IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

NGERIBUKEL CLAN, represented by Iyechadribukel Theodore "Ted" Aitaro, *Appellant*, **v.** **NGERIBKAL CLAN, HENRY BLESAM, and KOROR STATE PUBLIC LANDS AUTHORITY,** *Appellees*.
NGERIBKAL CLAN and THE ESTATE OF CARLOS SALII, represented by Bilung Gloria Salii, *Appellants*, **v.** **KOROR STATE PUBLIC LANDS AUTHORITY,** *Appellee*.
LUII'S CHILDREN, *Appellant*, **v.** **KOROR STATE PUBLIC LANDS AUTHORITY AND NGERIBKAL CLAN,** *Appellees*.
PAULINE INA RIVERA, *Appellant*, **v.** **NGERIBKAL CLAN and HENRY BLESAM,** *Appellees*.
HATSUICHI NGIRCHOMLEI, *Appellant*, **v.** **NGERIBKAL CLAN,** *Appellee*.

Cite as: 2017 Palau 33
Civil Appeal Nos. 15-031, 15-032
Appeal from LC/B Nos. 08-377, 08-379, 08-395, 08-398, 08-399, 08-402 through 08-406, 08-408, 11-0174 through 11-0178

Decided: October 20, 2017

Counsel for Appellants
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- Ngeribkal Clan ..... Johnson Toribiong
- Pauline Ina Rivera ..... Tamera Hutzler
- Hatsuichi Ngirchomlei ..... Salvador Remoket
- Luii's Children ..... Vameline Singeo
- Estate of Carlos Salii ..... Johnson Toribiong

Counsel for Appellees
- Ngeribkal Clan ..... Yukiwo P. Dengokl
- Henry Blesam ..... Yukiwo P. Dengokl
- Koror State Public Lands Authority ..... Natalie Durflinger

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
R. BARRIE MICHELSEN, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Land Court, the Honorable Salvador Ingereklii, Associate Judge, presiding.

OPINION

PER CURIAM:

[¶ 1] This appeal arises from the Land Court's award of ownership of five areas of land in Ngerbeched Hamlet. The Land Court awarded the lots which comprise Claim 41[1] to Ngeribkal Clan on a return of public lands theory, Worksheet Lot 05B002-138 to Henry Blesam ("Blesam") on a superior title theory, and Claim 89,[2] Public Parcel No. 5,[3] and Claim 151 to the Koror State Public Lands Authority ("KSPLA").

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[1] Consisting of Worksheet Lot Nos. 05B002-069, 05B002-071, 05B002-072, 40076, 40077, 40078, 40176, 40177, 40178, 40800, 40801, 40803, 40899, 40839, 40898, 40897, 40802, 40179A, 40179B, 40179C, 40179D, 05B002-222, 05B002-196, 40081 & 40082.

[2] Consisting of Worksheet Lot Nos. 05B002-188, 05B002-186, 05B002-180, 05B002-183, 05B002-190, 05B002-182, 05B002-058B, 05B002-166A, 05B002-058, 05B002-164, 05B002-163, 05B002-150, 05B002-070, 05B002-145, 05B002-144, 05B002-161, 05B002-150, 05B002-158, & 05B002-192.

[3] Consisting of Worksheet Lot Nos. 05B002-199, 05B002-073 & 05B002-220.

[¶ 2] On appeal, Ngeribkal Clan argues that in addition to Claim 41, it should have been awarded Claim 89 and Public Parcel 5 on its return of public lands claim. Ngeribukel Clan claims that it should have been awarded all lots at issue in this appeal on either its superior title claim (with regard to Worksheet Lot 05B002-138) or its return of public lands claim (with regards to the remaining lots). Luii's Children ("Luii") claims they should have been awarded Tochi Daicho Lots ("TD Lots") 1163 & 1164 (which they place within Claim 89 and Claim 41) on a return of public lands claim. The Estate of Carlos Salii ("the Estate") claims it should have been awarded TD Lots 1163 because Carlos Salii was deeded that lot in 1979 by two of Luii's Children as payment for legal fees. Pauline Ina Rivera ("Rivera") claims that she should have been awarded Worksheet Lot 05B002-138 on her superior title claim and Worksheet Lots 05B002-069, 05B002-188, 05B002-071 & 05B002-072 within Claim 41 on her return of public lands claim. Hatsuichi Ngirchomlei ("Ngirchomlei") claims he should have been awarded a portion of Lot 05B002-071 within Claim 41 on his superior title claim. For the reasons that follow, we affirm the determinations of the Land Court.

BACKGROUND

[¶ 3] With the exception of Worksheet Lot 05B002-138, the lands at issue in this appeal were all public lands which have been leased from KSPLA by various individuals. These public lands had all been previously owned by the Trust Territory government, which itself acquired ownership from the Japanese at the end of World War II.

