

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

**KERKUR CLAN, represented by Dirrakerkur Nona Luii,
IBUUCH CLAN, represented by Mlechei Modesta Towai Tulob
and Sonny Olu Tulob, ESTATE OF NGERIBONGEL
RECHULD, represented by Nancy Wong, NGETCHEDONG
CLAN, represented by Dingelius Eugene Uehara and
Dirradelbochel Benarda Ushibata, IBUUCH CLAN, represented
by Ngiraibuuch Paul Reklai, and KERKUR CLAN, represented
by Basilia Adelbai,
Appellants,
v.
**KOROR STATE PUBLIC LANDS AUTHORITY,
*Appellee.*****

Cite as: 2017 Palau 36
Civil Appeal No. 16-016
Appeal from LC/B Nos. 09-137 through 09-154, 16-055

Decided: November 30, 2017

Counsel for Appellants

Kerkur Clan, represented by Dirrakerkur Nona Luii..... Vameline Singeo
Ibuuch Clan, represented by Mlechei Modesta Towai Tulob..... Moses Uludong
Ibuuch Clan, represented by Sonny Olu Tulob..... Moses Uludong
Estate of Ngeribongel Rechuld, represented by Nancy Wong..... Moses Uludong
Ngetchedong Clan, Represented by Dingelius Eugene Uehara..... Pro Se
Ngetchedong Clan, Represented by Dirradelbochel Benarda Ushibata. Pro Se
Ibuuch Clan, represented by Ngiraibuuch Paul Reklai..... Moses Uludong
Kerkur Clan, represented by Basilia Adelbai..... Moses Uludong

Counsel for Appellee

Koror State Public Lands Authority..... Kassie McEntire

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
R. BARRIE MICHELSEN, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] This appeal arises out of a dispute over ownership of land in Medalaii Hamlet, Koror State. The Land Court found that the land was public and that no private claimant had met their burden to prevail on a return of public lands claim.

NOTE ABOUT PARTIES TO THIS APPEAL

[¶ 2] Kerkur Clan was represented at the Land Court hearing by Nona Luii and Ricardo Ngirkelau. The Clan's attorney was, and is, Vameline Singeo. The Clan filed an appeal and a timely brief.

[¶ 3] Notwithstanding the above facts, Basilia Adelbai later filed a notice of appeal purportedly on behalf of Kerkur Clan, even though she was not listed as a representative of the Clan during the hearing, nor, for that matter, was she a witness at the hearing.

[¶ 4] Individuals who are not representatives of a Clan or Lineage at the hearing below may not self-appoint themselves as representatives on appeal and file a brief¹.

[¶ 5] Adelbai's appeal is therefore dismissed as an appeal filed by a non-party to the proceedings below.

[¶ 6] For the Ibuuch Clan, the chief title holder, Paul Reklai, was the primary witness at the Land Court hearing. Other witnesses were Kodep Dlutaoch and Christina Joseph. The Land Court caption of the case states the "representatives" of the Clan as Hilaria Lakobong, Mutero Uehara, and Baustina Uehara.

¹ The brief was filed two months late and would have been stricken as untimely if the appeal had been filed by a proper appellant.

[¶ 7] Paul Reklai, Hilaria Lakobong, and Susan Ngirausui² filed an appeal on behalf of Ibuuch Clan, but did not file a brief. On the same day, and at the same time, Modesta Towai Tulob and Sonny Olu Tulob, also purporting to represent Ibuuch Clan, filed an appeal and later filed a brief. Neither of these persons were listed as representatives of the Clan below, and their names appear in this case for the first time in their notice of appeal. Because persons cannot substitute themselves as representatives of a Clan or Lineage and replace the representatives who appeared below, their brief is stricken and their appeal is dismissed.³

[¶ 8] Consequently, the Appellants in this case are: Kerkur Clan, represented by Nona Luiu and Ricardo Ngirkelau; Ibuuch Clan, represented by Hilaria Lakobong; the Estate of Ngeribongel Rechuld; and Ngetchedong Clan.

[¶ 9] Because Ibuuch Clan and Ngetchedong Clan failed to file briefs, we need only address the appeals of Kerkur Clan and the Estate of Ngeribongel Rechuld. The appeals of Ibuuch Clan and Ngetchedong Clan are dismissed pursuant to ROP R. App. Pro. 31(c) for failure to file briefs.

BACKGROUND

[¶ 10] The lots at issue are in Medalaii Hamlet, Koror State, just east of the court complex along Ernguul Road. The lots are all public land. The Land Court ultimately found that no private claimant had met their burden to establish all of the elements of a return of public lands claim. The court accordingly determined that KSPLA owned the lots.

