

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

PRUDENCE TECUR,
Appellant,
v.
TELUNGALEK RA TECHUR, et al.,
Appellees.

Cite as: 2018 Palau 12
Civil Appeal No. 17-004
Appeal from LC/M 16-00028 through 16-0030

Decided: August 10, 2018

Counsel for Appellant..... J. Roman Bedor
Counsel for Appellees.....Pro Se

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

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

OPINION

RECHUCHER, Justice:

[¶ 1] This appeal involves several competing claims for ownership of four parcels of land located in Ngchemiangel Hamlet in Aimeliik State that are depicted in the Court Exhibit 1, (BLS Worksheet No. 130 M 00), as Lot Nos. 130 M 19, 130 M 20, 130 M 21B, and 130 M 22B. The claimants are Telungalek ra Kerengel, claiming ownership of Lot No. 130 M 22B; Telungalek ra Ngerkui, claiming ownership of Lot Nos. 130 M 19, 130 M 20, and 130 M 21B; Telungalek ra Techur, claiming ownership of Lot Nos. 130 M 19, 130 M 20, 130 M 21B, and 130 M 22B; and, Prudence Techur who claims ownership of Lot Nos. 130 M 20, 130 M 21B and 130 M 22B. The words “Lineage” and “Telungalek” are used here interchangeably.

[¶ 2] On May 11, 2016, the Land Court awarded the ownership to Lot Nos. 130 M 20 & 130 M 21B to Telungalek ra Ngerkui; Telungalek ra Techur

was awarded Lot No. 130 M 19; and, Telungalek ra Kerengel was awarded Lot No. 130 M 22B. Prudence's claim was denied for his failure to present sufficient evidence to corroborate his claim of ownership to Lot Nos. 130 M 20 and 130 M 21B. Because Appellant fails to show a clear error committed by the Land Court, we AFFIRM the Land Court's decision below.

PROCEDURAL BACKGROUND

[¶ 3] After the Land Court issued Determinations of Ownership to the lots in question, Ngirasuong Techur, who had been affiliated with Telungalek ra Techur, filed a Notice of Appeal *pro se* naming Telungalek ra Kerengel as Appellee. Prudence, in his personal capacity, also filed a Notice of Appeal, naming Telungalek ra Ngerkui, Telungalek ra Techur, and Telungalek ra Kerengel as Appellees. This was the first appeal in this matter.

[¶ 4] Determinations of ownership were issued to the Lineages without identifying a representative of each Telungalek. The Appellate Court, without deciding the merits, dismissed the appeal and remanded the case back to the Land Court for a limited purpose - to hold further proceedings to determine the representative of each Telungalek and issue new Determinations of Ownership.

[¶ 5] In compliance with the Order on Remand, on June 13, 2017, the Land Court issued its Decision identifying the representatives of each Telungalek and new Determinations of Ownership: Grace Rimirch as representative of Telungalek ra Ngerkui was awarded Lot Nos. 130 M 20 and 130 M 21B; Ngirasuong Techur as representative of Telungalek ra Techur was awarded Lot No. 130 M 19; Yukiwo Dengokl as representative of Telungalek ra Kerengel was awarded Lot No. 130 M 22B. Roman Bedor, was the personal representative of Prudence Techur whose claim was denied.

[¶ 6] After the issuance of the Land Court's Decision identifying the representative of each Telungalek and the issuance of new Determinations of Ownership, Prudence Techur timely filed this second appeal regarding Lot Nos. 130 M 20 and 130 M 21B and alleging the Land Court committed clear error by awarding these lots to Telungalek ra Ngerkui.

FACTUAL BACKGROUND

[¶ 7] At the hearing before the Land Court, Appellant testified to two methods by which he claimed ownership to Lot Nos. 130 M 20 & 130 M 21B. First, he did not dispute the fact that Ngerkui owned Lots Nos. 130 M 19, 130 M 20, and 130 M 21B. But, he testified that when Ngerkui died, his son Techur inherited Ngerkui's lands. He also testified that he is natural child of Ongesii, Techur's son. He was later adopted by his grandparents Techur and his wife Keremius to become their son. Appellant further testify that he claims the lands currently owned by Techur because he is Techur's surviving son. This testimony forms what Appellant believes to be a legal conclusion based on the above given argument. Land Court correctly disregards it because it is not statement of fact.

