

Ilebrang Lineage v. Omtilou Lineage, 11 ROP 154 (2004)

**ILEBRANG LINEAGE,
Appellant,**

v.

**OMTILOU LINEAGE,
Appellee.**

CIVIL APPEAL NO. 03-019
LC/E 02-104

Supreme Court, Appellate Division
Republic of Palau

Argued: March 22, 2004

Decided: June 7, 2004

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Counsel for Appellant: Honora E. R. Rudimch

Counsel for Appellee: No appearance

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

Appeal from the Land Court, the Honorable DANIEL N. CADRA, Senior Judge, presiding.

MILLER, Justice:

Appellant Ilebrang Lineage challenges a Land Court determination that Appellee Omtilou Lineage is the owner of a taro patch in Choll Hamlet, Ngaraard, shown as Lot No. 02E011-019 on BLS Worksheet No. 02E011. Because the Land Court did not find facts sufficient to support its conclusion, we remand for further proceedings.

BACKGROUND

Even with the testimony of several witnesses with knowledge of the taro patch at issue, the history of the patch is not clear.¹ Annemary Tochi (“Annemary”), who claimed the patch on behalf of Appellant, testified that her mother, Ilebrang, owned the taro patch after World War II. According to her, after Ilebrang’s death in around 1947, her husband, Ringang, granted permission to his mother, Leleng, to use the taro patch on the condition that she return it when

¹Both sides argue that the Tochi Daicho supports their claim. Omtilou Lineage claims the taro patch is Lot No. 367, which lists Omtilou as the owner; Ilebrang Lineage contends the patch is listed as Lot No. 369, which is marked as Ilebrang. Because there is no known map of the Tochi Daicho plots in the area, the Land Court could not settle the dispute. Consequently, the Tochi Daicho is not useful in determining ownership.

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Ilebrang's children were old enough to use it. After Leleng's death, her children, including Omtilou, and her grandchildren began using the patch. Several decades later, Annemary decided she wanted the patch returned, but Rolmii Klsong ("Rolmii"), who claimed the land on behalf of Omtilou Lineage, refused. Despite the refusal, Annemary later gave another relative, Adolf, permission to begin using the patch. Adolf was using the patch at the time of the hearing.

Although witnesses for Omtilou **L156** Lineage did not corroborate Annemary's claim that Ilebrang owned the patch until her death, they did not challenge it, either. As for the use of the patch, Rolmii and Youlsau Rirou ("Youlsau") agreed with Annemary's testimony that members of Omtilou Lineage have used the patch almost exclusively since Ilebrang's death.

ANALYSIS

We review the Land Court's factual findings for clear error, *Ngerusebek Lineage v. Irikl Clan*, 8 ROP Intrm. 183, 183 (2000), and its legal conclusions *de novo*, *Fanna Mun. Gov't v. Sonsorol State Gov't*, 8 ROP Intrm. 9, 9 (1999).

The Land Court noted two independent yet intertwined rationales for its determination in favor of Omtilou Lineage, both based almost solely on the fact that members of Omtilou Lineage had used and controlled the taro patch since Ilebrang's death. First, the Court appeared to conclude that Omtilou Lineage's use of the land was persuasive evidence of its ownership. Second, the Court determined that any claim Ilebrang Lineage might have had is now barred by the 20-year statute of limitations found in 14 PNC § 402(a)(2).²

If supported by the facts, either rationale standing alone would have been sufficient to support the Land Court's determination. Instead of fully developing either rationale, however, the Land Court here seemed to mix them, and the two theories are incompatible. *See Mesubed v. Iramek*, 7 ROP Intrm. 137, 139 (1999) ("Evidence regarding an individual's use and possession of land, and the absence of evidence that the adverse party acted consistent with ownership, is relevant in determining ownership of the land irrespective of whether the doctrine of adverse possession applies.").

