

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

<p>NGERKEBAI CLAN, <i>Appellant,</i> v. NGEREMLENGUI STATE PUBLIC LANDS AUTHORITY, <i>Appellee.</i></p>
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Cite as: 2018 Palau 16
Civil Appeal No. 17-011
Appeal from LC/B 10-00072

Decided: August 21, 2018

Counsel for Appellant	Vameline Singeo
Counsel for Appellee	Masami Elbelau, Jr.

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

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

OPINION

PER CURIAM:

[¶ 1] The case of *Ngeremlengui State Government v. Ngardmau State Government*, 2016 Palau 24, set the boundary between those two states. The resolution of that case established that Bureau of Lands and Surveys Lot 201 01 H 003-001 (“Lot 001”) lies within the State of Ngeremlengui, just as it had been located within Ngeremlengui Municipality in Trust Territory times.

[¶ 2] This Land Court appeal brought by Ngerkebai Clan concerns ownership of Lot 001. The Land Court awarded the property to Ngeremlengui State Public Lands Authority. We affirm.

[¶ 3] Ngerkebai Clan claimed ownership of Lot 001 based upon a 1963 quitclaim deed it received from the Trust Territory Government. The validity of the deed, and its transfer of land to Ngerkebai Clan, is not disputed. Therefore, the task of the Land Court was to determine whether Lot 001 was within the 1963 conveyance.

[¶ 4] The Land Court held that the Trust Territory's quitclaim deed showed the property's southwestern boundary at the Ngermasch River, which placed all of the land conveyed within Ngardmau State, and therefore north of Lot 001.

[¶ 5] The Land Court also noted that the deed recites that the land conveyed approximately 301 hectares, which is close to the 295 hectares actually conveyed to it north of the river. The court pointed out that Lot 001 is 52.5 hectares which, added to the area north of the river, would result in a land area far in excess of the deed's reference to 301 hectares. The court's conclusion was that the deed did not convey any of Lot 001, and therefore the court found in favor of Ngeremlengui State Public Lands Authority.

STANDARD OF REVIEW

[¶ 6] “We review the Land Court's conclusions of law de novo and its findings of fact for clear error.” *Kebekol v. Koror State. Pub. Lands Auth.*, 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.” *Id.*

[¶ 7] “Determinations of the admissibility of evidence are in the discretion of the trial judge and will not be reversed by an appellate court unless there is an abuse of discretion.” *Temaungil v. ROP*, 9 ROP 139, 140 (2002) (quotation and citation omitted).

DISCUSSION

[¶ 8] The clan's first objection is an evidentiary one. The court sustained an objection to the testimony of Mario Retamal, the National Surveyor. The objection was to the form of the question. The objection as to form was sustained. The witness' answers to the subsequent questions were not subject

to objection. Since no evidence was excluded and all maps and charts used by the clan were admitted into evidence, we discern no reversible error.

[¶ 9] The second argument raised by the clan is that the court erred in its calculation of hectares that the clan actually received. One of the court’s observations was that the number of hectares the clan received north of Lot 001 was close to the 301 hectares mentioned in the deed, and that adding the 52 hectares of Lot 001 to the conveyance would convey significantly more than the 301 hectares. The clan argues that the court failed to subtract certain sublots that are not under clan control, making the conveyance significantly less than 301 hectares.

[¶ 10] If this is error, it is harmless error. The intent of the deed was to convey land in Ngardmau Municipality that was on the northern side of the river.¹ Lot 001 is south of the river in Ngeremlengui Municipality (now Ngeremlengui State). That clear, unmistakable boundary cannot be ignored to add hectares to the conveyance to make it as much as, or more, than the deed’s reference to the approximate size conveyed (“301 hectares, more or less”).²

[¶ 11] Lastly, the clan argues “[i]t was error to deny the Appellant’s claim because its size was beyond what the Land Court felt was the size of

¹ It is a well-established principle that when a diagram or map is attached to a deed, the map controls in cases of direct conflict between the worded description and the map. *See, e.g., Casso v. Ascension Realty Co.*, 196 So. 1, 5 (La. 1940). Therefore, the map accompanying the 1963 quitclaim deed (showing Ngerkebai Clan’s homestead land) takes precedence over the recitation of hectares.

² *See, e.g., Henry v. Borushko*, 281 P.3d 729, 732-33 (Wyo. 2012)

In deed interpretation, however, a recitation of acreage or other area is treated by courts as it probably was meant by the parties to the deed: merely an estimation on their part of the amount of acreage conveyed by the deed. This is particularly true where the recitation of acreage is modified by the phrase “more or less because the use of the words “more or less” indicates that the amount of land was not of the essence of the contract . . . [T]he designated quantity of land called for is the least reliable of all descriptive particulars and the last to be resorted to.” (quotations and citations omitted).

Appellant's claim." That was not the basis of the court's decision. The Land Court summarized its holding as follows:

Ngerkebai Clan failed to prove its claim that Lot 001 is part of the homestead lot quitclaimed by the Trust Territory Government in 1963. The evidence clearly shows that the land awarded to Ngerkebai Clan is all contained in the area north of the Ngermasch River within Ngardmau State.

[¶ 12] The wording of the clan's deed precludes it from convincingly arguing that it included property south of the river in Ngeremlengui.

[¶ 13] **AFFIRMED.**

SO ORDERED, this 21st day of August, 2018.