[¶ 8] Second, Appellant testified that his father, Techur, "... once told him to claim ownership of these lots for himself and his siblings, but now Prudence wants them register under his own name, and he would hold them for his siblings." Land Court denied Appellant's claim based on this testimony because Appellant failed to provide corroborating evidence to show which land his father was referring to, where and when the statement was made, and give the names of other people who were present and able to confirm the statement. Prudence also failed to perform acts consistent to the ownership of the land.

[¶ 9] Grace Rimirch and Ngirasuong Techur testified at the Land Court hearing. Grace testified that the lands claimed by Telungalek ra Ngerkui were originally owned by Uchelbang Clan. The ownership of said lands was later acquired by Ngerkui, a member of that Clan. Before he died, Ngerkui made an *inter vivos* transfer, a transfer made during one's lifetime, of Lot No. 130 M 19 to his son Techur, according to both Grace and Ngirasuong. Ngirasuong, Techur's son, built his house on the land, and he presently resides there. The rest of Ngerkui's lands, Lot Nos. 130 M 20 and 130 M 21B, remained with Ngerkui. Grace and Ngirasuong both further testified that Ngerkui's son, Techur, made known his intention that "... these lots would never be individually owned by one particular person...." Ngirasuong testified that his father's intention that the land be under communal

ownership is the reason he claims Lot Nos. 130 M 20 and 130 M 21B for Telungalek ra Ngerkui and Lot No. 130 M 19 for Telungalek ra Techur.

[¶ 10] On the basis of the foregoing testimonies, the Land Court made the following findings of fact: (a) Lot Nos. 130 M 19, 130 M 20, & 130 M 21B were formerly owned by Ngerkui who made an *inter vivos* transfer of Lot No. 130 M 19 to his son Techur; (b) Ngirasuong Techur, Techur's son, presently resides on that land; (c) During his lifetime, Techur made known his intention that his land will not be owned by one particular person; (d) The Land Court also found Telungalek ra Kerengel owns Lot No. 130 M 22B; but, it denied Prudence' claim for his failure to present sufficient evidence to corroborate his claim of ownership to Lot Nos. 130 M 20 & 130 M 21B.

[¶ 11] In this appeal, Appellant raises and argues two issues to support his appeal. First, he raised the issue presented the same argument he made at the lower court that is – when Ngerkui died, his properties passed on to his son, Techur, and became properties of Techur; and, after Techur died, his properties were inherited by his son, Appellant Prudence Techur. Thus, Appellant argues, awarding Ngerkui's properties to Telungalek ra Techur was an error of law made by the Land Court. Secondly, Appellant argues that Land Court's failure to state a valid reason used to award Lot Nos. 130 M 20 & 130 M 21B to Telungalek ra Ngerkui constitutes an abuse of discretion. We discuss below the issues raised by Appellant in the same order as they appear above.

STANDARD OF REVIEW

[¶ 12] We review the Land Court's conclusions of law de novo and its findings of fact for clear error. *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009). The factual determinations of the Land 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." *Id.* Deference is accorded to Land Court's findings on the credibility of witnesses. *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 37 (1999). Where there are several plausible interpretations of the evidence, the Land Court's choice between them will be affirmed even if this Court might have arrived at a different result. *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 223 (2009).

[¶ 13] An abuse of discretion occurs when a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper factors are considered, but the court in weighing those factors commits a clear error of judgment. *WCTC v. Kloulechad*, 15 ROP 127, 129 (2008) (quoting *Eller v. ROP*, 10 ROP 122, 128-29 (2003)). Under this standard, a lower court's decision will not be overturned unless that decision was clearly wrong. *Estate of Tmetuchl v. Aimeliik State*, 13 ROP 176, 177 (2006).

DISCUSSION

[¶ 14] The facts here are generally not in dispute. Appellant's arguments are directed at the legal conclusions of the Land Court. In his Opening Brief, Appellant argues that he was a natural child of Ongesii, who is the natural son of Techur, and Techur is the son of Ngerkui, who is the original owner of the properties in question here. Prudence was adopted by his grandparents, Techur and Keremius, as their son. He presented two bases for his claim of ownership to Lot Nos. 130 M 19, 130 M 20, and 130 M 21B. First, he testified that he should inherit the properties of his father Techur after he died; and, second, he testified that his father told him to claim the lands for himself and his siblings.