[¶ 4] The lands discussed herein as Claim 41 and Claim 89 are so labeled in reference to Ngeribkal Clan's attempts to claim these areas in the 1950s. In 1955, Hosei Rivera Ngeribkal filed Claim 41, which claimed that this area had been sold in 1937 for 9000 yen, only 1000 of which was received by the clan. Hosei Rivera claimed that the clan did not want to sell the land, but did so after the Japanese told him that he would be arrested and sent to Tobi or Sonsorol if the clan did not sell. This sale resulted in the Japanese Company Nangio Takaoku Co. being listed as the owner of TD Lots 1154, 1155, 1155-1, 1155-2 & 1156 at the time the Tochi Daicho listing was completed. The Land Court found that Ngeribkal Clan had proven its return of public land claim for this area and awarded it the land contained within Claim 41.

[¶ 5] In 1956, Baules Sechelong filed Claim 89 and claimed that this area had been forcibly purchased from the Ngeribkal Clan's chief in 1939 for inadequate compensation. The Land Court did not address whether Ngeribkal Clan had shown that it was the prior owner of the land within Claim 89 or whether this land had been wrongfully taken by the Japanese. It only held that Ngeribkal Clan's claim for these lots was untimely under 35 PNC § 1304(b)'s January 1, 1989 deadline.

[¶ 6] Other than the above mentioned listing for Nangio Takaoku Co., the Tochi Daicho for this area listed various clans or individuals as the owners of the property. The Tochi Daicho lists Merar (former title holder of Ngeribkal Clan and grandfather of Ngirchomlei) as the owner of TD Lots 1157 & 1158; Ngirusong (grandfather of Blesam) as the owner of TD Lots 1161 & 1162; and Luii (former title holder of Ngeribukel Clan and father to Itelbang Luii, now deceased, who filed the claim being adjudicated in this action) as the owner of TD Lots 1163 & 1164. The Tochi Daicho also lists Hosei Rivera (former title holder of Ngeribkal Clan, claimant in Claim 41 as discussed above, and father of Rivera) as the owner of TD Lot 1180, but as discussed below, the Land Court found that this TD Lot was located elsewhere.

[¶ 7] Additional relevant facts related to each claimant will be summarized when discussing their individual claims below.

STANDARD OF REVIEW

[¶ 8] "We review the Land Court's conclusions of law de novo and its findings of fact for clear error." *Kebekol v. KSPLA*, 22 ROP 38, 40 (2015). "The factual determinations of the lower court 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. Where there are several plausible interpretations of the evidence, the Land Court's choice between them shall be affirmed even if this Court might have arrived at a different result." *Eklbai Clan v. KSPLA*, 22 ROP 139, 141 (2015) (quotation omitted).

> In a return of public lands case, the claimant must show that a piece of property became public land "through force, coercion, fraud, or without just compensation or adequate consideration in addition to showing a proper connection to the land. 35 PNC § 1304(b)(1)-(2).

> At all times, the burden of proof remains on the claimants, not the governmental land authority, to establish by a preponderance of the evidence, that they satisfy all requirements of the [Land Registration Act]."

[¶ 9] Idid Clan v. Koror State Public Lands Authority, 20 ROP 270, 273 (2013) (citing Palau Pub. Lands Auth. v. Ngiratrang, 13 ROP 90, 93 (2006).

> A claimant meets his preponderance of the evidence burden "when the [Court] is satisfied that the fact is more likely true than not true." 29 Am. Jur. 2d Evidence § 173 (2d ed. 2008). If the claimant fails to convince the Court that all requisite elements of his claim are more likely true than not true, then the Court cannot rule in his favor.

[¶ 10] *In the Matter of Land identified as Lot No. 2006 B 12-002,* 19 ROP 128, 134, 135 (2012).

DISCUSSION

I. Ngeribkal Clan's Appeal

[¶ 11] Ngeribkal Clan submitted three separate claim forms for the lands at issue in this appeal. The first was filed on December 30, 1988 by Ngirurreor Rengulbai claiming "Bkulatiul, including Lot Nos. 1154, [1155,] 1155-1, 1155-2 and 1156" (the "1988 Claim"). The second was filed on May 26, 1998 by Hiroko Sugiyama and claims TD Lot Nos. 1157 & 1158 (the "1998 Claim"). The last one was filed on May 11, 2005 by Hiroko Sugiyama, which claimed ownership of "Tiul, Ngerbeched," also known as "Claims No 41, Claim No 151 & Claim No 89, Public Parcel No. 5" (the "2005 Claim").

[¶ 12] As noted above, Ngeribkal Clan prevailed on its return of public lands claim for Claim 41. KSPLA does not appeal this award, although some other appellants are challenging the award of these lots to Ngeribkal Clan because they have their own claims for some or all of this land. Those arguments will be addressed as necessary in subsequent sections.