STANDARD OF REVIEW

[¶ 11] “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).

² Susan Ngirausui represented Gregorio Ngirausui at the Land Court hearing, so she cannot co-sign an appeal for Ibuuch Clan.

³ Because of the Land Court's uncontested finding that the Ibuuch Clan did not meet the deadline to file a claim for a return of public lands prior to January 1, 1989, any other arguments in their brief are beside the point. 35 PNC § 1304(b)(2).

“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).

DISCUSSION

I. Appellant Estate of Ngeribongel Rechuld

[¶ 12] The Estate of Ngeribongel Rechuld argued below that certain of the lots had been a *mesei* cultivated by Ngeribongel Rechuld before it was taken by the Japanese. The Land Court found that the Estate had not established “who owned the land at the time of such taking” and that “there was insufficient evidence to establish that Ngeribongel owned the claimed lots immediately before it became public land.”

[¶ 13] On appeal, the Estate makes essentially identical arguments to Ibuuch Clan. The Estate argues that the Land Court erred in not delaying the hearing until it could secure counsel and erred in awarding lots to KSPLA that the land authority had not claimed. These arguments fail for the reasons discussed above for Ibuuch Clan.

[¶ 14] The Estate’s only effort to address the Land Court’s evidentiary findings is to state in a single sentence that the lots “became public lands after the Japanese seized them from Ngeribongel Rechuld who had been cultivating the land.” The brief does not cite to any record evidence. Generously construed, this could be an argument that the Estate presented sufficient evidence to prevail. “Challenges regarding the sufficiency of evidence in Land Court proceedings are questions of fact, which we review for clear error.” *Elsau Clan v. Peleliu SPLA*, 20 ROP 87, 88 (2013). “Because of this high burden, challenges to the sufficiency of the evidence in Land Court proceedings are extraordinarily unsuccessful.” *Id.* (citation omitted). Without citing to record evidence supporting the Estate’s claim, or directly addressing the Land Court’s findings, the brief does not meet the high burden to show clear error, and this Court affirms the Land Court’s finding.

II. Appellant Kerkur Clan

[¶ 15] The land claimed by Kerkur Clan is located across the M-dock road from the Koror court complex, bounded on the north by Ernguul Road and on the east by Ngerbeched Road. (The southern boundary is a surveyor's line based on the mapped lots.) The hearing covered two large lots along Ernguul Road (Cadastral Lot Nos. B012-009 and 0036, "Lots 9 & 36") where the Public Works and the Ministry of Education buildings are located. The hearing also covered a dozen or so smaller lots to the south.

[¶ 16] As explained below, for the purposes of Kerkur Clan's appeal, the hearing area can be divided into two parts: (1) land known as *Ngeritouchel*, which was part of "Claim 83"; and (2) everything else.

A. *Kerkur Clan's Claim*

[¶ 17] Dirrakerkur Nona Luiu testified that Kerkur Clan owned all of the lots before the Land Court. Similar to the witness for Ibuuch Clan, Luiu testified the land was Kerkur Clan's share of land given by the Ibedul. Luiu stated the land was taken by the Japanese, who paid only token compensation for the relocation of plants and houses. Luiu and other clan witnesses testified that Kerkur Clan's lands extended well beyond those before the Land Court, including down along Ernguul Road to Neco Plaza. The various claim forms and exhibits submitted by the clan included some that were relevant to the lots being heard, but many pertained on their face to lots outside the hearing area.

[¶ 18] The most relevant exhibits pertained to "Claim 83" which referred to proceedings before the Palau District Land Title Officer in 1955-56. In 1955, Ngirakerkur Adelbai submitted a claim for two tracts of land referred to as *Ngeritouchel* and *Kerkur*. The hearing documents include a sketch with length measurements for the perimeter of the claim along with area calculations. The documents do not, however, definitively fix the location of the tracts relative to a known geographic point—in other words, although the sizes of the tracts are well defined, it is not clear precisely where the tracts are located. In 1956, the hearing officer, D.W. LeGoullon, found that *Ngeritouchel* and *Kerkur* "were formerly the property of the Kerkur Clan." "The land *Ngeritouchel* was taken by the Japanese Navy in 1915 [and] no

evidence of any payment for the land can be found.” “The land *Kerkur* was taken by the Japanese Government in 1929. The Government paid the clan 1000 yen for moving houses off the land and for damages to plants and trees.” Despite these findings, the officer issued a Determination of Ownership to the Trust Territory Government.⁴

[¶ 19] In the late 1980’s, various representatives of Kerkur Clan, including Luii, filed return of public lands claims in the area. It does not appear, however, that any representative of the clan monumented these claims with BLS at any point prior to the hearing. At some point prior to the Land Court hearing in 2016, a clan representative worked with a BLS employee to superimpose a rectangular(ish) orange box on the BLS Worksheet that covered some of the smaller southern lots. The orange box is labeled “Claim 83.”

