

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

<p>IBUUCH CLAN by Ngiraibuuch Paul Reklai, <i>Appellant,</i></p> <p style="text-align:center">v.</p> <p>CHILDREN OF ANTONIO FRITZ by Laurinda Waisang Fritz Mariur, <i>Appellees.</i></p>
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Cite as: 2020 Palau 1
Civil Appeal No. 19-008
Appeal from LC/B 16-00013

Decided: January 2, 2020

Counsel for Appellant	C. Quay Polloi
Counsel for Appellees	J. Uduch Sengebau Senior

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
DANIEL R. FOLEY, Associate Justice
DENNIS K. YAMASE, Associate Justice

Appeal from the Land Court, the Honorable Salvador Ingereklii, Associate Judge, presiding.

OPINION¹

PER CURIAM:

[¶ 1] In this appeal from the Land Court’s determination of ownership, we conclude that the court improperly determined ownership in favor of parties who never properly filed a claim to the land in question. Further, the Land Court’s decision is premised on several fundamental legal errors. We therefore **REVERSE** the judgment in favor of the Children of Antonio Fritz and **REMAND** for further proceedings consistent with this opinion.

¹ The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

BACKGROUND

[¶ 2] The land at issue is located in Ngerbeched Hamlet, Koror State, and identified as Worksheet Lot C32 B 37 on BLS Worksheet No. C32 B00. The parcel corresponds to Tochi Daicho Lot 1334, where it is listed as a residential lot owned by “Chief Ngiraibuuch” and administered by “Rengechel.” The parties do not dispute that the Tochi Daicho listing signifies that, at the time of the listing, Lot 1334 was chief’s title land of the Ibuuch Clan and administered by Lansang Rengechel, the clan chief and adoptive father of Antonio Fritz. It is also undisputed that Fritz, and then his children, have occupied and built on the land since the 1950s. The crux of the dispute is whether Fritz’s children or Ibuuch Clan now own the property.

[¶ 3] In 2005 and 2006, several individuals and entities filed claims to Tochi Daichi Lot 1334. Of relevance to this appeal, Apolonia Rengechel Sungino, Fritz’s sister by virtue of his adoption, filed a claim for individual ownership and stated, as the basis for her claim, that the land belonged to her father Rengechel “who held the Chief Title and I will succeed ownership.” Ibuuch Clan Ex. 5. In July 2006, the Bureau of Lands and Surveys issued a Notice of Monumentation and Survey for several parcels in Ngerbeched Hamlet, including Lot 1334. The Notice provided that, pursuant to 35 PNC § 1309, any claim not filed by September 7, 2006, would be forfeited. The final attachment calendar issued in 2015 lists multiple claims to ownership of Lot 1334, including Sungino’s claim of individual ownership, but no claims by Fritz’s children, individually or as a group.

[¶ 4] In May 2018, Sungino executed a power-of-attorney authorizing Laurinda Waisang Fritz Mariur to pursue Sungino’s various claims in Land Court, including her claim to Lot 1334. Later that year, the Lot 1334 claimants engaged in an unsuccessful mediation. After several parties withdrew their claims, the matter was set for trial with a caption listing the claimants as “[1] Ngerbeched Council of Chiefs, by Iechadribukel Baules Sechelong, [2] Ibuuch Clan, by Ngiraibuuch Paul Reklai, and [3] Apolonia Rengechel Sungino, by Laurinda Waisang Fritz Mariur.” Notice of Hearing (Dec. 6, 2018).