[¶ 13] Ngeribkal Clan appeals the Land Court's determination for those lots located within Claim 89 and Public Parcel No. 5, which were awarded to KSPLA because they are listed as public land and no claimant was able to show that they should be returned. With regards to Claim 89, the Land Court found that Ngeribkal Clan's 1988 Claim did not cover these lots, and that its 2005 Claim for this land was untimely. With regards to Public Parcel No. 5, the Land Court rejected Ngeribkal Clan's arguments that this land was part of TD Lot 1155-2,[4] finding that TD Lot 1155-2 was entirely within Claim 41 and did not include Public Parcel No. 5.

A. Claim 89

[¶ 14] Ngeribkal Clan argues that the January 1, 1989 deadline for Return of Public Lands Claims in 35 PNC § 1304(b) violates the mandate of Article XIII, § 10 of the Constitution, and so the Land Court should have addressed its claim on the merits even if its claim was untimely. We reject this argument for the reasons recently explained in *KSPLA v. Rubekul a Meyuns*, 2017 Palau 7, ¶¶ 25-32.

[¶ 15] In the alternative, Ngeribkal Clan argues that the Land Court should have found that its claim was timely because the 1988 claim covered Claim 89 as well as Claim 41. Ngeribkal Clan's argument on this point rests only on the 1988 claim's description of the land claimed as "Bkulatiul, *including* [Lot Nos.]," which it claims indicates that the listed TD Lots are a non-exhaustive list. Having thoroughly reviewed the 1988 Claim and the evidence presented to the Land Court regarding its filing, we hold that the Land Court did not err in finding that the 1988 claim did not cover lots outside of Claim 41.

[¶ 16] As noted above, Claim 89 was claimed by Baules Sechelong in a separate action from Hosei Rivera's Claim 41. These two claims allege that different areas of land were sold at different times by different Ngeribkal Clan title holders for different sums of money, and under different threats

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[4] The Land Court's decision states that Ngeribkal Clan claims that the Parcel 5 lots are part of TD Lot 1152-2, but TD Lot 1152-2 is also not one of the Lots at issue in this case. Hearing testimony and the Clan's closing arguments below clearly show that this claim is based on 1155-2.

from the Japanese as to what they would do if the clan did not agree to the sale. The 1988 Claim lists those facts underlying Hosei Rivera's Claim 41, including the TD Lots which correspond to that claim and the specific cases in which his Claim was resolved by the Trust Territory Courts. However, it makes no mention of the facts underlying Baules Sechelong's Claim 89, the TD Lots corresponding to that claim, or the Trust Territory court cases resolving that claim.

B. Public Parcel No. 5

[¶ 17] Ngeribkal Clan argues that the Land Court erred by dismissing its claim to lots in Parcel 5 because Ngeribkal Clan did not monument the boundaries to TD Lot 1155-2 on which it bases its claim. It focuses on the Land Court's boilerplate language that it "will not award ownership of land whose boundary [is] not properly delineated" to argue that the Land Court found it had proved a return of public lands claim as to at least some of Public Parcel No. 5, but it did not awarded that land to Ngeribkal Clan because it found that those boundaries were unclear. However, a careful reading of the Land Court decision shows that it actually dismissed Ngeribkal Clan's claim to Parcel 5 because it found that this area was not part of TD Lot 1155-2 or otherwise included in Claim 41, the only area to which it found Ngeribkal Clan had filed a timely return of public land claim.

[¶ 18] The proper location of Tochi Daicho lots and their correspondence with Worksheet Lots is a factual determination by the Land Court, which is reviewed for Clear Error. *Idid Clan v. Demei*, 17 ROP 221, 227 (2010). Ngeribkal Clan does not directly address the Land Court's finding; instead it simply asserts that "Parcel 5 is drawn within Claim 41" and that "Parcel 5 was superimposed over TD 1155, 1155-1, and 1155-2." However, the maps it cites to do not show these TD numbers, and in fact show Claim No. 41 and Public Parcel No. 5 as distinct parcels of land. The official worksheet map provided by BLS also clearly shows that Claim 41 does not include Public Parcel No. 5 within its boundaries. The Land Court's factual finding that these maps were correct is not clearly erroneous.

II. Ngeribukel Clan

[¶ 19] Appellant Ngeribukel Clan claims ownership of all lots at issue in this appeal based on its historical status as one of the four saus of Ngerbeched and the traditional story of how it and the other three saus were given Ngerbeched by the Ibedul after defeating the people of Ngerkebesang. However, it presented no evidence of any actions taken by Ngeribukel Clan with regards to the lots at issue in this case between the clan's migration to Ngerbeched and the return of public lands claim filed by the clan on December 12, 1988. The Land Court found that Ngeribukel Clan likely owned these lots at some point in the past, but that it had not met its burden to show that it owned the lands at issue immediately prior to those lands becoming Japanese property. Ngeribukel Clan now argues that this finding by the Land Court was clearly erroneous, but does nothing more than frivolously "re-state[] the facts in the light most favorable to the appellant and contends that the Land Court weighed the evidence incorrectly." *Kebekol*, 22 ROP at 46.