[¶ 15] The Land Court rejected both of Prudence's claims because he failed to present corroborating evidence to support either statement. We see nothing wrong in doing so. The factual determinations of the Land Court will only be set aside if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Koror State Pub. Lands Authority vs. Ngirmand*, 14 ROP 29, 31 (2006). He also failed to present any explanation for his lack of action or objection to Ngerkui's *inter vivos* transfer of Lot No. 130 M 19 to his son Techur. And, based on that transfer, Ngirasuong built his house on the land and presently resides there without interference or objection by Appellant. Under Palau law "... a claimant's failure to act like a landowner could be evidence of lack of ownership and, inversely, that a claimant's use and dominion over land could be evidence of ownership." *Tucherur v. Rudimch*, 21 ROP 84, 88 (2014).

[¶ 16] The inheritance law in effect at the time of a land owner's death applies to the disposal of his properties. *Ngiraswei v. Malsol*, 12 ROP 61, 63 (2005). Ngerkui's time of death was most likely 1985, inferred from the evidence presented at trial, the same year his son Techur died. The intestacy statute in effect at the time of Ngerkui's death was 25 PNC § 301(b). The pertinent part of that Section states:

If the owner of fee simple land dies without issue and no will has been made . . . or if such lands were acquired by means other than as a bona fide purchaser for value, then the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death.

[¶ 17] The foregoing interpretation of § 301(b) applies in two different situations: (1) decedents without a will and without children; or (2) decedents without a will, who have children but were not bona fide purchasers of land for value. *Ysaol v. Eriu Family*, 9 ROP 146, 149-52 (2002). Ngerkui, meets the requirements of the second situation - he died without a will and with children, but he was not a bona fide purchaser of his land for value. However, in *Delbirt v. Ruluked*, 10 ROP 41, 43 (2003)¹, this Court instructed that meeting those elements by itself was not enough to apply the statute when neither party introduced evidence of a Lineage's desires as to the disposition of the property. But, in that case, the Court upheld the Land Court's determination as it found error was harmless. *Id.*

[¶ 18] Here, however, *Delbert's* requirement that a Lineage's desires are ascertainable is satisfied by the clear and unequivocal actions by the members of Lineages that hold the decedents as members. Grace Rimirch, representative of Telungalek ra Ngerkui, claimed ownership to Lot Nos. 130 M 20 & 130 M 21B for Telungaled ra Ngerkui; Ngirasuong, representative of Telungalek ra Techur, claimed ownership to Lot No. 130 M 19 for Telungalek ra Techur; and, Yukiwo Dengokl, representative of Telungalek ra Kerengel,

¹ Intestacy statute 39 PNC § 102(d) applied in *Delbirt* case because it existed at the time of his death. It is currently codified as 25 PNC § 301(b).

claimed Lot No. 130 M 22B for Telungalek ra Kerengel. Each Telungalek chose an heir to receive the decedents' properties, which is expressed in the claims of each Telungalek. Where, like in this case, there are several plausible interpretations of the evidence, the Land Court's choice between them will be affirmed even if this Court might have arrived at a different result. *NSPLA*, 16 ROP at 223. Deference is accorded to Land Court's findings on the credibility of witnesses. *Kerradel*, 8 ROP Intrm. at 37.

[¶ 19] Appellant also argues that there is no legal or customary basis to support the award of Ngerkui's land to Telungalek ra Ngerkui instead of his son Techur. Because, Appellant argues, Telungalek ra Ngerkui is an artificial being and not a person, it cannot be the proper heir of Ngerkui. He also used the same argument against awarding Techur's properties to Telungalek ra Techur, and not to his son, Appellant. Appellant's principal argument is that it was impermissible under § 301(b) for the Lineage to dispose of land by giving it to itself, and the Lineage was required to choose among Ngerkui's or Techur's heirs which, he says, do not include the Telungalek.

