

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

KOROR STATE PUBLIC LANDS AUTHORITY,
Appellant,
v.
OCHOB RENGIL aka KATEY G. GIRAKED and IDID CLAN,
by Bilung Gloria G. Salii,¹
Appellees.

Cite as: 2022 Palau 11
Civil Appeal No. 21-018
Appeal from LC/B 20-00023

Decided: July 12, 2022

Counsel for Appellants..... Michael E. Crane
Counsel for Appellee Ochob Rengiil (aka Katey G. Giraked)..... Siegfried B. Nakamura
Counsel for Appellee Idid Clan..... *Pro se*

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
 JOHN K. RECHUCHER, Associate Justice
 KATHERINE A. MARAMAN, Associate Justice

Appeal from the Land Court, the Honorable Justice Salvador Ingereklii, presiding.

OPINION

NGIRAIKELAU, Chief Justice:

[¶ 1] Koror State Public Lands Authority (“KSPLA”) appeals the Land Court’s August 9, 2021 Determination of ownership awarding lands to Ochob Rengiil, aka Katey Giraked (“Giraked”). Because we detect no error in the Land Court’s factual findings, we AFFIRM the Determination.

BACKGROUND

[¶ 2] Appellee Giraked filed claims for individual ownership of lands identified as Lot 181-091, which corresponds to Tochi Daicho (TD) Lots 254 and 255, and Lot 181-092, which corresponds to TD Lot 256. The lands are located in Ngerchemai Hamlet, Koror State. More specifically, Giraked submitted two Land Acquisition Records, both dated August 13, 1974, for TD

¹ Mrs. Salii did not appear or participate in the appeal.

lots 254, 255, and 256. Giraked also filed a return of public land claim on March 3, 1988. Those claims were not fully adjudicated at the time.

[¶ 3] These lots are part of a large tract of land called *Isngull*, owned by Giraked’s father, Ngiraked. Giraked inherited *Isngull* with Ngiraked’s passing. These lots are commonly referred to as the Sakurakai Cemetery (Lot 181-092) and the farm (181-091).

[¶ 4] KSPLA claimed that the lots are public land and should remain as such. A hearing was held on April 27, 2021, before the Honorable Justice Salvador Ingereklii, where Giraked and her granddaughter Stephanie Nakamura both testified. KSPLA did not present any witnesses and instead relied on documentary evidence.

[¶ 5] As to Lot 181-091 (TD 254 and 255), Ngiraked allowed a Japanese national, Tsunasang, to reside on and farm the land. Tsunasang paid Ngiraked rental fees for his use. That lease continued when Giraked inherited the land. In addition to the lease with Tsunasang, other individuals, including Mercy Remarui and Geggie Asanuma Udui, either used or vacated the land based on Giraked’s decision. The Land Court found that once Giraked inherited the land, she “maintained complete control of Tochi Daicho 254 & 255/Lot 181-091 . . . She has allowed and/or prevented other people from using the land without any objection from anyone, including KSPLA.” Determination at 5.

[¶ 6] As to Lot 181-092 (Tochi Daicho 256), Giraked testified that the Japanese government took control of the Lot without permission or compensation and designated the land as a “restricted area” where no one was allowed access. Giraked testified that she and her family were afraid to go there because it had been marked “restricted.” The Japanese government constructed monuments on Lot 181-092, including one monument built in 1966. The Japanese government also constructed “Daigunbots,” which was a Japanese navy gravesite. The area later became a site for more burials of people of Japanese descent and/or Inoko. Altogether the site became known as Sakurakai Cemetery.

[¶ 7] The Land Court found in favor of Giraked with respect to Lots 181-091 and 181-092, and found in favor of KSPLA with respect to Lot 20 B-01-001. KSPLA appeals as to Lots 181-091 and 181-092. The Land Court specifically found that Giraked’s ownership claim as to Lots 181-091 and 181-092 “prevails under the return of public lands provision of 35 PNC § 1304(b) because evidence sufficiently proved that her father, Ngiraked, owned these lots and were forcefully taken by the Japanese government without compensation.” Determination at 4. KSPLA timely appealed.

