determined that, because the Trust Territory government no longer owned *Ngerbas*, having conveyed it to a private party, and because KSPLA had withdrawn its claim, the case was “not a[n ROPL] case.” (Decision at 2 & n.1 (Mar. 2, 2015).) The remainder of the Land Court’s decision appears to address the parties’ competing claims for superior title, which turned on whether Omtilou Lineage had sold *Ngerbas* to a Japanese national in 1943. Initially, the Land Court noted the difficulty in assessing evidence regarding events that occurred over seven decades prior and found the parties’ respective evidence for and against the occurrence of a sale of roughly equal weight. However, the Land Court determined that, in such

circumstances, “corroborating evidence”—in this case, *In re Ilengelang*—can play an important role. (*Id.* at 6.) The evidence presented in *In re Ilengelang* explained how lots listed in the Tochi Daicho as owned by Palauans might nonetheless end up legitimately being owned by the Trust Territory government. In *In re Ilengelang*, evidence showed that the early 1940s were very active years for Japanese troop movement (which caused movement of Palauan civilians), land sales during 1943 would not have been recorded in the Tochi Daicho, and lands owned by Japanese nationals—even lands acquired through sales that went unrecorded—were listed in a schedule that was delivered by the Japanese government to the United States Navy at the end of the war. The Land Court determined that evidence from *In re Ilengelang* explained what happened to *Ngerbas*: it was sold to a Japanese national, but the sale was not recorded in the Tochi Daicho, and, subsequently the Trust Territory government took control of *Ngerbas* because it was listed in the schedule of lands owned by Japanese nationals. Thus, the Land Court found that “*Ngerbas* was likely sold and not just leased to a Japanese national,” that “the Tochi Daicho listing is erroneous to the extent that it does not reflect the change of ownership,” and that the Nagatas held superior title. (*Id.* at 8-9 & n.9.) Accordingly, the Land Court issued a determination of ownership in favor of the Nagatas.

Idid Clan appealed.

STANDARD OF REVIEW

“We review the Land Court’s conclusions of law de novo and its findings of fact for clear error.” *Kebekol v. Koror State Pub. Lands Auth.*, Civ. App. No. 13-020, slip op. at 4 (Mar. 6, 2015). “The factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion.” *Id.* (quoting *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009)).

DISCUSSION

Idid Clan assigns two errors on appeal. First, it argues that the Land Court erred by determining that Idid Clan was not pursuing an ROPL claim and, instead, reformed the claim into one for superior title. Second, it argues that the Land Court erred by relying on *In re Ilengelang* as evidence that the Tochi Daicho’s listing Omtilou Lineage as the owner of Lots 700 and 701 was erroneous. We address these assignments of error in turn.

I. The Land Court did not reform Idid Clan’s claim, and Idid Clan has failed to challenge the basis of the Land Court’s rejection of its ROPL claim.

Idid Clan’s first challenge on appeal consists of one muddled and wandering paragraph, but the main thrust of the alleged error assigned to the Land Court is the Land Court’s purported reformation of Idid Clan’s ROPL claim into a superior title claim. As explained below, the single paragraph does not sufficiently challenge the Land Court’s briefly explained rejection of Idid Clan’s ROPL claim, so we do not address it.

We have consistently held that Land Court claimants concurrently and in the alternative may pursue both ROPL and superior titles claims, but “a claimant desiring to pursue both types of claims must present and must preserve the claims individually.” *Idid Clan v. Koror State Pub. Lands Auth.*, 20 ROP 270, 273 (2013). In order to be properly presented and preserved, an ROPL claim must be filed on or before January 1, 1989. *See* 35 PNC § 1304(b)(2); *Elsau Clan*, 20 ROP at 89. A superior title claim must be filed within 30 days after the mailing of the notice of monumentation by BLS. *See* 35 PNC § 1309; *Idid Clan*, Civ. App. No. 14-005, slip op. at 5 n.2. If a party fails to properly present and preserve either claim, the Land Court may not consider that claim. *Idid Clan*, 20 ROP at 273. Indeed, in *Idid Clan*, we reaffirmed that “a claimant who fails to file both types of claims is limited to prevailing only on the claim he actually brings,” and, therefore, “a party that files only a[n ROPL] claim may not prevail upon a superior title theory,” as “the Land Court lack[s] the authority to transform a party’s [ROPL] claim into a superior title claim or to hear and adjudicate a superior title claim that was filed after the statutorily imposed deadline.” *Koror State Pub. Lands Auth. v. Idid Clan*, Civ. App. No. 14-005, slip op. at 4-5, 7 (May 26, 2015). The Land Court’s reformation of an ROPL claim into a superior title claim, when the claimant failed to properly present and preserve a superior title claim, is legal error that will result in reversal unless we conclude that it was harmless. *See Idid Clan*, 20 ROP at 276.

