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

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| KOROR STATE PUBLIC LANDS AUTHORITY,<br><br>Appellant,<br><br>v.<br><br>IDID CLAN, et al.,<br><br>Appellees. | CIVIL APPEAL NO. 13-010<br>(Case No. LC/B 09-0440 &<br>LC/B 09-0441)<br><br>**OPINION** |

Decided: February 19th, 2015

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| Counsel for Appellant: | Debra B. Lefing |
| Counsel for Appellee Idid Clan: | Salvador Remoket |
| Counsel for Appellees Telungalk ra Kikuo and Hambret Senior: | Raynold B. Oilouch |
| Counsel for Appellees Telungalek ra Iked Etpison and Metiek and Ungilredechel Ewatel: | Oldais Ngiraikelau |
| Counsel for Appellee Berengiei Masami: | J. Roman Bedor |

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and R. ASHBY PATE, Associate Justice.

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

PER CURIAM:

Koror State Public Lands Authority ("KSPLA") appeals the Land Court's July 11, 2013 Decision awarding parcels of land located in Ngerbodel, Ngerchemai Hamlet, Koror

State to Appellees Idid Clan, Telungalk ra Kikuo, Hambret Senior, Telungalek ra Iked Etpison and Metiek, Ungilredechel Ewatel, and Berengiei Masami (collectively "the Appellees"). For the reasons set forth below, we reverse the Land Court's determination in favor of Telungalek ra Iked Etpison and Metiek and Ungilredechel Ewatel (collectively "the E&M claimants") and remand for further proceedings consistent with this opinion. We affirm the Land Court's decision in all other respects.

## BACKGROUND

This appeal arises out of competing claims to ownership of lands located in Ngerbodel, Ngerchemai Hamlet, Koror State.[1] The Land Court held hearings between April 15, 2013 and April 29, 2013, and the following claimants appeared: Hambret Senior, Idid Clan, KSPLA, Telungalk ra Kikuo, Telungalek ra Iked Etpison and Metiek and Ungilredechel Ewatel, and Berengiei Masami, as well as others not party to this appeal. During the hearing, the Land Court took judicial notice of the records and testimonies from a previous hearing for cases LC/B 09-0442 through LC/B 09-0446 (hereinafter "the First Case"). At that time, no party stated any objection on the record to the Land Court taking judicial notice of the First Case.

[1] These lands include those listed on Worksheet Lot Nos. B01-074, B01-071A, B01-071B, B01-071B-1, B01-085A, B01-085B, B01-086A, B01-086B, and B01-086C shown on BLS Worksheet No. 2005 B 05, and Lot 40149. These lands were also claimed as corresponding to Tochi Daicho Lots Nos. 314, 317, 319, 320, 321, 322, 324, 325, 326, 327, 328, 329, 330, 331, 332, and 333.

At the conclusion of the hearing, the Land Court issued its Summary of Proceedings, Findings of Fact, Conclusions of Law and Determination on July 11, 2013, and awarded the claimed properties to the Appellees.

KSPLA timely appeals.

## STANDARD OF REVIEW

We review the Land Court's factual findings for clear error. *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007). Conclusions of law are reviewed de novo. *Id.* Issue preclusion is a matter of law reviewed de novo. *Salii v. Terekiu Clan*, 19 ROP 166, 170 (2012).

## ANALYSIS

KSPLA raises three claims on appeal. We address each in turn, as follows, beginning with the third because it is material to the resolution of KSPLA's other claims.

### I. Whether the Land Court erred in its application of issue preclusion or reliance on evidence presented in the First Case

KSPLA claims that the Land Court erred in finding that the doctrine of issue preclusion barred KSPLA from contesting various matters that were finally decided in the First Case. KSPLA argues that the doctrine of issue preclusion could not apply in this instance, because Idid Clan and the E&M claimants were not parties to the First Case. The case cited by KSPLA for support, however, held only that the party *against* whom the preclusive effect of a judgment is asserted must have been either a party to or in privity with a party to the original action. *Odilang Clan v. Ngiramechelbang*, 9 ROP 267, 272

(Tr. Div. 2001) (citing Restatement (Second) of Judgments § 29); *accord Hydronautics v. FilmTec Corp.*, 204 F.3d 880, 885 (9th Cir. 2001).

In the present case, the doctrine of issue preclusion was applied *against KSPLA* to preclude it from re-litigating issues that were finally resolved in the First Case. It is thus immaterial whether Idid Clan or the E&M claimants were parties to the First Case. It is sufficient that KSPLA, the party against whom issue preclusion was asserted, was a party to the First Case, as it indisputably was. Accordingly, the Land Court did not err in its application of the doctrine of issue preclusion.

