

Tbang Clan v. KSPLA, 10 ROP 1 (2002)
TBANG CLAN,
Appellant/Cross-Appellee,

v.

KOROR STATE PUBLIC LANDS AUTHORITY,
MERII TENGOLL, and CATHOLIC MISSION,
Appellees.

MERII TENGOLL,
Appellant/Cross-Appellee,

v.

KOROR STATE PUBLIC LANDS AUTHORITY and TBANG CLAN,
Appellees.

CIVIL APPEAL NO. 01-20
LC/B 99-151, 153-57, 167-70

Supreme Court, Appellate Division
Republic of Palau

Argued: August 30, 2002
Decided: October 11, 2002

Counsel for Tbang Clan: Raynold B. Oilouch

Counsel for Tengoll: Mark Doran

Counsel for KSPLA: Greg Fullem

Counsel for Catholic Mission: No Appearance

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
R. BARRIE MICHELSEN, Associate Justice.

Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Associate Judge, presiding.

PER CURIAM:

This case is illustrative of the difficulties inherent in trying to adjudicate land claims by reference to both Cadastral and Tochi Daicho lot numbers. While the Land Court did a creditable job in this complicated consolidated case, we are unable to discern the grounds for certain of the determinations **L2** made below. Consequently, we affirm in part and remand in

part for further proceedings.

BACKGROUND

This dispute arose over several properties located in Iyebukel Hamlet, Koror State. The various claimants referred to these parcels as Tochi Daicho (“T.D.”) lot numbers 753, 767, 768, 769, 770, 771, 772, and 773. These properties are also reflected on Cadastral Worksheet B00-006, as lot numbers B00-021, B00-022, B00-023, B00-027, B00-028, B00-029, B00-030, B00-031, B00-032, B00-038, B00-039, B00-040, and B00-041.¹ A slew of claimants appeared below, though only the parties to this appeal were awarded any property by the Land Court.

Appellee Koror State Public Lands Authority (“KSPLA”) was determined to be the owner of worksheet lot numbers B00-039, B00-040 and part of B00-030, on the ground that those parcels were filled land. Appellee Catholic Mission was awarded worksheet lot numbers B00-022, B00-023, B00-027 and B00-028, which the Land Court determined to correspond to T.D. lot number 767. Appellant/Cross-Appellee Merii Tengoll (“Tengoll”) received worksheet lot numbers B00-033, B00-034, B00-035, B00-036, B00-037, B00-038, and B00-041, which, the Land Court held, collectively corresponded to T.D. lot numbers 769, 770, 771, and 772. The Land Court subsequently amended its findings and conclusions, and awarded worksheet lot number B00-041 to Appellant/Cross-Appellee Tbang Clan on the ground that this parcel actually lay within the boundaries of T.D. lot number 773, which the Land Court had awarded to Tbang Clan in its original Adjudication and Determination. Tbang Clan also was awarded worksheet lot numbers B00-021, B00-024, B00-029, the portion of B00-030 that had not gone to KSPLA, B00-031, and B00-032, parcels which the Land Court held to comprise T.D. lot numbers 753, 768 and 773. This appeal followed.

STANDARD OF REVIEW

Land Court findings of fact are reviewed under a clearly erroneous standard. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). A lower court’s conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Where meaningful appellate review is impossible because the Land Court has failed adequately to articulate the basis for its decision, remand is necessary. *Tengadik v. Bitlaol*, 8 ROP Intrm. 204, 205 (2000). Evidentiary rulings cannot be grounds for reversal unless substantial prejudice is caused to a party and the complaining party proves the existence of such prejudice. *Iyar v. Becheserrak*, 9 ROP 154, 156 (2002).

DISCUSSION

As a threshold matter, we can dispense with Tbang Clan’s claim that the Land Court erred by failing to consider a Tochi Daicho map it sought to add to the record as an exhibit to its post-trial motion for reconsideration. As the Land Court correctly noted in its order denying Tbang Clan’s motion, a motion for reconsideration may not be used to retry a case and new evidence is

¹The sequence of the Cadastral Lot numbers does not correspond to the T.D. ones. They are listed numerically for ease of reference.

