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IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

MELEKEOK STATE PUBLIC LANDS AUTHORITY,
Appellant/Cross-Appellee,
v.
ANDRES DEMEI, represented by Seit Andres,
Appellee/Cross-Appellant.

Cite as: 2018 Palau 13
Civil Appeal Nos. 17-020 and 17-021
Appeal from LC/C 15-00063

Decided: August 10, 2018

Counsel for Appellant/Cross-Appellee Salvador Remoket
Counsel for Appellee/ Cross-Appellant Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

Appeal from the Land Court, the Honorable Rose Mary Skebong, Associate Judge, presiding.

OPINION

PER CURIAM:

[¶ 1] This Appeal concerns two plots of land in Melekeok State, 11C01-008 (Lot 008) and 11C01-010 (Lot 010). The Land Court awarded Lot 008, comprising of roughly 297 acres, to Melekeok State Public Lands Authority (MSPLA) and Lot 010, just over 1 acre, to Telungalk era Andres Demei.¹ Both parties appeal the determination of the lot awarded to the other party. We affirm the Land Court's determinations.

¹ According to the record before us, Andres Demei died in 1982. Therefore, Seit Andres is not "representing" Andres Demei. He is, according to the record, claiming the property on behalf of Telungalk era Andres Demei, and his caption as Appellee and Cross-Appellant should have reflected that fact. *Blailles v. Bekebekmad*, 2018 Palau 5.

STANDARD OF REVIEW

[¶ 2] The Land Court's factual findings are reviewed for clear error, and its conclusions of law are reviewed de novo. *Kebekol v. KSPLA* 22 ROP 32, 40 (2015). The Land Court's factual determinations "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. Where there are several plausible interpretations of the evidence, the Land Court's choice between them shall be affirmed even if this Court might have arrived at a different result." *Eklbai Clan v. KSPLA*, 22 ROP 139, 141 (2015) (internal quotations omitted).

FACTUAL AND PROCEDURAL BACKGROUND

[¶ 3] Seit Andres claimed to own the lots from his great-great-grandfather, Reklai Temol. Temol was summoned to Melekeok from Ngeremlengui at the age of 16 to become the Chief of the Uudes Clan. While travelling to Melekeok, Temol stopped at the land in question and declared it his property. Temol later had a son named Basiou. During his lifetime, Temol designated Palauan bead money for his son and entrusted it to a member of the new lineage that took over control of the Uudes Clan. Basiou attempted to collect the money, and when he was denied access, he and an accomplice murdered a senior male member of the Clan. Basiou fled to Peleliu, and eventually married and had children. His oldest child, Demei, returned to Melekeok. Demei cared for his father's land and attempted to register the land for the Tochi Daicho. However, the Japanese told him he could not register land in the hills, such as this property, and could only claim property in the residential area. Thus the property was not registered in the Melekeok Tochi Daicho.

[¶ 4] Demei recognized his son Andres as his successor to the land in Melekeok. Andres Demei claimed the property known as Tebedall ra Ingas through a "Land Acquisition Record" on August 25, 1975. A section of the Record included a sketch of the property monumented by Andres. However, Andres never informed his son, Seit Andres, of the exact locations of the land before his death in the 1982.

[¶ 5] MSPLA was granted a quit claim deed to all public lands in the state from the Palau Public Lands Authority. In the 1980s, the government built a dam on Lot 008. Andres Demei and his family did not object to the construction of this dam, claiming that it was in the best interest of the country, pointing to their “civic mindedness.” After the building of the dam, the government sought a temporary easement from Andres Demei for the construction of the Compact Road, which travels through Lot 010.

[¶ 6] Ultimately, the Land Court determined that MSPLA owned Lot 008 because it has maintained exclusive control over the lot for a long period of time. During that time, it built a public dam and excluded access to the public. At no point did Andres or Seit object to the building of the dam or take any action that would be congruous with land ownership. “Seit’s acknowledgment of MSPLA’s use, occupation, and denial of access to Lot 008 and its surrounding area is an acknowledgment that the land is public land.” The Land Court also stressed that Seit and his father were sophisticated actors with many years of public service who should have known about land claims. In other words, they should have objected if they owned the land.

[¶ 7] In regards to Lot 010, the Land Court indicated that, even though the land was not monumented, and the background story was rather fanciful, Andres and Seit still had a superior claim as compared to MSPLA. For this lot, MSPLA had not provided any evidence that the land was public.

[¶ 8] On appeal, the Appellant Seit Andres believes it was an error to award Lot 008 to MSPLA because of his and his father’s lack of objection to its use. MSPLA seeks a ruling that the Land Court committed error when failing to find that Lot 010 was public land.²

DISCUSSION

I. Lot 008

² Both parties filed their respective Opening Briefs on February 28, 2018. This made any Response briefs due 30 days later on March 31, 2018. However, both parties filed their Response Briefs on April 13, 2018 without leave from the Court. Therefore, none of the arguments in the Response Briefs nor Andres Demei’s Reply Brief have been taken into account.

