

Basilus v. Basilus, 12 ROP 106 (2005)
ROMANA BASILIUS,
Appellant,

v.

**SIANGELDEB BASILIUS, BAULANG RDECHOR, BAILIA KINTARO, SABINA
BASILIUS, LEO RULUKED, POLYCARP BASILIUS, SEVERINO RULUKED, and
MITSKO WALTER,**
Appellees.

CIVIL APPEAL NO. 03-047
LC/P 02-171

Supreme Court, Appellate Division
Republic of Palau

Argued: January 17, 2005

Decided: March 22, 2005

⊥107

Counsel for Appellant: Salvador Remoket

Counsel for Appellees: Kevin N. Kirk

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
ALEX R. MUNSON, Part-Time Associate Justice.

Appeal from the Land Court, the Honorable ROSE MARY SKEBONG, Associate Land Court
Judge, presiding.

PER CURIAM:

This appeal involves land known as *Meres*, Tochi Daicho Lot Nos. 198 & 199, as shown
as Lot 020 P 05 on BLS Cadastral Plat No. 020 P 00, located in Ngeraus Hamlet, Ngchesar State.
The Tochi Daicho lists Merkii as the individual owner.¹ Merkii died without a will in 1963.

A hearing on the disputed property was held on July 24, 2003. All the parties appeared
pro se. On August 27, 2003, the Land Court issued its Decision and Determination of Ownership
in favor of Appellees. The Land Court found that Appellant Romana Basilus (“Romana”) had
not been adopted by Merkii and, in the absence of any surviving children of Merkii, Siangeldeb
Basilus’s (“Siangeldeb”) claim was superior to any other claims before the court.²

¹*Meres* was originally listed as two separate lots, but were later combined during the current registration
program into single Lot No. 020-P-05.

²The Land Court never reached the issue of whether Siangeldeb was Merkii’s adopted brother, because it

Basilus v. Basilus, 12 ROP 106 (2005)

In response to the determination, Romana (now represented by counsel) filed a Motion for Reconsideration with the Land Court pointing out, for the first time, that a prior Land Court case specifically found that she had been adopted by Merkii and, in fact, had awarded another piece of Merkii's property to her for that very reason. See *In re The ownership of Lot No. N-48, a land known as Tikei, located in Oikull Hamlet, Airai State*, LC/N 00-261 (2000). She further noted that Katarina Kesolei ("Katarina"), who appeared and testified on behalf of Siangeldeb in the immediate matter, also appeared on behalf of the adverse claimant in the earlier proceeding. ¶108 As a result, Romana argued that Katarina should have been barred from claiming that she had not been adopted based on either collateral estoppel or issue preclusion. The Land Court, however, disagreed, stating simply: "[f]or the reasons expressed in *Sadang v. Ongesii* [10 ROP 100 (2003)], that the Land Court is the 'main event' where a claimant should present all facts that best support her claim, the motion for reconsideration is DENIED."

STANDARD OF REVIEW

Land court decisions 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*. See *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

ANALYSIS

Romana asserts three assignments of error on appeal. She first claims the Land Court erred when it found that she was not the adopted daughter of Merkii and adds that "had the Land Court allowed the new evidence from the former case into this case then the issue of [her] adoption by Merkii would have been so clear to everyone including the court below." Secondly, Romana argues that the Land Court misapplied this Court's holding in *Sadang* and therefore erred in denying her Motion for Reconsideration. Lastly, Romana claims that, regardless of whether she was actually adopted by Merkii, the Land Court erred when it found that Siangeldeb's claim to Merkii's property was superior to any other claims before it. Because the answer to her first assignment of error depends in large part on the treatment of the previous Land Court decision on which Romana seeks to rely, the Court will start by addressing the Land Court's denial of Romana's Motion for Reconsideration.

In *Sadang*, appellant filed a Motion for Reconsideration after failing to be awarded the land in dispute, arguing, among other things, that he had originally lined up witnesses to testify on his behalf at the original hearing (which was postponed), and that his lay representative became preoccupied with other matters and forgot to prepare for the hearing at its new date. In response, the Land Court vacated its Decision and Determination of Ownership and eventually determined that appellant was in fact the owner of the land in question. This Court, however, reversed. First noting that we had not had the occasion to decide whether the Land Court was endowed with inherent powers outside the Land Court Rules – because the Land Court Rules do not contain a rule comparable to Rule 60(b) of the Palau Rules of Civil Procedure³ – we found

was undisputed that Siangeldeb was at the very least Merkii's nephew.
³Rule 60(b) ("Relief from Judgment or Order") states in pertinent part:

Basilus v. Basilus, 12 ROP 106 (2005)

that, **¶109** regardless of whether the Land Court possessed any such power, “no relief was warranted in the circumstances presented here.” *Sadang*, 10 ROP at 102. We therefore held the Land Court had “abused its discretion and exceeded whatever inherent power it might have had” in reconsidering and vacating its first determination. *Id.*

In this case, although the Land Court did not elaborate on *Sadang*, Romana interprets the reliance on the case to mean that the court believed *Sadang* stripped it of any inherent power it might have. From this assumption, she then contends that the Land Court did not even consider the arguments and evidence contained in her Motion for Reconsideration, but instead simply denied her motion on the ground that she failed to produce this evidence at the hearing. She further argues that, contrary to the appellant in *Sadang*, she was prepared for the hearing but was under the mistaken impression that the Land Court had already decided the issue of her adoption to Merkii.