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not properly considered at that stage. Moreover, Tbang Clan has failed to demonstrate a critical element necessary to warrant reversal—prejudice. The record clearly reflects that a Tochi Daicho map was part of the record in this case. Tbang Clan has **L3** not shown how the fact that the Land Court used some other map than Tbang Clan’s preferred one was prejudicial error.

More substantively, Tengoll and Tbang Clan both take issue with various of the Land Court’s determinations. Specifically, Tengoll asserts that the Land Court erred by awarding Cadastral Lot numbers B00-039 and B00-040 to KSPLA, by awarding Cadastral Lot numbers B00-032 and B00-041 to Tbang Clan, and by dividing Cadastral Lot number B00-030 between those two parties. As to the KSPLA lots and the portion of B00-030 awarded to Tbang Clan, Tengoll cannot overcome the deferential clearly erroneous standard of review. As we have repeatedly stated, where “there are two permissible views of the evidence, the fact finder’s choice between them cannot be clearly erroneous.” *Iderrech v. Ringang*, 9 ROP 158, 160 (2002) (quoting *Olngebang Lineage v. ROP*, 8 ROP Intrm. 197, 200 (2000) and collecting cases) (internal quotation and citations omitted). Here, the Land Court’s conclusions concerning those three parcels are amply supported by evidence in the record and cannot therefore be clearly erroneous.

The determinations concerning B00-032 and B00-041 stand on a different footing. In its summary of the evidence, the Land Court noted that Tengoll asserted that B00-032 was part of the piece of property comprised of T.D. lot numbers 769-772. In awarding the parcel to Tbang Clan, the Land Court obviously must have rejected Tengoll’s testimony, but nothing in the record indicates why the Land Court did so. The Land Court also initially awarded B00-041 to Tengoll, but amended its findings and conclusions two weeks later to award the property to Tbang Clan, on the ground that the parcel actually lies within T.D. Lot number 773. But beyond a statement that “[t]he Court omitted worksheet lot no. B00-041 from Tochi Daicho Lot No. 773 and, instead, included it as part of Tochi Daicho Lot Nos. 769, 770, 771, and 772,” the Land Court failed to articulate the grounds for this conclusion as well. Because we cannot review the lower court’s determinations as to these two parcels on this record, remand is necessary to allow the Land Court to elucidate its reasoning.

Tbang Clan challenges the Land Court’s determinations that the Catholic Mission² owns Cadastral Lot numbers B00-027 and B00-028, that Tengoll owns B00-038, and that KSPLA owns B00-039. As to all but B00-038, however, these claims fail for the same reason as the Tengoll appeal: there is more than enough evidence in the record to support the Land Court’s conclusions. As such, they cannot be clearly erroneous and reversal is therefore unwarranted.

As to B00-038, however, there is insufficient fact-finding to permit review. The Land Court awarded this parcel to Tengoll, apparently on the ground that it lay within the property listed in the Tochi Daicho (lot numbers 769-772) as belonging to her predecessor in interest, Mad. But on Court exhibit 1, a marked up copy of Cadastral Worksheet B00-006, the lot looks

²The Land Court and the parties have used the expression “Catholic Mission” throughout these proceedings. The Catholic Mission did not participate in this appeal, but on remand it would be appropriate to issue determinations of ownership using the proper corporate name of the Church rather than the colloquial “Catholic Mission” expression.

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to fall within T.D. lot number 773, which the Land Court awarded to Tbang Clan. As we cannot discern how the Land Court reached the conclusion it did, we cannot conduct appellate **14** review on this point. Remand is therefore necessary.

CONCLUSION

For the foregoing reasons, the Land Court's Adjudication and Determination of March 30, 2001, is affirmed in part. This matter is remanded to the Land Court for further proceedings concerning Cadastral worksheet lot numbers B00-032, B00-038 and B00-041.