[¶ 9] Seit Andres challenges the Land Court's factual findings and claims the Land Court erred when taking the family's non-objection to indicate a lack of ownership. He claims the land through a superior title claim. This presupposes that the land was never made public. Andres argues that the Japanese never took control of the lots nor did the national government acquire ownership simply by erecting a dam on the land. Andres further argues that the government is constitutionally precluded from obtaining property through adverse possession.

[¶ 10] There exists a "high standard" in order to set aside the factual findings of the Land Court. *Children of Llecholch v. Etumai Lineage*, 21 ROP 27, 28 (2014). Appellant Andres has not met such a burden. Andres argues that the land could not have been public because there was no sign of Japanese ownership, such as ruins or buildings, and the national government had not taken any proper steps to achieve ownership of Lot 008. There is no case law or statutory requirement that the Japanese must leave buildings or ruins to indicate their historical possession.

[¶ 11] The Land Court's decision noted the government had exclusive control, and Andres never indicated he was the owner of the property when the government built the dam. The Land Court weighed the evidence before it and rejected the assertion that Seit and Demei had not objected to the building of the dam because of civic mindedness, but rather found the lack of objection to be an indication that the claimants did not own the land. In a previous case, this Court rejected the notion that a claimant to a piece of land did not object to others' use out of politeness, and read that fact to indicate that the man did not own the land. *Tucherur v. Rudimch*, 21 ROP 84, 88 (2014). ("Under Palauan law, a claimant's failure to perform acts consistent with ownership may be circumstantial evidence that the claimant does not own the land in question." *Id.* at 87). In a similar vein, the family's inaction regarding the building of the dam and its use as public property points to the conclusion that they do not own Lot 008.

[¶ 12] Appellant Andres also notes that prior to Japanese control, Clans owned the land, and thus, family history indicating that Andres and his family owned the lots should be respected. However, the evidence was that the Japanese would not allow their ancestor, Demei, to register the land in the

1940s. Residents were only permitted to own land in the residential areas of Melekeok and not in the hills, where this lot is located. At that point, the Japanese refused to consider individual or Clan possession of this land, and, instead, took it for their own use.

[¶ 13] Therefore, there is no evidence that the Land Court committed clear error when determining that the land was public defeating the family's superior title claim because of their lack of objection to the building of the dam and public use of the land.

II. Lot 010

[¶ 14] MSPLA makes a series of arguments in support of the theory that the Land Court committed error in not recognizing Lot 010 as public land. MSPLA first argues that the Japanese asserted ownership over the land when they refused to allow Demei to register the land in his name. MSPLA also argues that Demei was shown to own three other pieces of property in the Melekeok Tochi Daicho, yet this land was not registered to him. In addition, MSPLA argues that it has acquired the land through adverse possession because of the existence of the dam.

[¶ 15] It has already been established that the Japanese took ownership of Lot 008 when they refused to allow Demei to register the land in his name. However, Lot 010 borders lots with individual owners, a fact that was taken into account in the Melekeok Tochi Daicho. Therefore, the two lots do not have the same history. The government has also treated Andres Demei as the owner of this Lot. Melekeok State sought a temporary easement from Andres Demei to build the Compact Road through this lot. Therefore, his ownership was recognized. Even if permitted to claim private property through adverse possession, MSPLA does not have a claim to this particular lot. The dam was built on Lot 008, not Lot 010. Therefore, any claim would not be eligible for this particular lot. MSPLA still presents no evidence showing any ownership or interest of this lot. Thus the Land Court did not err when determining ownership of this Lot.

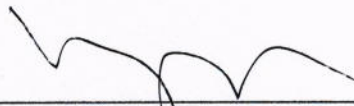
[¶ 16] MSPLA also argues the Land Court erred when it did not apply the proper legal standard to superior title claims. Namely, the Court, after accepting historical Japanese ownership, should have rejected Andres's

superior title claim as that theory is predicated on the assumption that the land never became public in the first place. *PPLA v. Ngiratrang*, 13 ROP 90, 93 (2006). However, this argument fails to consider that the two lots were considered separately and were awarded separately. Therefore, finding that one lot was public does not automatically mean that the other is also public because of its neighbor. Therefore, the Land Court did not misapply the legal standard.

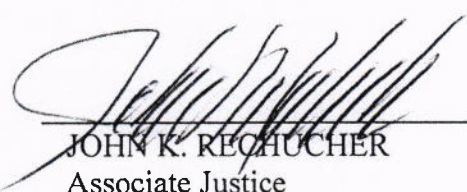
CONCLUSION

[¶ 17] For the above reasons, we **AFFIRM** the Land Court's award of Lot 11C01-008 to MSPLA and Lot 11C01-010 to Telungalk era Andres Demei, represented by Seit Andres.

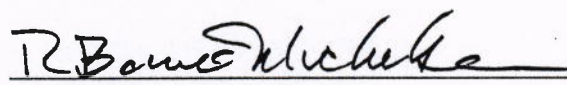
SO ORDERED, this 10th day of August, 2018.



ARTHUR NGIRAKLSONG
Chief Justice



JOHN K. RECHUCHER
Associate Justice



R. BARRIE MICHELSEN
Associate Justice