IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

In re Determination of Ownership of Real Property Located in Ulimang County of Ngaraard State Depicted as Worksheet Lot No. 06E005-028, Formerly Identified as Tochi Daicho Lots 1606 and 1607 Called Ngerdermang: Listed Under Ngirakesau.	CIVIL APPEAL NO. 11-027 (LC/E 08-0620) **OPINION**
EMERITA KERRADEL, FRANCISCO SUNGINO, and ANTONIO BELLS, Appellants.	

Decided: June 18, 2012

Counsel for Appellants: Raynold B. Oilouch

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; and ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Land Court, the Honorable GRACE YANO, Part-time Judge, presiding.

PER CURIAM:

Emerita Kerrael, Francisco Sungino, and Antonio Bells appeal the Land Court's rejection of their claim to Worksheet Lot 06E005-028A. Because we determine that Appellants were entitled, by the terms of their settlement agreement and by statute, to the Lot, we reverse and remand.

I. BACKGROUND

This case concerns a mysterious plot of approximately 39,000 square meters of land in Ngaraard. The mystery is why the land is apparently not accounted for in the Tochi Daicho. On May 1, 2006, the Bureau of Lands and Surveys ("BLS") issued a notice designating unmonumented lots in Ulimang County, Ngaraard State, as land to be surveyed and monumented. Among the fifty-four lots to be surveyed and monumented were Toichi Daicho Lots 1606 and 1607. The period for filing claims for the unmonumented land in Ulimang County ended on July 6, 2006. Among the claimants was Sesario Kerradel ("Sesario"). Appellant Emerita Kerradel ("Emerita") attended the monumentation on behalf of Sesario. Two other individuals, brothers Xavier and Herbert Decherong, attended the monumentation. Each party to the monumentation created a sketch of the claimed land, designated Lots 1606 and 1607, and drew them extending down from Tochi Daicho Lot 1638 to the shore. All of the participants acknowledged the same boundary, and none of the adjacent landowners or other claimants contested the boundary. On January 31, 2007, BLS designated the area monumented Worksheet Lot No. 06E005-028.

Over two years later, after mediation, all of the claimants to Lot 06E005-028 entered into a settlement agreement stating in relevant part:

> Herbert Decherong will get 10,000 square meters as his share . . . . The rest of the said lot will be divided equally among the representatives of claimant #4 (Sesario Kerradel). The representatives are Emerita Kerradel, Francisco

> Sungino, and Antonio Bells and each of their share will be registered under their name as their individual property.[1]

Almost two years after the settlement was signed, the case was set for hearing before the Land Court. The hearing was held on April 5, 2011. At the hearing, the parties proffered their settlement. The Land Court indicated that, upon BLS and the parties divvying up the lot, it would issue an order. However, later that day, the court issued an order posing several questions to the settling parties and scheduling a second hearing. It noted that Lots 1606 and 1607 "have a combined size of over 39,000 square meters. Meanwhile the Worksheet Lot at issue, 06E005-028, has a size of over 78,000 square meters which is almost double the size of the Tochi Daicho."

Several days before the second hearing, Ngaraard State Public Lands Authority ("NSPLA") filed a motion to intervene. The settling parties and counsel for NSPLA attended the second hearing. During the hearing, NSPLA's counsel admitted that he could identify no public lands in the area surrounding Lot 06E055-028, and the Land Court accordingly denied NSPLA's motion to intervene. However, counsel for NSPLA went on to suggest that the disparity in the size of the Worksheet Lot as compared to the Tochi Daicho Lots would intrude on some unidentified public lands. NSPLA did not appeal the Land Court's denial of its motion to intervene .

Emerita testified that the reason the Worksheet Lot was larger than the combined area of the Tochi Daicho Lots was that the "property was near the ocean . . . so it's probably the sediments that came [and] made it big." Emerita's testimony accorded with

[1] The settlement was later amended to include additional members of Herbert Decherong's family and a statement that BLS would survey the land.

that from the Ngaraard Land Registration Officer, Larry Tochi. Tochi testified that the swampy area near the ocean "has become solid." There was no scientific or expert evidence offered to support this claim that approximately 39,000 square meters of land accreted in the area since the Japanese time.

Citing our precedent creating a presumption in favor of the Tochi Daicho's accuracy, the Land Court held that the collective claims of the settling parties could only add up to the amount of land listed in the Tochi Daicho — approximately 39,000 square meters. The court rejected as facially absurd the suggestion that the land area had doubled in size due to accumulation of sediment. Accordingly, it ordered BLS and the settling parties to split Lot 06E005-028 into three pieces. First, BLS was to split the Lot into two based on the Tochi Daicho records. Then, one of the newly created lots was to be divided into a 10,000 square meter parcel for the Decherong brothers with the remainder going to Appellants under the terms of the settlement.