[¶ 5] At the January 2019 trial, the only claimants to appear were Sungino, represented by Mariur, and Ibuuch Clan.² Mariur called several witnesses to testify that: Fritz lived on Lot 1334 as early as the 1950s; ownership of the land was transferred to Fritz upon Rengechel's death in 1959; and ownership was transferred to Fritz's children after Fritz's death in 1975. Of particular note, Dirrakerkur Nona Luiu testified that her mother Ebil, who bore the female title Mlechei of Ibuuch Clan, agreed with Rengechel, her male counterpart, that the land would be Fritz's individual property after Rengechel's death. She also testified that Mlechei Ebil informed the people present at Rengechel's eldecheduch that the land would be Fritz's, and that no one objected. Finally, she testified that, at Fritz's eldecheduch, Mlechei Ebil informed those present that the land would now be the property of Fritz's children and, again, no one objected. Mariur called Floriano Felix as a customary law expert. Felix appeared to testify that a male titleholder can alienate clan land as long as he consults with his female counterpart. However, on cross-examination, Felix seemingly acknowledged the customary precept that a titleholder needs the permission of all the senior strong members before he can alienate clan land. Felix also testified that, under customary law, decisions made at an eldecheduch are final and cannot later be challenged.

[¶ 6] Ibuuch Clan called one witness, Ngiraibuuch Paul Reklai, who testified that Mlechei Hilaria U. Lakobong told him that Lot 1334 had never been alienated from Ibuuch Clan. He further testified that a clan decision had been made to allow Fritz's children to reside on Lot 1334 after Fritz's death but that they were not granted *ownership* of the land.

[¶ 7] After receiving written closing arguments, the Land Court issued its Summary of Proceedings, Findings of Fact, Conclusions of Law, and Determination. The court made the following relevant findings of fact "based on a preponderance of the evidence." Decision at 4.

- "Tochi Daicho 1334 is shown on the Koror Tochi Daicho listing as a house lot owned by Ngiraibuuch chief title."

² Ngerbeched Council of Chiefs did not appear or present evidence. The Land Court dismissed their claim and they have not appealed.

- “Tochi Daicho 1334 was part of a much bigger lot identified as Lot 1336 owned by Rengechel. Lot 1336 was later subdivided to several smaller lots which Rengechel gave to his children. Rengechel . . . gave the land known as Telialmekesong, identified as Tochi Daicho Lot 1334 to his son Antonio as his individual property.”
- “In 1956, Antonio built his first house on Tochi Daicho 1334 and no one raised any objections.”
- “In 1971, Antonio built his second house on Tochi Daicho 1334 and no one raised objections.”
- “Before he died in 1959, Rengechel told Mlechei Ebil, his female counterpart, that the land where Antonio has his house will be his individual property. During Rengechel’s eldecheduch held after his death, Mlechei Ebil carried out what Rengechel had told her and Tochi Daicho 1334 was given to Antonio as his individual property and no one raised objections.”
- “During Antonio’s eldecheduch held after his death, Mlechei Ebil and Rengechel[’s] relatives gave the same land to the children of Antonio as their property and no one raised any objections.”
- “Since Antonio’s death in 1975, his children ha[ve] continued to occupy Tochi Daicho 1334 up to the present time without objections from anyone.”
- “According to the expert witness [Felix], the male chief title holder and his female counter part, together can transfer clan land to an individual, however, the male chief title holder cannot transfer clan land by himself. Members of a clan can change chiefs’ title land, and there are occasions when this has occurred.”
- “Members of Ibuuch Clan met and decided to change the chief title land from Tochi Daicho 1334 to Tochi Daicho 1206, a land known as *Ngermaduleyang*.”

- “Mlechei Hilaria U. Lakobong was present during Antonio’s eldecheduch when the subject land was given out to Antonio’s children and made no objections.”

Decision at 4-6.

[¶ 8] Based on these findings, the Land Court concluded that “Antonio acquired ownership of Tochi Daicho 1334 from his father, Rengechel, during his eldecheduch held after his death in 1959” and that “Antonio’s children acquired ownership of the same land from their father during his eldecheduch after his death in 1975.” Decision at 10. Noting multiple times that no one from Ibuuch Clan had ever formally objected to the presence of Fritz’s children on the land, the court stated: “Evidence showed that since [Fritz’s death], [his] children had continued to occupy and exercise[] control over the subject land up to the present time without eliciting objections from anyone. The Court finds [Fritz’s] and his children’s continued occupation and control of the subject land without eliciting objections from anyone [is] indicative of ownership.” *Id.* The court therefore determined that the Children of Antonio Fritz—namely, Mariur, Jean Ilong Fritz Sablan, Glenford Remeliik Fritz, Vivian Orachel Fritz Ngiraklang, Victorino Fritz, and Darren Fritz—own Lot 1334 in fee simple.

