

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

ESUROI CLAN,
Appellant/Cross-Appellee,
v.
MATCHIAU’S CHILDREN,
Cross-Appellant,
v.
OLNGELLEL and SMENGESONG LINEAGES,
Appellees/Cross-Appellees.

Cite as: 2019 Palau 19
Civil Appeal No. 18-024
Appeal from LC/N 11-00087 and LC/N 11-00104

Decided: July 2, 2019

Counsel for Esuroi Clan	Vameline Singeo
Counsel for Matchiau’s Children	Brengyei Katosang
Counsel for Olngellel Lineage	Pro se
Counsel for Smengesong Lineage	Pro se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

OPINION¹

PER CURIAM:

[¶ 1] This case involves appeals of a Land Court determination regarding 19 parcels of land in Airai State. Appellant Esuroi Clan contests the Land

¹ Appellant Matchiau’s Children requests oral argument. After reviewing the briefs and record, the Court concludes oral argument is unnecessary, and the matter is submitted on the briefs pursuant to ROP R. App. P. 34(a).

Court's granting of twelve lots, Lots 04N002-002A–002F; 04N002-005; and 04N002-005A–005E, to Appellee Olngellel Lineage and three lots, Lots 04N002-004; and 04N002-004A and -004B, to Appellee Smengesong Lineage. Cross-Appellant Matchiau's Children appeals the award of the same lots as well as the award of the remaining four lots, Lots 04N002-001–003 and 04N002-001A, to Esuroi Clan.

[¶ 2] Esuroi Clan contends that the Land Court committed error “when it failed to identify the legal basis for its award of the lands to appellee[s].” Esuroi Clan Opening Br. 5. Specifically, the clan asserts that “[t]he Land Court did not identify whether its decision was based on the legal theory of Return of Public Lands or Superior Title,” *id.* at 4, and that this omission “is cause to vacate and remand back to the Land Court for clarification on this specific issue,” *id.* at 12.

[¶ 3] Matchiau's Children argues that “the Land Court erroneously determined that [Matchiau's Children] did not satisfy the elements of adverse possession because their occupation of Ngerullak was not hostile or adverse.” Matchiau's Children Opening Br. 1.

[¶ 4] For the reasons set forth below, the Court **AFFIRMS** the Land Court's decision in this matter.

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)).

[¶ 6] Esuroi Clan’s argument on appeal essentially asks this Court to review whether the Land Court properly applied the law in reaching its determinations. Similarly, Matchiau’s Children’s argues that the Land Court did not reach the appropriate conclusion of law with respect to its claim. As such, the Court approaches Esuroi Clan’s argument and Matchiau’s Children’s argument as issues of law, requiring application of the *de novo* standard in both instances. To the extent that the Court must address factual findings supporting the Land Court’s legal conclusions, those will be reviewed for clear error.

ANALYSIS²

I. Esuroi Clan’s Appeal

[¶ 7] Esuroi Clan appeals the Land Court’s determinations in favor of Olngellel and Smengesong Lineages. It argues that the Land Court failed to identify which legal theory it used to reach its determinations with respect to their claims.³ Esuroi Clan maintains that such an error requires remand to the Land Court for clarification. We disagree. While the Land Court did not explicitly state whether and what claims it was evaluating under a superior title theory or a return of public lands theory, it is clear to this Court that the Land Court evaluated Olngellel and Smengesong Lineages’ claims under a superior title theory, and any error on the Land Court’s part in not explicitly saying so is harmless.⁴

² Because the background facts are only secondarily at issue to the appeals brought in this case, the Court does not include a separate facts section in its opinion. Instead, the relevant facts appear as necessary throughout this section.

³ In its brief, Esuroi Clan addresses the record with respect to its bringing its claim on a return of public lands theory. *See id.* at 13–15. There is no challenge on appeal that relates to Esuroi Clan’s claim theory, and whether Esuroi Clan brought its claim under a return of public lands theory is immaterial to its appeal of the Land Court’s determinations with respect to Olngellel and Smengesong Lineages’ claims. For those reasons, the Court does not address Esuroi Clan’s discussion of the legal theory it pursued before the Land Court.

⁴ Purportedly relying on *Klai Clan v. Airai State Pub. Lands Auth.*, 20 ROP 253 (2013) and *Idid Clan v. Koror State Pub. Lands Auth.*, 20 ROP 270 (2013) as referenced in a footnote to *Ikluuk v. Koror State Pub. Lands Auth.*, 20 ROP 286 (L.C.), *rev’d*, 20 ROP 128 (2013), *aff’d* 21 ROP 66 (2014), Esuroi Clan’s counsel is under the impression that “[t]he Land Court is limited to hearing [Olngellel and Smengesong Lineages’] claims on a return of public lands theory” and that “[i]f [their claims] are to be considered [] superior title claim[s], then they

[¶ 8] The claims filed on behalf of Olngellel Lineage were filed in 1993 and 2005. Adjudication and Determination 5. The claims filed on behalf of Smengesong Lineage were filed in 1993, 1997, and 2005. *Id.* at 6. It is clear from the filing dates of the claims that these claims can only be brought as superior title claims. Any claim for return of public lands filed on these dates would have been untimely and, therefore, not considered. *See* 35 PNC § 1304(b)(2) (claims for return of public lands “must have been filed on or before January 1, 1989”).

