IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

PAULINE INA RIVERA,
Appellant,
v.
SUSAN NGIRAUSUI,
Appellee.

Cite as: 2018 Palau 22
Civil Appeal No. 18-014
Appeal from LC/B 07-00107 and LC/B 08-00411

Decided: November 2, 2018

Counsel for Appellant ..... Pro se
Counsel for Appellee ..... William L. Ridpath

BEFORE: JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] This is an appeal of a Land Court determination. Appellant contests the Land Court's granting of two plots of land, Tochi Daicho Lots 1188 (worksheet lot 05B002-037) and 1183 (worksheet lot 05B002-48), to Appellee in Land Court matters LC/B 07-00107 and LC/B 08-00411, respectively.[1] Specifically, Appellant contends that the Land Court erred by finding that Appellant did not present sufficient evidence to support her claim and by failing to afford her a "special duty due" her as a *pro se* litigant. *See* Appellant's Br. 1. She argues that, as a *pro se* litigant, she "lack[ed]

[1] Neither party requested oral argument in this appeal.

knowledge of the standards of proof, relevant law, and burden of proof that lawyers and counselors come to be familiar with" and that "[i]t is abundantly clear from her testimony that she did not understand the process or proof requirements and the Court made no effort to aid her understanding of either." *Id.* at 5. She argues that she nonetheless "met the elements of proof albeit absent the flowery language and grand gestures by attorneys that the Land Court has become accustomed to." *Id.* at 6. For the reasons set forth below, the Court **AFFIRMS** the Land Court's decision.

FACTS

[¶ 2] Tochi Daicho Lots 1188 and 1183 are taro patches that have been farmed by Appellant and her late mother, Inglong Ngiraidong, since approximately 1965. The lots were listed in the Tochi Daicho under Aot's name. Aot did not have any children of her own, but her sister Urong had two sons: Ngirausui and his younger brother Rengechel.[2] Ngirausui married Meked, and they adopted a son, Gregorio, who is Appellee's father.

[¶ 3] When Aot died in 1941, Ngirausui inherited Aot's lands through a 1942 agreement that was entered into by Chief Karbantil and four other clan members. This fact is uncontested. *See* Appellant's Br. 4 (stating that Aot's lands were given to Ngirausui). Appellant argues that Ngirausui gave two of the inherited lots — Tochi Daicho Lots 1188 and 1182[3] — to her mother in or around 1965 and later replaced lot 1182 with Tochi Daicho Lot 1183 when lot 1182 became diseased. *Id.* Appellant's mother farmed the lots, and Appellant has continued to farm them since her mother's death and has "always operated under the pretense and understanding that Lots 1183 and 1188" belonged to her mother and, in turn, to her. *Id.*

---

[2] The Land Court notes that Appellant testified that Aot, Rengechel, and Ngirausui were siblings, *see* Decision 12, but the "Statement of Facts" in Appellant's brief recognizes Aot as Ngirausui's aunt, *see* Appellant's Br. 3.

[3] Appellant refers to both 1883 and 1182 as one of the lots that was first given to her mother. *See* Appellant's Br. 4. The point is not relevant to this appeal, as Appellant appeals the Land Court's decision related to Tochi Daicho Lots 1188 and 1183.

PROCEDURAL BACKGROUND

[¶ 4] The procedural history of this matter with respect to case LC/B 07-00107 is particularly drawn out. Evidence was first heard in that matter in October 2013. As the Land Court noted, "[a]t the conclusion of that [2013] hearing, it was mentioned that there are other Tochi Daicho lots for Aot in Ngerbeched not currently before the Court" to which the testimony in the 2013 hearing would have applied. Given those circumstances, the Land Court withheld a decision in the LC/B 07-00107 case and instructed the Bureau of Land and Survey to submit all claims related to Aot's lands in Ngerbeched so that they could be determined together. All of the claims, including claims in case LC/B 08-00411, were brought to the Land Court and heard in February 2017.

STANDARD OF REVIEW

[¶ 5] The Appellate Division reviews the Land Court's conclusions of law *de novo* and its findings of fact for clear error. *Ngotel v. Iyungel Clan*, 2018 Palau 21 ¶ 7. The Land Court's factual determinations "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.* at ¶ 8 (citing *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009)). Deference is accorded to the Land Court's credibility findings. *Id.* (citing *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." *Id.* (citing *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 223 (2009)).

ANALYSIS

[¶ 6] Appellant raises two potential errors on the Land Court's part that: 1) the Land Court erred in finding that Appellant did not present sufficient evidence to support her claim and thus, committed error in denying her claim; and 2) the Land Court erred in failing to provide Appellant "a special duty" it owed to her as a *pro se* litigant.

