

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

**APOLONIA RENGECHEL SUNGINO** by Laurinda Waisang  
**Fritz Mariur,**  
*Appellant,*  
v.  
**IBUUCH CLAN** by Ngiraibuuch Paul Reklai,  
*Appellee.*

Cite as: 2021 Palau 6  
Civil Appeal No. 20-023  
Appeal from LC/B 16-00013

Argued: January 7, 2021  
Decided: February 24, 2021

Counsel for Appellant ..... J. Uduch Sengebau Senior  
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 Salvador Ingereklii, Associate Judge, presiding.

**OPINION**

PER CURIAM:

[¶ 1] This matter returns to us after the Land Court entered judgment in favor of Appellee following our remand. *See Ibuuch Clan v. Children of Antonio Fritz*, 2020 Palau 1 (“*Ibuuch Clan IP*”). For the reasons set forth below, we **AFFIRM**.

## BACKGROUND

[¶ 2] The basic facts undergirding this appeal are set forth in our prior decision, *see id.*, and familiarity with it is presumed. We recapitulate only those facts that are most salient to the resolution of this second appeal.

[¶ 3] The parties dispute ownership of land located in Ngerbeched Hamlet, Koror State, and identified as Worksheet Lot C32 B 37 on BLS Worksheet No. C32 B 00, corresponding to Tochi Daicho (“TD”) Lot 1334. The Tochi Daicho lists the lot as owned by “Chief Ngiraibuuch” and administered by “Rengechel.” Appellant Apolonia Rengechel Sungino (“Sungino”) is a daughter of Lansang Rengechel (“Rengechel”) and the sister of Antonio Fritz by his adoption.<sup>1</sup> It is undisputed that Rengechel at one time was *Ngiraibuuch*, the male titleholder of Appellee Ibuuch Clan. Sometime between 2005 and 2006, Sungino (along with other individuals) filed claims to the land. Initially, Sungino filed a claim on behalf of herself, but at some point during the litigation she announced that in reality she was claiming on behalf of the “children of Antonio Fritz.” (Hence the caption of our prior decision). The claims were opposed by Ibuuch Clan, represented by the current *Ngiraibuuch* Paul Reklai.<sup>2</sup> Of note, Antonio Fritz’s children themselves never filed a claim to Lot 1334 either as individuals or as a unit.

[¶ 4] Before the Land Court, the parties’ positions boiled down to the following. Ibuuch Clan pointed out that the Tochi Daicho listed the land in question as owned by “Chief Ngiraibuuch,” and administered by then-chief Rengechel—Antonio Fritz’s adoptive father. According to the Clan, because no other written records contradict the Tochi Daicho record, the land has remained property of the Clan to the present day.<sup>3</sup> The Clan does not dispute

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<sup>1</sup> Sungino is represented by Laurinda Waisang Fritz Mariur via a power of attorney signed in May 2018. Sungino died shortly after the Land Court hearing in January 2019.

<sup>2</sup> The Ngerbeched Council of Chiefs was part of the original litigation but failed to present any evidence on its behalf. They were dismissed as parties and they are not party to the present appeal.

<sup>3</sup> The parties did not dispute that the Tochi Daicho listing denotes that the land is chief title land, and thus property of the Clan.

that Fritz and his family have been permitted to use and occupy the land in question since at least the 1950s.

[¶ 5] In contrast, Sungino argued that the land belonged to Fritz’s children following the conveyance from her (and Fritz’s) father, Rengechel, to Fritz, and thereafter from Fritz to his children. She asserted that Fritz acquired the land from his father during the latter’s *eldecheduch*,<sup>4</sup> and when Fritz died on October 27, 1975, the land in question was transferred to his children at Fritz’s own *eldecheduch*. Sungino argued that the continuous and unchallenged occupation of the land over the last several decades by Fritz and his children provided further evidence of their rightful ownership of the plot despite the lack of written records attesting to this fact.

[¶ 6] In 2019, the Land Court held that “[b]ased on a preponderance of the evidence adduced . . . Antonio [Fritz] acquired ownership of Tochi Daicho 1334 from his father, Rengechel, during his *eldecheduch*” and that Fritz’s children “acquired ownership of the same land from their father during his *eldecheduch* after his death in 1975.” Determination (Mar. 25, 2019) at 10. The Land Court therefore held that “the Children of Antonio Fritz” owned TD Lot 1334 in fee simple. *Id.* at 10-11.

[¶ 7] On January 2, 2020, we reversed, holding, *inter alia*, that the Land Court committed several legal errors. First, we held that the Land Court erred when it determined ownership of TD Lot 1334 in favor of non-claimants—the Children of Antonio Fritz. *Ibuuch Clan II*, 2020 Palau 1 ¶ 13. We held that among the relatives of Rengechel, only Sungino, who filed a timely claim, was a proper claimant. *Id.* We further held that in light of the Tochi Daicho listing, the Land Court applied an incorrect “preponderance of the evidence” standard to the resolution of the case before it. *Ibuuch Clan II*, 2020 Palau 1 ¶ 16. Relying on our well-established precedent, we held 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.” *Id.* (quoting *Taro v. Sungino*, 11 ROP 112, 116 (2004)). We therefore reversed the ownership determination in favor of the Children of Antonio Fritz and remanded the matter for the Land Court

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<sup>4</sup> Rengechel died on July 6, 1959.

to apply the correct legal standard and determine whether “any of the actual claimants”—Sungino or Ibuuch Clan—“own Lot 1334.” *Id.* ¶ 19.

