

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

<p>AMALEI NGIRNGESANG, for Ngerbuuch Clan <i>Appellant,</i></p> <p style="text-align:center">v.</p> <p>SILAS NGIRABIANG, for Children of Mesiwal Malchianged <i>Appellees.</i></p>

Cite as: 2018 Palau 9
Civil Appeal No. 17-007
Appeal from LC/R 16-00039

Decided: July 5, 2018

Counsel for Appellant	J. Roman Bedor
Counsel for Appellee	Kena Njoya, MLSC

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

Appeal from the Land Court, the Honorable Rosemary Skebong, Associate Judge, presiding.

OPINION

RECHUCHER, Justice:

[¶ 1] This is an appeal from an Adjudication and Determination of Ownership issued by the Land Court for land named *Osbocheriu* located in Ngerdelolk Hamlet, Peleliu State. The Determination of Ownership names Takashi Koshiba, Elizabeth Ridep Malone, Silas Ngirabiang, Johanes Tsuneo, Madelsar Ridep, Umedip Ridep, Damiana Ridep, and William Ridep (collectively “Children of Mesiwal”) as co-owners of *Osbocheriu*. Having decided that Appellant failed to prove error by the Land Court, we **AFFIRM** its decision.

FACTUAL BACKGROUND

[¶ 2] The land at issue in this appeal was recorded in the Peleliu Tochi Daicho as Lot 970 as the land of Ngirabiang, and is depicted as Lots 003 R 09 and 003 R 10 on BLS Worksheet No. 003 R 00. Silas Ngirabiang filed a claim to the land on behalf of himself and his siblings, who are all children of Mesiwal, Ngirabiang's daughter. Amalei Ngirngesang filed a claim to the land on behalf of Ngerbuuch Clan.

[¶ 3] At the Land Court hearing, Silas testified that his grandfather, Ngirabiang, acquired the land from Ngerbuuch Clan. He planted and grew coconut trees on the land, and his family has used and continues to use the land since the time of German control. The family presently maintains a residence on the land without interference from Ngerbuuch Clan. Silas testified that, according to his knowledge, Ngirabiang acquired outright ownership of the land, rather than just a use right.

[¶ 4] Appellant Amalei Ngirngesang testified that during the tenure of Smau Techebau, Ngerbuuch Clan allowed persons from Ngesias to plant coconut trees on clan lands in Ngerdelolk because Ngesias was not suitable for growing coconut trees due to its limestone-rich soil. Smau Ngirabiang argued that since these lands are no longer used for growing coconuts, ownership should return to Ngerbuuch Clan. As chief of the clan, it is his duty to reclaim and retain these clan lands.

[¶ 5] In its Findings of Fact and Determination, the Land Court concluded that Smau Ngirngesang presented no real evidence that Ngerbuuch Clan merely allowed Ngirabiang to use the land to plant coconuts. The court noted that the German mandate for every head of household to maintain a coconut grove ended long ago, and yet, Ngerbuuch Clan never attempted to evict Ngirabiang and his family from the land. In the court's opinion, the fact that Ngerbuuch Clan had never taken any action against Ngirabiang or his descendants to disrupt their lengthy and continuous occupation of the land supported a conclusion that Ngirabiang obtained outright ownership from Ngerbuuch Clan. Accordingly, the Land Court concluded that Ngirabiang had owned *Osbocheriu* in fee simple and had passed it down to his daughter, Mesiwal, who in turn passed it down to her children. The Land Court issued

a Determination of Ownership naming the Children of Mesiwal co-owners of the two lots in question.

STANDARD OF REVIEW

[¶ 6] The Appellate Division reviews the Land Court’s findings of fact for clear error. *Masters v. Adelbai*, 13 ROP 139, 140-41 (2006). “Under this standard, if the Land Court’s findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made.” *Obak v. Joseph*, 11 ROP 124, 127 (2004). Deference is accorded to Land Court 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) (quotation and citation omitted). The Land Court’s conclusions of law are reviewed de novo. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

DISCUSSION

[¶ 7] On appeal, Appellant argues that the Land Court mischaracterized the interest in Lot 970 that Ngerbuuch Clan conveyed to Ngirabiang. According to Appellant, Ngirabiang never had complete ownership of Lot 970 because Ngerbuuch Clan only granted him a use right to grow coconuts on the land. Therefore, after Ngirabiang’s death, ownership of Lot 970 should have reverted to Ngerbuuch Clan rather than pass to his heirs.