BLS and the settling parties divided the parcel into three new lots. Lot 06E005-028A abuts Tochi Daicho Lot 1638 and is the most-inland lot. Lots 06E005-028B and -028C are along the shoreline. Lot 06E005-028C is 10,000 meters and went to the Decherongs in the Land Court's subsequent Determination of Ownership. Lot 06E005-028B includes 28,648 square meters and was awarded to Appellants. The Land Court did not award ownership of Lot 06E005-028A to anyone.

Appellants timely appealed, contending that the Land Court erred by (1) failing to award Lot 06E005-028A to a claimant before it, and (2) refusing to credit the unrebutted testimony regarding the accretion of land.

II. STANDARD OF REVIEW

We review the Land Court's findings of fact for clear error and its conclusions of law *de novo*. *Koror State Pub. Lands Auth. v. Idong Lineage*, 17 ROP 82, 83-84 (2010).

III. ANALYSIS

In evaluating a land claim, the "Land Court can, and must, choose among the claimants who appear before it." *Ngirumerang v. Tellames*, 8 ROP Intrm. 230, 231 (2000); *see also Rusiang Lineage v. Techemang*, 12 ROP 7, 9 (2004). Additionally, 35 PNC § 1304(c) requires that when BLS has issued proper notice, the claims period has ended, monumentation is completed, and the parties agree to a settlement, "the Land Court shall issue a determination of ownership."

However, both *Ngirumerang* and Section 1304(c) assume that proper process has been followed. Failure to comply with statutory requirements, such as those pertaining to notification and monumentation, open the Land Court's determination up to collateral attack. *See West v. Ongalek ra Iyong*, 15 ROP 4, 8 (2007) ("[A] party may only collaterally attack a prior determination of ownership if it can carry the burden of proving non-compliance with statutory or constitutional requirements by clear and convincing evidence.") Thus, it would be inappropriate to require the Land Court to award a parcel to a party in a proceeding tainted by some procedural or statutory error.

In this case, the Land Court did not identify any such error in reaching its conclusion that no party could be awarded ownership to Lot 06E005-028A. It correctly stated that the Tochi Daicho is afforded a presumption of accuracy. *See Tmetbab Clan v. Koror State Pub. Lands Auth.*, 16 ROP 91, 94 (2008). It further noted the discrepancy

between the combined area of Tochi Daicho Lots 1606 and 1607 and the size of the created Worksheet Lot 06E005-028. However, the Land Court failed to explain why this discrepancy warranted rejection of Appellants' claim. Appellants' monumentation included all the land from Tochi Daicho Lot 1638 to the shoreline, as depicted by the map drawn on their monumentation record. Although the size of this area (which would become Lot 06E005-028) does not match up with the Tochi Daicho Lots, no party to this appeal or to the case below has objected to Appellants' claim to the entire area. Thus, there was no need for Appellants to disprove the Tochi Daicho's accuracy in order to prevail on their claim.

We do not suggest that the size of a Tochi Daicho lot irrelevant to the adjudication of a claim. Often, discrepancies of size, location, or designation of a lot will impede the process of notification and monumentation. In such cases, agreements by the parties may be rejected in order to protect the interests of potential claimants who may not have received notice. In this case, however, all statutory requirements were met and all potential interested parties were notified. The notification of impending monumentation listed fifty-four Tochi Daicho Lots in the vicinity of Lots 1606 and 1607. The notification further gave the common names of the land to be monumented. Nowhere in the record before us is there a suggestion that this was insufficient to put potential claimants to Lot 06E005-028A on notice to file their claims and attend the monumentation. Further, all parties involved in the monumentation and all claimants to Lot 06E005-028 concurred in the placement of markers delineating that lot. Finally, there is nothing in the record to support NSPLA's contention below that Appellants'

claim encroaches on public lands. NSPLA has already admitted there is no public land in the area.

Based on the record before us, it appears that all potential claimants to Lot 06E005-028 were involved in the settlement agreement and all required statutory procedures were followed. Thus, the Land Court was required to issue a determination of ownership in accordance with the agreement. 13 PNC § 1304(c); *see also Ngirumerang*, 8 ROP Intrm. at 231; *Rusiang Lineage*, 12 ROP at 9.

Because we conclude that the court erred in its application of the law, we need not reach Appellants' second argument that the Land Court made a factual error. Therefore, we do not consider whether the court was obliged to accept uncontradicted testimony regarding the alleged accretion of 39,000 meters of land.

IV. CONCLUSION

For the foregoing reasons, we **REVERSE** the determination of the Land Court as to Lot 06E005-028A and **REMAND** for proceedings consistent with this opinion, which requires accepting and enforcing the settlement agreement among the parties.

So ORDERED this 18th day of June, 2012.

KATHLEEN M. SALII
Associate Justice

LOURDES F. MATERNE
Associate Justice

ALEXANDRA F. FOSTER
Associate Justice