IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

(In re: Lot 17H01-008)

TEBELAK CLAN
represented by Willard Kumangai

Appellant,

v.

CHILDREN OF JAMES H. NGIRAMOS

Appellees.

Cite as: 2020 Palau 13
Civil Appeal No. 19-013
(LC/H 17-00199)

Argued: May 13, 2020
Decided: May 21, 2020

Counsel for Appellant ..... Yukiwo P. Dengokl

Counsel for Appellees ..... C. Quay Polloi

BEFORE: GREGORY DOLIN, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Land Court, the Honorable Judge Rose Mary Skebong, Presiding Judge, presiding.

OPINION

YAMASE, Associate Justice:

[¶1] At issue in this case is the Land Court's determination of the ownership of Lot 17H01-008 that, according to Appellees, is commonly known as *Iwellang*.[1] Appellant

[1] While there was some confusion in the record on the names of various parcels, there is evidence to support the Land Court's finding that Lot 17H01-008 is *Iwellang*. It should also be noted that this land is

Tebelak Clan[2] claims that the land is within its homestead, which was quitclaimed to the Clan by the Trust Territory government and adjudicated to be their property in 1982 by the Land Commission. Because the Land Court's Findings of Fact and Conclusions of Law are insufficiently detailed, "we cannot discern the legal and factual basis for the [lower] court's [decision]," and are "unable to conduct a full and fair review of [the] decision." *Estate of Tmilchol v. Kumangai*, 13 ROP 179, 182 (2006). We therefore **VACATE and REMAND** this case for further proceedings not inconsistent with this opinion.

FACTS

[¶2] The case before the Land Court involved multiple claimants to multiple lots; only the ownership of Lot 17H001-008 (hereinafter Lot 008), contested by the Tebelak Clan and the Children of James H. Ngiramos, is before us on appeal.

A.

[¶3] We decided another appeal three years ago in which Tebelak Clan and/or Willard Kumangai also claimed a number of lots near Lot 008, and that case provides some background on Tebelak Clan's present claim:

> In 1963, an agent of the High Commissioner of the Trust Territory executed a handwritten quitclaim deed to Tebelak Clan for about 80 hectares of land. The area was identified as Lot 15-211 and referred to as the Tebelak Clan homestead. The quitclaim deed included a sketch of the homestead and adjacent properties . . . [and] various coordinates describing the boundary. At least some portions of the homestead appear to have been transferred from the clan to some of its individual members in the years since 1963.

Tebelak Clan v. Estate of Delangebiang Aderkeroi, 2017 Palau 27 ¶ 4.

[¶4] In the instant case, Willard Kumangai, who testified that he is Arbedul ra Tebelak, the highest male titleholder of Tebelak Clan, "contended that Lot 008 and Lot [17H01-]009 were part of Tebelak's homestead tract, and . . . produced into evidence a sketch of Tebelak's homestead Lot 15-211 (Tebelak Exhibit 1); and a copy of a Notice of Status Conference in the Land Court Case SP/H 16-00040[3] (Tebelak Exh. 2) discussing the award of Lot 15-211 to Tebelak Clan." The Notice of Status Conference was not a simple statement of the date of a hearing; it acknowledged that the Land Commission had

---

located in Ngardmau State, for which no Tochi Daicho exists. *See Sebal v. Tengadik*, 7 ROP Intrm. 149 (1999).

[2] Also spelled Teblak.

[3] *In the matter of land in Ngardmau referred to as Ngerdekus, described as Lot 15-211 on Map No. PB-19, and depicted as Lot 42-3050A on the BLS Worksheet No. 2019 H 01*, Case No. SP/H 16-00040 (Feb. 13, 2019).

already "held a hearing in 1982 and determined that Tebelak Clan owns Homestead Lot 15-211," but never "issue[d] a formal Determination of Ownership," as the case had apparently slipped through the cracks. Because it was not clear that the property had ever been properly monumented, the Land Court ordered further proceedings to determine the boundaries of Lot 15-211.

