

Ongesii v. Children of Silmai, 12 ROP 131 (2005)
MENGIDAB ONGESII,
Appellant,

v.

CHILDREN OF SADANG SILMAI,
Appellee.

CIVIL APPEAL NO. 03-23
LC/E 00-345

Supreme Court, Appellate Division
Republic of Palau

Decided: June 21, 2005¹

Counsel for Appellant: Moses Uludong

Counsel for Appellee: David Kirschenheiter

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

Appeal from the Land Court, the Honorable GRACE YANO, Land Court Judge, presiding.

PER CURIAM:

This appeal marks the second time this land dispute has come before the Appellate Division of this Court. As recounted in *Sadang v. Ongesii*, 10 ROP 100 (2003), Mengidab Ongesii (“Mengidab”) filed a Motion for Reconsideration after the Land Court awarded the land in question to the children of Sadang Silmai (“children of Sadang”), arguing that numerous mistakes made by his lay representative handling his case constituted cause for vacating the decision under ROP R. Civ. P. 60(b)(1). Along with his motion, Mengidab submitted affidavits from prospective witnesses and asserted that those witnesses would have rebutted the testimony that the Land Court relied upon in making its prior findings. In response, the Land Court vacated its Decision and Determination of Ownership, conducted **¶132** another hearing to allow Mengidab to present additional evidence, and, in the end, determined that he was in fact the owner of the land in question. On appeal, this Court reversed. Finding that Land Court abused its discretion in vacating the initial determination because “no relief was warranted in the circumstances presented here,” *Sadang*, 10 ROP at 102, we remanded the matter back with instructions to reinstate the original determination of ownership.

¹Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral arguments pursuant to ROP R. App. P. 34(a).

Ongesii v. Children of Silmai, 12 ROP 131 (2005)

Mengidab now appeals that determination. In particular, Mengidab appeals the Land Court's finding that, although his father, Ongesii, was listed in the Tochi Daicho, Sadang Silmai ("Sadang") was the true owner of land known as *Ngellitel*.² At the outset, we quickly dispense with Mengidab's suggestion that we should look at evidence adduced at the second hearing. An obvious implication from our holding that the Land Court abused its discretion in granting his motion for reconsideration is that the second hearing should never even have been held. Thus, all evidence arising therefrom has no role in our present determination. The sole question before us is whether a reasonable trier of fact could have found, by clear and convincing evidence, that the Tochi Daicho presumption had been rebutted based on the evidence presented at the first hearing. *Andres v. Desbedang Lineage*, 8 ROP Intrm 134 (2000); *Arbedul v. Romei Lineage*, 8 ROP Intrm. 30 (1999).³

After considering this evidence, we find no reversible error. Mengidab presented only one witness at the hearing -- his forty year old son, John Mengidab ("John"). Although John's testimony provided general background information -- such as that Ongesii was Kodep, or sacred leader, of Ngaramodekngai, *Ngellitel* is a Ngaramodekngai historical site, and that he recently constructed a large concrete house on the property -- he did not possess any specific knowledge as to how Ongesii acquired ownership of the property. By contrast, the children of Sadang presented four witnesses whose testimony was detailed, apparently uninterested, and often based on first hand information. *See Pedro v. Tiakl*, 8 ROP Intrm. 221 (2000) (Land Court's finding of ownership was amply supported by the record where testimony developed by one party did not establish her theory of how land was acquired and testimony submitted by other party presented a specific amount of how land was acquired which was corroborated by an independent witness and by family members). Merraoch Tarkong and Techebui Ngiracheluolu, both elder female members of Esebres Clan, testified that *Ngellitel* was originally Esebres land, but was given to Sadang as his inheritance by his adopted father, and chief of the clan, Ngirachesebres Bedul. Merraoch added that Tungel, successor to Bedul, placed boundary markers on *Ngellitel* during the Japanese survey, and that Sadang was represented by Ongesii (his uncle) because he was attending school **L133** abroad at the time. Furthermore, Naruo Robert and Siwarong Ngiraibai testified they personally attended Sadang's eldecheduch wherein *Ngellitel* was given to his children.

In light of this testimony, we cannot say that the Land Court was clearly erroneous when it concluded: "[Ongesii's] respected, if not fearsome character, along with the evidence given by Richard Sadang's witnesses who are older and presumed to have greater and more accurate knowledge of past events, convince this court clearly that the Tochi Daicho listing of Ongesii as owner of Lot 65 is wrong. The court is convinced that the land was given to Sadang Silmai, and

²The property is designated as Tochi Daicho Lot No. 65 and Lot No. 00E-002-001 on BLS Worksheet No. 200-E-002. *Ngellitel* is located in Choll Hamlet, Ngaraard State.

³Although Mengidab raises three assignments of error in his brief, two of them are not worthy of being fully addressed by this Court. Mengidab's second assignment of error -- the Land Court erred in finding that *Ngellitel* was given out in Sadang's eldecheduch -- relies exclusively on evidence from the second hearing. Furthermore, his third assignment of error -- the Land Court erred because he is entitled to *Ngellitel* under custom as heir to Ongesii -- only begs the all-important question of who is the owner of the land.

Ongesii v. Children of Silmai, 12 ROP 131 (2005)
in turn, was given at his death and eldecheduch to this children.” [Determination, at 5].

CONCLUSION

For the foregoing reasons, the judgment of the Land Court awarding the property known as *Ngellitel* to the children of Sadang is AFFIRMED. The matter, however, is remanded to the Land Court to issue a new determination of ownership which enumerates each child by name, instead of “Children of Ngiracherang Sadang Silmai.” See *Children of Dirrabang v. Children of Ngirailid*, 10 ROP 150 (2003).