Following *Mesubed v. Iramek*, a court may find that long, uninterrupted use by one party is proof that the party has always owned the land. Here, however, the Land Court never determined that Omtilou's use of the land showed that it had always owned it. In order to do so, it would have had to reject Annemary's testimony that the patch was originally owned by Ilebrang and that Omtilou was using it with Ilebrang's permission. But the Court never passed judgment on Annemary's testimony or delved into the history of the patch. Instead, after making its findings as to the use of the patch since Ilebrang's death, the Court stated that "[f]urther factual findings are neither necessary nor appropriate to the resolution of this dispute." The Land Court's conclusion that "[w]hile the land may have belonged to Ilebrang, the children of Ilebrang have done nothing consistent with their claim of ownership since 1947" is not compatible with an award to Omtilou Lineage pursuant to *Mesubed*. If the land did, in fact, belong to Ilebrang,

²Section 402(a) states: "The following actions shall be commenced only within 20 years after the cause of action accrues . . . (2) actions for the recovery of land or any interest therein."

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Mesubed does not apply, and Omtilou Lineage could only have acquired title by meeting the requirements for adverse possession.

Unlike *Mesubed*, adverse possession allows a party that did *not* originally own the land to acquire title to it through long, uninterrupted—and hostile—use. *Pedro v. Tiakl*, 8 ROP Intrm. 221, 224 (2000) (“To trigger the running of the limitations period, a party’s possession of the land must be, *inter alia*, hostile or adverse and under a claim of **L157** right of title.”).³ But the findings of the Land Court are also insufficient to uphold an award to Omtilou Lineage on that basis. Although the Land Court found that members of Omtilou had used the land since Ilebrang’s death, it made no finding that their use of the land was hostile. And in order to make that finding, it would have had either to reject Annemary’s testimony that the original use of the land was permissive or to find that it had become hostile⁴ for the 20-year statutory period,⁵ and to do so notwithstanding the general rule that “[t]he existence of a familial relationship between claimants to the land defeats the requirement that the possession be hostile.” *Sebal v. Tengadik*, 7 ROP Intrm. 149, 151 (1999); *see also Rebluud v. Fumio*, 5 ROP Intrm. 55, 56 (1995) (“Moreover, appellant conceded a family relationship with appellees, and this negates any possibility that his possession was hostile or adverse.”).

CONCLUSION

The Land Court’s findings are not sufficient to uphold the award of the taro patch to Omtilou Lineage. We accordingly vacate the Determination of Ownership and remand for further proceedings. Because Senior Judge Cadra is no longer at the Land Court, the case should be assigned to a new judge, who can decide whether another hearing is necessary in order to

³Although the Land Court never explicitly relied on adverse possession, 14 PNC § 402(a) and adverse possession are two sides of the same coin. *See PPLA v. Salvador*, 8 ROP Intrm. 73, 77 (1999) (“Adverse possession and the statute of limitations must be considered together. A claimant obtains much the same result whether claiming under a 20-year adverse possession claim, or invoking a 20-year statute of limitations defense.”). An individual or a party can obtain title to land by adverse possession—and the statute of limitations only begins to run—if possession is actual, open, visible, notorious, continuous, hostile or adverse, and under claim of right or title; if one of these requirements is lacking, there is no adverse possession. *See Andres v. Desbedang Lineage*, 8 ROP Intrm. 134, 135 (2000); *Arbedul v. Rengelekel A Kloulubak*, 8 ROP Intrm. 97, 98 (1999); *Ngerungor Clan v. Mochouang Clan*, 8 ROP Intrm. 94, 97 (1999).

⁴Although this Court has not explored what is required for a permissive use to become hostile, several U.S. courts have required a “clear, positive, and unequivocal act brought home to the owner, such as an explicit disclaimer. . . . [T]here must be either actual notice of the hostile claim, or acts or declarations of hostility so manifest and notorious that actual notice will be presumed.” 3 Am. Jur. 2d *Adverse Possession* § 50 (2002).

⁵Annemary testified that she asked for the patch to be returned but that Rolmii told her that the patch belonged to Omtilou Lineage, thus providing actual notice of a hostile claim. That testimony alone, however, is not sufficient to support a conclusion that the use had been hostile for 20 years because the Land Court never determined when the conversation between Annemary and Rolmii took place. Instead, the Court noted Annemary’s testimony that the taro patch was to be returned to Ilebrang’s children when they became old enough to tend it themselves. But the mere fact that members of Omtilou Lineage continued using the patch as Ilebrang’s children grew older did not provide the children with notice that the use was hostile.

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determine who owned the patch initially and whether any events have taken place that affected the initial ownership. The ultimate determination “may, but need not, reach the same result as the first Determination of Ownership.” *Matchiau v. Telungalek Ra Klai*, 7 ROP Intrm. 177, 179 (1999).