[¶ 7] With respect to the first claim of error, Appellant incorrectly frames the Land Court's findings. The Land Court did not determine that Appellant

did not present sufficient evidence to support her claim: It determined that Appellant's claim "fail[ed] for credibility considerations." The Land Court concluded that Appellant's testimony was "outweighed by the others'" testimony, namely Appellee's and Kodep Rengechel's (another claimant adverse to Appellee). They testified that Appellant's mother was only granted a use right by Ngirausui. The Land Court further supported its determination by pointing out that Gregorio Ngirausui filed a claim to the lots in question in his name, which was at odds with Appellant's testimony that he claimed the lots on her behalf or indicated that he supported her claim to the lots. The Land Court reasoned that "action speaks louder than words and Gregorio Ngirausui's action of claiming the lots for himself speak louder than Gregorio's purported words now spoken out of [Appellant]'s mouth." The Land Court also took issue with Apolonia R. Sungino's testimony at the 2017 hearing. It compared her demeanor at the 2013 hearing with her actions at the second hearing, noting that in 2013, she was "absent or otherwise reserved if present and was aligned only to her nephew Kodep Rengechel," but in 2017 "she was more assertive and testified that she is not a claimant but is only involved as a witness." Her testimony in 2017 revealed that Appellant "had promised or at least suggested that land interests in Melekeok would be given to her, [Sungino] in exchange for her support [of Appellant] in these proceedings." Appellant, in her appeal, does not dispute the facts as presented by the Land Court with respect to this characterization of Sungino's testimony.

[¶ 8] As we have already indicated, we accord deference to the Land Court's credibility determinations. *Ngotel*, 2018 Palau 21 ¶ 8 (citation omitted); *see also Eklbai Clan v. Koror State Pub. Lands Auth.*, 22 ROP 139, 145–146 (2015) (explaining that extraordinary circumstances must exist to set aside a credibility determination and "'extraordinary circumstances do *not* exist where the record shows that the trial judge considered the content of one side's testimony and their credibility, did the same to the other side's witnesses, weighed the competing stories, and concluded that one side was unpersuasive'" (quoting *Ngermengiau Lineage v. Estate of Isaol*, 20 ROP 68, 71 (2013)) (emphasis in original)). In its decision, the Land Court analyzed the evidence and arguments presented by the claimants. It also clearly explained what testimony it found credible, where it found credibility

lacking, and gave reasons supporting its credibility findings. As a result, we find no error in the Land Court's weighing of the evidence here.

[¶ 9] With respect to the Appellant's second claim, she explains that "[o]ver the course of Appellant's claim, and cross examinations, it is clear that she was not only confused and grossly unprepared to prosecute her claim, but intimidated by cross examination and ignorant of the evidentiary standards she must prove to prevail." Appellant's Br. 9. She concludes from this that "[t]he Land Court should have realized this and taken measures to remedy the situation." *Id.* The premise upon which her conclusion is based is sound: Appellant asserts that "'[t]here is a long[-]standing, and oftentimes unspoken, tradition in the United States and here in Palau of courts employing a heightened duty to its pro se litigants.'" Appellant's Reply Br. 8–9 (quoting *Whipps v. Nabeyama*, 17 ROP 9, 12 n.2 (2009)). The Land Court, in particular, recognizes this duty through its Rules of Procedure, mandating that the rules themselves "be construed to ensure fairness in the conduct of hearings and presentation of claims with or without assistance of legal counsel." L.C. R. of Proc. 2; *see also Ikluk v. Koror State Pub. Lands Auth.*, 20 ROP 128, 131 (2013).

[¶ 10] What Appellant seeks, though, is not an assurance of fairness, as the Land Court rules guarantee. Rather, she explains that "[h]er case was so poorly presented [] that the Land Court should have recognized its duty to make legal sense of it." Appellant's Br. 7. Beyond fair treatment, it is clear that Appellant seeks the Land Court's assistance in making her case. *See, e.g.*, *id.* at 9 ("The Land Court failed in its duty to Appellant Rivera by not informing her of the defects in her scant explanations of her Trial Exhibits and expectations that the evidence would 'speak for itself.'"). The Land Court, however, "is not required to act as each claimant's advocate." *Llecholch v. Lawrence*, 8 ROP Intrm. 24, 25 (1999). Appellant has presented no evidence that the Land Court treated her unfairly or penalized her for what she describes as "her confused and spurtive averments." Appellant's Opening Br. 9. Instead, the Land Court reviewed the evidence she presented, listened to her testimony and witnesses, and made a determination with regard to the substance of her claim. We see no breach of any duty that the Land Court owed to Appellant. As we have said in a related but different context, "[a]ny

other rule would be unfair to those claimants who came to the Land Court hearing prepared." *Anastacio v. Yoshida*, 10 ROP 88, 91 (2003).

CONCLUSION

[¶ 11] For the reasons set forth above, we **AFFIRM** the decision and judgment of the Land Court.