[¶ 9] In rendering its decision, the court briefly acknowledged that it was determining ownership in favor of individuals who had never filed claims and, with the exception of Mariur, had not participated in the proceeding: “Apolonia Rengechel Sungino, represented by Laurinda Waisang Fritz Mariur, claimed ownership of the subject lot for the children of Antonio. Evidence showed that she had originally filed her claim for individual ownership of the subject lot but had told Ms. Mariur that she was actually claiming the land for the children of Antonio, and executed a Power-of-Attorney appointing Ms. Mariur to represent her in this proceeding.” Decision at 8. Ibuuch Clan filed a motion for reconsideration, which the court denied. This timely appeal followed.

STANDARD OF REVIEW

[¶ 10] We review the Land Court’s conclusions of law, including its application of customary law, *de novo* and its findings of fact for clear error.

Kiuluul v. Elilai Clan, 2017 Palau 14 ¶ 4; *Beouch v. Sasao*, 20 ROP 41, 50 (2013).

DISCUSSION

[¶ 11] Appellant Ibuuch Clan asserts that the Land Court erred in at least eight ways. We focus on the major errors that require reversal and a remand.

I. The Land Court Erred by Determining Ownership in Favor of Non-Claimants.

[¶ 12] Appellant asserts that the court erred by “awarding ownership to a non-claimant” considering that the only claim of individual ownership that proceeded to trial was the claim of individual ownership by Sungino and that “[t]he Children of Antonio Fritz did not file any claim.” We agree. The Land Claims Reorganization Act of 1996 provides that any land claim must be filed no later than thirty days after the notice of monumentation. 35 PNC § 1309(a)-(b). The Act further provides that “[a]ny claim not timely filed shall be forfeited,” and that “[t]he Bureau of Lands and Surveys shall not accept untimely claims or transmit the same to the Land Court.” *Id.* § 1309(a). The Rules and Regulations of the Land Court provide, inter alia, that:

- “Any person or group of persons who claim ownership of land not yet registered must file a written claim in a claim form prescribed by the Land Court”;
- “All claims to private lands must be filed with the Land Court no later than 60 days prior to the date set for hearing of the land claimed”; and
- “Any claim which is not timely filed shall be forfeited.”

Land Ct. Rules 10, 11, 12. The Land Court does not have the inherent authority—or authority provided by the Act or its Rules—to adjudicate an untimely claim, even if the claim is tried with the parties’ consent. *See Klai Clan v. Airai State Pub. Lands Auth.*, 20 ROP 253, 256-57 (2013). In sum, the entire system of resolving land disputes is premised on the principle that a claimant must timely file a claim and that “[w]here . . . parties assert competing claims of superior ownership, the Land Court must award ownership *to the*

claimant advancing the strongest claim.” Ngirametuker v. Oikull Vill., 20 ROP 169, 172 (2013) (emphasis added). In determining land ownership, “[t]he Land Court can, and must, choose among the claimants who appear before it and cannot choose someone who did not, even though his or her claim might be theoretically more sound.” *Ngirumerang v. Tmakeung*, 8 ROP Intrm. 230, 231 (2000).

[¶ 13] It is undisputed that the Children of Antonio Fritz—collectively, or as individuals—never filed a claim of ownership for Lot 1334, let alone a timely claim. Rather, Sungino filed a claim for individual ownership asserting that she owned Lot 1334 by virtue of her father’s purported ownership of that lot. This was the claim that proceeded through mediation and was set for trial. The court did not have authority to entertain an entirely new assertion of ownership by non-claimants that was first raised at trial.