[¶ 8] We find no error in the Land Court’s assessment. The court’s conclusion that Ngirabiang had obtained complete ownership of the land from Ngerbuuch Clan was a plausible interpretation of the evidence presented, particularly in light of the fact that Ngirabiang’s descendants have continuously occupied the land for decades with no interference from the clan. As we have previously explained,

Under Palauan law, a claimant's failure to perform acts consistent with ownership may be circumstantial evidence that the claimant does not . . . own the land in question. The inverse is also true—evidence that a claimant consistently used and exercised control over land without eliciting objection may be circumstantial evidence of ownership.

Tucherur v. Rudimch, 21 ROP 84, 87 (2014) (internal citations omitted). Children of Mesiwal's continuous and longstanding use and occupation of *Osbocheriu*, combined with Ngerbuuch Clan's failure to object to their presence, support the court's conclusion that Ngerbuuch Clan conveyed a complete ownership interest in Lot 970 to Ngirabiang rather than simply a use right.

[¶ 9] Although Ngirabiang was listed in the Tochi Daicho as the owner of Lot 970, Appellant argues that this entry merely signifies that he had been given a use right to the land. Appellant cites *Ucherbelau v. Ngirakerkeriil*, 2 TTR 282 (1961), which explained

Prior to the Japanese land survey of about 1938-41, while there was known to be some individually owned land in the Palaus, this form of ownership was rather unusual and it was common practice to refer to clan or lineage land as having been "given" to an individual when all that had actually been given was the right to use the land. Consequently, statements about the giving of clan or lineage lands in the Palau Islands prior to that survey are not readily to be presumed to mean that ownership as individual land was given. The natural presumption in such cases is that the individual was given only the right to use the land as long as he lived and fulfilled his obligations to the clan or lineage in question. The court will therefore construe such statements to mean this unless the contrary conclusion is clearly shown.

Id. at 284.

[¶ 10] However, *Ucherbelau* is inapplicable to the facts of the instant case. In *Ucherbelau*, the land in question had been recorded in the Japanese

land surveys of 1926-28 and 1938-41 as the property of Ngeribukel Clan. The plaintiff in that case attempted to argue that these listings were incorrect by pointing to testimony suggesting the land in question had been “given” to his predecessor in interest before 1927, and had been individually-owned land ever since. Rejecting this argument, the court observed that it was common practice to refer to clan or lineage land as having been “given” to an individual even though only a use right had been transferred. Therefore, the *Ucherbelau* court concluded that the statement that the land had been “given” to an individual prior to 1927 was insufficient to call into question the accuracy of the listings.

[¶ 11] In the instant case, the Tochi Daicho listed Ngirabiang, rather than Ngerbuuch Clan, as the owner of Lot 970. Therefore, unlike the plaintiff in *Ucherbelau*, the Children of Mesiwal claimants never had to dispute a historical listing naming a separate entity as owner of the land in question. Even though the Peleliu Tochi Daicho does not enjoy the presumption of accuracy afforded to the Tochi Daichos of other states, it is nevertheless evidence carrying the same weight as any other evidence. *See Mesebeluu v. Uchelkumer Clan*, 10 ROP 68, 70-71 (2003) (“Thus, the Peleliu Tochi Daicho may be given evidentiary weight but it does not carry the presumption of accuracy of the Tochi Daichos of other states.”). The listing, combined with the fact that Ngirabiang and his descendants have occupied, controlled, and used the land without interruption or objection since the German administration, appears to confirm ownership instead of a mere use right. *See Tucherur*, 21 ROP at 87.

[¶ 12] Appellant argues that the Land Court failed to establish consent from the senior strong members of Ngerbuuch Clan. According to Appellant, because the transcript of the Land Court hearing does not mention that the strong senior members of Ngerbuuch Clan consented to the transfer of *Osbocheriu*, the court should have concluded that Ngirabiang was only granted a use right, as such a transfer would not require the consent of a clan’s senior strong members. *See, e.g., Ngoriakl v. Rechucher*, 20 ROP 291 (2013). However, there is no evidence suggesting that the senior strong members of Ngerbuuch Clan did not consent to the transfer of *Osbocheriu* to Ngirabiang. Given the circumstances, we find that it was reasonable for the Land Court to infer consent from the fact that no one from Ngerbuuch Clan

ever objected to Ngirabiang's descendants' continued occupation of the land, even after the land was no longer used for growing coconuts.

CONCLUSION

[¶ 13] Because the Land Court's findings were not clearly erroneous, we **AFFIRM** its Determination of Ownership awarding the land at issue (Lots 003 R 09 and 003 R 10, Tochi Daicho Lot 970) to the Children of Mesiwal.

SO ORDERED, this 5th day of July, 2018.