

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED

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CLERK OF COURT

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KOROR STATE PUBLIC LANDS
AUTHORITY, NGERMELLONG
CLAN, and TELUNGALK RA
NGIRKELAU,

Appellants,

v.

TMETBAB CLAN,

Appellee.
-----X

CIVIL APPEAL NO. 11-014
(Case Nos. LC/B 04-140 – 04-145)

OPINION

Decided: July 2, 2012

Counsel for Appellant KSPLA:	J. Uduch Sengebau Senior
Counsel for Appellant Ngermellong Clan:	Ernestine K. Rengiil
Counsel for Appellant Telungalk ra Ngirkelau:	Raynold B. Oilouch
Counsel for Appellee:	Yukiwo P. Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Land Court, the Honorable SALVADOR INGEREKLII, Associate Judge, presiding.

PER CURIAM:

The three appellants in this case appeal several findings of fact by the Land Court. Because we discern no clear error, we affirm.¹

I. BACKGROUND

This appeal concerns land, previously administered by Koror State Public Lands Authority (“KSPLA”), located in Ngerkesoal Hamlet, Koror State, including Worksheet Lot Nos. 04B001-40504, -40505, -40518, -40519, -40520 and -40521. The Land Court held hearings on the matter between October 26, 2010, and February 18, 2011. It issued its determination that the land rightfully belonged to Tmetbab Clan and should be returned to Tmetbab Clan pursuant to 35 PNC § 1304(b) (providing for the return of wrongfully-acquired public lands). The hearing below included Tmetbab Clan, KSPLA, Ngermellong Clan, and Telungalk ra Ngirkelau as claimants, as well as other claimants not party to this appeal.

A. Tmetbab Clan

In support of its claim to the land, Tmetbab Clan submitted the testimony of Dominica Ngoriakl. She testified that the land, referred to as *Tuker*, belonged long ago to Iweaol Clan, but Iweaol Clan gave Tmetbab Clan all its property and titles as *ulsiungel*. Ngoriakl further testified that a Tmetbab Clan member named Oreng farmed the land during or shortly before the Japanese taking of the land. The Japanese administration, according to Ngoriakl, pressured the head of Tmetbab Clan, Buikrechuld, to give up the land to a Japanese company. Buikrechuld was jailed and the lands taken by the

¹ Although Appellants request oral argument, we determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

government. This version of events was also supported by the testimony of Ikloi Itpik and the claim filed in 1988 on behalf of Tmetbab Clan. Ngoriakl further explained that Adelbai er Kesoal Eledui Omeliakl showed her the boundaries of the land. Her understanding of the boundary was corroborated by ninety-one-year-old Itpik, Ngoriakl's maternal uncle's wife. The Land Court found that Tmetbab Clan owned and used the land, and it determined that the Japanese had taken the land by force. Accordingly, it awarded the land to Tmetbab Clan.

B. KSPLA

KSPLA contended below that the land should remain public. Because the Land Court determined that Tmetbab Clan made out its case for the return of public land, Koror State lost title. On appeal, KSPLA contends that the Land Court failed "to apply the requisite burden of proof" in a return of public lands case. Upon closer examination, however, KSPLA's argument amounts to a factual dispute. In essence, KSPLA contends that the Land Court erred in finding that (1) Tmetbab Clan gained lands from Iweaol Clan as *ulsiunge*; (2) the land at issue before the court was *Tuker*; (3) Tmetbab Clan, rather than Oreng, owned the land prior to the Japanese taking, and (4) the Japanese took the land by coercion or force.

C. Ngermellong Clan

Three witnesses testified on behalf of Ngermellong Clan in support of its claim to all of the land before the court. According to Ngermellong Clan member Yukiko Basilio, both her mother and a former Chief of Ngermellong Clan told her that the land was owned by Ngermellong Clan but had been taken by the Japanese. She testified regarding

the boundaries of the land and submitted a document dated June 10, 1963, which purports to be a "Certificate" stating that certain lands were "borrowed" by the Japanese for use by the Institute of Tropical Industry. Attached to the Certificate was a map that showed a road and several lettered lots. Lot "F" was listed as belonging to Ngermellong Clan. The map had no identifying features other than what appear to be roads. Basilio also stated that she farmed the land in the 1960s.

Ngirur Umang, another member of Ngermellong Clan, testified that, when she was a young girl, the Japanese used the land. She also stated that her brother had built a house on the land. Finally, Tekereng Sylvester, a member of the Clan through his father who bore the Clan's highest male title, stated that he built a house on the land because his father told him it belonged to Ngermellong Clan. He testified that, after the war, many settled the land, including some members of Ngermellong Clan and some non-members.