Idid Clan's argument need not detain us for long because its contention that the Land Court erroneously reformed its ROPL claim into a superior title claim is factually incorrect. Idid Clan seems to infer reformation due to the very fact that the Land Court considered a superior title claim, indicating that Idid Clan believes it filed only an ROPL claim. No one disputes that Idid Clan filed a timely ROPL claim in 1988. But, contrary to Idid Clan's assertions, the record clearly shows that it also filed superior title claims for *Ngerbas* by submitting a Claim for Land Ownership for Tochi Daicho Lot 700 and a Land Claim Monumentation Record for all of *Ngerbas*. See *Ikluk v. Koror State Pub. Lands Auth.*, 20 ROP 286, 289 (L.C. 2013) (noting that a superior title claim is filed by using a Land Court "Claim of Land Ownership" form, which is not subject to the return of public lands statutory deadline), *cited with approval in Idid Clan*, Civ. App. No. 14-005, slip op. at 5-6; *Ucheliou Clan v. Oirei Clan*, 20 ROP 37, 39 (2012) (noting that a party had indicated a superior title claim on a "Land Claim Monumentation Record" and implicitly finding this sufficient). Both these claims were timely filed on November 21, 2005, within the 30-day period following the mailing of the notice of monumentation by BLS in early November 2005. Moreover, the record shows that Idid Clan pursued both types of claims throughout the proceedings below. (See, e.g., Idid Clan's Written Closing Arg. at 6 (Jan. 20, 2015) ("Idid Clan says the land did not become public land. If it did, then it was taken by force."); *accord* Tr. at 190.) Thus, the Land Court did not reform Idid Clan's ROPL claim into a superior title claim; instead, it separately disposed of an

ROPL claim and a superior title claim (although the Land Court's analysis mostly discussed the two claims together), both of which Idid Clan had properly presented and preserved.

Before turning to its second assignment of error, we briefly address the basis of the Land Court's rejection of Idid Clan's ROPL claim. The Land Court determined that, because the Trust Territory government conveyed *Ngerbas* to a private party and no longer owned it, Idid Clan could not pursue a statutory ROPL claim.³ Although language in several of our cases might be read to suggest that a Land Court claimant may not pursue an ROPL claim if the land at issue is not public land at the time the claim is filed,⁴

³ The Land Court also suggested that Idid Clan could not pursue an ROPL claim because the relevant public land authority, KSPLA, had withdrawn its claims to *Ngerbas* earlier in the proceedings. Although we have often stated that, as a function of the statutory framework, "[ROPL] cases may be won by a public land authority [that] does not even participate in the proceedings," *Koror State Pub. Lands Auth. v. Wong*, 21 ROP 5, 8 (2012), *overruled on other grounds by Koror State Pub. Lands Auth. v. Idid Clan*, Civ. App. No. 14-005, slip op. at 6 n.4 (May 26, 2015); *accord Ngarngedchibel v. Koror State Pub. Lands Auth.*, 19 ROP 159, 161 (2012), we have never addressed the effect of an affirmative withdrawal of the relevant public land authority in an ROPL proceeding. To whatever extent the Land Court's rejection of Idid Clan's ROPL claim relied on KSPLA's withdrawal, we neither affirm nor reject that determination of the legal significance of this fact because we have no occasion to review the Land Court's underlying legal conclusion, as Idid Clan does not challenge it on appeal.