[¶ 14] Our conclusion is bolstered by several considerations. Allowing a court to award land to persons who never filed a claim would make a mockery of the rules governing the timeliness of land claims. Further, allowing a claim of individual ownership by one person to permutate at trial into an assertion of ownership by a group of different people raises fairness concerns. It is unclear how an opposing claimant can adequately prepare to counter a claim that so fundamentally changes at trial. Finally, allowing an individual claimant such as Sungino to claim land for a different group of persons, not including herself, raises prudential concerns regarding standing. As we have explained, our courts must ask whether a person “is a proper party to request an adjudication of a particular issue.” *Koror State Leg. v. KSPLA*, 2017 Palau 28 ¶ 30. It is not at all evident that Sungino is a proper party to bring the ownership claims of her adoptive nieces and nephews, ownership claims that are incompatible with her claim of individual ownership. Indeed, the posture of this case raises serious concerns about whether Sungino’s interests were represented in the proceeding. The power-of-attorney authorized Mariur to represent Sungino’s claim of ownership over Lot 1334. At trial, however, Mariur, purportedly on Sungino’s behalf, contended that Mariur herself, as well as others, but not Sungino, own Lot 1334. Even in the absence of any specific evidence of impropriety, the opportunity for abuse in this type of situation is obvious. For these reasons, then, the court erred in awarding Lot 1334 to non-claimants, the Children of Antonio Fritz.

II. The Land Court’s Determination of Ownership Was Further Impaired by Other Legal Errors.

[¶ 15] Even if the Children of Antonio Fritz had been proper claimants, the Land Court also committed several additional legal errors in determining ownership in their favor. The Land Court’s determination appears to be implicitly based on several theories of ownership that are sometimes overlapping, sometimes contradictory: (1) that Rengechel individually owned Lot 1334 and passed it down to Fritz, whose children presumably inherited the land upon Fritz’s death; (2) that Ibuuch Clan owned Lot 1334, but that Rengechel lawfully alienated it to Fritz with the agreement of Mlechei Ebil, and Fritz’s children inherited it from their father; and (3) that Mlechei Ebil, with the agreement of other clan members, gave Lot 1334 to Fritz’s children as their personal property after his death, and that no clan members objected.³ There are problems with all of these theories.

[¶ 16] First, regarding the Land Court’s finding that Rengechel owned Lot 1334 as part of a larger lot, the court did not properly account for the presumption that Tochi Daicho listings are complete and accurate. It is well established that “[t]he identification of landowners listed in the Tochi Daicho is presumed to be correct, and the burden is on the party contesting a Tochi Daicho listing to show by clear and convincing evidence that it is wrong.” *Taro v. Sungino*, 11 ROP 112, 116 (2004). The Tochi Daicho listing for Lot 1334 lists the owner as “Chief Ngiraibuuch” and in no way indicates any individual ownership interest.⁴ Because Rengechel is not identified as an owner on the

³ The Land Court found that “[d]uring Rengechel’s eldecheduch . . . Tochi Daicho 1334 was given to Antonio as his individual property,” and that “[d]uring Antonio’s eldecheduch[,] . . . Mlechei Ebil and Rengechel[’s] relatives gave the same land to the children of Antonio as their property.” Decision at 5. It is not evident how Mlechei Ebil and others would be in a position to “g[i]ve” the property to Fritz’s children if the land had previously been transferred to their father as his personal property.

⁴ This is in contrast to surrounding parcels, for which the Tochi Daicho listings denote Rengechel as the owner. See *Ibuuch Clan Ex. 4*. The court did not point to any authority for the proposition that clan chief’s title land is the personal property of the individual who is chief. Indeed, our precedent suggests that chief’s title land is essentially clan property to be used by the chief during the time he holds that position. See *Omrekongel Clan v. Ikluk*, 6 ROP Intrm. 4, 6 (1996) (“[T]he general pattern is for chief’s title land to pass from chief to chief for use during the period he is head of the clan.” (quoting *Kisaol v. Gibbons*, 1 TTR 597, 598 (App. Div. 1956))).