STANDARD OF REVIEW

[¶ 8] We review the Land Court’s legal conclusions and mixed findings of law and fact are reviewed de novo. *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 93 (2006); *Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225, 228 (1996). We review factual findings for clear error, and exercises of discretion

for abuse. *Elsau Clan v. Peleliu State Pub. Lands Auth.*, 2019 Palau 7 ¶ 7. We will set aside factual determinations if they lack evidentiary support in the record and “no reasonable trier of fact could have reached the same conclusion.” *Id.* at ¶ 8. “Where 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. Koror State Pub. Lands Auth.*, 22 ROP 139, 141 (2015).

DISCUSSION

[¶ 9] Appellant KSPLA raises two issues on appeal. First, whether the Land Court erred in awarding the two Lots under a public lands claim pursuant to 35 PNC § 1304(b) when it “cited no evidence of a taking through force, coercion, fraud[,] or without just compensation or adequate consideration.” Appt. Op. Br. at 4. KSPLA asserts that the proper claim would have been one of superior title, but because that was never pled, the claim is barred. The second issue raised is whether the Land Court erred in awarding Lot 181-092 “based on a presumption of exclusivity that was directly contradicted by precedent and the evidence presented.” *Id.* This Court considers arguments relevant to each subject Lot in turn.

I. Giraked’s Claim to Lot 181-091 is Valid as a Superior Title Land Claim.

[¶ 10] There are two (2) types of claims through which a person may claim ownership to public land: (1) a superior title claim in which the claimant asserts s/he holds the strongest title to the land claimed; and (2) a claim for return of public lands in which the claimant concedes that a public entity holds title to the land, but argues that the title was acquired wrongly from the claimant or his/her predecessors. *Klai Clan v. Airai State Pub. Lands Auth.*, 20 ROP 253, 255 (2013); *Koror State Pub. Lands Auth., v. Wong*, 21 ROP 5, 7–8 (2012). In *Klai Clan*, the Court held that a party that files only a return of public lands claim may not prevail upon a superior title theory at the Land Court hearing if it has not actually filed a superior title claim. *Klai Clan*, 20 ROP at 256–57. In other words, a claimant who wishes to pursue both claims must file a return of public land claim as well as a superior title claim. *Id.* at 256–57; *Idid Clan v. Koror State Public Lands Auth.*, 9 ROP 12, 14 n.3 (2001) (“*Idid Clan I*”).

[¶ 11] The typical superior title procedure is outlined in 35 PNC §§ 1307-1312: (1) issue a public notice of monumentation, hearing, and specific notice to “all persons personally known to the Registration Officer to claim an interest in the land, and to all persons listed on the Land Acquisition Records,” 35 PNC § 1309(b) & (c); (2) a thirty-day period within which all claims to the land must be filed; (3) a monumentation by the Bureau of Lands and Surveys; and (4) an adjudication that results in a determination of ownership. *See Wong*, 21 ROP at 8.

[¶ 12] The Land Court’s Regulations provide that “[a]ll claims to private lands must be filed with the Land Court no later than 60 days prior to the date set for hearing.” *Klai Clan*, 20 ROP at 256. Giraked claimed Lot 181-

091 as her private land but did not file a claim within sixty (60) days before the hearing. Yet, the Land Court awarded her Lot 181-091 on the basis of her return of public land claim. The Land Court’s reliance on the return of public land claim as a basis for its award of Lot 181-091 to Giraked was an error. As the Court in *Ngirameketii v. KSPLA*, 16 ROP 229, 231 (2009) explained more than a decade ago, a “return of public lands claim may not be considered as a superior title claim in order to avoid the statutory deadline.”