⁴ *See, e.g. Kebekol*, Civ. App. No. 13-020, slip op. at 8 ("[T]he third enumerated element [of an ROPL claim] has, implied in the name of the claim itself, a sub-element—that the lands in question must be public."); *Elsau Clan v. Peleliu State Pub. Lands Auth.*, 20 ROP 87, 89 (2013) ("[T]he Land Court begins with the presumption that the land in question is to remain public land and will only decide otherwise where the claimant is able to meet the elements of Section 1304."); *Salii v. Koror State Pub. Lands Auth.*, 17 ROP 157, 160 (2010) ("If a claimant fails to prove the[] three necessary elements [of §1304(b)], title cannot be transferred pursuant to §1304(b), and the property remains public land."); *Adelbai v. Masang*, 9 ROP 35, 39 (2001) ("[Section] 1304(b) also requires that the land claimed qualifies as land to be returned."). There is also language in some of our opinions stating that, in the context of an ROPL claim, evidence

we have never squarely addressed the issue. We note that a close reading of the statute suggests that a claimant may pursue an ROPL claim even if the government entity that is alleged to have wrongfully acquired the land subsequently conveyed title to a private party. *See* 35 PNC § 1304(b) (stating that “[t]he Land Court shall award ownership of public land, or land claimed as public land” to a claimant who meets the statutory elements); 35 PNC § 101 (defining “public land” as “those lands situated within the Republic which were owned or maintained by the Japanese administration or the Trust Territory Government as government or public lands, and such other lands as the national government has acquired or may hereafter acquire for public purposes”).

Although the Land Court rejected Idid Clan’s ROPL claim on the ground that the land was no longer public land, Idid Clan does not sufficiently challenge this reasoning on appeal. In fact, Idid Clan seems to accept the Land Court’s rationale. (*See* Opening Br. at 3 (“The Land Court recognized that that the Trust Territory Government conveyed the land to [a private party], and therefore, the case is not a return of public lands proceeding.”).) Although a few brief statements of Idid Clan’s single paragraph addressing the rejection of its ROPL claim disagree with the Land Court’s conclusion

regarding whether the land is in fact public land is entirely irrelevant, because the claimant, *ab initio*, concedes that the land is public land for purposes of the claim. *See, e.g., Koror State Pub. Lands Auth. v. Idid Clan*, Civ. App. No. 14-005, slip op. at 9-11 (May 26, 2015). This language might be read to suggest that, for ROPL claims, the Land Court should never inquire whether the land is in fact public land. *See Kebekol*, Civ. App. No. 13-020, slip op. at 7 (“The question raised by [an ROPL] case is not who currently owns the land, as it would be in a quiet title claim”). We note the language used in these cases in order to expressly state here that none of it should be understood to conclusively determine whether, to be subject to an ROPL claim, the land at issue must be public land at the time the claim is filed.

that *Ngerbas* was not public land, all of those statements are conclusory and unsupported by any citation to relevant legal authority. See *Idid Clan*, 20 ROP at 276 (explaining that argument in appellant's brief challenging Land Court's finding that "spans less than one-third of a page and cites no legal authority whatsoever . . . amounts to little more than a conclusory statement that there was 'no evidence' to support the finding" and thus would not be addressed, "as it is inadequately briefed"). Further, it is clear to us from the more fully developed—yet still terse—portions of the paragraph that the real thrust of Idid Clan's argument is that the Land Court erroneously reformed its ROPL claim into a superior title claim, an argument we have already rejected.

Accordingly—although we express no opinion as to the correctness of the Land Court's reasoning—because Idid Clan does not sufficiently challenge it on appeal, we do not disturb the Land Court's disposition of Idid Clan's ROPL claim. See *id.*; cf. *Sungino v. Palau Evangelical Church*, 3 ROP Intrm. 72, 76 (1992) (“[Appellant’s] fail[ure] to assign error to the basis of the trial court’s decision . . . constitutes waiver and is fatal to his appeal.”). Because Idid Clan's assertion that the Land Court erroneously reformed its claim is factually baseless and because it failed to challenge the basis of the Land Court disposition of its ROPL claim, we affirm the Land Court's rejection of Idid Clan's ROPL claim.