A. No Error in the Land Court's Factual Findings

[¶ 20] Ngeribukel Clan argues that the land court erred by failing to credit the testimony of Iyechadribukel Aitaro, Lucas, and Mobel, which they argue shows that Ngeribukel Clan owned "the lands at issue in this appeal at all times relevant herein" and that the Japanese Government took this land without just compensation. However, this testimony only concerns Ngeribukel Clan's role in the conquering of Ngerkebesang and its position as one of the four saus of Ngerbeched. It does not address whether Ngeribukel Clan owned the land immediately prior to the Japanese acquisition. "Where evidence is subject to multiple reasonable interpretations, a court's choice between them cannot be clearly erroneous even if this Court might have arrived at a different result." *Kebekol*, 22 ROP at 40. The Land Court's interpretation of this testimony was reasonable, and so will not be disturbed on appeal.

[¶ 21] Ngeribukel Clan also argues that there was no evidence that it had ever lost ownership of these lots, and therefore the Land Court erred in finding that it did not own them. However, evidence that Ngeribukel Clan lost ownership is unnecessary. Under Palauan law "an uninterrupted chain of

title is unnecessary to prove ownership of property, so long as the ownership is supported by other adequate evidence," such as extended uninterrupted use and possession of the property. *KSPLA v. Ngirngebedangel*, 20 ROP 210, 214 (2013). There is no requirement for claimants, including Public Lands Authorities, to establish how they acquired land, and "a court may infer a valid transfer of land to a claimant when that claimant has occupied the land without objection for a significant period of time." *See Obak v. Joseph*, 11 ROP 124, 128 (2004).

[¶ 22] Ngeribukel Clan further argues that the Land Court erred by using the fact that it did not file any claims to these lots during the Trust Territory period as evidence against its claim, and argues that doing so "is no different than saying that Ngeribukel has no claim because of [latches, stale demand, or waiver]," which is expressly prohibited in return of public lands cases by 35 PNC § 1304(b)(2). But the Land Court's decision "had nothing to do with the prohibited legal doctrines and everything to do with Appellant's failure to meet its burden of proof." *Tmetbab Clan v. KSPLA*, 16 ROP 91, 94 (2008). It simply used Ngeribukel Clan's inaction for over 40 years as evidence that it did not own these lots at the time they were acquired by the Japanese. "Under Palauan law, a claimant's failure to perform acts consistent with ownership may be circumstantial evidence that the claimant does not . . . own the land in question." *Tucherur v. Rudimch*, 21 ROP 84, 87 (2014). Such evidence may be overcome, but Ngeribukel Clan did not provide any affirmative evidence which could have overcome it.

B. Arguments regarding Ngeribkal Clan and Henry Blesam

[¶ 23] Ngeribukel Clan also makes frivolous arguments that Ngeribkal Clan and Henry Blesam should not have been awarded the land they were given. With regards to Ngeribkal Clan, it argues that that clan's unsuccessful attempts to obtain Claim 41 and Claim 89 in the 1950s and 1960s should have been given preclusive effect by the Land Court and prevented it from claiming those lands in this case. This argument is absurd. The return of public lands statute explicitly provides that "res judicata or collateral estoppel as to matters decided before January 1, 1981" shall not apply to claims for public land by citizens of the Republic. 35 PNC § 1304(b)(2). The law is equally clear that in "claims and disputes still pending to public lands," the

Land Court is not required to give preclusive effect to prior judgments. 35 PNC § 1310(b).

[¶ 24] With regards to Blesam, Ngeribukel Clan argues that the Land Court should have dismissed his superior title claim because he did not present affirmative evidence to the Land Court. It is true that claims which are "not timely filed shall be forfeited," 35 PNC § 1309(a), but once a timely claim is filed there is no automatic legal basis for holding that a claimant has forfeited that claim due to inaction. We have explicitly held that although "fail[ing] to appear [at a Land Court hearing] can be fatal to a party's case," a party does not abandon its claim by failing to appear. *Ngermechesong Lineage v. Children of Oiph*, 11 ROP 196, 197 (2004). Indeed, we have previously noted that "a party listed in the Tochi Daicho who filed a claim could prevail even if it failed to appear at the hearing if the parties who appeared did not present sufficient evidence to rebut the presumption of the Tochi Daicho listing." *Id*. That is essentially what happened here. The Tochi Daicho lists Ngirusong as the owner of TD Lots 1161 & 1162, and the Land Court credited the testimony of Hiroko Sugiyama (representing Ngeribkal Clan) and Felix Francisco (representing the Children of Luii) that these TD Lots correspond to Lot 05B002-138, and that this land is owned by Ucherriang, the daughter of Ngirusong and mother of Blesam. Ngeribkal Clan does not point to any evidence which would rebut the Tochi Daicho listing, dispute the identified location of these TD Lots, or call into question whether Blesam is Ngirusong's proper heir.