B. The Land Court’s Decision

[¶ 20] After the hearing, the Land Court found that all of the lots were public land, “under complete control of the government since the 1950s.” The court noted the 1956 finding that *Ngeritouchel* and *Kerkur* had been previously owned by Kerkur Clan. The court then found that Kerkur Clan “failed to monument the lots it claims before the court.” “The area outlined in orange and designated as Claim 83 on Court Exhibit 1 [the BLS Worksheet] was superimposed there by [BLS] personnel as instructed by Ngirakerkur Debed Luii after he found out that the lot (Lot C32 B 17) he originally claimed for the clan was all mangrove.”⁵

[¶ 21] The Land Court then analyzed the clan’s return of public lands claim. *Cf., e.g., KSPLA v. Idid Clan*, 22 ROP 21, 24 (2015) (a return of public lands 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

⁴ This appears to be the result of pre-Constitution legal precedents.

⁵ The Land Court’s use of the word “claimed” appears imprecise. The record suggests that sometime prior to the hearing Debed Luii informed BLS that the Worksheet Lot that corresponded to their previously filed claims was Lot C32 B 17. That lot was not within the area of lots being heard by the court.

attained that status by a [wrongful] government taking”). The court first found that of the various 1988 claim forms introduced by Kerkur Clan, only one was timely *and* pertained to the lots at issue. This was Nona Luiu’s December 27, 1988 claim on behalf of the clan to: “sel ngarngii a blil a Evence Beches eriou ra Public Works el nguu sel keburs el molmuut er tial komisteba er chelechal taem el mo nguu a shop ra Francis Toribiong e merael el mora keburs ra Ngermesekiu” [“The place where Evence Beches’ house is located below the Public Works including the mangrove all the way to the dump site today including Francis Toribiong’s shop all the way to the Mangroves at Ngermesekiu”].

[¶ 22] The court found that this description did not cover several of the lots at issue, including the larger northern Lots 9 & 36 along Ernguul Road. The Court concluded that Luiu’s testimony that Kerkur Clan owned lots outside the December 27, 1988 claim or the 1955 Claim 83 could not properly expand the clan’s claim at the hearing. *See Idid Clan v. Demei*, 17 ROP 221, 226 (2010). The court also noted that the 1950’s claims (including Claim 83) did not include the greater area Luiu claimed at the hearing, which indicated to the court that clan did not own the other lots. *See Idid Clan v. Olngembang Lineage*, 12 ROP 111, 115-16 (2005).

[¶ 23] The December 27, 1988 claim describes the boundaries of the clan’s land in fairly general terms, but may roughly correspond to the *Ngeritouchel* area of Claim 83. (The *Kerkur* area of Claim 83 was across Ngerbeched Road, and so outside of the hearing area.) The court found that Kerkur Clan had not established that it owned land other than *Ngeritouchel* and also “failed to show wrongful taking” of any land outside of *Ngeritouchel*.

[¶ 24] The Land Court found that Kerkur Clan owned *Ngeritouchel* and that it had been wrongfully taken from them by the Japanese. (KSPLA also conceded this.) However, the court found “that Kerkur Clan failed to prove that the area outlined in orange and designated as Claim 83 on Court Exhibit 1 is the proper location of its claim under Claim 83.” Although Kerkur Clan had owned *Ngeritouchel*, the clan did not establish where *Ngeritouchel* was: the clan “failed to show its exact location.”

C. Kerkur Clan's Appeal

[¶ 25] The clan makes two arguments. It first argues that it met its burden to establish the statutory requirements for a return of public lands and the Land Court erred in denying its claim because the clan failed to monument it. The second argument is less clear, but generally challenges the court's treatment of the superimposed "Claim 83" on the BLS Worksheet.

[¶ 26] The brief is not specific about what lots the clan is appealing. However, the brief does not undermine the trial court's determinations for any land outside of *Ngeritouchel*/Claim 83. Among other things, the Land Court found that the clan had not shown it had filed a timely claim to land outside that area, or, assuming it had, the clan had not shown that land was wrongfully taken from it. Kerkur Clan has not provided any basis to reverse either of those findings. Accordingly, to the extent the clan is appealing the determinations for any lots outside of *Ngeritouchel*, this court affirms the Land Court.