[¶5] The final order[4] entered in SP/H 16-00040 provided:

> Willard Kumangai . . . confirmed that Lot 42-3050A [identified as Lot 15-211 by BLS] was the clan's property . . . [but claimed] two other lots adjacent to Lot 42-3050A, . . . 17 H 01-008 and 17 H 01-009,[5] and requested the court to include Tebelak Clan in the registration proceedings for those two lots.
>
> Mr. Kumangai was advised that in order to be included in any land proceedings before the court, the clan must first comply with the filing of claims process with the BLS; but that for the time being, this court will only address the clan's title to Lot 42-3050A.

Registration of Title to Land at 2 (May 1, 2019). It is unclear to us from this Order whether the Land Court was making a determination that Lot 15-211 consisted only of Lot 42-2050A or was simply delaying its decision on the inclusion of the other lots until this case, which was already pending.

B.

[¶6] In the instant case, the Land Court's Findings of Fact and Discussion with respect to Lot 008 provides, in its entirety:

> Lot 008 is called *Iwellang*. It[]s ownership is contested between the Children of James Haim Ngiramos and Tebelak Clan. Tebelak Clan simply claimed it as part of Tebelak's homestead, but did not dispute that Ngiramos and his children developed and have occupied the land as their own for a long time.[6] The claim of the children of James Haim Ngiramos prevails over Tebelak Clan. The evidence of use and occupation prevails over the simple statement of ownership.

---

[4] While the *pro se* Kumangai did not formally ask the Land Court to "take judicial notice" of the entire record in SP/H 16-00040, this Court will do so on appeal.

[5] This lot was awarded to Tebelak Clan in the instant case; there were no other claimants.

[6] The Land Court also discussed the claim of Ngiramos' children in more detail in a different portion of its opinion. Edwin testified that his grandfather had "planted crops and plants on the land and used it as a homestead," and that his father had continued to do so. He also testified that his grandfather died during the war and was buried in the woods, testimony that the Land Court specifically found credible. Christina, born in 1953, also testified that her father had used the land as far back as she could remember without objection from anyone, and had planted mahogany trees and built a house there.

Adjudication and Determination at 9. The Land Court therefore awarded Lot 008 to the Children of Ngiramos, and Tebelak Clan appealed.[7]

STANDARD OF REVIEW

[¶7] We review the Land Court's findings of fact for clear error. *See Ngerungel Clan v. Eriich*, 15 ROP 96, 98 (2008). The Land Court's determinations of law are reviewed *de novo*. *See Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007). While it is true that we may affirm the trial court's judgment on "any basis apparent in the record," *Idid Clan v. Palau Pub. Lands Auth.*, 2016 Palau 7 ¶ 7 n.7, "when the task at hand involves making factual determinations, a trial court must provide sufficient findings in order for us to conduct meaningful appellate review." *Ochedaruchei Clan v. Thomas*, 2020 Palau 11 ¶ 21 (Dolin, J. concurring).

DISCUSSION

A.

[¶8] We decided an appeal related to this homestead lot before. The primary issue in that case was the same as we hold it is here—whether or not the particular lots at issue were or were not within the boundaries of Lot 15-211. *Estate of Aderkeroi,* 2017 Palau 27 at ¶ 13 ("The court noted the historical sketches of the homestead, including in the quitclaim deed, indicated an area of land between the homestead and the shoreline that was not included. This area appears to correspond to [the lots at issue in the case]."). On appeal, we held that the Land Court's determination that the lots at issue were outside the homestead was not clearly erroneous. *Id.* at ¶ 16.

[¶9] Appellant contends that it was clearly erroneous to conclude that the Children of Ngiramos own Lot 008 because that lot is within the boundaries of Lot 15-211, Tebelak Clan's homestead. *See generally In re Siob*, 21 ROP 123, 127 (Land Ct. 2014) ("[D]uring the Trust Territory period, a homestead program was established whereby a homesteader could acquire title to government land if he met certain conditions. *See*, 67 TTC §301."). The Land Court correctly noted in its final order in SP/H 16-00040 (which was entered on May 1, 2019, only a week before the Land Court hearing in the instant case) that it was bound by the Land Commission's earlier determination of ownership of Lot 15-211. *See* 35 PNC § 1310(b) ("[T]he Land Court shall not hear claims or disputes as to right or title to land between parties or their successors or assigns where such claim or dispute was finally determined by the Land Claims Hearing Office, the former Land Commission, or by a court of competent jurisdiction[, but] shall, for purposes of this chapter, accept such prior determinations as binding.") *Cf. Inglai Clan v. Emesiochel*, 3 ROP Intrm. 219, 223-24 (1992) ("[W]hen the LCHO inherited the proceedings before the

[7] Another claimant also appealed from the underlying Land Court decision, but chose to dismiss its appeal.