III. Luii's Children

[¶ 25] The Children of Luii assert the claim of Itelbang Luii (now deceased) who filed a return of public lands claim asserting that a portion of the land covered by Claim 89 and Claim 41 were owned by his father and had been occupied and used by Luii and his family. The Tochi Daicho lists "Luii" (the father of Claimant Itelbang Luii and grandfather of the named children of Luii) as the owner of TD Lots 1163 and 1164, and is the basis for the Children of Itelbang Luii's claim. Luii first filed a claim for this land in 1977 and filed an additional return of public lands claim in 1988.

A. Land Court's Finding of Facts and Conclusions of Law

[¶ 26] With respect to the claim of the Children of Luii, the Court accepted as evidence the exhibits they presented "and consider[ed] them as evidence supporting the claim in this proceeding." Land Court Opinion (First Phase) at 19.

[¶ 27] That evidence was as follows: In 1977, Itelbang Luii claimed TD Lots 1163 and 1164 as heir to his deceased father, who was listed in the Tochi Daicho. At the time of the monumentation in 1986, he wrote to the KSPLA to explain why he was not acceding to its claim of ownership, or its demand he pay rent. "It has been more that [sic] half a century that I have been occupying the land. The only period during which I have not occupied the land was between 1944 and 1945, when I was forced to flee to Babeldaob because of the hostilities of the war. In 1946 when I returned I built my house on the same land and have been living on the land up until now....When the war was over the Trust Territory Government continued to assert its claim on the land."

[¶ 28] Other exhibits presented and admitted during the hearing show that the monumentation for Tochi Daicho Lot Numbers 1163 and 1164 took place on January 17, 1977. Claimant Itelbang Luii did the original monumentation at that time. Further evidence presented by claimant's witness Francisco shows that during the second claim period in 2005, he went to that monumentation to show the markers originally placed by Itelbang Luii. Mr. Francisco also testified at length as to the boundaries as shown to him by Itelbang Luii. At trial, Mr. Francisco marked these boundaries. Court's Exhibit 1-A. The required monumentation therefore occurred in 1977 and 2005.

> The Land Court determined:
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> "Evidence adduced did show that TD Lots 1163 and 1164 are listed as individually owned by Luii and there was no evidence presented to show that the listing was wrong."
>
> "Evidence further showed, as illustrated by Mr. Felix Francisco on Court Exhibits A & A-1, that TD Lots 1163 and 1164 are within

> Claim 89-part and Claim 41-part..." Land Court Opinion (First Phase) at 19.
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> "Evidence showed that Itelbang Luii [son of Luii], a citizen, filed a timely return of public land claim for ownership of Lots 1163 & 1164." *Id.*
>
> "[T]he Children of Luii [Itelbang Luii died prior to the hearing] failed to show who owned them [the Tochi Daicho lots] before they were taken. They further failed to provide substantive evidence to support their contention that there lots were taken without compensation or adequate consideration. To simply state that the land was taken without compensation without any substantive evidence to support such statement is not enough to establish ownership." *Id.* at 19-20.

B. Analysis

[¶ 29] It is not clear what a "substantial evidence" standard involves, but it certainly suggests a burden greater than the preponderance test that is well established by case law. This case must be remanded for the Court to use that standard to determine whether the claimants proved, by the preponderance of the evidence, that Luii's Tochi Daicho lots, claimed by the post-war government, were acquired by force or without compensation, keeping in mind that this Court has specifically rejected the notion that "a statement that land was taken without compensation is insufficient to carry a claimant's burden of proof as to a wrongful talking." *Heirs of Giraked v. Koror State Public Lands Authority,* 20 ROP 241, 247 (2013). (claimant Ngirmeriil's credible testimony that mother and uncle told him that the Japanese took the land to farm pineapples and as a buffer for a Japanese shrine sufficient to support claim.)

[¶ 30] See also, *Palau Public Lands Authority v. Ngiratrang,* 13 ROP 90 (2006), where the successful claimant on a Return-of-Public-Lands claim relied solely on recitation of family history. "In the absence of an alternative means of acquisition by the Japanese Administration, the Land Court credited

Sakuma's credible testimony regarding his family's ownership and the subsequent appropriation without compensation by the Japanese." *Id.* at 93.[5]

[¶ 31] The reason that this Court has never required additional evidence to support credible testimony regarding lack of compensation is the difficulty of proof. If one asserts that no payment has been made, what other proof will the claimant have, absent an admission from the one responsible for the payment?