The Land Court found much of this testimony "self-serving and biased." It further noted that Basilio's testimony did not adequately identify the lands previously claimed by Ngermellong Clan. Ngermellong Clan appeals, identifying eight errors in the Land Court's decision. The arguments can be summarized as follows: The Land Court clearly erred in (1) its finding that Basilio did not adequately identify the lands Ngermellong Clan purported to own; (2) its failure to consider Ngermellong Clan Exhibit 2; (3) its determination that Umang's testimony was contradictory with other testimony and was self-serving; (4) its determination that Sylvester's testimony was similarly self-serving; (5) its finding that the "testimony of witnesses of Ngermellong Clan" was not credible; (6) its determination that Iweaol Clan gave Tmetbab Clan its lands as ulsiungel; (7) its

finding that Buikrechuld was imprisoned by the Japanese for failure to give them his land; and (8) its finding that Tmetbab Clan used the land before the Japanese took it.

D. Telungalk ra Ngirkelau

In the proceedings before the Land Court, Desiu Ngirkelau (“Desiu”), proceeding *pro se*, made the case for his family’s claim to the land. He testified that his Uncle, Ricardo Ngirkelau (“Ricardo”), received the land from his brother in 1937. He further stated that the land used to belong to Terekieu Clan. Ricardo began farming the land, but representatives of the Japanese government tried to convince him to give up the land. When he refused, government representatives threatened him and took the land. According to Desiu’s testimony, Ricardo was given 500 yen for his labor and the crops that were on the land, but nothing for the land itself.

Although Desiu did not submit any exhibits, on appeal, he relies on exhibits submitted by the Roman Tmetchul Family Trust (“RTFT”), which is not party to this appeal. Among the evidence submitted by RTFT is a claim filed in 1954 by a member of the Ngirkelau family. The claim was for land called *Ereong* and included a sketch of the claimed land. A statement affixed to the claim mirrors Desiu’s testimony, but it also includes the statement that the Japanese “paid . . . 500 yen for the land.” A hearing was held in 1955 and the Trust Territory District Land Title Officer determined that the land had been sold, albeit under protest, and that the land should be released to the Trust Territory government. In 1959, an appellate tribunal determined that the 500 yen (which amounted to one yen per *tsubo*) was “at least substantially adequate compensation.”

The Land Court rejected Telungalk ra Ngirkelau's claim because it determined that *Ereong* was located in another area, not in Ngerkesoal. Telungalk ra Ngirkelau appeals, contending that the Land Court erred by "inadequately" considering the 1954 claim and the subsequent Trust Territory litigation.

II. STANDARD OF REVIEW

An appellant contesting the Land Court's findings of fact must show that its conclusions were clearly erroneous. *Espong Lineage v. Airai State Pub. Lands Auth.*, 12 ROP 1, 4 (2004). In other words, so long as the Land Court had a plausible reading of the facts based on the evidence before it, we will not reverse. *Mechol v. ROP*, 9 ROP 17, 18 (2001).

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.

III. ANALYSIS

A claimant seeking return of public lands must show:

- (1) that the land became part of the public land . . . as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation or adequate consideration, and
- (2) that prior to that acquisition the land was owned by the citizen or citizens or that the citizen or citizens are the proper heirs to the land.

35 PNC § 1304(b). The burden remains on the private claimants to show, by a preponderance, that the elements of Section 1304(b) have been satisfied. *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 93-94 (2006). The governmental land authority retains control of the land if no claimant can satisfy its burden. *Id.*

A. KSPLA's Appeal

KSPLA frames its appeal as an argument that the Land Court failed to apply the correct "burden" for return of public lands. However, KSPLA's argument is actually that the Land Court erred with respect to several of its factual determinations, which led to the court's conclusion that Tmetbab Clan met 35 PNC § 1304(b)'s burden. Thus, we review the record for clear error. *Ngiratrang*, 13 ROP at 93-94.

First, KSPLA contends that Tmetbab Clan failed to meet its burden because it did not show that it was the original owner or proper heir to the land, *see* 35 PNC § 1304(b)(2); instead, the evidence supported the conclusion that Iweaol Clan owned the land. In particular, KSPLA notes that Ngoriakl, at one point during her testimony, stated that the land "went to a female person in the clan" rather than to Tmetbab Clan itself. It further points to evidence that Iweaol Clan was, in separate proceedings, adjudicated the owner of another parcel of land. KSPLA does not argue that the earlier proceedings that awarded land to Iweaol Clan are entitled to some sort of preclusive effect, however. Therefore, KSPLA's argument fails because there is evidence in the record to support the Land Court's conclusion. Tmetbab Clan submitted another case concerning land previously owned by Iweaol Clan in which the Land Court found that "Tmetbab Clan has exercised complete control and dominion over . . . land known as Iweaol, for over sixty

years.” Additionally, both Ngoriakl and Ikloi testified that all of Iweaol’s land came to Tmetbab Clan as ulsiungel.² The Land Court found this testimony credible. One statement from Ngoriakl’s testimony in tension with the Land Court’s conclusion does not undermine its determination that Tmetbab Clan received all of Iweaol’s land.

Second, KSPLA argues that it was clear error for the Land Court to conclude that the land at issue in this matter was *Tuker* because a previous Land Court proceeding purported to award *Tuker* to Tmetbab Clan. In support KSPLA proffers a document, which it did not present below, showing that land called *Tuker* was awarded to Itpik Martin, Ikloi’s husband. Because KSPLA does not appear to have contested the borders of *Tuker* below, nor did it present the document to the Land Court, it has waived this argument. *See Rechucher*, 13 ROP at 149.