KSPLA also argues that the Land Court inappropriately relied on evidence and testimony from the First Case to render its decision in this case. However, KSPLA has not claimed, and our review of the record has not revealed any indication, that KSPLA objected during trial to the admission of the records and testimony from the First Case. Consequently, KSPLA has failed to preserve this claim. *See, e.g.*, *Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004) ("We have repeatedly stated the general rule that parties cannot seek review of alleged errors of the trial court when they made no objection to the Court's actions at the time."). In any event, the Land Court may accept records of past proceedings as evidence in hearings before it and give such records as much weight as it deems appropriate. *See Ngerungel Clan v. Eriich*, 15 ROP 96, 100 (2008). Consequently, we find no error in the Land Court's reliance on the records and testimony admitted in the First Case.

## II. Whether the Land Court erroneously shifted the burden of proof to KSPLA

KSPLA claims that the Land Court improperly shifted the Appellees' burden of proof to KSPLA, in so far as the Land Court's decision stated several times that KSPLA failed to provide evidence to show how the claimed properties became public land. This argument, however, takes the Land Court's statements out of context and misconstrues the Land Court's actual findings and conclusions.

It is clear from the Land Court's decision that each of the Appellees brought and, with the exception of the E&M claimants as discussed in more detail below, ultimately prevailed on a return of public land claim. To succeed on this theory, a claimant must show that he or she: (1) is a citizen who filed a timely claim; (2) is either the original owner of the land or one of the original owner's proper heirs; "and (3) the claimed property is public land which attained that status by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration." *Heirs of Giraked v. Koror State Pub. Lands Auth. v. Tellei*, 20 ROP 241, 244 (2013); *see also* 35 PNC § 1304(b). The claimant, not the governmental land authority, at all times bears the burden of proving, by a preponderance of the evidence, that each element is satisfied. *Idid Clan v. Koror State Public Lands Authority*, 20 ROP 270, 273 (2013).

The Land Court recognized that the individual claimants had the burden of proving their return of public land claims and expressly found, with the possible exception of the

E&M claimants as discussed below, that this burden had been met. On appeal, KSPLA does not challenge the Land Court's conclusions with respect to the first and second elements of the Appellees' return of public land claims. Rather, KSPLA argues that the Land Court erroneously reversed the applicable burden of proof with respect to the third element, by requiring KSPLA to prove how the lands in question became public lands. Specifically, KSPLA maintains that the Land Court's statements that KSPLA did not produce evidence to show how the claimed properties became public land evince an improper shift of the burden of proof to KSPLA.

Considered in context, however, it is clear that the statements cited by KSPLA reflect only a critique of the evidence offered by KSPLA, or rather the lack thereof, and not a shift of the burden of proof. First, KSPLA fails to acknowledge that, at the outset of the decision, the Land Court found, by a preponderance of the evidence, that the entire area of Ngerbodel, including all of the properties claimed by the Appellees, was forcefully taken by the Japanese government. Furthermore, the Land Court's particularized discussion of each of the Appellee's claims consistently included a finding that the claimed properties were privately owned before being forcefully taken by a government without adequate consideration. Thus, the Land Court unambiguously found that the Appellees proved, by a preponderance of the evidence, that the land at issue only became public land through a wrongful government taking, thereby satisfying the third essential

element of their return of public land claims. KSPLA does not challenge these factual findings or the sufficiency of evidence on which the Land Court based them.

It was only in contrast to the persuasive evidence that the land became public as a result of a wrongful government taking that the Land Court considered and remarked on KSPLA's failure to offer any evidence suggesting that the land might have become public in some other manner. Without question, KSPLA did not have the burden of proof as to whether the claimed properties did or did not attain public status as a result of a wrongful government taking. The Land Court did not, however, impose such a burden on KSPLA.

Rather, the Land Court found that there was substantial evidence that the claimed properties attained public status through a wrongful government taking and remarked further that KSPLA presented no evidence supporting any alternative theory by which the land might have become public. It is not error to consider the absence of evidence supporting alternative theories in evaluating the probative value of the evidence proffered by a claimant. *See Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 94-95 (2006) ("[T]he Land Court's comments regarding the lack of evidence regarding the means by which the Japanese Administration acquired the Lot cannot fairly be said to represent a shifting of the burden of proof from the claimant to the government land authorities. Rather, it merely stands as a partial explanation for the court's conclusion that [the claimant's witness] was a credible witness. . . . The Land Court was certainly within its

discretion in considering the lack of evidence supporting alternative theories when making its decision as to the credibility of [the claimant's witness].").