[¶ 32] Certainly there have been cases where statements in similar cases were held not credible by the Land Court. In the *Heirs of Giraked* case, the witness for Adachi's heirs testified that it was his "understanding" that the property was "not bought." Such testimony was held insufficient. *Id.* at 245. In the same case Katey Giraked's testimony was that her father never told her that the land was purchased by the Japanese, and she did not know how the land was acquired by the government. The Court upheld the Land Court's decision that such testimony failed to meet the preponderance burden. *Id.* at 246.

[¶ 33] Another example is *Estate of Ngirachelbang v. Ngardmau State Pub. Lands Auth.*, 12 ROP 148, 150 (2005) ("Rimat provided the Court with no details about who took the land or how the land was taken, other than to state that the land was taken without compensation.")

[¶ 34] In this case, on remand, the Land Court will have to make a finding as to the credibility of the written statements of Itelbang Luii, and determine whether such evidence is more like the evidence of the prevailing parties in *Ngiratrang* and *Heirs of Giraked* or similar to the non-prevailing parties in *Giraked* and the *Estate of Ngirachelbang* case[6].

[¶ 35] The Court should also consider, in determining the credibility as was noted in *Ngiratrang, supra*, whether there are alternative explanations as

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5 "According to Sakuma, his grandfather Ngiratrang's family planted betel nut trees. coconut trees and other crops on the land. Finally, Sakuma testified that the Japanese government took the lot without compensation." *Id.* at 92.

6 The Land Court's finding of fact that "the Children of Luii failed to show who owned [the lots] before they were taken" is clearly erroneous, given the Tochi Daicho evidence of ownership before the taking.

to how the Japanese government would have come in to possession of the property. Although KSPLA has no burden to prove ownership, the uncontroverted evidence in this case was that its ownership comes from the Japanese Government's taking of the property that only occurred after 1940. The well-known history of that period can be considered.

> With the militarization of the islands in the years prior to and during the Pacific War, however, the place of Micronesians on their land, like all other aspects of their life under Japanese rule, drastically worsened. House, beaches, agricultural plots, recreational areas, all lands and buildings deemed necessary for the Japanese defense of the islands were seized by the military, at first with monetary compensation, and then, as the islands were either attacked or besieged in the last few years of the war, without any payment whatsoever.

Peattie, NANYO, THE RISE AND FALL OF THE JAPANESE IN MICRONESIA, 1885-1945, Univ. of Hawaii Press, 1988, p. 99-100

> "In the late summer of 1943, massive shifts of island people began, to make way for the troops and new defensive installations. All the Palauan residents of Koror were relocated to a village in Aimeliik in southern Babeldaob that was soon referred to as the Second Koror."

Hezel, STRANGERS IN THEIR OWN LAND, Univ. of Hawaii Press, 1995, p. 225.

[¶ 36] In short, in Return-of-Public-Lands cases, "[i]t is not error to consider the absence of evidence supporting alternative theories in evaluating the probative value of the evidence proffered by the claimant." *Koror State Pub. Land Auth. v. Idid Clan,* 22 ROP 21, 25 (2015).

C. The Land Court was in Error to State that the Claim was Inadequately Monumented.

[¶ 37] The Land Court asserted both that the Children "failed to place their lots," and also said that the area monumented by Itelbang exceeded the 4,440 that should have been the limits of Lots 1163 and 1164. This fact was

given as a separate reason to deny the Children's claim, because "the Court will not expand the Children of Luii's holdings that is beyond the size suggested by the Tochi Daicho." Opinion at 20.

[¶ 38] Clearly, Itelbang participated in monumentation, and a later monumentation was performed with Felix Francisco noting Itelbang's claim. The problem was that the Court felt the claim was too large to be the true boundaries of the two Tochi Daicho lots.

[¶ 39] The requirement to show or prove the size of Appellants' claimed property is not a requirement under 35 PNC § 1304(b). If the Land Court is unsure of the location of the Lots in question it can order further surveys and hearings.

IV. The Claims of the Estate of Salii

[¶ 40] In 1979, Itelbang Luii and Kator Francisco signed a Warranty Deed purporting to transfer TD Lot 1163 to Carlos Salii in lieu of payment for legal services. Carlos Salii filed a claim to TD Lot 1163 based on this deed, which the Land Court rejected because Itelbang Luii and Kator Francisco did not own TD Lot 1163 and so had no ownership rights to transfer.

[¶ 41] If, on remand, the Land Court holds in the alternative, that the Children should prevail on their claim, that result would require the Court to address in full the claims of the Estate of Salii. The Court will be required to determine whether the facts, as found by the Land Court, support the application of the "after-acquired" property doctrine[7].