[¶ 9] As Esuroi Clan correctly indicates in its briefing, “in asserting superior title, a claimant is claiming the land on the theory that it never became public land in the first place.” Esuroi Clan’s Opening Br. 12 (emphasis omitted) (quoting *Ikluk v. Koror State Pub. Lands Auth.*, 21 ROP 66, 68 (2014)). As the Land Court noted in its decision, Olngellel Lineage did just that: In his testimony before the Land Court, a witness for Olngellel Lineage, Takeo Ngirmekur, indicated that the land was never public. The Land Court noted that he “said that Sambal was a member of Esuroi Clan who died during the Japanese period, before the compilation of the Tochi Daichio. . . . The property would have been registered in the Tochi Daichio under the names of Sambal’s children, with Tkoel as trustee.” Adjudication and Determination 5. The Land Court relied on this testimony in making its determination in favor of Olngellel Lineage, further stating that “Ngirmekur’s testimony that Esuroi Clan gave [the claimed land] to Sambal even before the Tochi Daichio period was not refuted or disputed by Esuroi.” *Id.* at 8. The Land Court concluded that it found “Olngellel’s claim more credible” than Esuroi Clan’s claim. *Id.* Deference is accorded to the Land Court’s credibility findings. *Ngotel v. Iyungel Clan*, 2018 Palau 21 ¶ 8 (citing *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 37 (1999)). For these reasons, we will

should file said action in the Trial Division as their recourse.” Esuroi Clan Opening Br. 13. Esuroi Clan’s counsel grossly misunderstands the law. Before the Land Court, a claimant “may assert two types of claims. First, under the authority of Article XIII of the Constitution and 35 PNC § 1304(b), its implementing provision, a litigant may assert a claim for return of public lands. . . . Alternatively, the claimant may bring a quiet title claim asserting that he has superior title to the piece of property . . . Superior title and return of public lands claims may be asserted individually or together.” *Ikluk v. Koror State Pub. Lands Auth.*, 20 ROP 128, 130–31 (2013) (internal citations and quotations omitted). As long as a claimant timely brings its claims, a claimant is free to choose to bring either or both types of claims before the Land Court.

not disturb the Land Court's findings with respect to Olngellel Lineage's claim.

[¶ 10] The Land Court's decision regarding Smengesong Lineage's claim does not explicitly mention witness assertions that the land never became public, but it points to evidence implying as much. The Land Court decision describes testimony that the claimed property "was given as *elbechiilel a* Durratiou, who was married to Rdialul Betel," who was Rdialul "before the Japanese period," demonstrating that the property was privately held before the Japanese Administration. Adjudication and Determination 6. There is no indication of government ownership. The Land Court stated that the testimony "was not disputed by Esuroi Clan[] and is deemed to be credible evidence of Smengesong's acquisition of the property." *Id.* at 9. Again, we accord deference to the land Court's credibility determination and will not disturb the Land Court's findings with respect to Smengesong Lineage's claim.

II. Matchiau's Children's Appeal

[¶ 11] On appeal, Matchiau's Children asserts that the Land Court erred in failing to find that its occupation of claimed land was hostile or adverse. Underlying Matchiau's Children's assertion is the implication that it argued an adverse possession theory before the Land Court. Matchiau's Children incorrectly characterize the Land Court's framing of its claim. The Land Court did not determine that Matchiau's Children did not satisfy the hostile or adverse element of an adverse possession claim. *See Smengesong Lineage v. Rechebei*, 2017 Palau 30 ¶ 26 (adverse possession requires, among other things, that "possession of the property is 'hostile or adverse' rather than permissive") (citing *Petrus v. Suzuki*, 19 ROP 37, 40–41 (2011)). The Land Court did not even examine Matchiau's Children's claim as one of adverse possession.

[¶ 12] Had the Land Court considered Matchiau's Children's adverse possession argument, the argument would have failed as a matter of law. On appeal, Matchiau's Children identify several facts undermining its own claim. First, the land claim stems from the familial relation to Eberdong, Matchiau's father. *See Matchiau's Children's Opening Br. 1*. Matchiau's Children's brief explains that Eberdong "ended up on the shores of Ordemel

where he sought shelter from Rdialul Ngiramolau, chief of Esuroi Clan.” *Id.* at 1–2 (citations omitted). Second, it further states that “Rdialul Ngiramolau advised Eberdong to go to [the claimed land] and ask for Tuchermel’s consent to reside in [the claimed land].” *Id.* at 2 (citations omitted). Crucially, it further states that “Eberdong was given [the claimed land] by chief Tuchermel Ksau of Klai Clan in exchange for two goats.” *Id.* (The Land Court addressed all of these facts as well. *See* Adjudication and Determination 4.) These facts alone would have precluded a finding in favor of adverse possession.

[¶ 13] Rather than approach the claim as one of adverse possession, like the claims of Olngellel and Smengesong Lineages, it appears the Land Court treated Matchiau’s Children’s claim as one for superior title. The Land Court did not address any governmental taking of the claimed land because the facts presented by Matchiau’s Children involved events leading to claimed private ownership prior to that time and did not indicate a governmental taking. The Land Court determined that Matchiau’s Children’s claim was based on Matchiau’s membership in Esuroi Clan. Adjudication and Determination 8. In its decision, the Land Court analyzed the evidence and arguments presented by the claimants and concluded that the evidence, including “Matchiau’s own statements[,] support[] Esuroi’s claim[,] and the clan’s claim prevail[ed] over Matchiau’s [C]hildren’s claim” with respect to the lots awarded to Esuroi Clan. *Id.* (citation omitted).

CONCLUSION

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