Put differently, the Land Court found the Appellees' evidence all the more persuasive in light of KSPLA's failure to present any evidence that challenged or refuted the evidence proffered by the Appellees. Although KSPLA endeavors to make it seem as though the Land Court based its decision in this regard solely on the absence of evidence presented by KSPLA, this argument relies on selective quotation that misleadingly omits the Land Court's extensive discussion of the evidence showing that the claimed properties were privately owned before they were forcibly taken by a government without adequate compensation. There is a significant difference between weighing the evidence presented, including the absence of evidence supporting alternative theories, and requiring one party to satisfy a burden of proof. In fact, had the Land Court not mentioned the comparative lack of evidence presented by KSPLA, and instead rested exclusively on its finding that the Appellees had met their burden by a preponderance of the evidence, this would have been a sufficient basis for the Land Court to find in favor of the Appellees on this point and for us to affirm the decision in this regard.

In sum, the Land Court first found that there was substantial evidence supporting the Appellees' version of events, namely that the claimed properties became public land through a wrongful government taking. In weighing this evidence, the Land Court found it significant that KSPLA did not provide any evidence suggesting that the land attained

public status in any other manner. A land authority necessarily increases the chances of an adverse judgment, and risks subjecting itself to the consequent high bar on appeal, by failing to present evidence that controverts the evidence proffered by the claimant. *See Ngiratrang*, 13 ROP at 96. ("[W]hile a public lands authority's decision not to appear and/or not to present evidence at a return of public lands hearing does not lessen the claimant's burden of proof, by failing to do so a public lands authority risks facing a formidable clearly erroneous standard upon appeal, should the Land Court reach factual findings in the claimant's favor."). Accordingly, we find no error in the Land Court's consideration of the comparative lack of evidence offered by KSPLA with respect to how the claimed properties attained the status of public land.

## III. Whether the Land Court erred in finding that KSPLA's evidence did not prove that the claimed properties had become public lands

KSPLA claims that the Land Court erred in finding that KSPLA failed to prove that the properties in question have been administered as public lands. Specifically, KSPLA argues that the documentary evidence it presented, which included lease agreements, quitclaim deeds, and maps, proved that all of the claimed properties have been maintained by KSPLA as public land since the time of the Trust Territory.

The relevance of this argument relies on a distinction that the Land Court was, unfortunately, not always careful to make. In particular, it is well-established that "a Land Court claimant may raise one of two types of claims: (1) a superior title claim, in

which the claimant asserts he holds the strongest title to the land claimed; and (2) a return of public lands claim, in which the claimant concedes that a public entity holds superior title to the land, but argues that the title was acquired wrongly from the claimant or his predecessors." *Klai Clan v. Airai State Public Lands Authority*, 20 ROP 253, 255 (2013); *see also Ngarameketii v. Koror State Pub. Lands Auth.*, 18 ROP 59, 64 (2011) ("Unlike a return of public lands case in which the claimant does not dispute the government's ownership of the land . . . , a claimant asserting superior title is claim[ing] the land on the theory that it never became public land in the first place." (quotation omitted)). Although these clams may be asserted concurrently and in the alternative, they involve distinct elements, carry different burdens of proof, and are susceptible to different defenses. *Idid Clan*, 20 ROP at 273. Due to the significant differences between these two types of claims, we have held that, where a land claimant asserts both a superior title and a return of public land claim for the same property, "the Land Court must consider such claims separately." *Ikluk v. Koror State Public Lands Authority*, 20 ROP 128, 131 (2013) (citing *Airai State Pub. Lands Auth. v. Seventh Day Adventist Mission*, 12 ROP 38, 41 (2004) ("[T]he Land Court must consider any Article XIII claims as analytically separate from determinations of ownership under the land registration program.")).

In this case, the Land Court's written decision is not always clear as to which, if any, of the individual claimants brought a superior title claim as well as a return of

public land claim. Nonetheless, with respect to all but the E&M claimants, it is clear from the decision below that the Appellees each prevailed on their return of public land claim. Specifically, as to Appellees Telungalek Ra Kikuo and Idid Clan, the decision expressly stated that these claimants proved each of the elements of their return of public land claims. Similarly, as to Appellees Hambret Senior and Berengiei Masami, the Land Court explicitly considered and found in favor of the claimants on each of the essential elements of a return of public land claim, while discussing neither any evidence relevant to, nor the elements of, a superior title claim. A necessary element of the Land Court's ultimate conclusion in this regard is a finding that the claimed properties had acquired the status of public land. This is the very finding that KSPLA argues that the Land Court should have made and that the evidence of record supports.