V. Pauline Ina Rivera

[¶ 42] Rivera claims that her father Hosei Rivera had owned Worksheet Lot 05B002-138 and the northern portion of Claim 41 until the late 1930s. At that time, she asserts that Japanese nationals seized most of her father's land

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[7] The "after-acquired title" doctrine holds that "if A, having a defective title, conveys to B with covenants of warranty and thereafter A acquires the outstanding interests, such interests pass to B without the necessity of further instruments, and B's argumented title leaps back to the date of A's deed." (internal citation omitted). *ROP v. Pacifica Development Corp.*, 1 ROP Intrm. 387, 392-393 (1987).

to use for housing, but allowed him to retain TD Lot 1180 where his house was located. She argues that Lot 05B002-138 corresponds to TD Lot 1180, which the Tochi Daicho lists as individually owned by her father. Based on that listing, she claims Lot 05B002-138 on a superior title theory, and also claims a much larger area of land adjacent to that lot which she claims had been taken by the Japanese prior to the completion of the Tochi Daicho on a return of public lands theory. The Land Court dismissed her claims in part because it credited the testimony of other witnesses that the TD Lot in this area were sequentially numbered, that Lot 05B002-138 corresponds to Tochi Daicho Lot 1161 and 1162, and that TD Lot 1180 is outside of the area currently being considered by the Land Court. Since Rivera claims that TD Lot 1180 and the land which was wrongfully taken prior the completion of the Tochi Daicho used to be a single contiguous piece of land, the finding that TD Lot 1180 is located elsewhere is fatal to Rivera's superior title and return of public lands claims.

[¶ 43] On appeal, Rivera argues that it was clear error for the Land Court to award Henry Blesam Lot 05B002-138 when Rivera and her father before her had lived on that land for her entire life, and there is no other land upon which her family's dwelling has ever been located. She also argues that the Land Court erroneously ignored the fact that the Trust Territory government had granted Rivera's 1974 war claim and paid $7000 for the destruction of Hosei Rivera's house and crops during World War II, which she claims shows that the Trust Territory government recognized her father's former ownership of the lots she now claims. Additionally, Rivera asserts that the Land Court failed in the special duty it owed her as a *pro se* litigant and failed to conduct a requested site visit at which it would have seen physical evidence that further supported her claim.

[¶ 44] Rivera further asserts that the Land Court should have found that Henry Blesam waived his claim to Lot 05B002-138 by failing to affirmatively present evidence at the hearing, and that the Land Court impermissibly relied on testimony given by other witnesses and Tochi Daicho records not in evidence in awarding him this lot. We reject these arguments for the same reasons we rejected similar arguments by Ngeribukel Clan, and also note that Rivera's assertion that the Tochi Daicho listing relied on by the Land Court was not introduced into evidence is simply not true.

A. Factual Misrepresentations in Rivera's Briefing on Appeal

[¶ 45] Rivera's argument on appeal misrepresents the facts about where she and her family have lived since World War II. Rivera's argument for clear error is premised on the assertion that she and her family have resided on Lot 05B002-138 for more than 60 years, but nowhere in her briefing does she address, or even mention, the extensive evidence showing that she and her family actually lived and continue to reside on an immediately adjacent parcel of leased land. The Land Court found that Rivera's parents occupied parts of the lots she now claims under various lease agreements with the Trust Territory Government, and that Rivera is presently residing within Lot 05B002-071, not Lot 05B002-138. This finding is firmly supported by the evidence in the record. Rivera introduced lease agreements and other documents into evidence which show that her family has been living on land leased from the Trust Territory government since at least 1956. Lease records introduced by KSPLA show that Rivera and her parents have been the lessees of Lot 40063, which is adjacent to Lot 05B002-138, since at least 1968.

B. No Error in the Land Court's Factual Findings on the Location of TD Lot 1180

[¶ 46] The proper location of Tochi Daicho lots and their correspondence with Worksheet Lots is a factual determination for the Land Court, which is reviewed for clear error. *Idid Clan*, 17 ROP at 227. Rivera's argument that TD Lot No 1180 must be 05B002-138 is based on her assertion that she is currently living on TD Lot No 1180 because that is where her family's house has always been. Given the Land Court's well supported factual finding that Rivera and her family live and have lived on lots leased from the Trust Territory government for her entire life, the fact that she lives on part of the land that she now claims does not show that Lot 05B002-138 must correspond to TD Lot 1180.

[¶ 47] Rivera's 1974 war claim also tells us little about the location of TD Lot 1180. The claim application form she submitted into evidence makes no reference to Tochi Daicho ownership and only lists the location of the damaged property as "Koror, Ngerbeched." There is also no indication in the record that the Trust Territory government made any affirmative finding as to the location of Rivera's father's house when it paid this war claim, or even

that it accepted the claim's assertion that her father owned the land on which his damaged house and crops were located.

