

Ikluk v. Udui, 11 ROP 93 (2004)
SANTOS IKLUK,
Appellant,

v.

GEGGIE A. UDUI and
KATEY O. GIRAKED,
Appellees.

GEGGIE A. UDUI,
Appellant,

v.

KATEY O. GIRAKED,
Appellee.

CIVIL APPEAL NOS. 02-015,
02-019, & 02-020
LC/B 01-519 & 01-520

Supreme Court, Appellate Division
Republic of Palau

Argued: December 2, 2003

Decided: March 4, 2004

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Counsel for Ikluk: Mark Doran

Counsel for Udui: Moses Uludong, T.C.

Counsel for Giraked: No appearance

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

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

MILLER, Justice:

Geggie A. Udui and Santos Ikluk filed these appeals challenging the determinations of ownership of the Land Court concerning the land reflected in the Koror Tochi Daicho as Lot Nos. 137 and 138 and in the Cadastral Worksheet as Lot Nos. 010 B 06 Part A and Part B, respectively (“contested property”). For the reasons set forth below, we affirm the Land Court’s

determinations.

BACKGROUND

The two subject parcels of land are listed in the Tochi Daicho as individual property belonging to Moluel. Moluel died intestate at an unspecified date before 1957, and there is no evidence of an eldecheduch being held to dispose of the contested property. Moluel had a daughter by the name of Lalii. Lalii had a son named Ikluk who, in turn, was the father of claimant Santos Ikluk (“Ikluk”).

Irorou Ilengelang (“Irorou”) was Moluel’s niece. A January 16, 1973, land acquisition record discloses that Irorou filed a claim for the contested property as inheritance from Moluel. In 1973, Irorou entered into a transaction with Katey Ochob Giraked for the sale of Tochi Daicho Lot No. 138. The sale was recorded in 1981, and pursuant to a court judgment Irorou transferred a quitclaim deed to Katey Giraked in 1983. In 1980, Irorou sold Tochi Daicho Lot No. 137 to Masami Asanuma, who conveyed the land to claimant Geggie Asanuma Udui (“Udui”), his daughter.

Following a hearing, the Land Court found that the evidence supported the inference that Irorou owned the contested property and therefore had authority to sell the land to Giraked and Udui. Based on the testimony of the Koror State land registration **195** officer Chamberlain Ngiralmu as well as a review of the January 16, 1973, land acquisition record, the Land Court determined that Tochi Daicho Lots 137 and 138 are both located in Cadastral Lot No. 010 B 06. The Land Court then found that Udui owned the half of Lot No. 010 B 06 adjacent to Lots 010 B 04 and 010 B 05 (“Part A”) while Katey Giraked owned the half adjacent to Lot 010 B 07 (“Part B”). Ikluk and Udui appeal the determinations of the Land Court, Ikluk claiming that he was the rightful heir to the contested property and Udui claiming that the Land Court should have awarded her the property in its entirety.

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).

IKLUK’S APPEAL

By his first issue on appeal, Ikluk asserts that the Land Court erred in finding that Irorou is the proper heir of Moluel. It is undisputed that no eldecheduch was held after Moluel’s death. Moreover, Moluel’s death preceded the enactment of Palau District Code § 801, which was Palau’s first statutory law governing the disposition of the property of an intestate decedent. Despite Ikluk’s claim that Palauan custom dictates that his grandmother Lalii was the legitimate heir of Moluel, no party presented any expert testimony before the Land Court regarding who Moluel’s customary heirs would have been after his demise. ¹ The Land Court concluded that

¹Katey Giraked did testify that as caretakers of Moluel, she and her mother, as ebedel a kesol er ngii,

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Irorou owned the contested property based on a line of cases holding that a party's actions or inactions are relevant to the determination of ownership.

