

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

-----X
UCHELIYOU CLAN and NOAH
SECHARRAIMUL,

Appellants,

v.

OIREI CLAN,

Appellee.
-----X

CIVIL APPEAL NO. 11-038
LC/N 09-0352 & 09-0353

OPINION

Decided: December 19th, 2012

Counsel for Appellant Ucheliou Clan: J. Uduch S. Senior
Counsel for Appellant Secharraimul: J. Roman Bedor
Counsel for Appellee: Oldiais Ngiraikelau

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

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

PER CURIAM:

Appellants Ucheliou Clan and Noah Secharraimul each appeal the Land Court's determination that Worksheet Lot Numbers 05N001-98 and 05N001-99 ("Lots 98 and 99") belong to Oirei Clan. Because the Land Court's decision does not contain a legal error or clear factual error, we affirm.

I. BACKGROUND

Lots 98 and 99 are located in Ngetkib Village, Airai State. The Land Court held proceedings to determine ownership of the lots on August 5, 2010. Among the claimants were Ucheliou Clan, Secharraimul, and Oirei Clan. Rosania Masters presented Ucheliou Clan's case. She stated that the lots were part of land known as *Ikidel*. During her testimony, it became clear that a mistake was made by the Bureau of Lands and Surveys ("BLS") during the monumentation process. Specifically, she stated that two monumentation markers—denoted 43 and 46—should have been connected to indicate a boundary line within Lot 99 between Ucheliou land and Oirei land. When Masters testified to the discrepancy between her description of the claim during monumentation and the map produced by BLS, the Land Court immediately rectified the error, ordering BLS to connect the monuments and produce a map reflecting the purported boundary.

Noah Secharraimul sought individual ownership of Lots 98 and 99, which he claimed are called *Bersoech* and *Ngeyaol*, respectively. According to Secharraimul, *Bersoech* was given to his mother, Kamerang Secharraimul ("Kamerang"), by the women of Ngermellong for her services to that house. A portion of Lot 99 was farmed by Kamerang. According to Oirei Clan's representative, Timothy Ngirdimau, Kamerang received permission from Ngirdimau's mother to farm the land.

Oirei Clan contended that the lots are part of land called *Sangelliou*. Ngirdimau testified that the lots were given to Oirei Clan by "the last remaining person" of Ngermelkii Clan, the previous owner of the land. According to Ngirdimau, the last member of Ngermelkii Clan was a man who married a woman from Oirei Clan.

The Land Court determined that the lots belonged rightfully to Oirei Clan. In its findings of fact, the court stated that the lots were *Sangelliou* and were “among the properties conveyed to Oirei Clan by Ngermelkii [C]lan.” The court emphasized that the lack of any Tochi Daicho records in Airai meant that the court had to rely on “multiple level hearsay and . . . testimony of competing claimants [that] are largely self-serving and affected with bias.” Thus, the court’s decision turned “on the credibility or lack thereof in the testimony and evidence” submitted by the parties. The court rejected Masters’ claim on behalf of Ucheliou Clan because it concluded that the documentary evidence supported the conclusion that both lots were part of *Sangelliou*. Similarly, with respect to Secharraimul’s claim, the court found that Lot 98 is not *Bersoech* and Lot 99 is not *Ngeyoal*. Further, to the extent that Secharraimul’s family farmed on the lots, such activity was permitted by Ngirdimau’s mother.

Ucheliou Clan appeals, contending that the discovery of BLS’s error in recording Masters’ claim required suspension of the hearing and a new round of monumentation. By proceeding with the hearing, the Clan claims, the Land Court committed legal error. Secharraimul also appeals, arguing that Lot 99 was adversely possessed by his family and Lot 98 was not properly claimed by Oirei Clan.

II. STANDARD OF REVIEW

We review the Land Court’s legal conclusions de novo and its factual findings for clear error. *Children of Dirrabang v. Children of Ngirailid*, 10 ROP 150, 151 (2003).

III. ANALYSIS

A. Ucheliou Clan's Appeal

Section 1307(a) of Title 35 of the Palau National Code requires BLS to conduct a monumentation of land subject to ownership determination, with input from all claimants. According to the statute, a BLS Registration Officer is to record the results and “forward to the Land Court all documentation relating to the monumented parcel and the claims filed.” Here, it is uncontested that the records initially submitted by BLS failed to accurately depict Masters’ claim on behalf of Ucheliou Clan, which should have included a line between two markers splitting Lot 99. Ucheliou Clan now suggests that the failure of the Land Court to adjourn the hearing and order a new monumentation was error.