C. Land Court's Duty to Pro Se Litigants and the Failure to conduct a Site Visit

[¶ 48] Rivera argues that, because she was a *pro se* litigant below, the Land Court should have recognized "its duty to make legal sense" of the evidence she submitted, that it should have recognized that she was "confused and grossly unprepared to prosecute her claims," and that this recognition should have prompted the Land Court to ask her additional questions to explore her claims and prompt her for explanations. "While we take no issue with the abstract proposition that courts owe a special duty to *pro se* litigants, we will not lightly presume that the Land Court has failed to discharge that duty." *Rengulbai v. Baules*, 2017 Palau 25 ¶ 15. Rivera does not explain what questions the Land Court should have asked her or what additional evidence she would have introduced if the Land Court had prompted her to do so. "With nothing more than [Rivera's] unparticularized showing, there is simply no basis for concluding that the Land Court failed in the discharge of its duties." *Id.*

[¶ 49] Rivera also argues that the Land Court erred by not conducting a site visit. At the hearing, the Children of Luii requested a site visit to the land near Rivera's house to resolve a boundary issue with their claim, and the Land Court stated on the record that a site visit would be possible, but apparently this site visit did not occur. Rivera has not explained why "a site visit was important or necessary for the Land Court to understand the issues or to apply the relevant evidence properly" with respect to her claim. *Urebau Clan v. Ucheliou Clan*, 20 ROP 178, 180 (2013). More fundamentally, Rivera never actually requested a site visit by the Land Court or raised any objection when a site visit did not occur. Having failed to request a site visit, Rivera cannot now assign error to the Land Court's failure to provide one.

VI. Hatsuichi Ngirchomlei

[¶ 50] Ngirchomlei filed a superior title claim for TD Lots 1157 and 1158 in 2005, asserting that they were the individual property of his grandfather as shown in the Tochi Daicho and that they were then assigned to his father during the division of his grandfather's property. He argues that this

assignment is supported by the fact that his father had lived on that land during the Japanese era until the age of 15 and that his father ultimately received war claims payments for the loss of his grandfather's house and coconuts on this land during the war. He claims that during World War II, Ngirchomlei's father fled to Airai and did not return from Airai until several years after the war. When he returned, he asserts that his father learned that TD Lots 1157 and 1158 had been forcefully taken by the government. We note that despite these contentions, Ngirchomlei did not present a return of public lands claim to the Land Court.

[¶ 51] The Land Court rejected Ngirchomlei's superior title claim on a number of grounds, but the only one we need consider for the purpose of this appeal is the fact that it found that these lots he claimed were public land which has been leased to individual lease holders for many years. One of the elements to a superior title claim is evidence showing that the land "never became public land in the first place." *Wasisang v. Palau Pub. Lands Auth.*, 16 ROP 83, 84 (2008) (quotation omitted). The Land Court found that there was no evidence that Ngirchomlei or his father had taken any actions consistent with ownership in the years after World War II.

[¶ 52] Ngirchomlei argues that the lots he claims are within Claim 41, and because KSPLA lost on a return of public lands claim for these lots, he should have only needed to prove that he has a stronger claim than Ngeribkal Clan in order to receive this land. However, the superior title principle that the Land Court must award the land to the claimant advancing the strongest claim does not apply to return of public lands claims, and "does not mean that the Land Court is obligated to award public land to a private claimant solely because the court has determined that the land was acquired wrongfully." *Ngaraard SPLA v. Tengadik Clan*, 16 ROP 222, 224 (2009). The Land Court also cannot award land under a return of public lands theory to a claimant who has not filed a return of public lands claim.

[¶ 53] At best, Ngirchomlei presents arguments for why Ngeribkal Clan should not have been awarded a portion of Claim 41 because it cannot show it was the prior owner. However, had Ngeribkal Clan's claim failed, the Land Court would not have awarded this land to Ngirchomlei, it would have awarded the land to KSPLA. "[A]n appellant cannot obtain a reversal of the

court below if all that party shows is that a different adverse party should have prevailed." *Rengulbai Lineage v. Medorm Hamlet*, 9 ROP 118, 118 (2002). KSPLA did not appeal the Land Court determination, so there is no need to consider any arguments as to whether Ngeribkal Clan is the prior owner or the heir of the prior owner of TD Lots 1157 and 1158.

CONCLUSION

[¶ 54] We affirm the Land Court's judgment in all respects except for the Court's judgment with respect to the Children of Luii. The case is remanded for the Court to utilize the preponderance-of-the-evidence standard when evaluating the evidence submitted by the Children, and also in light of this Court's precedent in *Heirs v. Koror State Public Lands Authority,* 20 ROP 241 (2013), and *Palau Public Lands Authority v. Ngiratrang,* 13 ROP 90 (2006).

[¶ 55] If on remand, there is a need to reach the claims of the Estate of Salii, the Land Court will need to engage in further fact finding.

SO ORDERED, this 20th day of October, 2017.