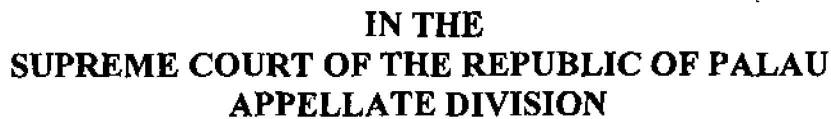


IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

ELIA KUAL, Appellant, v. NGARCHELONG STATE PUBLIC LANDS AUTHORITY, Appellee.	CIVIL APPEAL NO. 12-047 (LC/N 09-0402) **OPINION**

Decided: August 8, 2013

Counsel for Appellant: Yukiwo Dengokl
Counsel for Appellees: William Ripdath

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

Appeal from the Land Court, the Honorable C. QUAY POLLOI, Senior Judge, presiding.

PER CURIAM:

This is an appeal of a Land Court Decision awarding ownership of a rock island to Ngarchelong State Public Lands Authority (NSPLA). For the reasons set forth below, the Land Court's Determination is **AFFIRMED.**

BACKGROUND

This case concerns the claims of Appellant Elia Kual, Mengellakl Municipality, and the NSPLA to a rock island known as *Ngerulleuang* (the Island).[1] An evidentiary hearing on the competing claims was held on October 23, 2012.

At the hearing, Kual presented evidence that a deity known as Ngirngarchelong gave *Ngerulleuang* to Ureked Clan. Kual testified that he received title to the island from a Ureked Clan title bearer named Swei. Uong er Etei Victor Joseph, a chief of Ngarchelong and Mangellang Municpality, testified that the island was used for *teliakl*, a place where a person would go for a "designated number of days" prior to installation as a chief. NSPLA, which claimed the title "for Ngarchelong State," only presented evidence rebutting Kual's claim.

Following the hearing, the Land Court issued a Decision concluding that ownership to the island rested with NSPLA. In reaching this conclusion, the Land Court rejected Kual's claim because there was "insufficient proof of Ureked Clan's initial ownership [and] Mr. Guak's claim in reliance of that earlier ownership cannot prevail." The court rejected the Mengellang Hamlet claim because Joseph's testimony "would support a claim for the clan where Uong er Etei comes from more so than for Mengellang village."

Turning to NSPLA's claim, the Land Court wrote:

> It can readily be inferred [the] island is within 12 nautical miles seaward from land. Pursuant to Article I, Section 2 of the Palau Constitution,

[1] The Municipality has not appealed the Land Court's Determination.

'Each state shall have exclusive ownership of all living and non-living resources . . . from the land to twelve (12) nautical miles seaward from the traditional baselines.' By legal operation on the foregoing facts, [the] Island is hereby determined to be owned by [NSPLA].

Kual appealed.

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 Ngirailild*, 10 ROP 150, 151 (2003).

DISCUSSION

On appeal, Kual contends that the Land Court erred when it concluded that Article I, § 2, of the Constitution governs ownership of islands, and that even if the Land Court's constitutional interpretation was proper, Ngarchelong State (as opposed to NSPLA) was the proper party to receive title to the island.

I. The Distinction Between Ngarchelong State and NSPLA

As amended, Article I, § 2, of the Constitution provide "each state shall have exclusive ownership of all living and non-living resources, except highly migratory fish, within the twelve (12) nautical mile territorial sea, provided, however, that traditional fishing rights and practices shall not be impaired." ROP Const. amend. XXVI, § 2. Kual first argues that the Land Court erred when it relied on this provision to grant ownership of the Island to NSPLA because Article I, § 2, references states, not state public land authorities. We disagree.

As we recently observed,

> litigants in a Land Court proceeding may advance two types of claims: (1) a superior ownership claim under which the litigant pursues ownership based on the strength of his title; and (2) a return of public lands claim under which a private party "admits that title to the land is held by a public entity, but seeks its return." *See Koror State Pub. Lands Auth. v. Wong*, Civ. App. 12-006, slip op. at 4–5 (Oct. 31, 2012) (emphasis omitted). *Where . . . parties assert competing claims of superior ownership, the Land Court must award ownership to the claimant advancing the strongest claim. See Ngirumerang v. Tmakeung*, 8 ROP Intrm. 230, 231 (2000) ("The Land Court can, and must, choose among the claimants who appear before it and cannot choose someone who did not, even though his or her claim might be theoretically more sound.").

Ngirametuker v. Oikull Village, Civ. App. 12-030, slip op. at 6–7 (May 21, 2013) (emphasis added).

Here, Kual advanced a superior title claim. Accordingly, the Land Court was required to award ownership to the claimant advancing the strongest claim. *Id.* In this regard, the Land Court concluded that the true owner of the property was Ngarchelong State and that, since the state itself was not a party, the strongest claimant was NSPLA. Accordingly, if Ngarchelong State is the true owner of the property, the Land Court did not err in determining title in favor of NSPLA.

II. Ownership of the Property

The Land Court concluded that § 2 operates to grant states title to all lands within 12 nautical miles of its shores. Kual contends this was error. We believe that the Land Court's decision may be affirmed on other grounds and thus decline to consider the

Constitutional question. *See Ngetelkou Lineage v. Orakiblai Clan*, 17 ROP 88, 93 (2010) ("An appellate court may affirm or reverse a decision of a trial court even though the reasoning differs."); *see also Blanco v. ROP*, 16 ROP 205, 208 (2009) ("[C]ourts should avoid unnecessarily addressing and deciding constitutional issues." (internal punctuation omitted)).

As a rule of law, "[t]he title to islands is ordinarily vested in the owner of the bed of the waters out of which they arise provided there has been no separation of such ownership by grant, reservation, or otherwise." 78 Am. Jur. 2d Waters § 353 (citing *City of St. Louis v. Rutz*, 138 U.S. 226, (1891)). Here, there is no dispute that the area below the high water mark (including the seabed) is government land. 35 PNC § 102 ("[A]ll marine areas below the ordinary high watermark belong to the government."). There is also no dispute that the areas below the high water mark are owned by the states. *House of Traditional Leaders v. Koror State Gov't*, 17 ROP 101, 107 (2010) (citing section 2 for the proposition that "[t]he Republic of Palau transferred authority to lands below the high water mark to the state governments."). Because the states own title to the seabed, they own title to the islands arising from the seabed, unless ownership to the island has been separated from ownership of the seabed by sale or other legal means. 78 Am Jur. 2d Waters § 353; *see also Ngirametuker*, slip op. at 7–8 (Absent proof that an eligible claimant acquired title, rock islands in Airai State are public land).

Here, the Land Court found, and we agree, that Kual failed to prove that the title to the Island was separated from title to the seabed. In the absence of such evidence, the Land Court did not err when it found that Ngarchelong State (the owner of the relevant seabed) is the owner of the Island. *See id.*

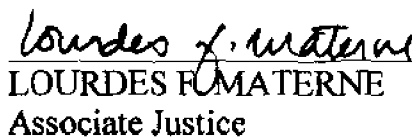
CONCLUSION

For the foregoing reasons, the determination of the Land Court is **AFFIRMED**.

SO ORDERED, this 8th day of August, 2013.

ARTHUR NGIRAKLSONG
Chief Justice

KATHLEEN M. SALII
Associate Justice



LOURDES F. MATERNE
Associate Justice