Other than 35 PNC § 1307(a), Ucheliou Clan cites no authority for this drastic proposition. Certainly, procedural errors by the Land Court and BLS may be the basis for successful appeals and even collateral attack.¹ See *Nakamura v. Isechal*, 10 ROP 134, 136 (2003). However, there must be some showing that the error actually affected the rights of the appealing or attacking party. See *Ngiraiwet v. Telungalek ra Emadoab*, 16 ROP 163, 165 (2009). Otherwise, the error is harmless and we will not reverse the Land Court’s determination. *Id.* In this case, the error was immediately corrected by the Land Court once it came to the court’s attention. BLS was ordered to prepare a map depicting the claim as Masters described it during her testimony. Even Ucheliou Clan’s counsel

¹ The burden of proof in a collateral attack is distinct from that applicable on appeal, but in both cases, procedural error may be the basis for vacating or reversing a Land Court’s determination of ownership.

acceded to the Land Court's solution without objection. The procedural rules outlined by statute for the settlement of land disputes in Palau are not mere formalities, but a party seeking to set aside a determination of ownership must show that a procedural error prejudiced it in some manner in order to prevail.

B. Secharraimul's Appeal

We turn to Secharraimul's allegation of error as to Lot 99, which he contends was owned by his mother by virtue of adverse possession. Secharraimul claimed that his grandfather and father owned Lot 99 and rented the land to Okinawans during the Japanese time. He testified that he and his mother also farmed the land. On appeal, Secharraimul argues that decades of open use of the land, under claim of right, entitled him to ownership of Lot 99 by adverse possession. However, this argument is premised on the conclusion that Lot 99 is *Ngeyaol*, the land that Secharraimul's grandfather leased to Okinawan tenants. The Land Court concluded that Lot 99 is *not Ngeyaol*. Secharraimul does not contend, on appeal, that this determination was clear error.

The Land Court did, however, find that Kamerang cultivated a portion of Lot 99. However, upon questioning by the court, Ngirdimau explained that his mother gave permission to Kamerang to use the land. Although Secharraimul's argument on appeal contains a correct recitation of the law of adverse possession, he does not explain why the Land Court erred in crediting Ngirdimau's testimony. Because there is evidence that

Kamerang's use of the land was permitted by a representative of the true owner, it was not error for the Land Court to reject Secharraimul's adverse possession claim.²

As to Lot 98, Secharraimul's argument proceeds along two lines. First, he objects that Oirei's claim at the initial monumentation did not include Lot 98, only Lot 99. However, the Land Claim Monumentation Record in the case file clearly states that Ngirdimau claimed Lot 98. Second, Secharraimul recites the evidence that supported his contention that Lot 98 is *Bersoech*, and argues that there is no evidence to support the Land Court's conclusion that Lot 98 is part of *Sangelliou*. In determining that the land was *Sangelliou*, the Land Court relied on Ngirdimau's testimony that *Bersoech* was located "way down below" the disputed lots. Although this testimony was self-serving, it was supplemented by land acquisition records from 1976 relied upon by the Land Court. These records reflect the borders between Ucheliou Clan land, *Sangelliou*, and *Bersoech*, and are consistent with Ngirdimau's description of *Sangelliou*'s location.

² A party advancing an adverse possession theory must show by clear and convincing evidence that "possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of right for twenty years." *Petrus v. Suzuki*, Civ. App. No. 10-044, slip op. at 4 (Nov. 23, 2011). Permissive use is inconsistent with the hostility element. *See id.* at 5-6.

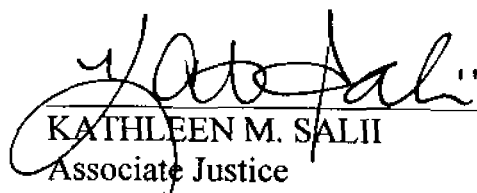
IV. CONCLUSION

For the foregoing reasons, we **AFFIRM**.

So ORDERED this 19th day of December, 2012.



ARTHUR NGIRAKLSONG
Chief Justice



KATHLEEN M. SALII
Associate Justice



LOURDES F. MATERNE
Associate Justice