

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

TADAO NGOTEL,
Appellant,
v.
IYUNGEL CLAN,
Represented by Hayes Ngiratred,
Appellee.

Cite as: 2018 Palau 21
Civil Appeal No. 17-008
Appeal from LC/F 01-00936; LC/F 16-00060;
LC/F 16-00061 & LC/F 16-00062

Decided: October 22, 2018

Counsel for Appellant Yukiwo P. Dengokl
Counsel for Appellee Pro se

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

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

OPINION

JOHN K. RECHUCHER:

FACTUAL BACKGROUND

[¶ 1] This appeal involves ownership of four lots located at Ngeiungel Hamlet in Ngarchelong State called Itungelii, listed in Ngarchelong Tochi Daicho as Lot No. 1129, owned by Ngarchelong Village with Remeskang as its administrator. It was later surveyed and identified as worksheet lots 02F008-001, 002, 003, 004, 005 and 009. These lots were the subject of Land Court Civil Action No. LC/F 01-00936. The claimants were Iyungel Clan,

represented by Ngetiungel Ngiratreked, Riungel Iderbei, Nobuo Swei, Merii Temael, and Rikel Tmarsel.

[¶ 2] While the case was still pending, three additional lots, namely, TD 1753 in the name of Ngotel; TD 1755 in the name of Riungel; and TD 1756 in the name of Kertou, were brought in for the same hearing. The claimants to these lots claimed they are parts of a larger area of land identified as TD 1129, called Itungelii, located in Ngeiungel Hamlet in Ngarchelong State. These additional lots were assigned separate case numbers for hearing. TD 1753 was the subject of Land Court Civil Action No. LC/F 16-0061; TD 1755 in LC/F 16-00062; and TD 1756 in LC/F 16-0060.

[¶ 3] After land surveys, TD 1756 was identified as worksheet lot 02F008-001A claimed by Ski Kertou, Wilhelm Imesei, Adolf Ngiratreked, Josua Ngiratreked, and Ngetiungel Ngiratreked. At the hearing, Pamela Kertou, daughter of Ski Kertou, was present for her grandfather's claim. Pamela testified that she had little knowledge of the location of TD 1756. TD 1753 was identified as worksheet lot 001B claimed by Tadao Ngotel, Lalii N. Ewatel, Paulus Swei, Marencia Darou, Riungel Iderbei, and Alex Ngotel. They also claimed this lot is part of a larger lot called Itungelii, TD 1129, and TD 1755 was identified as worksheet lot 002 claimed by Riungel.

[¶ 4] Riungel passed away before the hearing. His son, Nimrod Riungel, was present at the hearing and testified in support of his father's claim. He testified that his father claimed this lot because he is listed in the Tochi Daicho of Ngarchelong as its owner. He further testified that his father divided his properties and distributed them to his four sons before he died in 2004. Nimrod claims the land because it was his share of the division. He also testified that the land in question is part of a larger land area called Itungelii, and he is familiar with its cost line.

[¶ 5] The Land Court found that those claimants who claimed ownership of lots 1753, 1755, and 1756 could not prevail on their claims because they provided insufficient evidence to establish the location of the lands they each claimed. It also found that it is more probable than not that the locations of the claimed lands as described by the claimants were inaccurate. The Land Court, based on the evidence adduced at trial and information obtained from

existing files and records of the Land Court, found that the claim of Iyungel Clan to TD 1129 as being all of the worksheet lots prevailed.

[¶ 6] Appellant timely filed this appeal.

STANDARD OF REVIEW

[¶ 7] The Appellate Division reviews 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 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.* Deference is accorded to the 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).

DISCUSSION

[¶ 8] We review the Land Court’s findings of fact for clear error. Under this standard, the factual determination 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. *Rengiil*, 16 ROP at 188. As discussed below, the Land Court’s factual determinations that the land claimed by Appellant, TD 1753, is not located in Ngeiungel Hamlet in Ngerchelongs State and that Iyungel Clan’s claim to TD 1129 prevails, have evidentiary support in the record such that a reasonable trier of fact could have reached the same conclusion, and this Court is not “left with a definite and firm conviction that an error has been made.” *Obak v. Joseph*, 11 ROP 124, 127 (2004) (citation omitted).

