

*Ngaraard State Pub. Lands Auth. v. Rechucher*, 10 ROP 11 (2002)  
**NGARAARD STATE PUBLIC LANDS AUTHORITY,  
and PALAU PUBLIC LANDS AUTHORITY,  
Appellants,**

v.

**JOHN K. RECHUCHER,  
Appellee.**

CIVIL APPEAL NO. 02-05  
LC/E 00-320

Supreme Court, Appellate Division  
Republic of Palau

Argued: October 11, 2002  
Decided: October 28, 2002

Counsel for Appellant: Matthew Johnson

Counsel for Appellee: Pro se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;  
KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable FRANCISCO KEPTOT, Associate Judge, presiding.

SALII, Justice:

The Ngaraard State Public Lands Authority and the Palau Public Lands Authority (the Public Lands Authorities) appeal a determination of ownership of the Land Court finding that John K. Rechucher is the owner of a portion of Ngerengchong which is comprised of sections of Tochi Daicho Lots 462 and 467. We affirm.

### **BACKGROUND**

In 1958, the Trust Territory Government was ordered to return portions of Tochi Daicho Lots 462 and 467 which consisted of approximately 49.13 acres, to Ibedechang Clan. *See Esebei v. Trust Territory of the Pacific Islands*, 1 TTR 495 (Tr. Div. 1958). In 1980, Rechucher purportedly purchased all of the lots he claimed in the proceeding below. In the instant Land Court action, Rechucher claimed ownership of lands called Ngerenchong, Ngerdangel, and Melii which consisted of the whole or portions of Tochi Daicho Lots 462, 467, and 469, and included the lands adjudicated in 1958. The Public Lands Authorities argued that the parcels were public land.<sup>1</sup>

---

<sup>1</sup>Although there were multiple claimants to the lands at issue, the Land Court's adverse determinations of

*Ngaraard State Pub. Lands Auth. v. Rechucher*, 10 ROP 11 (2002)

The Public Lands Authorities did not obtain a transcript of the hearing. According to Rechucher, however, at the start of the ¶12 hearing, the Land Court introduced Worksheet 2000-E-003, a map that included specific lot locations and areas, and ordered all parties to examine the Worksheet and advise the court of any objections. None of the parties objected to the exhibit and the Land Court used the Worksheet depiction as the basis of its determination.

The lots at issue in this appeal are Lot 00E003-001 consisting of 166,659 square meters, Lot 007 E 02-K consisting of 18,409 square meters, Lot 007 E 02-I consisting of 12,805 square meters, and Lot 007 E 02-H consisting of 3,514 square meters. The total area is 201,387 square meters.<sup>2</sup> These lots correspond to the land adjudicated by the Trust Territory Court.

On appeal, the Public Lands Authorities argue that because the 49.13 acres adjudicated in *Esebei* amounts to only 198,822 square meters, the Land Court committed an error of law when it awarded Rechucher ownership of 201,387 square meters. To remedy this claimed error the Public Lands Authorities request that the case be remanded to the Land Court for a new survey and issuance of a new determination of ownership reflecting lands limited to 49.13 acres.

### STANDARD OF REVIEW

We review the Land Court findings of fact for clear error, *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998), and its conclusions of law *de novo*, *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

### DISCUSSION

The Public Lands Authorities urge us to find that the Land Court erred as a matter of law by awarding more land than was sought. Although we believe that the matter complained of would be more accurately described as an issue of fact, the characterization of the issue is immaterial as we find the Public Lands Authorities seek to argue an issue not raised below. Thus, the issue is waived.

In general, parties waive issues not raised to the court below.<sup>3</sup> *Ngiraked v. Media Wide, Inc.*, 6 ROP Intrm. 102, 104 (1997). In *Ngiraked*, this Court found that the appellant's argument on appeal, that the appellee relied on a disputed deposition in its summary judgment motion, had not been argued to the trial court and therefore was waived. The same principle applies in this case. The Worksheet indicated the lot sizes that the Public Lands Authorities now find so problematic. The parties had an obligation to ensure that the lots at issue were correctly identified and measured and to object to the Worksheet exhibit if they believed the dimensions were not correct. Furthermore, because the Public Lands Authorities did not obtain a transcript

---

their claims were not appealed.

<sup>2</sup>In their brief to this Court, the Public Lands Authorities argued a calculation of 201,027 square meters. It is clear from an examination of the Worksheet that the area is as stated in the text above.

<sup>3</sup>Two exceptions to the general rule exist. *See Tell v. Rengiil*, 4 ROP Intrm. 224, 226 (1994). Because the Public Lands Authorities did not argue that either is applicable to this case, we do not entertain them here.

*Ngaraard State Pub. Lands Auth. v. Rechucher*, 10 ROP 11 (2002) of the hearing, we must presume that they had the opportunity to object and did not. *See Pedro v. Carlos*, 9 ROP 101, 102 (2002). The Public Lands Authorities will not be granted another opportunity to argue an issue that they should ¶13 have raised in the first instance below.

In an attempt to redefine the waiver issue, the Public Lands Authorities asserted at oral argument that there was no dispute until the Land Court issued its determination relying on the *Esebei* court's award of 49.13 acres to Rechucher's grantor. This argument fails for two reasons. First, the *Esebei* decision itself refers to "approximately 49.13 acres." *Esebei*, 1 TTR at 498. We believe that an additional six tenths of an acre falls within the provenance of "approximately." Second, the Land Court's recitation of 49.13 acres was simply a shorthand for the court to make clear the lots to which it was referring. In discussing Rechucher's claim, the Land Court described the parcel as "[t]he 49.13 acres that covers part of Tochi Daicho Lot 462 (Ngerdangel and Melii)." Land Ct. Op., English Translation at 3 (January 15, 2002). This reference contains three descriptions of the parcel in an attempt to accurately identify these lots claimed by Rechucher as opposed to other lots claimed by him. Finally, when the court issued its determinations it used the Worksheet Lot numbers, the Tochi Daicho numbers and, where appropriate, the common names. Thus, the Public Lands Authorities' argument—that the court "did not intend to give more land to Appellee beyond the 49.13 acres"—fails.

#### CONCLUSION

For the foregoing reasons, the determination of the Land Court is affirmed.