

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

<p>NGERDELOLK HAMLET, <i>Appellant,</i> v. PELELIU STATE PUBLIC LANDS AUTHORITY, <i>Appellee.</i></p>

Cite as: 2021 Palau 15
Civil Appeal No. 20-024
Appeal from LC/R 20-00003 through LC/R 20-00022

Decided: May 27, 2021

Counsel for Appellant	Johnson Toribiong
Counsel for Appellee	Mariano W. Carlos

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
GREGORY DOLIN, Associate Justice

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

OPINION¹

PER CURIAM:

[¶ 1] In this appeal, Appellant challenges the Land Court’s rejection of its ownership claim to 21 islets in the lagoon of Peleliu State. For the reasons set forth below, we **AFFIRM** the Land Court’s decision.

¹ Although Appellant requested oral argument, we denied the request in our April 27, 2021 order and resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

BACKGROUND

[¶ 2] The parties dispute the ownership of 21 “tiny, broken and uninhabitable, [] mostly limestone,” Adjudication and Determination at 2 (Aug. 17, 2020), islets located near several large rock islands of Peleliu State and depicted on the Bureau of Lands and Surveys (“BLS”) Worksheets No. 2020 R 01 through 03 as Lots R 847 through 866 and R 860-A (the “Islets”). In the Land Court proceedings, there were three claimants, including Ngerdelolk Hamlet (Appellant), Peleliu State Public Lands Authority (“PSPLA,” Appellee) and Well Lineage. The ownership of some of the surrounding larger islands has been previously determined and the ownership of one of those islands, Ngedebus Island, was determined in favor of Appellant, *see* Adjudication and Determination in Case No. LC/R 00-05 (June 28, 2001), but the ownership of the Islets was not adjudicated in these prior cases and remains unresolved.

[¶ 3] All three parties claimed ownership of the Islets based on different legal theories. PSPLA argued that the land belongs to Peleliu State on the basis of the “history of public use by the people of Peleliu,” whereas Appellant argued that the Islets have been “Ngerdelolk village land since ancient times, and people requested permission for their use from the chiefs of Ngerdelolk, particularly Chief Obakeldelolk.” Adjudication and Determination at 3.² The Land Court expressly noted that all of the “claimants assert that these 21 islets never became public land and claim ownership based on a superior title theory.” *Id.* at 4.

[¶ 4] Following discovery and a hearing held on July 23, 2020, the Land Court, on August 17, 2020, issued its “Adjudication and Determination,” finding the Islets to be “public property under the administration of” PSPLA. *Id.* at 6. This timely appeal followed.

² Well Lineage claimed that it owns eight of the islets as spoils of a war fought long ago between Ngemelis and “Ulong, its longtime enemy.” Adjudication and Determination at 3. The Land Court denied this claim, finding that although the story of war between these two clans “is a well-recited [one] . . . , the connection between the story and eight small islets now claimed is just not sustainable.” *Id.* at 5. Well Lineage chose not to seek review of the adverse determination of its claim and is not a party to the current appeal.

STANDARD OF REVIEW

[¶ 5] We review the Land Court’s findings of fact for clear error, *see Ebilklou Lineage v. Blesoch*, 11 ROP 142, 144 (2004), and such “findings will not be set aside as long as they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion,” *Etpison v. Tmetbab Clan*, 14 ROP 39, 41 (2006). When reviewing the record, “this Court will refrain from substituting its own judgment of the credibility of the witnesses or the weight of the evidence.” *Dmiu Clan v. Edaruchei Clan*, 17 ROP 134, 136 (2010). If this Court determines that the evidence supports two permissible competing views, the Land Court’s decision in favor of one of these views cannot be clearly erroneous. *See Airai State Pub. Lands Auth. v. Baules II*, 2020 Palau 6 ¶ 7.

