

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

IDID CLAN,
Appellant,
v.
KOROR STATE PUBLIC LANDS AUTHORITY,
Appellee.

Cite as: 2017 Palau 10
Civil Appeal No. 16-012
Appeal from LC/B 08-017

Decided: March 6, 2017

Counsel for AppellantSalvador Remoket
Counsel for AppelleeNatalie Durflinger

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

Appeal from the Land Court, the Honorable C. Quay Polloi, Senior Judge, presiding.

OPINION

PER CURIAM:

[¶ 1] Idid Clan appeals the Land Court’s award of Lot 054 B 08 to the Koror State Public Lands Authority (“KSPLA”). For the reasons below, the Land Court’s decision is **AFFIRMED**.

BACKGROUND

[¶ 2] This is the third time the dispute between Idid Clan and KSPLA over Lot 054 B 08 has come before the Appellate Division. In its original decision, the Land Court relied on the Tochi Daicho land survey done by the Japanese, indicating that Lot 703, now Lot 054 B 08, was owned by Keyukl, a member of Idid Clan. It proceeded to reform Idid Clan’s return-of-public-lands claim into a superior title claim, even though Idid Clan had only filed the former with respect to Lot 054 B 08. *KSPLA v. Idid Clan*, 22 ROP 66, 67 (2015). Then “[t]he Land Court found that the government had never actually

acquired the land because there was no evidence presented to show *how* it was acquired.” *Id.* The Land Court put the burden on the government to prove lawful acquisition. Given the Land Court’s finding that the land had never legally become public, the Land Court naturally found that KSPLA could not prevail under a superior title analysis.

[¶ 3] KSPLA appealed, and we held that the Land Court erred in reforming Idid Clan’s claim and finding that the land was not public, since a return of public lands claim “concede[s] that the land is public.” *Id.* at 72. We therefore remanded “for a finding as to whether the land in question ‘became part of the public land ... through force, coercion, fraud, or without just compensation or adequate consideration.’” *Id.* at 73 (quoting 35 PNC § 1304(b)(1)).

[¶ 4] On remand, the Land Court found that Keyukl owned the land through the end of Japanese administration and that the land was first claimed as public during the Trust Territory administration. Relying on the testimony of Bilung Gloria Salii that the lot had been rented but not purchased during the Japanese administration, the Land Court found that the land had been taken without compensation. The Land Court “found that there was a wrongful taking not so much because it credited the foregoing testimony by itself but more so because it found corroboration through the unexplained circumstances of how the government came to own what was still listed in the Tochi Daicho as being owned by Keyukl.” Second Remand Decision at 5.

[¶ 5] KSPLA appealed again, and we reversed. *KSPLA v. Idid Clan*, 2016 Palau 9. We held that the Land Court’s factual findings regarding use of the land during the Japanese administration were insufficient to support the conclusion that the Trust Territory administration had wrongfully taken the land:

The Land Court’s ... analysis on remand ends with the finding that the Japanese national leasing the land did not acquire an ownership interest by making rent payments. While it is incontestable that leasing is not the same as buying, a finding of facts ending with Japanese use of the land is insufficient in this case. The land was not transferred away from Idid Clan during the Japanese occupation. Instead, at some unknown time and for some unknown reason, the

Trust Territory government began to exhibit behavior indicating administration of the land. Based on the Land Court's statements of the evidence and its reasoning, Keyukl's undisputed ownership during Japanese times has no bearing on any later acquisition by the Trust Territory.

Id., at ¶ 13.

[¶ 6] We also held that the unexplained circumstances of how the government came to own the land were not, without more, sufficient to support the conclusion that the land was wrongfully taken:

[T]he Land Court's apparent presumption is that, where there is no evidence that the Trust Territory acquired land for just compensation, the Trust Territory must not have acquired it for just compensation. ... [But] the absence of proof of a fact is not the same as proof of its opposite. The absence of proof on a subject will necessarily inure to the detriment of the party who bears the burden of proof on that subject. The Land Court's approach essentially transfers the burden of proof from Idid Clan to KSPLA without requiring Idid Clan to make even a prima facie showing of an acquisition without just compensation.

Id. at ¶ 20.

[¶ 7] Finally, we held that the Land Court erred in looking to the Tochi Daicho listing to determine whether the Trust Territory had acquired the lot for compensation:

[T]he Tochi Daicho presumption is irrelevant to the ultimate resolution of this matter, but the Land Court nonetheless appears to rely heavily on the early-1940s listing of Keyukl as the owner of Lot 703.... [B]ecause the Tochi Daicho does not—and logically cannot—speak to what occurred after its compilation, a Tochi Daicho listing has no relevance when the parties agree who owned the land at the time the Tochi Daicho was compiled and the dispute relates only to subsequent events.

[There is] no evidence to suggest that the Trust Territory government took over responsibility for updating the Tochi Daicho records, or that

it customarily updated Tochi Daicho records when purchasing land from the owners listed in the Tochi Daicho. Accordingly, the fact that the Tochi Daicho records were never updated to reflect new ownership of lot 703 is not probative of whether the Trust Territory government acquired the lot for compensation.

Id. at ¶¶ 21-22.