Tochi Daicho listing, the Land Court’s finding that “Tochi Daicho 1334 was part of a much bigger lot identified as Lot 1336 owned by Rengechel,” Decision at 4, constitutes a finding that the Tochi Daicho listing for Lot 1334 is incorrect.⁵ Such a finding must be made based on “clear and convincing evidence.” *Taro*, 11 ROP at 116. Although the court acknowledged that a party contesting a Tochi Daicho listing has the burden of proving by clear and convincing evidence that the listing is wrong, the court made its finding contradicting the Tochi Daicho listing based only on “a preponderance of the evidence.” Decision at 4, 10. The Land Court’s application of an incorrect standard of proof is a structural error that ordinarily requires remand. *See Kebekol v. KSPLA*, 22 ROP 38, 41 (2015).

[¶ 17] Second, the court erred in concluding that “the male chief title holder [of Ibuuch Clan] and his female counter part, together can transfer clan land to an individual.” Decision at 5. A trial court is bound by controlling Appellate Division case law on a principle of customary law—“our past judicial recognition of a traditional law as binding will be controlling as a matter of law, absent evidence that the custom has changed.” *Beouch*, 20 ROP at 48. As we recently explained, “[i]t is a long-settled doctrine of traditional law that clan land is under the authority of the clan and transfers or dispositions of land must be approved by the strong senior members of the clan.” *Imetuker v. Ked Clan*, 2019 Palau 30 ¶ 13 (indicating that recognition of this customary principle “goes back to the Trust Territory”). Expert witness Felix did not testify that there had been a change in customary law, or that the transfer of Ibuuch Clan land followed unique principles. Therefore, to the extent he meant to testify that clan land can be transferred with only the consent of the male and female titleholders, his view is inconsistent with our case law, and the Land Court should have disregarded his testimony.⁶

⁵ The court also found that “[m]embers of Ibuuch Clan met and decided to change the chief title land from Tochi Daicho 1334 to Tochi Daicho 1206, a land known as *Ngermaduleyang*.” Decision at 6. It is unclear when this occurred. However, even if this change was made after the date of the Tochi Daicho listing, the court nowhere indicates why the transfer of the chief’s title land from Lot 1334 in and of itself means that the lot became Rengechel’s personal property rather than clan property.

⁶ We recently noted that a good practice for handling expert testimony on customary law, in light of our decision in *Beouch v. Sasao*, “would be for the trial court to first determine whether binding precedent exists and, if it does, limit expert testimony on that point of customary law

[¶ 18] Third, the court erred to the extent it grounded its judgment on the finding that “no one” objected to the occupation of Lot 1334 by Fritz or by his children. *See* Decision at 5. It was clear error for the court to determine that the absence of formal objection was indicative of ownership given that any lack of objection is entirely consistent with the narrative advanced by Ibuuch Clan—that the clan gave permission for Fritz and his children to use the land but did not transfer ownership. Further, the court’s reliance on the finding that no one objected at either Rengechel’s or Fritz’s eldecheduch was misplaced. Other than finding that one senior strong member, Mlechei Lakobong, “was present during Antonio’s eldecheduch,” Decision at 6, the court made no finding that all of the clan’s senior strong members who would be required to give their consent to a transfer of ownership were present at either Rengechel’s or Fritz’s eldecheduch. Although Felix testified that a decision made at an eldecheduch is final and cannot later be challenged, the record is devoid of any authority for the proposition that whatever occurs at an eldecheduch overrides all other principles governing the transfer of clan land.

[¶ 19] For these reasons, we **REVERSE** the ownership determination in favor of the Children of Antonio Fritz and **REMAND** this matter to the Land Court. On remand, the Land Court should determine if the evidence presented at trial supports a determination that any of the actual claimants own Lot 1334.

CONCLUSION

[¶ 20] We **REVERSE** and **REMAND** the Land Court’s judgment.

to the issue of whether the custom has changed.” *Terekieu Clan v. Ngirmeriil*, 2019 Palau 37 ¶ 11.