

Uchelkumer Clan v. Isechal, 11 ROP 215 (2004)

**UCHELKUMER CLAN,
Appellant,**

v.

**YASHINTO ISECHAL,
Appellee.**

**SUSAN NGIRAUSUI,
Appellant,**

v.

**UCHELKUMER CLAN,
Appellee.**

CIVIL APPEAL NO. 03-037
LC/R 03-01 & 03-03

Supreme Court, Appellate Division
Republic of Palau

Argued: July 7, 2004

Decided: September 10, 2004

L216

Counsel for Uchelkumer Clan: Raynold Oilouch

Counsel for Ngirausui: Clara Kalscheur

Counsel for Isechal: Oldiais Ngiraikelau

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable GRACE YANO, Part-Time Judge; the Honorable ROSE MARY SKEBONG, Associate Judge; and the Honorable SALVADOR INGEREKLII, Associate Judge, presiding.

MILLER, Justice:

Uchelkumer Clan (“the Clan”) and Susan Ngirausui (“Ngirausui”) appeal from the Land Court’s second set of determinations of ownership concerning parcels of land located in the Peleliu village of Imelchol (“the land”). The land is identified in the Peleliu Tochi Daicho as Lot Nos. 1004 and 1002 and designated as Cadastral Lot Nos. 283-191, 283-192, 283-198, and 283-198A. After the case was remanded to the Land Court for further proceedings, a new panel of

Uchelkumer Clan v. Isechal, 11 ROP 215 (2004)

Land **1217** Court judges determined that Yashinto Isechal (“Isechal”) owned Lot Nos. 283-198 and 283-198A and the Clan owned Lot Nos. 283-191 and 283-192. Because the second Land Court panel did not violate the claimants’ due process rights by issuing a new decision without hearing additional evidence and the new panel’s findings were not clearly erroneous, we affirm the Land Court’s determinations on remand.

BACKGROUND

In November 1998, a Land Court panel comprised of Judges Francisco Keptot, Grace Yano, and Thedosia Blailes held a hearing to determine the ownership of all of the lots in Imelchol Village. The Land Court found that Imelchol was the property of the Clan, and Ngirchongor Rekui, a former title bearer of the Clan, had divided Imelchol among the Tochi Daicho listees to allow them to use the land to grow coconuts to meet the requirements of the German Administration. Imelchol was used for coconut plantations through the Japanese Administration until Peleliu was evacuated during World War II. Most of the individual claimants relied on the Tochi Daicho listings of relatives to establish their ownership of the disputed parcels of land, but many of the claimants had not returned to Imelchol after World War II and they had no personal knowledge of the history of the land. Based on the testimony and evidence presented at the hearing, the Land Court issued a decision (with Judge Keptot dissenting) awarding ownership of all of the lots in Imelchol Village to the Clan. Isechal and Ngirausui, along with other claimants, appealed.

On March 3, 2003, the Appellate Division affirmed all of the Land Court determinations of ownership except for those concerning the land claimed by Isechal and the land claimed by Ngirausui. We found that those two claimants presented evidence in addition to the Tochi Daicho listings that was not addressed in the Land Court’s decision but that might have had an impact on the Land Court’s weighing of the evidence. Therefore, we remanded the case back to the Land Court for further proceedings with respect to the lots claimed by Isechal and Ngirausui. On July 22, 2003, a different Land Court panel, comprised of Judges Grace Yano, Rose Mary Skebong, and Salvador Ingereklii, issued its adjudication awarding ownership of Lot Nos. 283-198 and 283-198A to Isechal and Lot Nos. 283-191 and 283-192 to the Clan. The second Land Court panel did not hold a new hearing, but issued its new adjudication based solely upon its review of the record. The Clan and Ngirausui appealed.

STANDARD OF REVIEW

This Court reviews the Land Court’s factual findings under the clearly erroneous standard. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). Under this standard, if the Land Court’s findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made. *Id.* Conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

ANALYSIS

Uchelkumer Clan v. Isechal, 11 ROP 215 (2004)

The Clan argues that the Land Court's second decision was issued in violation of its right to due process. Specifically, the Clan contends that it was entitled to have the matter heard and decided on remand by the same panel of judges or, at the very least, it was entitled to notice of the Land Court's intention **1218** to replace the original judges with new judges and an opportunity to object to the new panel or to request a new hearing. Alternatively, the Clan asserts that the second adjudication was clearly erroneous and should be reversed. Ngirausui has also filed an appeal, arguing that the Land Court erred in awarding the lots that she claimed to the Clan. We will address the claims of the Clan and Ngirausui separately below.

