

FILED

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

2022 AUG -9 AM 8:30

SUPREME COURT
OF THE
REPUBLIC OF PALAU

TELUNGALK RA KSAU/KLAI CLAN
Appellants,
v.
AIRAI STATE PUBLIC LANDS AUTHORITY¹, and
TMEWANG RENGULBAI,
Appellees.

Cite as: 2022 Palau 16
Civil Appeal No. 21-013
Appeal from LC/N 09-00192

Decided: August 9, 2022

Counsel for Appellants..... Johnson Toribiong
Counsel for Appellees..... Mariano W. Carlos

BEFORE: KATHERINE A. MARAMAN, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, presiding.

OPINION

PER CURIAM:

[¶ 1] Telungalk ra Ksau/Klai Clan [“Klai Clan”] appeals the Trial Division’s Decision and Judgment in favor of Tmewang Rengulbai [“Tmewang”]. Because we find no indication of clear error or abuse of discretion on the part of the Trial Division, we **AFFIRM** the Decision and Judgment. We do, however, **REMAND** to the Trial Division to resolve the limited issue of the discrepancy in awarded Lot numbers between the Amended Findings of Fact & Decision and the Judgment.

BACKGROUND

¹ On April 20, 2022, Airai Public Lands Authority [“ASPLA”] filed a Notice of No Response Brief in which it states that, “[s]ince Appellants’ appeal targeted the private lands that were awarded to Claimant Tmewang Rengulbai, ASPLA therefore, considers its self [sic] as not a party in this particular appeal and, therefore, files no responsive brief.” Although no party formally moved to dismiss ASPLA from the case, we agree that this appeal does not concern ASPLA.

[¶ 2] Before the Trial Division, Klai Clan argued that they had superior title to effectively the entire Ngerusar Hamlet because Klai Clan was the first to occupy the Hamlet and has owned the lands since time immemorial. In support of this claim, Tuchermel Geggie Anson testified that residents of Airai sought Tuchermel's permission to enter the lands. Further, during and after the war between Ngerteluang and Ngertacherudel, members of Klai Clan occupied and cultivated taro patches on parts of the land. Relatedly, Klai Clan asserts that the lands were part of the "spoils of war."

[¶ 3] The Trial Division cites two central pieces of evidence that "cast doubt on the validity of Klai [Clan's] evidence." Am. Find. Fact & Decision at 22. First, there were Japanese markers within the area claimed by Klai Clan. The markers, which were undisputedly planted by Tmewang's father during the Japanese Administration, indicated private ownership. *Id.* at 16, 22. The word "KANG" was written on the markers, and Tmewang and Roman Remoket testified that "KANG" was used to point to public lands when they shared a boundary with private lands. *Id.* at 22.² The second central piece of evidence the Trial Division found weighed against Klai Clan was an aerial photo survey conducted of the subject land in 1975-76. Klai Clan's claim is not indicated on the survey map because Klai Clan did not attend or mark its properties during the survey. *Id.* at 23.

STANDARD OF REVIEW

[¶ 4] Klai Clan argues that the Trial Division "committed error or abused its discretion" which are two different standards of review. Appellant's Opening Br. at 1. "We review findings of fact for clear error." *Salvador v. Renguul*, 2016 Palau 14 ¶ 7. "Under this standard, the factual determinations of the lower court will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this Court is left with a definite and firm conviction that a mistake has been made." *Id.* "Where there are several plausible interpretations of the evidence, the [trial court]'s choice between them shall be affirmed even if this Court might have arrived at a different result." *Rengulbai v. Children of Elibosang Eungel*, 2019 Palau 40 ¶ 7. We will not "reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *Takeo v. Kingzio*, 2021 Palau 25 ¶ 6.

[¶ 5] We review exercises of discretion for abuse of that discretion. *Ngikleb v. Sadao*, 2021 Palau 5 ¶ 7. An abuse of discretion occurs when a decision is "arbitrary, capricious, or manifestly unreasonable or because it stemmed from an improper motive." *W. Caroline Trading Co. v. Kinney*, 18 ROP 70, 71 (2011). "Absent extraordinary circumstances, this Court may not set aside a trial court's credibility determination." *Oiwerrang Lineage v. J. Techur*, 2022 Palau 4 ¶ 11.

DISCUSSION

² ASPLA also conceded at the end of trial that the lots initially identified by Tmewang as "Metuker" never became public land.

[¶ 6] Klai Clan argues that the Trial Division disregarded the manifest weight of the evidence in his favor in awarding Lots 09 N 002-048C, 049, 049A, 050A, 063, 062 and 090³ to Tmewang instead of Ksau/Klai Clan. On appeal, Klai Clan recounts the evidence presented below and states that the Trial Division “abused its discretion in its unrestrained bias in favor of Appellee.” Appellant’s Opening Br. at 7. However, as Tmewang raises in his Response Brief, Klai Clan does not further elaborate *how* the Trial Division erred or abused its discretion.⁴ Appellee’s Resp. Br. at 7-10. Klai Clan asks us to reach a different result than the Trial Division, but to do that, we would need to reweigh the evidence, make credibility determinations, and draw different inferences from the evidence. These are actions reserved for the Trial Division. Both the clear error and the abuse of discretion standards contain a high burden for the Appellant to meet, and Klai Clan has presented no substantive arguments to advance either. We therefore affirm the Decision and Judgment of the Trial Division.

[¶ 7] One caveat exists, however. Both Appellants and Appellees identify an apparent discrepancy between the Lot numbers awarded in the Trial Division’s Amended Findings of Fact and Decision and its Judgment. In the Amended Findings of Fact and Decision, the Trial Division states, “Tmewang Rengulbai successfully contend that Lots 048C, 049, 049A, 050A, 063, 062 and 090 constitute the land called Metuker which he inherited from his father.” Am. Find. Fact & Decision at 16. And later, that “Tmewang expanded his claim to include Lot Nos. 090A, 063A, 050, 060 and 091 at trial, however, ASPLA argues convincingly that these lots are outside of Tmewang’s claimed boundary lines and should not be awarded to him.” *Id.* at 16. In the Judgment, however, the Trial Division states that “Judgment is entered in favor of ... Tmewang Rengulbai for lot nos. 09 N 002-090, 090A; 09 N 002-062; 09 N002-063, 063A; 09 N 002-050-part, 050A; 09 N 002-049, 049A; 09 N 002-048C; 09 N 002-060B; and 09 N 002-091.” J. at 2 (emphasis added to indicate Lot numbers that do not match). The emphasized Lot numbers in the Judgment are expressly those that the Trial Division found Tmewang did *not* sufficiently argue belonged to his family. The Court agrees that this is a discrepancy, potentially simply a typographical mistake. Because we do not want to misconstrue the findings of the Trial Division and for the sake of clarity, we therefore remand the case to the Trial Division for the limited purpose of clarifying this discrepancy.

CONCLUSION

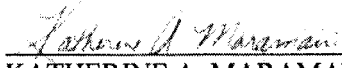
[¶ 8] For the reasons set forth above, we **AFFIRM** the Trial Division’s Judgment and Decision, but **REMAND** to the Trial Division for the limited purpose of clarifying the discrepancy in awarded Lot numbers between the Amended Findings of Fact & Decision and the Judgment.


³ See *infra* discussion of discrepancy in awarded Lot numbers.

⁴ Tmewang does not otherwise raise substantive arguments to counter Klai Clan’s claim on appeal.

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SO ORDERED this 9th day of August, 2022.


KATHERINE A. MARAMAN
Associate Justice


ALEXANDRO C. CASTRO
Associate Justice


KEVIN BENNARDO
Associate Justice