

**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 2
Civil Appeal No. 19-003
Appeal from LC/B 16-00007, 16-00012

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 erred by failing to apply the presumption that a Tochi Daicho listing is correct. We therefore **VACATE** 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] This appeal concerns the disputed ownership of land located in Ngerbeched Hamlet, Koror State. Both sides contend that the land in question is identified as Worksheet Lots C32 B 36 and C32 B 30A on BLS Worksheet No. C32 B 00 and corresponds to Tochi Daicho Lot 1319. It is undisputed that the Tochi Daicho lists Ibuuch Clan as the owner of Lot 1319.

[¶ 3] At trial, Laurinda Waisang Fritz Mariur presented a claim to ownership of the land in question on behalf of her deceased father, Antonio Fritz, and his children.² Her evidence included: (1) a 1937 “Application for private[]land ownership transfer,” in which a certain “Ngcheed” purports to apply to the Japanese authorities to transfer property to his nephew Rengechel, Antonio Fritz’s adoptive father; and (2) testimony that Antonio Fritz and his children continuously used the land in question for 81 years without any objection from Ibuuch Clan. The Clan claimed that it had not been able to find an attorney and did not present any evidence at trial. However, the Land Court allowed the Clan to file a post-trial written submission. In that filing, the Clan pointed to the Tochi Daicho listing for Lot 1319 and contended that Mariur had not overcome the presumption that this listing is correct. The Clan advanced several reasons for doubting that the 1937 land application dealt with Tochi Daicho Lot 1319 and also disputed that the application itself was equivalent to a legal transfer.

[¶ 4] In its Summary of Proceedings, Findings of Fact, Conclusions of Law, and Determination, the Land Court found, in relevant part, by “a preponderance of the evidence,” that: (1) Tochi Daicho 1319 encompasses Worksheet Lots C 32 B 36 and C32 B 30A; (2) “[i]n September 1937, Ngcheed, who had complete authority over Tochi Daicho 1319, conveyed ownership of the same to his nephew Rengechel”; (3) Rengechel conveyed ownership to Antonio Fritz; (4) “Fritz and his family had maintained uninterrupted possession, control and use of Tochi Daicho 1319 for years without objections

² Appellant and Appellees were the only parties to appear and maintain their claims at trial. The Ngerbeched Council of Chiefs did not appear or present evidence. The Land Court dismissed their claim and they have not appealed. Unlike in the matter of *Ibuuch Clan v. Children of Antonio Fritz*, 2020 Palau 1, also decided today, Appellant does not contend that the Children of Antonio Fritz are not proper claimants.

from anyone”; and (5) several of Rengechel’s relatives do not presently object to Mariur’s claim.³ Decision at 3-4. The court quickly disposed of Ibuuch Clan’s arguments, stating, “[o]ther than its reliance on the Tochi Daicho listing . . . Ibuuch Clan’s written submission failed to provide any evidence to support its claim of ownership of the subject lot.” Decision at 5. 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 in fee simple the land identified as Tochi Daicho 1319, now identified as Worksheet Lots C32 B 30A & C32 B 36 on BLS Worksheet No. C32 B 00.”⁴ Decision at 9. This timely appeal followed.

STANDARD OF REVIEW

[¶ 5] We review the Land Court’s conclusions of law *de novo* and its findings of fact for clear error. *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4. The trial court’s “application of an incorrect standard of proof is a structural error that requires remand unless the outcome of the case clearly shows that the error was harmless, such as when a heightened burden of proof is imposed on a party who prevails nonetheless.” *Kebekol v. KSPLA*, 22 ROP 38, 41 (2015).

DISCUSSION

[¶ 6] Appellant contends that the Land Court erred in several ways. In the interest of judicial economy, however, we only address the error that requires remand. In a dispute over private land ownership, “[t]he identification of landowners listed in the Tochi Daicho is presumed to be correct, and the burden

³ On remand, the Land Court should explain its finding that Lot 1319 encompasses Worksheet Lots C32 B 36 and C32 B 30A on BLS Worksheet No. C32 B 00. In fact, the record on appeal suggests that Worksheet Lot C32 B 30A includes portions of two Tochi Daicho Lots, 1319 and 1329, and that Lot 1329 is listed in the Tochi Daicho as belonging to Kerkur Clan. In general, the Land Court’s decision may reflect unresolved confusion about the relationship between Tochi Daicho Lot 1319 and the two worksheet lots. For example, at the beginning of its Decision, the court states that the Tochi Daicho lists Lot 1319 as being owned by Kerkur Clan. Decision at 1. However, Kerkur Clan is not otherwise mentioned, and the court later notes Ibuuch Clan’s “reliance on the Tochi Daicho listing Ibuuch Clan as the owner of [Lot] 1319.” Decision at 5.

⁴ The court also determined that the boundary separating Worksheet Lots C32 B 30 and C32 B 30A should be adjusted by the Bureau of Lands and Surveys. This adjustment is not at issue on appeal.

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). Appellees pointed to the 1937 “application” concerning transfer of the property from Ngcheed to Rengechel to refute the statement in the Tochi Daicho, which necessarily postdates the application, that Lot 1319 is owned by Ibuuch Clan. *See Ngiradilubech v. Timulch*, 1 ROP Intrm. 625, 625 n.2 (1989) (“Tochi Daicho is Japanese for ‘landbook,’ and refers to the recording of ownership of land in Palau resulting from the land survey conducted by the Japanese Government between 1938 and 1941.” (citation omitted)). The Land Court, therefore, should have applied the presumption of correctness regarding the Tochi Daicho and determined whether Appellees had established their ownership by clear and convincing evidence. The Land Court did not do so. Rather, the court made its findings, which contradicted the Tochi Daicho listing, by a lower “preponderance of the evidence” standard. *See* Decision at 3. This is structural error requiring a remand. *Kebekol*, 22 ROP at 41.

[¶ 7] On remand, the Land Court should apply the Tochi Daicho presumption and explicitly address Appellant’s arguments that the 1937 “application” should be given little to no evidentiary weight.⁵ Considering the clear necessity of a remand for revised factfinding by the Land Court, we do not opine at this juncture on what evidentiary weight should be given to Appellees’ use of the land in question and any lack of objection to that use by Ibuuch Clan.

CONCLUSION

[¶ 8] We **VACATE** and **REMAND** the Land Court’s judgment.

⁵ We reject Appellees’ suggestion that the Land Court did not have to consider, or should have ignored, Ibuuch Clan’s written submission. Once the court specifically solicited the Clan’s post-trial brief, without objection from Appellees and with the implication it would factor into the court’s decision, the court had an obligation to consider the submission.