II. The Land Court did not err in rejecting Idid Clan's superior title claim.

The Land Court determined that Omtilou Lineage sold Lots 700 and 701 to a Japanese national sometime in 1943. Such a sale would explain how *Ngerbas* eventually came to be owned by the Trust Territory government, which later conveyed it to a private party who transferred it to the Nagatas. Thus, the Land Court found that the Tochi Daicho's listing Omtilou Lineage as the owner of Lots 700 and 701 was erroneous, as it had never been updated to reflect the sale by Omtilou Lineage to the Japanese national. In so finding, the Land Court noted that the evidence presented by Idid Clan and the Nagatas was in equipoise, a result of the familiar "he-said-she-said" situation often faced by the Land Court. To resolve the deadlock, the Land Court relied on *In re Ilengelang*, in which there was evidence that a lot of land changed hands between 1940 and 1943, without being reflected in the Tochi Daicho (which was completed in 1941), so a schedule of lands owned by Japanese nationals was given by the Japanese government to the U.S. Navy at the end of the war, as a supplement to the Tochi Daicho. The evidence regarding the schedule explained how the Trust Territory government came into ownership of the land at issue in *In re Ilengelang* and formed the basis for inferring that the Tochi Daicho's listing the land as owned by a Palauan claimant's predecessor-in-interest was erroneous. In the case below, the Land Court found that *Ngerbas* must have been included on the same schedule of lands, and, based on this finding, the Land Court

inferred that the Tochi Daicho's listing Omtilou Lineage as the owner of Lots 700 and 701 was erroneous.

In its second assignment of error, Idid Clan makes a two-fold argument. First, it argues that the Land Court erred in relying on evidence presented in *In re Ilengelang* because that evidence was not introduced in the case below. We decline to consider this argument, as Idid Clan has failed to properly brief it. As we recently reiterated in *Anastacio v. Eriich*, Civ. App. No. 15-012 (June 30, 2016), “[a]rguments that are unsupported by legal authority need not be considered by the Court on appeal, and generally we will not consider them.” *Anastacio*, Civ. App. No. 15-012, slip op. at 6 (brackets, quotation marks, and citations omitted).

Here, Idid Clan's brief contains three terse sentences⁵ complaining that the Land Court relied on evidence that was never introduced in the proceedings below. Idid Clan does not bother to express the unstated legal proposition—that reliance on un-introduced evidence is reversible error—or to cite any authority for that proposition. The failure to cite any authority in support of an argument is all the more troubling where, as here, the appellant's argument amounts to a challenge to admissibility determinations made by the Land Court, which has extraordinarily broad discretion to consider “all relevant evidence which would be helpful . . . in reaching a fair and just determination of claims.” LCR

⁵ In the first of these sentences, Idid Clan states only that “[t]he Land Court erred when it relied on evidence not on record” (Opening Br. at 4.) The next two sentences are only slightly more explanatory: “the Land Court reviewed records in a separate case,” and “the evidence in [the] *Ilengelang* case were [sic] not introduced at this Land Court case.” (*Id.*)

Proc. 6; see also *PPLA v. Tmiu Clan*, 8 ROP Intrm. 326, 329 (2001) (“Land Court . . . rulings concerning the admissibility of evidence . . . have always favored admission over exclusion, consistent with the legislative preference that ‘procedural and evidentiary rules should be designed to allow claimants to represent themselves’ in the Land Court.” (brackets omitted) (quoting 35 PNC § 1310(a), cited as formerly codified at 34 PNC § 1309(a)). Absent citation to any relevant legal authority, we are disinclined to review Idid Clan’s argument in detail, and, because the argument does not appear clearly meritorious on the face of the record, we will not excuse Idid Clan’s failure to provide a legal framework for assessing it. See *Anastacio*, Civ. App. No. 15-012, slip op. at 10 (citing *Mikel v. Saito*, 19 ROP 113, 117 (2012)).

Aside from its unsupported argument that the Land Court erroneously considered un-introduced evidence, Idid Clan also argues that the Land Court erred in finding that the Tochi Daicho listing was erroneous. Citing *Orak v. Temael*, 10 ROP 105 (2003), Idid Clan asserts that the evidence from *In re Ilengelang* could not amount to the clear and convincing evidence needed to rebut the presumption of accuracy accorded the Tochi Daicho in superior title claims. Idid Clan is correct that “[i]n the context of a superior title claim, ‘the identification of landowners listed in the Tochi Daicho is presumed to be correct, and the burden is on the party contesting a Tochi Daicho listing to show by clear and convincing evidence that it is wrong.’” *Ngiraked v. Koror State Pub. Lands Auth.*, Civ. App. No. 14-029, slip op. at 7 (January 5, 2016) (brackets omitted) (quoting *Taro v.*

Sungino, 11 ROP 112, 116 (2004)). Idid Clan is also correct that the Land Court did not apply the Tochi Daicho presumption in this case. However, we conclude the Land Court's decision not to apply the Tochi Daicho presumption was not error.

