IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

CHILDREN OF BENJAMIN OITERONG,
***represented by* CELINE O. ANDRES,**
Appellant,
v.
IDESONG SUMANG,
Appellee.

Cite as: 2021 Palau 30
Civil Appeal No. 21-003
Appeal from Case No. LC/B 20-00024

Decided: October 8, 2021

Counsel for Appellant ..... Johnson Toribiong
Counsel for Appellee ..... C. Quay Polloi

BEFORE: GREGORY DOLIN, Associate Justice
KATHERINE A. MARAMAN, Associate Justice
DANIEL R. FOLEY, Associate Justice

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

OPINION[1]

PER CURIAM:

[¶ 1] In this case, the Land Court's determined that the land depicted as Worksheet Lots No. 20B02-001 and 181-12082 on Worksheet 2020 B 02 (the "Disputed Land") is subject to a return of public lands claim, and as a consequence of that determination, it awarded said land to Appellee Idesong

[1] Although Appellant requested oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

Sumang. Celine O. Andres,[2] representing the Children of Benjamin Oiterong, who was one of the claimants to the Disputed Land, appeals and argues that the land in question was not public land and that in any event, Appellee's claim is time-barred by 35 PNC § 1304(b)(2).[3] Both points raised by Appellant challenge the Land Court's factual findings, but Appellant fails to convince us that the Land Court's findings of fact are clearly erroneous. Accordingly, we **AFFIRM**.

BACKGROUND

[¶ 2] As part of its ongoing effort to finally and conclusively monument and determine ownership of all land in Palau, *see* 35 PNC §§ 1302, 1304(a), the Land Court held a hearing on the ownership of the Disputed Land. Several claimants, including Appellant and Appellee came forth to lay claim to this land. As relevant here, Sumang claimed that in 1973 his adoptive grandfather, Mokirong, filed a return of public lands claim for land that included the two parcels in question. The land to which Mokirong laid claim in 1973 was listed in the Tochi Daicho — a recording of ownership of land in Palau resulting from the land survey conducted by the Japanese Government between 1938 and 1941 — as Lot 156. Between 1973 and the present day, Mokirong's claims have been adjudicated in various proceedings. However, Sumang contended that these prior proceedings only resolved parts of Mokirong's claims, and that the claim to the Disputed Land remains pending.

[¶ 3] On January 12, 2018, Sumang filed a claim of land ownership to the Disputed Land stating that he is proceeding on a return of public lands theory. *See* 35 PNC § 1304. In the form that he filled out, he stated that the Tochi Daicho lists Mokirong as the owner of these lands. At trial, Sumang argued that despite the requirement that all return of public land claims be filed by January 1, 1989, *see id.* § 1304(b)(2), his claim is timely because it is a continuation of his grandfather's original 1973 claim, rather than an entirely new one.

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[2] Appellant is alternatively known as Celine Oiterong.

[3] Section 1304(b)(2) sets a deadline of January 1, 1989 for the filing of return of public land claims.

[¶ 4] Over a course of three days in September and October 2020, the Land Court held a hearing on various claims to the land in question. On February 15, 2021, the Land Court issued a detailed fourteen-page Findings of Fact and Conclusions of Law. In its opinion, the Land Court analyzed the testimony and exhibits offered by various claimants, as well as documents from related cases. Having done so, the Land Court concluded that: the Disputed Land was part of Mokirong's 1973 claim; that Sumang's claim is a continuation of Mokirong's original claim; and that Sumang has succeeded in proving all the necessary elements of a return of public land claim. *See, e.g.*, *Idid Clan v. KSPLA*, 20 ROP 270, 273 (2013) (listing the elements). In reaching its conclusion, the Land Court rejected both Appellant's arguments: that Sumang's claim is untimely or that Sumang's indication of a private individual, rather than any governmental entity, as the listed Tochi Daicho owner of Lot 156 on his claim form defeated the public ownership of the Disputed Land. The Land Court also rejected Appellant's claim to the land.