Third, KSPLA complains that a woman, Oreng, and not Tmetbab Clan, was the proper prior owner. However, this does not follow. The testimony was simply that Oreng is the only person who could be remembered using the land prior to the Japanese taking. Oreng’s use of the land supports the inference by the Land Court that Tmetbab Clan was the prior owner.

Finally, KSPLA contends that Ngoriakl’s statement at one point during her testimony that she did not “really know” how the Japanese got the land undermines the

² KSPLA also argues for the first time in its reply that the Land Court’s determination regarding the lands coming to Tmetbab Clan as ulsiungel is a determination of custom that must be proved by clear and convincing evidence. We decline to consider an argument never made below and raised for the first time in a reply. *See Rechucher v. Lomisang*, 13 ROP 143, 149 (2006) (discussing the Court’s waiver rule).

Land Court's determination that the taking was wrongful. However, both Ngoriakl and Itpik gave detailed testimony on how the Japanese threatened Buikrechuld to get him to give up the land to a Japanese company, going so far as to throw him in jail. This is the same account provided in the 1988 claim for return of public lands submitted on behalf of the Clan.

Thus, we affirm the factual findings of the Land Court with respect to Tmetbab Clan's claim. Those findings supported the court's ultimate conclusion that Tmetbab Clan met its burden and proved the elements of 35 PNC § 1304(b).

B. Ngermellong Clan's Appeal

Ngermellong Clan contests eight of the factual determinations made by the Land Court. Several of these factual determinations involved the weighing of evidence and determinations of the credibility of witnesses. Such matters are solely the province of the Land Court. *Idid Clan v. Olngembang Lineage*, 12 ROP 111, 116 (2005); *Ngeribongel v. Gulibert*, 8 ROP Intrm. 68, 70 (1999). Because the Land Court clearly laid out its reasons for giving certain evidence less weight and certain witnesses less credence, we reject Ngermellong Clan's arguments that the Land Court should have given more weight to Basilio's identification of Ngermellong Clan lands; that the court should have credited Umang's and Sylvester's testimonies; and that the Land Court was wrong to determine that Ngermellong Clan's witnesses were not credible.

Further, several of Ngermellong Clan's contentions are addressed above because they mimic those made by KSPLA. For the reasons already outlined, we reject Ngermellong Clan's arguments that the Land Court erred in its determination that

Tmetbab Clan came to own the land as ulsiungel; that the court erred in its finding that the Japanese imprisoned Buikrechuld; and that the court was wrong to find that Tmetbab Clan used the land prior to the Japanese taking.

This leaves Ngermellong Clan's second argument: that the Land Court failed to consider Ngermellong Clan Exhibit 2, the Certificate from the Japanese official from the Institute of Tropical Industry purporting to identify lands the Japanese "borrowed." Ngermellong Clan fails to explain how this piece of evidence, which is not identified specifically in the Land Court's order, should be prioritized over the other evidence submitted. Nor does the Clan cite any authority which requires the Land Court to explain its acceptance or rejection of every piece of evidence submitted. *See Rechucher v. Ngirmeriil*, 9 ROP 206, 210 (2002) (The court need not "make a finding with respect to every piece of evidence submitted."); *but see Smanderang v. Elias*, 9 ROP 123, 123 (2002) (the court must "clearly articulate both its findings of fact and its conclusions of law."). There may be some instances in which such a failure by a court to explain its rationale in not considering certain evidence would be clear error; however, in this case, the Land Court "clearly articulate[d]" the factual and legal basis for its rejection of Ngermellong Clan's case. We find no error.

C. Telungalk ra Ngirkelau's Appeal

Telungalk ra Ngirkelau contends that the Land Court clearly erred by "inadequately" considering its 1954 claim and the subsequent litigation in the Trust Territory courts, which strongly supported the conclusion that the family owned *Ereong* before the Japanese taking. Again, this argument attacks the Land Court's weighing of

the evidence, to which we defer in the absence of a gross error. *See Idid Clan*, 12 ROP at 116; *Ngeribongel*, 8 ROP Intrm. at 70. Additionally, the Land Court explained that it determined that *Ereong* was not the land before it. *Ereong* was supposed to have been transferred to the Ngirkelau family from Terekieu Clan. However, the court found that Terekieu Clan did not own any land in Ngerkesoaol Hamlet and thus *Ereong* must have been located elsewhere. Telungalk ra Ngirkelau does not explain why this was incorrect. Thus, we affirm the Land Court's rejection of the claim of Telungalk ra Ngirkelau.

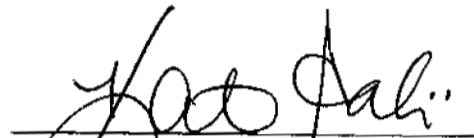
IV. CONCLUSION

Thus, we **AFFIRM** the Land Court.


So ORDERED this 7th day of July, 2012.



ARTHUR NGIRAKLSONG
Chief Justice



KATHLEEN M. SALII
Associate Justice



ALEXANDRA F. FOSTER
Associate Justice