

*Tmiu Clan v. Hesus*, 12 ROP 156 (2005)  
**TMIU CLAN,**  
**Appellant,**

**v.**

**VERONICA HESUS,**  
**Appellee.**

CIVIL APPEAL NO. 04-006  
LC/S 02-166

Supreme Court, Appellate Division  
Republic of Palau

Decided: July 11, 2005<sup>1</sup>

Counsel for Appellant: Pro Se

Counsel for Appellee: Yukiwo Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;  
LOURDES F. MATERNE, Associate Justice.

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

PER CURIAM:

The Land Court credited the testimony of Veronica Hesus over that given by witnesses on behalf of Tmiu Clan. The Clan now challenges that determination and the Land Court's ultimate conclusion that Veronica owned the disputed property. We affirm the decision of the Land Court.

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### **BACKGROUND**

According to a 1950 survey, Tmiu Clan owned the land known as "Steba" (or "Elengel") in Ngermasech Hamlet, Angaur State, and identified as Worksheet Lot No. 299-31 on Bureau of Lands and Surveys Worksheet No. 299. The map showing the results of the 1950 survey, Serial Map No. 355, PAN-1, was not published until 1962. So although the map of Angaur lists the Clan as the owner of Steba, Veronica maintained during the Land Court proceedings that the Clan gave the land to her father Tomei Oscar (Tomei) shortly after the survey was conducted and before the map was published.

According to Veronica's testimony, which the Land Court specifically found credible,

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<sup>1</sup>After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. ROP R. App. P. 34(a).

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Tomei built his home on Steba in 1952 or 1953, and he and his family lived there for over 50 years without any objection from the Clan. Additionally, Veronica and her husband Hesus built a home on the property over 30 years ago, also without objection from any Clan members.

Carlos Salii, on behalf of the Clan, testified that the Clan never gave the land to Tomei but instead simply allowed him to use it. As evidence of the Clan's continued ownership, Salii testified that it collected war claims for damages to the land in the 1970s. Additionally, the Clan introduced into evidence two Land Use Agreements concerning Steba, one signed by Veronica's husband in 1994, and the other signed by Veronica's brother in 1997. Both agreements, submitted to obtain financial assistance with construction projects on residential buildings on the property, acknowledged that the Clan owned the land. Veronica testified, however, that she was unaware of either agreement.

After evaluating the testimony and evidence, the Land Court commented that "[r]esolution of this essentially boils down to whether the Court finds the testimony that Tmiu Clan orally transferred this land . . . to Tomei credible." Then, as mentioned above, the Court specifically credited Veronica's testimony, noting her demeanor, her age and ability to perceive and understand things at the time of the transfer, and corroboration of her testimony by other witnesses. On the other hand, the Land Court described Salii's testimony as "vague and not supported by the evidence."

The Land Court also found significant that Tomei and his family had occupied the land for over 50 years without objection from the Clan. And the Land Court stated that the Land Use Agreements did not act as any type of waiver or concession by Veronica as to ownership of Steba given that she was unaware of them.

The Land Court concluded that it was more probable than not that the senior strong members of the Tmiu Clan gave Steba to Tomei sometime after the land was surveyed. Accordingly, Veronica was awarded ownership of the land in fee simple. The Clan appeals.

## ANALYSIS

We review the Land Court's findings of fact under the clearly erroneous standard, under which the findings will not be set aside as long as they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this Court is left with a definite and firm conviction that a mistake has been made. *Rechucher v. Ngirmeriil*, 9 ROP 206, 210-11 (2002). We review a Land Court's conclusions of law *de novo*. *Children of Dirrabang v. Children v. Ngirailild*, 10 ROP **1158** 150, 151 (2003).

Despite the well-known holding that the trial judge is best situated to make credibility determinations and that we will generally defer to those decisions, *Palau Cmty. Coll. v. Idid Clan*, 10 ROP 143, 149 (2003); *Ngirasechedui v. Whipps*, 9 ROP 45, 47 (2001), Tmiu Clan expresses disagreement with the Land Court's decision to credit Veronica's testimony over that of Salii's about the transfer of Steba. We can see no reason to upset the credibility determination in this case, particularly where the Land Court explained its determination as being a result of the

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witnesses' manner and demeanor, the age of the witnesses at the time of the events they were describing, and the details provided by the witnesses.

Tmiu Clan also asserts that the Land Court's repeated emphasis on the length of time Tomei's family had occupied the land without objection from the Clan was a misguided attempt to apply the principles of adverse possession and statutes of limitation. We find nothing in the Land Court's written order to indicate that it based its conclusion on either of those doctrines.

Finally, Tmiu Clan recounted evidence that supported its version of events regarding Steba, including the 1962 map listing it as the owner, the war compensation it received in the 1970s, and the Land Use Agreements it executed in the mid-1990s, which, Tmiu Clan argues, the Land Court was bound to honor as a written admissions of ownership.

Given the finding of credibility as to Veronica's testimony, we cannot conclude that the Land Court's ultimate decision was clear error, even in the face of the evidence marshaled by the Clan. The transfer of land Veronica discussed occurred after the map survey but before its publication, which would explain that the Clan was listed as the landowner. Additionally, although the Land Use Agreements identified the Clan as the owner of Steba, the Land Court referred to that acknowledgment as "solely for the purpose of obtaining housing loans," and also found significant that Veronica was unaware of the agreements and thus could not be found to have waived her interest in the land.

We have said before that where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous and reversal is warranted only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *Ngerukebid Lineage v. KSPLA*, 9 ROP 180, 182-83 (2002). We therefore conclude, because there is support in the record for the Land Court's findings, that the determination below is not clearly erroneous. *Sadang v. Ngersikesol Clan*, 8 ROP Intrm. 63, 64 (1999) (concluding that where there is support in the record for the trial court's findings of fact, there is no clear error).

## CONCLUSION

For the reasons stated above, we affirm the Land Court's determination that Veronica is the owner in fee simple of Steba.