[¶ 13] However, a claimant, such as Giraked, who fails to file a claim to private land may still pursue such a claim under 35 PNC § 1309(a). Section 1309(a) unambiguously states in relevant part:

Any claim not timely filed shall be forfeited; however, persons listed on the land acquisition records, who have not filed a claim, shall be deemed to have filed a claim for all parcels for which the Bureau has commenced a monumentation, but which have not been fully adjudicated, as of the effective date of this law.²

Here, although Giraked did not file a claim for Lot 181-091 (a land she claimed was her private land) within sixty days before the hearing, she did submit a 1974 Land Acquisition Record which reflects her claim to TD Lots 254 and 255 (181-091). The Land Acquisition Record showed that monumentation of the land commenced more than forty years ago, but the claim had not been fully adjudicated, as of the effective date of § 1309(a). By operation of § 1309(a), Giraked is deemed to have filed a claim to Lot 181-091 and is entitled to pursue such a claim.

[¶ 14] We have previously held that a trial court judgment “is to be upheld, if it is correct, even though the court may have relied upon a wrong ground or assigned an erroneous reason for its decision.” *Elbelau v. Beouch*, 3 ROP Intrm. 328, 330 n.1 (1993); *see also Rengulbai v. Baules*, 2017 Palau 25 ¶ 20 (*citing Minor v. Rechucher*, 22 ROP 102, 105 (2015) (finding that the Appellate Division “may affirm a . . . court’s judgment on bases other than those relied upon below”). Here, it is obvious that the Land Court relied upon a wrong ground to award Lot 181-091 to Giraked. However, we conclude that the Land Court’s ultimate Determination was correct and, as such, it is to be upheld. For the foregoing reasons, we affirm the Land Court Determination with respect to Lot 181-091, even though the bases we rely on differs from that of the Land Court.³

² 35 PNC § 1309 was amended in 2008 to include the cited language.

³ Although the Honorable Justice Rechucher joins the majority opinion and agrees that Giraked’s claim of ownership to Lot 181-091 was timely made based on the 1974 Land Acquisition Record, and that such a record provides a valid basis for a superior title claim, he questions whether the majority’s decision today deprives KSPLA of its due process right to be informed of the nature and scope of Giraked’s adverse claim. Justice Rechucher believes that Giraked’s Land Acquisition Record did not provide KSPLA with sufficient notice of her superior title claim. He maintains that in addition to the Land Acquisition Record, Giraked should have filed a typical superior title claim or mentioned during the hearing that she was claiming the subject lot under a superior title theory based on the Land Acquisition Record. Her failure to do so, Justice Rechucher asserts, requires a remand for further proceedings “to afford KSPLA adequate notice and sufficient time to prepare to defend its claim for Lot 181-091.” *Infra* ¶ 28.

II. Giraked's Claim to Lot 181-092 is Valid as a Public Land Claim.

[¶ 15] A successful public land claim must meet the elements in 35 PNC § 1304(b): (1) the claimed lot is public land that became so by a wrongful taking by an occupying power through force, coercion, fraud, or without just compensation or adequate consideration; (2) prior ownership by a citizen, and pursued by either that citizen or their proper heir; and (3) a claim filed before January 1, 1989.

[¶ 16] Here, KSPLA argues that the Land Court erred in awarding Lot 181-092 to Giraked because she failed to prove that the land was wrongfully taken. As explained below, this argument lacks merit. The Land Court found, based on Giraked's testimony, that the Japanese government took control of Lot 181-092 without permission or compensation and designated the land as a "restricted area." As a result, Giraked and her family were afraid to enter. She further states that the Japanese government constructed monuments on the Lot, including one built in 1966. They also constructed "Daigunbots," or Japanese Navy gravesites. The area later became the gravesite for other people of Japanese descent. One cited example was the burial of Yano Takeo in 1985. Altogether, the site later became known as Sakurakai Cemetery.

[¶ 17] We find that the Land Court's Determination of a "wrongful taking" finds ample support in the record. Since it is undisputed that the other two elements are met: Ngiraked owned the land prior to its acquisition by the occupying power, and a claim for return of public land was timely filed, we therefore affirm the Land Court's Determination that Giraked's public land claim to Lot 181-092 is valid.