Commission, under 35 PNC 1110(c) it could not redetermine the ownership of the land. Its authority was limited to following up the 1982 determination by issuing a notice of the determination and a certificate of title."). Although Tebelak Clan never used the legal term of art "*res judicata*," given the heightened duty that courts have to *pro se* litigants, and the fact that Kumangai presented the Land Court with its own order which explicitly acknowledged the 1982 determination, that was more than enough to raise the issue in the Land Court. *See Whipps v. Nabeyama*, 17 ROP 9, 12 n.2 (2009) ("There is a long standing, and oftentimes unspoken, tradition in the United States and here in Palau of courts employing a heightened duty to its pro se litigants. We find that this tradition serves the interest of justice in helping to ensure meaningful access to the courts of Palau to all Palauan citizens, regardless of their socio-economic status.").

[¶10] In this case, unlike in *Estate of Aderkeroi*, we are unable to assess whether the Land Court's findings are or are not "clearly erroneous," because the Land Court never made an explicit factual determination of whether Lot 008 is within the boundaries of homestead Lot 15-211. That is precisely the type of factual finding that should be made by the Land Court in the first instance, and without which we cannot conduct meaningful appellate review. Accordingly, we must remand the case to the Land Court so that it can address the argument and enter its factual determination on the record.

[¶11] If, on remand, the Land Court determines that Lot 008 is not within the boundaries of Lot 15-211, it could reaffirm its determination that the land belongs to the Children of James Ngiramos. If, on the other hand, the Land Court concludes that Lot 008 is indeed inside Lot 15-211, that would mean that Lot 008 is part of Tebelak Clan's original homestead, and the Land Court is bound by the Land Commission determination unless it further finds that the Children of Ngiramos have shown that they acquired ownership of the land by adverse possession or that it was transferred to them in some other manner.

B.

[¶12] "Common law adverse possession presents a mixed question of law and fact." *Tmiu Clan v. Ngerchelbucheb Clan*, 12 ROP 152, 167 (2005). It is therefore inappropriate for this Court to decide the issue on appeal in the first instance. We leave it open for consideration on remand, with the following guidance to the Land Court.

[¶13] It is well established that in order to claim ownership by adverse possession, a claimant must show by preponderance of the evidence that its possession "is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for twenty years." *Children of Ngiramechelbang Ngeskesuk v. Brikul, et al.*, 14 ROP 164, 166 (2007). The Land Court has already found that "Ngiramos and his children developed and have occupied the land as their own for a long time." That finding need not be reconsidered. At the same time, because the finding does not address all of the factors necessary to make out a claim of adverse possession it, standing alone, is

insufficient for the claimant to prevail. On remand, the Land Court can evaluate whether all of the necessary conditions for adverse possession are met. Specifically, the Land Court should address Kumangai's testimony that the Clan also planted things on the land. If the Court finds that testimony to be credible, that may defeat the claim of adverse possession because it may mean that Ngiramos' children did not have the land in their *exclusive* possession. We, of course, express no view on the veracity of Kumangai's testimony or its impact on the resolution of any adverse possession claim. We further note that the existence of a familial relationship may also serve to defeat an adverse possession claim under Palauan law, which the Land Court may need to consider if the parties are related. *E.g.*, *Tmiu Clan*, 12 ROP at 154 ("We have held that the existence of a family relationship between the landowner and the adverse possessor defeats the requirement that the possession is hostile or adverse."). Again, we express no view on the matter, and leave the resolution of these questions to the Land Court as the finder of fact.

CONCLUSION

[¶14] For all of the forgoing reasons, the judgment of the Land Court is **VACATED** and the case is **REMANDED** for further proceedings not inconsistent with this opinion.

SO ORDERED, this 21st day of May, 2020.

GREGORY DOLIN
Associate Justice

ALEXANDRO C. CASTRO
Associate Justice

DENNIS K. YAMASE
Associate Justice