In other words, the dispositive question with respect to these Appellees was not whether the land had attained public status—that point was necessarily conceded in the context of their return of public land claims. Rather, the dispositive issue was how the land became public. As discussed at length above, the Land Court properly found in favor of Appellees on the latter issue. Accordingly, to the extent that KSPLA argues that the Land Court failed to find that the properties claimed by Appellees Telungalek Ra Kikuo,

Idid Clan, Hambret Senior, and Berengiei Masami have not been public lands, KSPLA's argument is without merit.[2]

With respect to the E&M claimants, however, it is not readily apparent whether the Land Court found in their favor under a theory of superior title or return of public land. In considering the specific claims of the E&M claimants, the majority of the Land Court's written decision is dedicated to the evidence of uninterrupted and unchallenged private use of the claimed properties in recent times. Similarly, the decision's discussion of KSPLA's competing claims to this land states that KSPLA's documentary evidence did not prove that the lots at issue have been public lands. While this suggests that the Land Court found that the E&M claimants established superior title, the Land Court's decision contained no explicit finding to this effect. In fact, the decision never made any explicit finding as to whether the claimed properties were presently public or private.

Instead, the Land Court finished its discussion of the conflicting evidence on this point by transitioning to the issue of how the land may have attained public status and found that this occurred, if at all, through a wrongful government taking. This implies that the Land Court based its ultimate determination in favor the E&M

[2] Notably, the Land Court's statement that KSPLA's documentary evidence did not prove that the lands have been public occurred in the context of a larger discussion of the evidence of private ownership presented by Appellee Etpison. This further supports the conclusion that the particular statement on which KSPLA bases this claim on appeal is relevant, if at all, only to the E&M claimants.

claimants on an alternative finding. That is, even assuming that the properties claimed by the E&M claimants had become public, this land only attained public status by virtue of a wrongful government taking. While this suggests that the Land Court found in favor of the E&M claimants under their return of public land theory, the decision only ever explicitly addresses the wrongful taking element of such a claim. In marked contrast to the decision's discussion of the claims of the other Appellees, the Land Court's discussion regarding the E&M claimants does not state who owned the land prior to the wrongful taking or explain how the claimants demonstrated that they are the proper heirs to the prior owner(s).

This raises a question as to whether the ultimate decision in favor of the E&M claimants was premised on some combination of the elements of a claim for superior title and a claim for the return of public land. This possibility only emphasizes the importance of the Land Court's obligation to consider and resolve these distinct claims, including their differing elements and burdens, separately. It is with the utmost appreciation for the substantial number and complexity of the cases before the Land Court that we must reaffirm this requirement here. The interests of justice can only be served if the parties to an adversarial proceeding can understand from the resulting decision how and why they won or lost—and it is solely within the province of the trial court to set forth this determination in the first instance.

Due to the Land Court's failure to separately consider the E&M claimants' superior title and return of public land claims, we can at best speculate as to the basis for the ultimate determination in their favor. Furthermore, we are reluctant to consider and find, effectively in the first instance, whether the E&M claimants established the elements of either their superior title or return of public land claim. *Cf. Aimeliik State Pub. Lands Auth. v. Rengchol*, 17 ROP 276, 282 (2010) ("AIMSPLA apparently wants us to make the initial decision on these issues, but such a request runs counter to our function as an appellate court."). The relative lack of analytical clarity as to the basis for the determination below precludes our ability to review the decision. *See id.* ("Without a primary decision on the issue by the lower court, we have nothing to review."). This may also have deprived KSPLA of the ability to mount an effective appeal. Accordingly, we must reverse the Land Court's determination in favor of the E&M claimants and remand for further proceedings consistent with this opinion.

At the same time, we emphasize that the extent of the additional proceedings may be fairly limited. We remand solely for the purpose of having the Land Court weigh the evidence of record and render an unambiguous decision as to whether the E&M claimants have or have not proven the essential elements of their claims for superior title or return of public land. The record as it stands may well be sufficient to permit a definite determination in this respect. Accordingly, though we leave the ultimate decision to the

discretion of the Land Court, it may be that no additional development of the record or the arguments of the parties is required to accomplish the purpose of this remand.

## CONCLUSION

For the foregoing reasons, the Land Court's determinations of ownership in favor of Telungalek ra Iked Etpison and Metiek and Ungilredechel Ewatel are reversed and the matter is remanded for further proceedings consistent with this opinion. The decision of the Land Court is, in all other respects, affirmed.

SO ORDERED, this 17th day of February, 2015.

ARTHUR NGIRAKLSONG
Chief Justice

KATHLEEN M. SALII
Associate Justice

R. ASHBY PATE
Associate Justice