The majority understands Justice Rechucher's concerns. However, the law, § 1309(a), does not require Giraked to file a parallel typical claim of superior title or to expressly state on the record that she is relying on the Land Acquisition Record for her superior title claim to Lot 181-091. We have held, on more than one occasion, that "[c]itizens had a right to contest government claims of title to property before the enactment of the Constitution, and that right continues after the expiration of the period for filing Article XIII claims." *Carlos v. Ngarchelong SPLA*, 8 ROP Intrm. 270, 272 (2001). By virtue of the Land Acquisition Record, Giraked asserted and gave notice of her right to contest the government claim to Lot 181-091 more than four decades ago.

The fact that the Land Court awarded Lot 181-091 to Giraked based on an erroneous reason did not deprive KSPLA of its due process right to notice of Giraked's private claim because, as Justice Rechucher acknowledges, a claim for superior title was timely filed. Hence, this case is distinguishable from the line of cases cited by Justice Rechucher where the Land Court, despite the *absence* of a timely filed claim based on superior title, proceeded to reform a claim for return of public lands into a superior title claim. *Infra* ¶ 25-26. More importantly, unlike the instant case, none of the cases cited in the Concurring Opinion involved land acquisition records.

Here, there was a timely filed claim for both superior title and a return of public land. But instead of awarding ownership of Lot 181-091 based on Giraked's private land claim, the Land Court simply awarded the land based on her return of public lands claim. In making the award, the Land Court had no reason to transform and did not transform Giraked's public land claim into a superior title claim because Giraked had filed a timely claim based on superior title. The Land Court simply selected a wrong reason to support its determination.

Despite relying upon a wrong ground for its determination, the Land Court's determination was ultimately correct and the majority affirms the determination for the reasons stated in the Opinion. With all due respect to our judicial colleague, where, as here, KSPLA had notice of Giraked's superior title claim and had its day in court, a remand is unnecessary.

CONCLUSION

[¶ 18] For the reasons set forth above, we AFFIRM the Land Court’s Determination as to Appellee Giraked’s ownership of both Lots 181-091 and 181-092.

RECHUCHER, Associate Justice, concurring:

[¶ 19] The Opinion addresses all that is necessary to resolve this case. But, based on the facts here, I have some concern regarding due process, specifically adequate notice and opportunity to be heard. Thinking that the same issue may come up in future appeals, I therefore write separately.

[¶ 20] The evidence before the Court indicates that Giraked’s father owned Lot 181-091 all along. Giraked therefore should have filed a claim under a superior title theory. But no such claim was filed in the present case. Thus, Giraked’s claim would not prevail because “[a] party who files only a return of public lands claim may not prevail upon a superior title theory at the Land Court hearing if it has not actually filed a superior title claim.” *Klai Clan*, 20 ROP at 256–57.

[¶ 21] On August 15, 1974, Giraked filed a Land Acquisition Record claiming ownership to the subject lots of *Isngull* and the same became part of the Court’s record in this case. However, all throughout the hearing, there was no mention of claiming the lots under a superior title theory based on that Land Acquisition Record, or any statement relating to that Record. Only in Giraked’s written closing argument was it ever mentioned. On the contrary, the Land Court made findings of fact to the effect, in part, that:

. . . [Giraked] filed a Land Acquisition Record of her claim for ownership of Tochi Daicho 256. The Land Acquisition Record included a sketch which showed that her claim also included Tochi Daicho 254 & 255. During the hearing she stated that she is claiming ownership of these lots from the government who took the land without permission. Thus, her claim is a return of public land claim under Article XIII, Section 10 of the Constitution, as implemented by 35 PNCA 1304(b).

Determination at 3. This is the scope and nature of explanation made by the Land Court in its fact findings on August 09, 2021 hearing wherein a “Land Acquisition Record” was mentioned.

[¶ 22] Furthermore, on August 9, 2021, the Land Court issued its Conclusion and Determination wherein it states, “[b]ased on the foregoing findings of fact and the entire record of these claims, it is concluded and hereby

determined that Katey G. Giraked owns Lot 181-091 (TD 254 & 255) & Lot 181-092 (TD 256) shown on BLS Worksheet No. 2020 B 01, located in Ngerchemai Hamlet, Koror State.” Determination at 8. It is telling that the Land Court’s Determination was not made based on the Land Acquisition Record. That Determination closes the proceedings in determining ownership of the subject lots and the same stands as final and appealable judgment of the Land Court.