[¶ 8] Because the Land Court’s factual findings were insufficient to support its decision, we remanded to the Land Court a second time with “instruct[ions] that, in the absence of evidence establishing it is more likely than not that Lot 054 B 08 was wrongfully taken or otherwise acquired without just compensation, Idid Clan will have failed to meet its burden of proof on its return-of-public-lands claim, and Idid Clan’s claim must fail.” *Id.* at 16.

[¶ 9] On remand, the Land Court held an additional hearing. At the hearing, Bilung Gloria Salii testified for Idid Clan “that according to her mother and their family history, no compensation was received for the purchase of Tochi Daicho lot 703, not during the Japanese period or the Trust Territory period.” Pasquana Blesam testified for KSPLA that “Bilung Ngerdokou, mother and predecessor of Bilung Gloria Salii, ... filed claims in the 1950’s or assisted other claimants in that period, [but] she did not file a claim for the lot at issue.”

[¶ 10] The Land Court considered Bilung Gloria Salii’s testimony, but ultimately concluded that “more than a mere denial by her on behalf of her deceased mother is needed, particularly now that additional evidence was submitted at the third hearing to show that her mother and predecessor Bilung Ngerdokou filed claims in the 1950’s and assisted other claimants, including the claim for the nearby *Ngerbas*, yet Bilung Ngerdokou did not also claim [the lot at issue].” Accordingly, the Land Court concluded that Idid Clan had not met its burden of proving that the land was wrongfully taken. Idid Clan appeals this determination.

STANDARD OF REVIEW

[¶ 11] We review the Land Court’s findings of fact for clear error, and those findings will be set aside only if they lack evidentiary support in the

record such that no reasonable trier of fact could have reached the same conclusion. *KSPLA v. Idid Clan*, 22 ROP 66, 68 (2015). Thus, where evidence is subject to multiple reasonable interpretations, the Land Court's choice between them cannot be clearly erroneous. *Id.*

DISCUSSION

A. The Land Court's factual findings are not clearly erroneous.

[¶ 12] The record in this case supports the Land Court's conclusion that Idid Clan failed to prove the land at issue was wrongfully taken. As the Land Court noted in its decision, no evidence was introduced to prove a wrongful taking except "the uncorroborated hearsay testimony of an interested witness who otherwise lacks personal knowledge regarding transactions that possibly took place before her birth...." The Land Court weighed this uncorroborated hearsay against evidence presented by KSPLA that Idid Clan previously claimed other lots in the area while not claiming the lot at issue here. It was not error for the Land Court to consider this evidence. As we have held, "while it is clear that a claim for public land should not be denied merely because it was not claimed during the 1950s, we cannot say that, in a closely contested case like this one, the failure of Idid Clan to claim the land—where Idid's representatives sought the return of other lands, but not this one—was wholly immaterial." *Salii v. KSPLA*, 17 ROP 157, 159 (2010) (quoting *Idid Clan v. Olngembang Lineage*, 12 ROP 111, 117 (2005)).

[¶ 13] The Land Court, faced with some evidence supporting Idid Clan's position and some evidence supporting KSPLA's position, credited the latter over the former. "It is not the appellate panel's duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007). Because the Land Court was entitled to find KSPLA's evidence more persuasive than Idid Clan's, its finding of fact is not clearly erroneous.

B. The Land Court did not improperly exclude evidence from consideration.

[¶ 14] Apparently recognizing that it cannot succeed in showing clear error, Idid Clan instead argues that "the Land Court committed reversible error when it did not consider the Tochi Daicho listing as evidence in support

of [its] claim.” This argument fails on multiple grounds. First, it fails to identify the applicable standard of review or to explain how that standard applies to the asserted error. On multiple occasions, we have rejected appeals that fail to identify or apply the proper standard of review. *E.g. Salvador v. Renguul*, 2016 Palau 14 ¶ 24; *Riumd v. Mobel*, 2017 Palau 4 ¶ 37-38.

[¶ 15] Second, the record demonstrates that the Land Court recognized and gave appropriate weight to the Tochi Daicho listing in this case. Specifically, the Land Court relied on the Tochi Daicho listing in determining that Keyukl was the original owner of the lot at issue. The Land Court did not rely on the Tochi Daicho listing when determining whether the lot was wrongfully taken, but that is because it found the lot at issue became public after the Tochi Daicho was completed. This is entirely consistent with our opinion in the last appeal. *KSPLA v. Idid Clan*, 2016 Palau 9 ¶ 22 (“The Tochi Daicho records establish that Keyukl owned the land in the early 1940s when the Tochi Daicho survey was completed. But as we noted in the first appeal of this case, the relevant question is whether Keyukl or his successor in interest was justly compensated for the land when Lot 703 changed hands sometime in the 1950s or later. The Tochi Daicho indicates nothing about that.”). Appellant’s contention that the Land Court improperly ignored the Tochi Daicho listing is therefore without merit.

CONCLUSION

[¶ 16] Because Idid Clan has not shown the Land Court’s factual findings to be clearly erroneous, the decision of the Land Court is **AFFIRMED**.

SO ORDERED, this 6th day of March, 2017.