The Land Court found that (1) the Tochi Daicho was completed in 1941, (2) the last transaction during the Japanese administration regarding *Ngerbas* occurred in 1943, and (3) the transaction was a sale that transferred *Ngerbas* to a Japanese national and was not merely a lease. (Decision at 2, 7-8.) Although Idid Clan challenges the last of these findings on appeal, it does not challenge the first two of them. It claims that, under the Tochi Daicho presumption, the Land Court could not find that the Japanese national owned *Ngerbas* unless the Nagatas provided clear and convincing evidence that the Tochi Daicho's listing Omtilou Lineage as *Ngerbas*' owner was wrong.

We disagree. As we recently emphasized in *Koror State Pub. Lands Auth. v. Idid Clan*, Civ. App. No. 15-027, (Mar. 29, 2016):

The Tochi Daicho presumption is typically applied to create a firm starting point from which private claimants can establish a chain of title. But, because the Tochi Daicho does not—and logically cannot—speak to what occurred after its compilation, a Tochi Daicho listing has no relevance when the parties agree who owned the land at the time the Tochi Daicho was compiled and the dispute relates only to subsequent events.

Idid Clan, Civ. App. No. 15-027, slip op. at 13. Here, the parties do not dispute that Omtilou Lineage owned *Ngerbas*, and was listed as its owner in the Tochi Daicho, up until the Tochi Daicho's completion in 1941. Instead, the parties' dispute concerns a transaction that occurred in 1943, *after* the Tochi Daicho was completed. Because it was

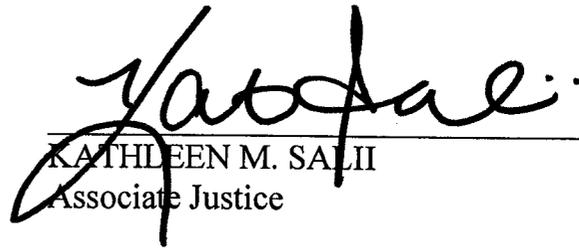
completed before the relevant transaction occurred, the Tochi Daicho cannot speak to whether the post-completion transaction resulted in a change of ownership. Accordingly, the Land Court correctly did not apply the Tochi Daicho presumption in favor of Idid Clan or require the Nagatas to rebut such a presumption with clear and convincing evidence. *See Kebekol*, Civ. App. No. 13-020, slip op. at 6 (“[T]he [Tochi Daicho] presumption only extends to what the Tochi Daicho listing *itself* shows; any elements of a claim that are not addressed by the listing need only be demonstrated by the usual standard of proof.”).

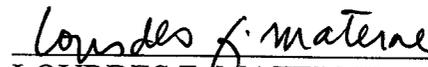
Because the Land Court committed no error in not applying the Tochi Daicho presumption, Idid Clan’s argument that the evidence from *In re Ilengelang* could not amount to clear and convincing evidence that the Tochi Daicho listing was wrong is a non-starter. Moreover, we conclude that the evidence adduced at trial, including the evidence from *In re Ilengelang*, was sufficient to support the Land Court’s finding by preponderance that *Ngerbas* was sold to a Japanese national in 1943 rather than merely leased. Accordingly, we reject Idid Clan’s second assignment of error.

CONCLUSION

For the reasons set forth above, the Land Court's decision and determination of ownership are **AFFIRMED**.

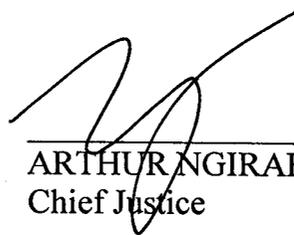
SO ORDERED, this 15th day of July, 2016.


KATHLEEN M. SALII
Associate Justice


LOURDES F. MATERNE
Associate Justice

NGIRAKLSONG, Chief Justice, Concurring:

I concur.


ARTHUR NGIRAKLSONG
Chief Justice