[¶ 8] On remand, relying on supplemental briefing and the record as it existed, the Land Court determined that Ibuuch Clan owns Lot 1334. Decision (Aug. 3, 2020) (“*Ibuuch Clan III*”) at 7. The Land Court rejected Sungino’s claim to individual ownership based on her contention that the land “belong[ed] to [her] father who held the chief title and [she] will succeed ownership.” *Id.* at 5. The Land Court concluded that Sungino presented no testimony or other evidence to corroborate the claim that her father owned the land in his individual capacity rather than in his capacity as chief of Ibuuch Clan. *Id.* Nor did the Land Court find Sungino’s assertion that the land was transferred to Rengechel’s children at his *eldecheduch* convincing because of the dearth of evidence indicating that the senior strong members of Ibuuch Clan had consented to such a transfer. *Id.* at 6. Instead, the Land Court concluded that while Rengechel exercised authority over Clan land during his tenure as *Ngiraibuuch* and in the exercise of that authority permitted his child Fritz (together with Fritz’s own family) to live on such land, that permission was not (and could not be) tantamount to transfer of ownership. *Id.* at 5-6. Ultimately, the Land Court concluded that Sungino had not presented “clear and convincing” evidence to overcome the Tochi Daicho presumption of correctness. *Id.* at 7. This appeal followed.

### STANDARD OF REVIEW

[¶ 9] We review the Land Court’s conclusions of law (including on issues of customary law) de novo and its findings of fact for clear error. *Ibuuch Clan II*, 2020 Palau 1 ¶ 10. “It is not the appellate panel’s duty to reweigh the evidence, test the credibility of witnesses, 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

[¶ 10] On appeal, Appellant claims that (1) under Palauan custom, the relatives of Rengechel and Antonio Fritz had authority to dispose of the land

identified as Lot 1334 to Fritz and then his children at the two men's *eldecheduchs*; and (2) the Land Court erred in awarding the land to Ibuuch Clan because senior members of the Clan failed to object to the transfers.

[¶ 11] There are several problems with Appellant's argument. Most fundamentally, whether or not the relatives of Antonio Fritz had authority to transfer Lot 1334 to him or his children is entirely beside the point when it comes to Sungino's claim of individual ownership. We have already held that the Children of Antonio Fritz are not claimants to the land in question. *See Ibuuch Clan II*, 2020 Palau 1 ¶ 13. The question therefore is whether the evidence in support of Appellant's *own* individual claim to Lot 1334 is sufficient to overcome the Tochi Daicho's presumption of correctness. As the challenger to the Tochi Daicho listing, Appellant bore the burden of production and persuasion on that issue. *See, e.g., Ngerbachesis Klobak v. Ueki*, 2020 Palau 22 ¶ 8 (noting that in order to prevail on any claim, a party advancing a claim must marshal sufficient evidence to prove it). In light of that burden, we see no error in the Land Court's determination that Appellant failed to marshal evidence in support of her claim to individual ownership.

[¶ 12] To the extent Appellant is challenging the Land Court's determination that Ibuuch Clan owns Lot 1334, her argument is also unavailing. Although styled as a challenge to the Land Court's legal determinations, in reality, Appellant challenges the Land Court's weighing of the evidence used to overcome the Tochi Daicho listing. This is rarely a winning argument. *See Kawang Lineage*, 14 ROP at 146 ("This Court has heard a number of appeals challenging the factual determinations of the Land Court and appellants are extraordinarily unsuccessful."). Appellant's arguments simply fail to convince us that the Land Court's factual determinations are so erroneous as to be implausible. *See Techeboet Lineage v. Baules*, 2020 Palau 30 ¶ 4 ("[I]t is not our role to substitute our judgment for that of the trial court if the trial court's interpretation of the evidentiary record was plausible.").

[¶ 13] Appellant's attack on the Land Court's statement that "[p]erhaps, [the lack of] objection when it was announced during Rengechel's *eldecheduch* that the land where [Fritz] had his house would be his individual property" is explained by the fact that the *eldecheduch* attendees had prior knowledge that

Fritz had been permitted to build his house on the chief title land but had not been transferred ownership of the land, *Ibuuch Clan III* at 6-7, is equally not fruitful. According to Appellant, such a conclusion is nothing more than “conjecture[] and speculation[]” unsupported by the record and warranting reversal. Appellant’s Opening Br. at 11. We disagree. In light of Appellant’s burden, we read the Land Court’s decision as merely stating that Appellant has failed to convince the Land Court that, in light of several plausible explanations for the lack of objections at the *eldecheduhs* (with at least one of the explanations being entirely consistent with the Clan’s view of the facts), the conclusion Appellant draws is the only plausible one.

### CONCLUSION

[¶ 14] Having reviewed the Land Court’s decision as a whole, we are not “left 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)). Accordingly, the judgment appealed from is **AFFIRMED**.