[¶ 20] The word "heir" is defined as "someone who, under the law of intestacy, is entitled to receive intestate decedent's property." BLACK'S LAW DICTIONARY 839 (10th ed. 2014). Its meaning is not restricted to children, relatives, or any particular being. In the case of *Bandarii v. Ngerusebek Lineage*, 11 ROP 83 (2004), the appellant raised and argued the same issue, and the Court ruled that a Lineage has broad power in disposing of decedent's properties. That broad power allows the Lineage the authority to give the properties to itself. The Court said:

Appellant's principal argument is that it was impermissible under § 301(b) for the Lineage to dispose of land by giving it to itself but was required to choose among Bandarii's heirs which, he says, do not include the Lineage. This is an issue of statutory interpretation and thus is reviewed *de novo*. Assuming *arguendo* that the statute applies here, we see no error in the way in which the trial court applied it.

In general, intestacy statutes define those who inherit from a person who dies without a will. Section 301(b) is different in that, rather than designating a particular heir or heirs, it confers on a

lineage under certain circumstances the power to dispose of a deceased's fee simple land. By its express terms, § 301(b) places no limit that power. It does not limit the lineage's choice to children or relatives or even to natural persons, but says only that "the land . . . shall be disposed in accordance with the desires of the . . . lineage." Given the breadth of the Lineage's power to dispose of property, this Court can see no basis within the statute's plain meaning to conclude that Ngerusebek Lineage was prohibited from giving the property to itself.

Id. at 85 (Internal citations omitted).

[¶ 21] Ngerkui and Techur both died without a will, with children, and were not bona fide purchaser for value of the land they owned. Thus, the inheritance statute, 25 PNC § 301(b), is inapplicable. There was also no *eldecheduc* held to distribute decedent's properties. Thus, under Palau law, Ngerkui's and Techur's properties are supposed to go to their children. *Matchiau vs. Klai Clan*, 7 ROP Intrm. 177 (1999). See also *Children of Dirrabang vs. Children of Ngirailid*, 10 ROP 150 (2003). But, when § 301(b) is inapplicable, we look to Palau customary law to resolve the inheritance and distribution of Ngerkui's and Techur's properties. See *Delbirt*, 10 ROP at 43, ("Where a court finds no expression of the desires of statutorily define lineage, we conclude that it must turn to customary law to determine the proper heir of the deceased.") As stated earlier, the desire of the implicated lineage is ascertained through their filing of claims. Therefore, the Land Court correctly determined that Telungalek ra Ngerkui is the proper heir to receive Ngerkui's land, and Telungalek ra Techur is the proper heir to receive Techur's land.

ABUSE OF DISCRETION

[¶ 22] In his Opening Brief, Appellant argues that the Land Court failed to state the reason or cite authorities to support the award of the lands owned by Ngerkui to Telungalek ra Ngerkui. Unless Ngerkui had a will disposing of his properties after his death to his Lineage, Ngerkui's properties should pass on to his children. Appellant applied this same argument against awarding Techur's properties to Telungalek ra Techur. Appellant also argues that both awards of Ngerkui's property to Telungaled ra Ngerkui and Techur's

properties to Telungalek ra Techur run counter to Palau law on the basis of this argument. He further argues the Land Court's failure to identify an authority that it relies on in making such awards and disregard Appellant testimonies renders the Land Court's decision an abuse of its authority.

[¶ 23] At the outset, the issue regarding an abuse of the court's discretion was not raised and argued at the lower court so the same is deemed waived. *Fanna Mun. Gov't v. Sonsorol State Gov't*, 8 ROP Intrm. 9, 9 (1999). ("The general rule is that an issue that was not raised in the trial court is waived and may not be raised on appeal for the first time.").

[¶ 24] An abuse of court's discretion occurs where a relevant factor that should have been given significant weight is not considered, instead an irrelevant or improper factor is considered and given significant weight, or where all proper factors are considered, but the court in weighing those factors commits a clear error of judgment. *Kloulechad*, 15 ROP at 129. Under this standard, a lower court's decision will not be overturned unless that decision was clearly wrong. *Aimeliik State*, 13 ROP at 177. Here, Appellant fails to show clear error of judgment regarding its determination and awarding of ownership to lot nos. 130 M 20 & 130 M 21B to Telungalek ra Ngerkui and lot no. 130 M 19 to Telungalek ra Techur.

CONCLUSION

[¶ 25] Because Appellant failed to show clear error of fact made by the Land Court, we **AFFIRM** the decision of the Land Court.