Ikluk contends that Palauan case law dictates that, if it is not otherwise disposed of at an *eldecheduch*, a decedent's land passes to his children. As we have recently explained, "[t]his is an incorrect statement of law." *Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 152 (2003). While we have upheld determinations to that effect, we have expressly "left open the possibility that [the] evidence . . . might support a different result," *Matchiau v. Telungalek ra Klai*, 7 ROP Intrm. 177, 179 (1999) (citing *Ruluked v. Skilang*, 6 ROP Intrm. 170, 172 (1997)), and thus "we have yet to formulate a single rule to deal with" these circumstances, *Tangadik v. Bitlaol*, 8 ROP Intrm. 204, 205 (2000). Rather, consistent with our usual approach to customary matters, we have gone no further than to say that "the property passes to the proper customary heir or heirs" and "who the customary heir happens to be is a question of fact to be established by the parties before the Land Court." *Dirrabang*, 10 ROP at 152. Thus, while a trial court may determine that, under custom, a decedent's land passes to his children, it is not bound to do so, particularly where, as here, no expert testimony was introduced.

In this case, the Land Court relied on a line of cases that hold that a court may infer a valid transfer of land to a claimant when that claimant has occupied the land without objection for a significant period of time. We have explained:

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While possession of land is not always an indication of ownership, we believe it is a fair inference that occupation of the land by appellee's family following [the land owner's] death and for the past thirty or more years is indicative of a tacit or *de facto* disposition of the land to them.

Elewel v. Oiterong, 6 ROP Intrm. 229, 233 (1997). In *Mesubed v. Iramek*, 7 ROP Intrm. 137 (1999), for example, the Tochi Daicho listed Krasai as the owner of a land traditionally known as Imerab. Appellant Mesubed was Krasai's daughter and his only surviving child. Appellee Iramek was Krasai's nephew. After Krasai's death, Iramek moved to Imerab, built a house, and lived there in excess of 20 years without any objection from Mesubed. In upholding the determination of the LCHO and that of the Trial Division, this Court stated that while not conclusive, it is certainly relevant when determining ownership that a claimant has not performed any acts consistent with ownership for a significant period of time. *Id.* at 139 (citing *Armaluuk v. Orrukem*, 4 TTR 474, 478 (Tr. Div. 1969)). Similarly, Iramek's uncontested occupation of the land suggested that he was the proper heir. *Id.* Implicit in these cases is the premise that although there may be no direct evidence of the disposition of a property, evidence of an individual's use and possession of the property may be relevant in ascertaining ownership.

As in *Mesubed*, the instant case presents a fact situation where the chain of ownership of the contested property went unchallenged for roughly forty years after Moluel's death. None of Ikluk's ancestors disputed Irorou's claim to the land. On the other hand, Irorou and her successors-in-interest performed acts consistent with ownership. On these facts, the Land Court did not err in finding that Irorou was the proper heir of Moluel with the authority to transfer the

were in charge of Moluel's land.

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contested property to Udui and Giraked. Given our disposition of this issue, Ikluk's remaining issues on appeal are moot and need not be addressed by the Court.

UDUI'S APPEAL

On cross-appeal, Geggie Udui asserts that the Land Court erred in finding that the land acquired by Katey Giraked fell within the contested property, and in therefore dividing the property between the two of them. Essentially, Udui argues that the evidence presented to the Land Court could be construed to indicate that Giraked actually occupied Cadastral Lot No. 010 B 07 rather than Lot No. 010 B 06. Because a certificate of title to Lot No. 010 B 07 had already been issued in 1985 to an outside party, Udui argues that Giraked has no claim to the land at the heart of the instant dispute. However, the Land Court's Adjudication and Determination discloses that the trier of fact took all evidence into consideration in ascertaining to which property Giraked held a claim. In drawing its conclusions, the Land Court not only weighed the credibility of the oral testimony but also reviewed the 1973 land acquisition record as well as Irorou's sketch of her property. Those records indicate that Irorou witnessed the setting of the boundary monuments for what became Cadastral Lot Nos. 010 B 06 and 07 and thus would have known the boundary at the time she conveyed Lot 138 to Giraked. Accordingly, the Land Court's finding that Katey Giraked owned a portion of the contested property is not clearly erroneous. 197

CONCLUSION

For the foregoing reasons, we AFFIRM the determinations of the Land Court.