[¶ 27] As to *Ngeritouchel*, the clan is correct that a failure to monument, in and of itself, is not a standalone basis to deny a claim. BLS is required to coordinate mandatory monumentation sessions with all claimants prior to Land Court hearings. *See* 35 PNC §§ 1307, 1309. Statutory notice of monumentation must "clearly explain" "in both English and Palauan" "the date of monumentation, that attendance by claimants or their representatives is mandatory, and the penalties for failure to attend." 35 PNC § 1309(c)(2). "A claimant who fails to personally attend or send an authorized representative to a scheduled monumentation may not contest the boundary determinations and monumentation resulting from the session." 35 PNC § 1307(d). Kerkur Clan does not contend that BLS failed to provide notice, or that a clan representative attended; therefore, the clan "may not contest the boundary determinations and monumentation resulting from the session." But this appears to be the extent of the statutory consequence. A claimant could still come to court and assert that they owned demarcated lots monumented by another claimant or established by BLS. Kerkur Clan is correct that it would be error for the Land Court to deny a claim solely on the basis that the claimant did not monument it.

[¶ 28] However, that is not what the Land Court did. The court did take issue with the clan’s failure to monument and follow BLS procedures. Some of the court’s language in the decision suggests that it might have denied the claim solely on this basis—which might be error. But the Land Court’s core rationale is that the clan had simply failed to show the location of *Ngeritouchel*. In other words, the court found that the clan had not established if *Ngeritouchel* was wholly or partly within the hearing area, and, if so, where within the hearing area its boundaries are. Even if the Land Court’s statements about monumentation are erroneous, the court’s finding about being unable to fix the location of *Ngeritouchel* provides an independent basis to affirm.

[¶ 29] Given the foregoing, there are two separate problems with the clan’s arguments for reversal, one legal and one factual. The legal problem is that the clan is equating the Land Court’s finding that the clan owned *Ngeritouchel* with a finding that the clan established ownership of public land being heard by the court. The Land Court was adjudicating ownership of land only within a designated hearing area. The clan’s burden was to show that it was the original owner of some demarcated portion of that land. Showing that it owned *Ngeritouchel* is only sufficient if it can establish that *Ngeritouchel* is a particular portion of the land at issue in the hearing. The factual problem is that the clan has not pointed to evidence that would establish that the location of *Ngeritouchel* is as shown by the superimposed orange “Claim 83” box on the Worksheet. As discussed below, the clan concedes that the orange box is not an accurate superimposition of *Ngeritouchel*. Thus the clan’s first argument fails.

[¶ 30] Kerkur Clan’s second argument relates to the superimposition of the orange “Claim 83” box on the BLS Worksheet. The clan argues that the Land Court ordered this superimposition but then denied the clan’s claim because they relied on the superimposition. The factual history of the superimposition is muddled.⁶ Assuming the superimposition shown on the

⁶ There is a June 13, 2012 Land Court order that reads:

Finally, a request was made at a previous status conference for the court to order BLS to produce a map containing the map of Kerkur’s Claim No. 83 superimposed upon the worksheet . . . The request was granted because

BLS Worksheet was done pursuant to court order, the Land Court's statement that "the Court cannot, and will not allow, claimants to superimpose [a] sketch of their alleged claims on preferred areas without monumenting the lots they claim" lends some support to the clan's argument. Ultimately, however, the argument does not work. First, the Land Court order did not purport to excuse the clan, even assuming it could, from mandatory monumentation; the court noted that the superimposition would "add clarity to these proceedings." Second, the clan is reading the Land Court's "will not allow claimants to superimpose" language out of context. The Land Court's bottom line finding was "that Kerkur Clan failed to prove that the area outlined in orange and designated as Claim 83 on [the Worksheet] is the proper location of its claim under Claim 83." Stated differently, the court found that the clan did not show that the superimposition was accurate. Thus the clan's second appellate argument also fails.

D. The Underlying Issue of Ownership of Ngeritouchel

[¶ 31] Although the clan's two arguments do not quite work, both of them hint at a tough issue suggested by the clan's appeal. Kerkur Clan indisputably owned *Ngeritouchel*, which was wrongfully taken from them; this is more or less the precise wrong that the return of public lands statute was designed to remedy. Further, from the various record maps and sketches it is very likely that some significant portion of *Ngeritouchel* is located within the hearing area. Given these two premises, it is almost inconceivable that the clan was not returned at least some of the hearing land and strongly

such a map will also add clarity to these proceedings. However, the court neglected to include the request in its order. Therefore, BLS is hereby ordered to produce the described superimposition on Claim No. 83 on Worksheet 2005 B 07 and submit it to the court as soon as practicable, but no later than June 25, 2012.