DISCUSSION

[¶ 6] On appeal, Ngerdelolk Hamlet raises two issues. First, it argues that PSPLA lacks the legal capacity to claim and hold the lands in dispute. Second, Ngerdelolk Hamlet alleges that the Land Court “abused its discretion by disregarding the testimony of Obakeldelolk Isao Singeo, and the other witnesses.” Opening Br. at 11. We address these contentions in turn.

I.

[¶ 7] It is well settled that this Court will not consider arguments that are raised for the first time on appeal. *See Sugiyama v. Han*, 2020 Palau 16 ¶ 38 (“No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited that issue.”) (quoting *Kotaro v. Ngirchchol*, 11 ROP 235, 237 (2004)). There are two exceptions to this general rule, which allow this Court to consider an issue first raised on appeal: “(1) ‘to prevent the denial of fundamental rights,’ and (2) ‘when the general welfare of the people is at stake.’” *Rechucher v. Lomisang*, 13 ROP 143, 149 (2006) (quoting *Tell v. Rengiil*, 4 ROP Intrm. 224, 226 (1994)). Appellant’s argument regarding PSPLA’s legal incapacity to claim and hold the Islets was never raised before the Land Court. We therefore will not consider the argument unless it fits one of the aforementioned exceptions. Because a dispute between two entities about ownership of land does not affect “the general welfare of the people,” *id.*, and because losing a court case after

having been afforded due process during litigation is not a “denial of fundamental rights,” *id.*, we decline to address Appellant’s argument about PSPLA’s legal capacity to claim or hold the Islets.

II.

[¶ 8] Turning to Appellant’s argument that the Land Court “abused its discretion by disregarding” what Appellant considers to be relevant testimony, Opening Br. at 11, having reviewed the record, we are not “left with a definite and firm conviction that an error has been made.” *Sungino v. Ibuuch Clan*, 2021 Palau 6 ¶ 14 (quoting *Koror State Pub. Lands Auth. v. Idid Clan*, 2016 Palau 9 ¶ 9).

[¶ 9] As an initial matter, we disagree that the Land Court “disregard[ed]” the relevant testimony. To the contrary, the court considered the testimony of Appellant’s witnesses and discussed the testimony in its opinion. *See* Adjudication and Determination at 3-5. That the court found the testimony not to be credible, *id.* at 4-5, does not mean that the court failed to consider it.³

[¶ 10] Appellant understandably disagrees with the Land Court’s view of the evidence. However, “[w]here there are several plausible interpretations of the evidence, the Land Court’s choice between them shall be affirmed even if this Court might have arrived at a different result.” *Eklbai Clan v. KSPLA*, 22 ROP 139, 141 (2015). “It is not the appellate panel’s duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence.” *Children of Antonio Fritz v. Ibuuch Clan*, 2021 Palau 7 ¶ 4 (quoting *Esuroi Clan v. Roman Tmetuchl Family Trust*, 2019 Palau 31 ¶ 12). Indeed, “an appeal that merely re-states the facts in the light most favorable to the appellant and contends that the Land Court weighed the evidence incorrectly borders on frivolous.” *Ngiraked v. Koror State Pub. Lands Auth.*, 2016 Palau 1 ¶ 8 (internal quotation marks omitted).

³ The Land Court need not discuss all the evidence it relies on to support its decision. Rather, its decision need only “reveal an understanding analysis of the evidence, [and] a resolution of the material issues of ‘fact.’” *Eklbai Clan v. Imeong*, 13 ROP 102, 107 (2006) (internal quotation marks omitted). Of course, in the present case, the Land Court did discuss the relevant evidence.

[¶ 11] When two competing entities claim the same land in Land Court proceedings, the Land Court’s job is to choose the best claimant before it. *See Andres v. Aimeliik State Pub. Lands Auth.*, 2020 Palau 18 ¶ 11 (“[I]n a superior title case, the Land Court has no choice but to choose [the strongest claim] between the claimants who come forward.”) (quoting *Eklbai Clan*, 22 ROP at 146). In the present case the Land Court did exactly that, and we find no fault with its conclusions.

CONCLUSION

[¶ 12] The Land Court’s determination of ownership is **AFFIRMED**.