[¶ 9] In Appellant’s Opening Brief, Appellant argues the Land Court committed legal error by taking into consideration prior cases on different lots located in Ngeiungel and Ollei Hamlets, in order to make a factual determination that TD 1753 is not located in Ngeiungel Hamlet. Appellant Br. 1, 8. Considering prior cases to aid its finding of fact regarding the

location of TD 1753 is a legal issue to be reviewed *de novo*. Rule 5 of the Land Court Rules of Procedure provides, in part, that “[t]he Land Court may take judicial notice, at a party’s request or on its own initiative, of facts not reasonably subject to dispute and which are either (1) generally known within the territorial jurisdiction of the Land Court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonabl[y] questioned.” ROP Land Court R. P. 5. Here, the prior adjudicated land cases located in Ngeiungel and Ollei Hamlets are generally known within the territorial jurisdiction of the Land Court and are sources whose accuracy cannot be reasonably questioned. Upon timely request, Appellant is entitled to an opportunity to be heard as to the propriety of the Land Court taking judicial notice of prior adjudicated land cases. However, he never requested to be heard on the matter. Therefore, we find no error in the Land Court’s decision.

[¶ 10] Appellant also argues that the Land Court committed clear error in finding that TD 1753 is not located at Ngeiungel Hamlet on the basis of records of the Land Court adjudication regarding lots in the 1700 series located in Ollei and Ngermetong Hamlets. Appellant Br. 1, 8. This argument raises the same issues discussed in paragraph nine above. Accordingly, the foregoing discussion and reasons upholding the Land Court’s decision apply equally to this argument.

[¶ 11] Appellant Ngotel testified that the land he claimed is TD 1753, corresponding to worksheet lot 001B and located in Ngeiungel Hamlet in Ngarchelong State. Hayes Ngiratred, who represented his mother Ngetiungel on behalf of Iyungel Clan in the claim to TD 1129, disagrees. He stated, not under oath, that TD 1753 is not located in Ngeiungel Hamlet. Appellant argues that Rule 8 of the Land Court Rules of Procedure requires witnesses before the Land Court to take an oath before testifying. *See* ROP Land Court R. P. 8. Accordingly, because Ngiratred’s statement was not made in compliance with Rule 8, Appellant argues, his statement should not have been considered by the Land Court. Appellant Br. 8. The Land Court found that, even without Ngiratred’s statement, the evidence was sufficient to support Iyungel Clan’s ownership. In fact, Appellant Ngotel testified that adjacent and nearby lands to TD 1129 belonged to Iyungel Clan and were given to individual members of the clan. Decision 13.

[¶ 12] Appellant also argues that the Land Court erred in concluding that the entirety of TD 1129 was the property of Iyungel Clan, where evidence before that court showed that part of the land belonged to Iyungel Clan and the total area of TD 1129 awarded to Iyungel Clan exceeded the actual size of the lot stated in the Tochi Daicho by 38,431 square meters. Appellant Br. 1.

[¶ 13] The land claimed by Appellant is listed in the Tochi Daicho of Ngarchelong as TD 1753 with Ngotel as its owner. Instead of presenting evidence to support his claim to that lot, Appellant spent much of his time discussing the claim of Ngeruisong Clan to TD 1129, which he claimed corresponded with worksheet lot 003 and consisted of 37,570 square meters. He maintained that the location of the lands that belong to Iyungel Clan are more to the east of Itungelii and claimed that the land to the west towards the shoreline should belong to Ngeruisong Clan. *See* Decision 6–7. The Land Court determined that Appellant’s claim that TD 1129 should belong to Ngeruisong Clan was not supported by the evidence. *Id.* at 12–13.