At the outset, we disagree with Romana’s allegation that the Land Court believed *Sadang* stripped it of any inherent authority and therefore it did not consider the arguments and evidence contained in her Motion for Reconsideration. To the contrary, given the court’s pronouncement that “the Land Court is the ‘main event’ where a claimant should present all facts that best support her claim,”⁴ we read the Land Court’s order to mean that, whatever its authority, no relief was warranted under the conditions present in this case.⁵

On this reading, we see no reversible error. Here, we need not decide whether, as in *Sadang*, the Land Court would have abused its discretion if it had granted Romana’s motion. Rather, it is sufficient to say that its denial of her motion was not an abuse of discretion. The only potential bases for relief argued by Romana on appeal are her claims that (a) the Land Court should have allowed the “new evidence” from the former case, and (b) that she was under the “mistaken assumption” that the Land Court had already decided the issue.⁶ It is plain that the

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.
On motion and upon such terms as are just, the court may relieve a party or the party’s legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) . . .

⁴Indeed, the Land Court was paraphrasing what this Court quoted in *Sadang*. See *Sadang*, 10 ROP at 102 (quoting *Temael v. Ellechel*, 8 ROP Intrm. 324, 326 (2001)) (“the Land Court hearing is the ‘main event’ where a claimant should marshal the facts in support of his or her claim as best as possible.”).

⁵This Court recently recognized that the Land Court has the inherent authority, under certain circumstances, to reconsider an original, erroneous determination and enter a new determination of ownership. *Shmull v. Ngirirs Clan*, 11 ROP 198 (2004).

⁶As mentioned earlier, Romana argued in her Motion for Reconsideration that Katarina Kesolei should be barred from claiming she had not been adopted by Merkii based on collateral estoppel, or issue preclusion. It is unclear how this could be so since Katarina was merely a witness for two different

Basilus v. Basilus, 12 ROP 106 (2005)

prior Land Court decision, issued more than three years earlier, was not “new evidence” within the meaning of Rule 60(b). *See* n.3 *supra*; *see generally Sadang*, 10 ROP at 102 (“Accordingly, we follow the Land Court’s lead in looking to Rule 60(b) for **¶110** guidance as to what inherent powers the Land Court might have.”). Moreover, whatever Romana’s assumption, she nevertheless had the opportunity to – and did – present a full account of why she claimed to have been adopted by Merkaa. Accordingly, we find that the Land Court did not err in denying her Motion for Reconsideration.

Having reached this conclusion, we next address Romana’s first assignment of error in light of the actual evidence and testimony presented at the hearing below. In reaching its finding that Romana was not adopted by Merkaa, the Land Court found that the “unrebutted testimony of Katarina Kesolei and Basilia Kintaro is that Romana Basilus was given to and raised by Elechuus when she was a baby.” [Determination, at 7]. Furthermore, the court found the testimony of Romana’s own natural mother, Josepha Skilang, supported the contention that Merkaa gave Romana to Elechuus to raise because her hands were full with her own sick child. Although Romana declares that Katarina Kesolei’s testimony was unconvincing, this Court has made clear that it will not “substitute its own judgment of the credibility of witnesses, based on its reading of a cold record, for . . . the trial court’s assessment of their veracity.” *In re Shadel*, 5 ROP Intrm. 265, 266 (1996) (quoting *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994)). Accordingly, we hold the Land Court was not clearly erroneous in concluding Romana was not adopted by Merkaa.

Last, the Court turns to Romana’s third assignment of error. Romana argues that, regardless of her purported adoption by Merkaa, her claim is still superior to that of Siangeldeb. She asserts that, pursuant to Palauan custom, she is a strong member of the family because she is the natural daughter of a female line (an ochell descendant) in relationship to Merkaa. Siangeldeb, on the other hand, is a weak member because he is a child of a male line. In the alternative, Romana also contends the Land Court failed to lay out a factual and legal basis for deciding that Siangeldeb’s claim was superior.

Romana’s arguments have no merit. First, she did not make the bloodline argument to the Land Court before the issuance of the Determination of Ownership, nor was it mentioned in her Motion for Reconsideration. Throughout the proceedings, Romana has based her claim solely on her alleged mother-daughter relationship with Merkaa, and we have expressly stated that “[t]his Court will not entertain arguments that the trial court did not have the opportunity to hear . . . [and] there is no basis for considering them for the first time of appeal.” *In re Rengiil*, 8 ROP Intrm. 118, 120 (2000) (internal citations omitted). Second, we find the Land Court adequately explained the basis for its determination. *See Tangadik v. Bitlaol*, 8 ROP Intrm. 204 (2000). In articulating its reasons, the Land Court stated:

claimants. We need not decide this issue, however, since Romana did not raise this legal theory on appeal. *See Nakatani v. Nishizono*, 2 ROP Intrm. 7, 12 (1990) (“Except for issues of constitutional magnitude, an appellate court is limited in its deliberations by the record on appeal and the issues framed by the parties. The scope of appellate review is generally limited to matters complained of or points raised in the appeal.”).

Basilus v. Basilus, 12 ROP 106 (2005)

The court is thus convinced that there was no adoption. Therefore, the claim of Romana Basilus to Merkii's property on the basis that she is Merkii's sole surviving child and heir, must be rejected. Finally, we turn to the claims of Siangeldeb Basilus based on his relationship as nephew to Merkii. There was testimony by Leo Ruluked that Siangeldeb was adopted by Merkii's parents, and therefore Merkii's brother. Whether he was Merkii's nephew or her brother is not critical since in ¶111 the absence of any surviving children, Siangeldeb's claim to Merkii's properties is superior to any of the other claims before the court.

[Determination, at 8]. In our opinion, it is clear that, after finding that Romana had failed to prove her one and only claim by a preponderance of the evidence, *i.e.*, that she was the adopted daughter of Merkii, the Land Court awarded the property to the only other claimant with a colorable claim.

CONCLUSION

For the foregoing reasons, the judgment of the Land Court awarding the properties known as *Meres* to Appellees is AFFIRMED.