[¶ 23] There is no dispute that Giraked’s claim of ownership to Lot 181-091 was timely made because she filed the Land Acquisition Record on August 15, 1974. *See* 35 PNC § 1309(a). And, she could have also filed her superior title claim separately or parallel to her return of public land claim. There is also no dispute that a Land Acquisition Record is a valid basis for a superior title claim. But none of these is at issue in this matter, as far as due process is concerned.

[¶ 24] Now, faced with the foregoing facts and this Court’s Opinion in the present appeal, the questions are: (A) whether KSPLA was deprived of its due process right to be informed of the nature and scope of adverse claim against its claim (i.e. this Court’s reformation of Giraked’s claim from a return of public land claim to a superior title claim); and (B) whether KSPLA was deprived of its due process right to have adequate time to prepare to defend its interest at the hearing to determine ownership of the subject lots. With consideration of the facts testified to, exhibits submitted, Findings of the Land Court, and resulting Conclusion and Determination of the Land Court, I am convinced that KSPLA was deprived of its due process right to a fair trial.

[¶ 25] Notice of a legal claim is a fundamental requirement of due process, an absolute constitutional right. *Idid Clan II*, 22 ROP at 71. Although due process rights belong only to other private claimants in any given action and not land authorities *per se*, “reciprocity and an interest in accuracy favor ensuring that interested public parties have their day in court as well as private parties.” *Wong*, 21 ROP at 10, n.7. “Notice of a claim is a fundamental element of due process because without its requirement adverse parties effectively are required to shoot at a moving target.” *Idid Clan II*, 22 ROP at 71. Here, KSPLA was not afforded this due process right before or during the hearing.

[¶ 26] In *Koror State Pub. Lands Auth. v. Idid Clan*, 2016 Palau 9, ¶ 5 (“*Idid Clan III*”), this Court explained that after finding that the land at issue never became public land in the first place, the Land Court reform Idid Clan’s claim from a return of public land to a superior title claim and determined that KSPLA could not prevail under a superior title analysis. On appeal, this Court admonished the Land Court that it erred in reforming Idid Clan’s claim and awarding the land based on an argument that Idid Clan never made and that KSPLA therefore never had a fair opportunity to contest. *Id.* at 3-9. In the instant appeal, we attempt to resuscitate the dying claim of Giraked by reforming her claim from one of return of public land to one of superior title. In other words, this Court seeks to do what the Appellate Court admonished the Land Court in Idid Clan’s case not to do. In *Idid Clan II*, 22 ROP at 71, this Court said:

Idid Clan filed a timely return of public lands claim for this land, and, it appears, most assuredly should have filed a superior title claim, because the witness it presented asserted that the land never became public in the first place and counsel argued this theory before the Land Court. But the record before the Court contains no such claim, and a party simply cannot be awarded judgment—money, real property, declaratory, equitable, or even nominal—without first filing a claim.

[¶ 27] In its Findings of Fact, the Land Court states, “[Giraked’s] claim is *a return of public land* claim under Article XIII, Section 10 of the Constitution, as implemented by 35 PNCA § 1304(b).” Determination at 3 (emphasis added). So, it is reasonable to assume that the Land Acquisition Record, in itself, did not sufficiently alert KSPLA or the Land Court that Giraked would pursue a superior title claim at trial. Indeed, our resolution of the issue here benefits Giraked and presses KSPLA into a disadvantageous situation—regardless of the arguments substantively presented at trial, which here centered entirely on a return of public lands claim, Giraked could simply pull out the 1974 Land Acquisition Record and launch a superior title claim against KSPLA without substantively presenting it. This does not give KSPLA clear notice or sufficient time to prepare to defend its interest at the hearing.

[¶ 28] Based on the above discussion, it appears just and fair to vacate the Land Court determination and remand this case with instruction to the Land Court to hold further proceedings, make additional findings and issue a new determination regarding the effect of the 1974 Land Acquisition Record. This would afford KSPLA adequate notice and sufficient time to prepare to defend its claim for Lot 181-091.