I. Uchelkumer Clan's Claim

Although the Clan believes that it was either entitled to have its case heard on remand by the same panel of judges or to present new testimony in support of its claims, it has identified no statute or rule stating that the Land Court cannot decide a case on the written record or that it must first give the parties notice of its intention to do so. The Land Court has decided remanded cases on the existing record without taking additional evidence in the past. *See Tengoll v. Tbang Clan*, 11 ROP 61, 65 (2004) (upholding issuance of revised determination without further hearing). Here, our opinion remanding this case specifically stated that the Land Court "need not take additional evidence" in reaching its decision on remand. *Mesebeluu v. Uchelkumer Clan*, 10 ROP 60, 73 (2003). Moreover, Senior Land Court Judge J. Uduch Senior issued an Order Appointing Three Judge Panel on June 4, 2003, which provided the parties with notice that Judges Skebong and Ingereklii would be members of the new panel, along with Judge Yano. Some of the parties asserted at oral argument that they did not receive this order and did not know that Judges Keptot and Blailes were no longer members of the panel.¹ Even if so, the parties took no action while nearly five months elapsed from the time that the case was remanded until the second Land Court panel issued its decision. It was incumbent on any party who did not want the decision to be issued on the existing record to give notice to the Land Court of that party's request for a hearing, particularly since our opinion remanding the case expressly stated that the Land Court could proceed without taking additional evidence. Instead, the parties did nothing until after the new Land Court panel had issued its decision. Under these circumstances, the Clan's right to due process did not entitle it to a new hearing on remand and does not entitle it to any relief from the Land Court's decision on appeal.

The Clan further argues that any violation of its due process rights is especially egregious in this case, where the original panel of judges issued findings of fact and a decision in favor of the Clan that was reversed by the new panel on remand based on contradictory findings. The Clan points to an apparent contradiction between the original finding that the individual claimants merely had a use right to the land because clan land cannot be converted into individual property without the consent of the clan, and the new finding that Ngirchongor Blolobel unilaterally conveyed part of Imelchol to Isechal's father in payment for services rendered. (March 8, 1999 Decision, Finding of Fact No. 4; July 22, 2003 Adjudication, Findings of Fact Nos. 1 and 2). However, the second panel did not disagree with the original finding; instead, it found that the senior members of the Clan gave their consent to the conveyance to Isechal's father through the absence of any protest for a long period of time. (July 22, 2003

¹Isechal's counsel received this order and attached it to his brief.

Uchelkumer Clan v. Isechal, 11 ROP 215 (2004)

Adjudication, Finding of Fact No. 4). These findings are not irreconcilably inconsistent. Moreover, our opinion specifically allowed the second panel to give **L219** further consideration to the parties' claims and reach a different result than the first panel did because the first panel failed to clarify whether its findings took into account the facts specific to Isechal's and Ngirausui's claims. Therefore, the second panel complied with our mandate in issuing a new adjudication based on new findings of fact.

In its final argument, the Clan contends that the second Land Court panel's adjudication was clearly erroneous because it was contrary to the weight of the evidence presented at the hearing. The Clan asserts that the original findings were the result of the first panel's ability to assess the credibility of the witnesses and to conclude that Isechal was not a credible witness. In other words, the Clan asserts that the original panel considered the facts and testimony that Isechal presented to support his claim, but it chose not to believe him. Therefore, the Clan contends that the second adjudication was clearly erroneous because it failed to take into account this credibility finding by the first panel of judges in awarding the land to Isechal.

However, Isechal presented ample evidence to support the second Land Court panel's findings and adjudication. The second Land Court panel was presented with a credibility issue when it was asked whether to credit Isechal's or the Clan's history of the land. Although Isechal based his claim, in part, on the Tochi Daicho listing, he also substantiated his claim with additional evidence as to how his father had obtained the land. Isechal testified that the Clan's title bearer, Ngirchongor Blolobel, conveyed the land to his father during the Japanese Administration to reward his father for his visits to the title bearer and his wife. Isechal further testified that Ngirchongor Blolobel told his father to plant his coconut trees on the land, register his name on the land, and keep it for himself. Although Isechal was a young child when his father died, he remembered his father clearing the land and growing coconut trees. In addition, his older relatives and a former Ngirchongor, Salvador, had similar knowledge of how the land became Isechal's property, and they showed him the land and related its history to him when he returned to Peleliu after he finished his schooling in Koror. Isechal himself cleared the land and saw coconut trees still growing on the land in around 1948 or 1950. It appears that the second Land Court panel, including Judge Yano, who was present at the original hearing, believed the evidence presented by Isechal, and where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous. *Ngetchab Lineage v. Klewei*, 8 ROP Intrm. 116, 117 (2000). The second Land Court panel's decision to accept the testimony of Isechal over the testimony of representatives of the Clan was supported by the evidence and, therefore, was not clearly erroneous.