[¶ 5] On February 22, 2021, Andres filed a motion for reconsideration, again arguing that the Disputed Land is not public land, and even if it were, the time has long passed to file a claim for its return. Sumang opposed. On February 24, 2021, the Land Court, finding that Andres was simply "rehash[ing] the same arguments that were originally presented to the court," Order at 2 (quoting *Shmull v. Ngirirs Clan*, 11 ROP 198, 202 n.3 (2004)), denied the motion. This appeal followed.[4]

STANDARD OF REVIEW

[¶ 6] We review trial court's conclusions of law *de novo* and its findings of fact for clear error. *Sungino v. Ibuuch Clan*, 2021 Palau 6 ¶ 9. "It is not the appellate panel's duty to reweigh the evidence, test the credibility of witnesses,

[4] The cover page of Appellant's Opening Brief and the Notice of Appeal are inconsistent. The former identifies the denial of the motion for reconsideration, while the latter identifies the Land Court's underlying judgment as the subject matter of the present appeal. However, because both orders are inseparably intertwined and given that Appellant's brief addresses what Appellant perceives to be the errors in the underlying judgment, we construe the appeal as encompassing both the denial of the motion for reconsideration and the initial judgment. *Cf. Arugay v. Wolff*, 5 ROP Intrm. 239, 241 n.2 (1996) ("[A] notice of appeal designating the final judgment is sufficient to support review of all earlier orders that merge in the final judgment. The general rule is that an appeal from a final judgment supports review of all earlier interlocutory orders.").

or draw inferences from the evidence. Therefore, we must affirm the Land Court's determination as long as the Land Court's findings were plausible." *Esuroi Clan v. Roman Tmetuchl Family Trust*, 2019 Palau 31 ¶ 12 (quoting *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007)).

DISCUSSION

[¶ 7] On appeal, Andres presses the same two points previously rejected by the Land Court, *see ante* ¶¶ 4-5.

[¶ 8] Andres' contention that the Disputed Land was not public land at the time of the Land Court's hearing is easily disposed of. The only evidence on which Andres relies is Sumang's statement on the claim form that Tochi Daicho lists his adoptive grandfather as the owner of Lot 156. However, that statement was simply a mistake. The official Tochi Daicho record clearly lists "Palau Administration" as the owner of this piece of property. A certified abstract of the listing by the Bureau of Land and Surveys was submitted into evidence as Sumang's Exhibit 12b. Furthermore, we ourselves were able to ascertain, and take judicial notice of, the official translation of the Tochi Daicho which mirrors the information submitted to the Land Court. *See Napoleon v. Children of Masang Marsil*, 17 ROP 28, 32 (2009) (holding that an appellate court can take judicial notice of a fact "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" such as a certificate of title). 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." *Sungino v. Ibuuch Clan*, 2021 Palau 6 ¶ 7 (quoting *Ibuuch Clan v. Children of Antonio Fritz*, 2020 Palau 1 ¶ 16). Neither Sumang's erroneous statement on the claim form, nor any evidence adduced by Appellant comes close to showing that the Tochi Daicho listing is wrong. We are convinced that notwithstanding Sumang's statement,[5] the disputed land was "public land."

[5] The error did not cause any prejudice to any party because it was clear from the beginning to the end that Sumang was basing her argument on the same facts as were alleged by Mokirong in 1973.

[¶ 9] Appellant's second contention that Sumang's claim was filed too late, *see* 35 PNC § 1304(b)(2), in essence challenges the Land Court's factual determination that the claim is a continuation of Mokirong's 1973 claim. In order to analyze whether the present claim does or does not relate to the 1973 claim, one needs to analyze maps submitted together with each claim, evaluate testimony of witnesses as to boundaries and uses of land, weigh the credibility of that testimony, and engage in other similar fact-intensive inquiries. It is the role of a trial, rather than appellate court to evaluate and weigh such evidence. *See Ngikleb v. Sadao*, 2021 Palau 5 ¶ 7 ("The trial court is in the best position to weigh evidence, determine the credibility of witnesses, and make findings of fact.") (quoting *Ngiraingas v. Tellei*, 20 ROP 90, 94 (2013)). Absent a showing of clear and obvious error, we do not "second guess those determinations." *Ngeremlengui v. Ngardmau*, 2016 Palau 24 ¶ 79. Appellant does not even attempt to show any error in the Land Court's determination that Sumang's 2018 claim relates back to his adoptive grandfather's claim. Instead, Andres merely repeats that claims for return of public land filed after January 1, 1989 are not cognizable. While that statement is true as a matter of law, it does nothing to leave us "with a definite and firm conviction that an error has been made," *Koror State Pub. Lands Auth. v. Idid Clan*, 2016 Palau 9 ¶ 9 (quoting *Ngirausui v. KSPLA*, 18 ROP 200, 202 (2011)), in determining that *this claim* is a continuation of a timely filed one. Absent such a conviction we will not disturb the Land Court's factual findings.

CONCLUSION

[¶ 10] The Land Court's February 15, 2021 Determination of Ownership, as well as its February 24, 2021 Order Denying the Motion for Reconsideration are **AFFIRMED.**