At the hearing, however, the BLS surveyor testified that he thought the superimposition was already done when he joined BLS in 2010. After the hearing, the Land Court found that the superimposition was not done independently by BLS, but rather "as instructed by Ngirakerkur Debed Luii." Finally, KSPLA Exhibit K introduced below is a 1974 map of claims in Koror which already shows a "Claim 83" box drawn on a map of downtown Koror.

suggests that the Land Court must have made a mistake somewhere in the proceedings that would warrant reversal.

[¶ 32] But the Land Court’s decision is in fact driven by the clan failing to follow various statutory procedural requirements, and it, or its counsel’s, failure to address a number of facially apparent problems with the claim as presented. Although this should have been an easy win for the clan, it failed to do the easy things necessary to achieve that win. Based on the discussion of the clan’s appellate arguments, and as further explained below, we affirm the Land Court.

[¶ 33] The record indicates that the orange box on the worksheet is not an accurate superimposition of *Ngeritouchel*: the box (1) is in the wrong location and (2) is the wrong size. As to location, both the original sketch in the District Land Office hearing file and the 1974 index map of claims in Koror State (KSPLA Exs. C & K) show the bottom right corner of *Ngeritouchel* aligned with a road that branches off the Ngerbeched Road. In contrast, the bottom right corner of the orange box is a significant distance farther south from the branch road. As to size, the 1950’s hearing document sketch and findings of fact provide a precise size for *Ngeritouchel*. But Land Court hearing testimony established that the orange box is a different size, a fact Kerkur Clan acknowledged in its written closing argument: “The evidence shows that superimposed boundary or size of claim 83 on [the BLS Worksheet] is not accurate.” Any argument that the orange box accurately depicts *Ngeritouchel* is unsupported. Given that, the clan has not established what land before the Land Court corresponded to *Ngeritouchel* and therefore could not prevail on a claim for return of that land.

[¶ 34] The fact that the orange box was plotted incorrectly is hard to explain. The original District Land Office documents provide precise length measurements for three sides of *Ngeritouchel* (the fourth side follows the land/mangrove line), precise measurements of the diagonals of *Ngeritouchel*, and precise area measurements. There is no apparent reason that the area of *Ngeritouchel* could not have been superimposed accurately (assuming it would be possible to identify the branch road aligned with the bottom right corner of *Ngeritouchel*). And although BLS may bear most of the fault for the inaccuracy, the record does not indicate that the clan or its counsel took

timely steps to verify the superimposition, moved the Court to order BLS to correct the errors, or established the correct placement of *Ngeritouchel* at the hearing. (The clan’s decision not to try and rehabilitate the superimposition may be explained by its decision to claim ownership of all of the hearing area and beyond—in other words, the exact placement of *Ngeritouchel* within the hearing area may not have seemed particularly relevant because the clan argued it owned the whole area regardless.)

[¶ 35] Ultimately the clan’s failure to monument its claim, failure to ensure an accurate placement of *Ngeritouchel*, and its decision to focus on a sweeping claim to all of the hearing land and beyond, prevented the clan from proving a return of public lands claim—despite strong evidence in their favor—such that the decision below is affirmed.⁷

⁷ Because it failed to monument the claim, the clan “may not contest the boundary determinations and monumentation resulting from the session.” 35 PNC § 1307(d). The exact full effect of this provision is unclear here. However, one straightforward reading is that the clan cannot seek an award of land with boundaries different than those determined at the monumentation. Stated differently, as a non-monumenting claimant, the clan could still argue for an award of a lot (or group of lots) monumented by other claimants, but the clan could not seek to be awarded land with boundaries determined by something other than the Section 1307 monumentation session (or pre-established boundaries such as the shoreline or a road). So the clan could have, for instance, argued for an award of all the monumented lots that fell within *Ngeritouchel*. But the clan would have needed to establish the correct boundaries of *Ngeritouchel* in relation to those lots in order to advance such an argument. *Cf., e.g., Shiro v. Estate of Reyes*, 21 ROP 100, 104 (2014) (“Moreover, the Land Court pointed out that the Mereb Children failed to monument their claim for WS Lot 22 within the time period set for such monumentation and that they therefore cannot contest that it falls within the boundaries of Tochi Daicho lot 2097, which were set by the Children of Blailes during the monumentation period.”).

CONCLUSION

[¶ 36] For the reasons above, the Court **AFFIRMS** the determinations of the Land Court.

SO ORDERED, this 30th day of November, 2017.