[¶ 14] The Land Court found that those claimants who claimed ownership of lots 1753, 1755, and 1756 could not prevail on their claims because they provided insufficient evidence to establish the location of the lands they each claimed. It also found that it is more probable than not that the locations of the claimed lands, as the claimants described them, were inaccurate. 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.*, 16 ROP at 223.

[¶ 15] As previously stated, Appellant Ngotel testified that the land he claimed is TD 1753, corresponding to worksheet lot 001B and located in Ngeiungel Hamlet in Ngarchelong State. Ngiratred disagreed and said that TD 1753 is not located in Ngeiungel Hamlet. To be sure, the Land Court examined more closely the testimonies of the claimants, reviewed the existing records of the Bureau of Lands & Surveys and Land Court files of each daicho lot in question, comparing the locations of the claimed lots with their neighboring lots that had already been adjudicated, comparing the size of each lot as shown in the Tochi Daicho with the size of the same lots as shown in the worksheet after surveys. Based thereon, the Land Court found that those daicho lots in the 1750 to 1760 series are located in Ollei Hamlet

and those in the 1120 to 1130 series are located in Ngeiungel Hamlet, together with Itungelii, TD 1129. Decision 11.

[¶ 16] The size of the claimed land listed in TD 1753 is 2,240 tsubo, or 7,405 square meters. Appellant asserted that the size of the land he claimed, after survey, is 27,859 square meters, an increase of 20,454 square meters, or 276%. The sizes of the lots listed in the Tochi Daicho are not presumed correct like the list of ownership. Because of the huge increase of the size of the land claimed here by Appellant, several hundred times the lot's listed size, the Land Court found it more probable than not that the size claimed by Appellant is inaccurate. *See Children of Ingais v. Etumai Lineage*, 20 ROP 149, 151 (2013) (Land Court concluded that appellants did not meet their burden of proof because their description of the lot size was “wholly inconsistent with the Tochi Daicho’s description” of the lot size).

[¶ 17] Melii Temaël and Rikel Tmarsel filed a claim asserting that TD 1120 is owned by Ibai Lineage. At the time of the hearing, they had already passed away, but Melii’s son, Thomas Temaël, appeared for the claim. He testified that his grandparents only claim for that part of Itungelii that was used for *yasiring* that his grandparents cultivated. This contradicted the claim of Melii and Rikel as written in their claim form, where they claimed ownership of the land for Ibai Lineage. Thomas also did not know what part of Itungelii was their share of the *yasiring*. The Land Court found that the claim of Ibai Lineage also failed because Thomas Temaël did not provide sufficient evidence to identify the specific part of TD 1129 that Ibai Lineage claimed to own. Decision 13.

[¶ 18] Appellant further argues that the Land Court erred when it determined that TD 1129 was all of the worksheet lots because the size of TD 1129 then far exceeded the lot size as listed in the Tochi Daicho. Appellant Br. 4. The claim of Iyungel Clan to TD 1129 as being all of the worksheet lots prevails. Aside from the evidence and testimony put forth by Ngiratred, other evidence corroborated the claim that the land at issue, Itungelii, traditionally belonged to Iyungel Clan and was given to individual members of that clan. Additionally, the Tochi Daicho listing lists Remeskang as the administrator of TD 1129, and there is no disputing that Remeskang was from Iyungel Clan. Finally, referring again to the size of TD 1129, when

all the worksheet lots at issue are combined, they exceed the TD 1129 size listing by 34%. This is a much more reasonable figure when compared with the other size increases and decreases found in many of the claimants' claims. Accordingly, the claim of Iyungel Clan to TD 1129 as being all of the worksheet lots prevails. Decision at 13–14.

CONCLUSION

[¶ 19] Because Appellant fails to show clear error committed by the Land Court, we **AFFIRM** its Decision and Order, which determined that Iyungel Clan owns Itungelii, listed in Ngarchelong Tochi Daicho as Lot No. 1129 and further identified as worksheet lots 02F008-001, 002, 003, 004, 005 and 009 located in Ngeiungel Hamlet in Ngarchelong State.