II. Ngirausui's Claim

Ngirausui argues that the Land Court erred in awarding the lots she had claimed, Cadastral Lot Nos. 283-191 and 283-192, to the Clan.² In our prior opinion, we noted that Ngirausui, like Isechal, had presented evidence in addition to the Tochi Daicho listing "that might have had an impact on the Land Court's weighing of the evidence," but that we could not

²The Clan's contention that Ngirausui's appeal was untimely filed was rejected by this Court's Order entered on June 10, 2004.

Uchelkumer Clan v. Isechal, 11 ROP 215 (2004)

tell “whether it weighed the facts specific to these [claimants].” *Mesebeluu*, 10 ROP at 73. This evidence included not only a March 1, 1989 Deed of 1220 Transfer from the descendants of the Tochi Daicho listee to Ngirausui’s deceased father, but also evidence that the grandchildren of the Tochi Daicho listee had received war claims reparations on the land and that, unlike many of the other individual claimants who never returned to the land after the war, the daughter-in-law of the Tochi Daicho listee farmed the land in the 1950s. Ngirausui claims that this evidence supports a finding that the Tochi Daicho listee had individual ownership of the land and was able to convey ownership to Ngirausui’s father.

However, the second Land Court panel specifically addressed all of this evidence in its adjudication. The Land Court pointed out that the receipt of war claims reparations is not necessarily proof of land ownership because reparations were paid not only for land, but also for crops, houses, and other personalty. (Adjudication at 3). Ngirausui produced no evidence that the war claims reparations were paid for the land itself, rather than for damages to personalty or crops. In addition, although the Land Court acknowledged Ngirausui’s witnesses’ testimony that their mother had farmed the land, it also noted that—like most of the claimants discussed in the first appeal—they had no knowledge of how their grandfather had come to own the land and pointed solely to the Tochi Daicho listing in his name. As we stated in our prior opinion, we did not mean to “suggest that the evidence presented by either [Ngirausui or Isechal] was conclusive,” but were unsure whether the Land Court had “failed to consider the evidence at all.” *Mesebeluu*, 10 ROP at 73. Now that the Land Court has expressly considered this evidence, the Land Court’s decision to award ownership of the land to the Clan instead of to Ngirausui was not clearly erroneous.

In further opposition to the Land Court’s decision, Ngirausui points out that the Land Court failed to state which claims and testimony offered by the Clan it was relying on to reach its decision on remand. The Land Court’s summary in its adjudication stated only that, “[t]he claims and testimony of Uchelkumer Clan are incorporated herein.” Ngirausui argues that this summary is insufficient, particularly in a case such as this where two of the judges did not see any of the witnesses testify and had to make their factual findings based only on a dry record. However, the Land Court is not required to reiterate every fact alleged at the hearing in its decision because the availability of a transcript allows meaningful review to take place. *Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 35-36 (1999). Here, it is clear from a review of the adjudication and transcript in this case that the Land Court rejected the testimony offered by Ngirausui in favor of the testimony offered by members of the Clan, such as Ngirchongor Ermas Ngirachelbaed.

Although Ngirausui raises other arguments, they have been addressed in our prior opinion. We held that it was not clear error for the Land Court to have concluded that actual ownership of the land never passed from the Clan to the Tochi Daicho listees, and we specifically rejected the contention that the Clan was estopped from challenging the Tochi Daicho listings, stating that, “[t]here is no rule that prevents a party from relying on the Tochi Daicho as to one parcel of land but challenging its accuracy as to another.” *Mesebeluu*, 10 ROP at 75.

CONCLUSION

Uchelkumer Clan v. Isechal, 11 ROP 215 (2004)

For the reasons discussed above, we affirm the Land Court's determinations.