

Rechucher v. Lomisang, 13 ROP 143 (2006)

JOHN K. RECHUCHER,
Appellant,

v.

NGERIBONGEL LOMISANG,
Appellee.

CIVIL APPEAL NO. 04-037
LC/H 01-97

Supreme Court, Appellate Division
Republic of Palau

Decided: July 21, 2006¹

1144

Counsel for Appellant: Pro se

Counsel for Appellee: David Kirschenheiter

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice.

Appeal from the Land Court, the Honorable MOSES ULUDONG, Part-Time Judge, presiding.

PER CURIAM:

John Rechucher appeals from the Land Court's determination of ownership concerning a parcel of land located in Ngardmau State known as *Osiuchermel* ("the Land"). The Land is identified in the Ngardmau Municipality Daicho Map as Lot 14 and as Lot 436 in the Merrengor Map. After holding a hearing, the Land Court determined that Ruth Ngeribongel Lomisang owned the Land. For the foregoing reasons, we affirm.

BACKGROUND

This appeal concerns a Land Court determination of ownership regarding land known as *Osiuchermel* located in Ngardmau State. Although Ngardmau is one of four states in Palau lacking a Tochi Daicho listing from the Japanese land registration program,² two uncertified and unofficial maps have been used in past cases to determine land ownership in the state and were presented in this case. The Ngardmau Municipality Daicho Map (SK-503/91) designates *Osiuchermel* as Lot 14 and registers it under the name of Arurang. The so-called Merrengor Map

¹ The court has concluded that oral argument would not materially assist in the resolution of this appeal. ROP R. App. P. 34(a). The hearing set for August 7, 2006, is therefore canceled.

² According to the trial testimony, the Ngardmau Tochi Daicho was destroyed during World War II.

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(Jan. 15, 1951) designates the same land as Lot 436 and lists ownership in Lomisang. Taro Ngiraingas, a former surveyor with the Bureau of Lands and Surveys, testified as to the creation and accuracy of these two maps. According to Ngiraingas, neither map has been certified as accurate. When asked which map he believed to be the most accurate, Ngiraingas replied that he could not say. LC Hearing Transcript at 337.

In the Land Court, Appellant John Rechucher claimed ownership through a deed from Kuiroy Arurang. Kuiroy testified on Rechucher's behalf. According to Kuiroy, the Land was originally owned by a man named Ngirakerisil, who gave the Land to Kuiroy's father, Arurang, in return for care and support ("ulsiungel") provided prior to the former's death. Kuiroy's father initially used the Land to grow tobacco. Later, a Japanese mining company leased the Land as a residential area for employees of the nearby bauxite mine. The Japanese company leased the Land for a total of three years, until the onset of World War II in Palau. The Land remained unused from 1941 until 1995.

Kuiroy's father passed away in 1972. Subsequently, in 1983, Kuiroy filed a registration statement of all lands he claimed to have inherited from his father, including *Osiuchermel*. In 1992 or 1993, Kuiroy spent two days improving the road crossing the Land, using a grader and bulldozer. According to Kuiroy, he received no complaints regarding his access of the Land during this two-day period. Thereafter, in 1995, Kuiroy purported to sell the Land to John Rechucher, in a series of transactions. Rechucher testified that, following these transactions, he built several houses and § 1145 planted coconut trees and other plants on the Land, without complaint or challenge from any other purported owner of the Land.

Appellee Ruth Ngeribongel Lomisang claimed *Osiuchermel* based on her grandfather's ownership and conveyance of the parcel. According to Ruth, her grandfather Lomisang was given the Land by Ngerbachesis Clan in return for services rendered. The Clan later took back the Land, after which Lomisang redeemed the Land from Renguul, an ochell of the Ngerbachesis Clan, through payment of Palauan money called Ngerulik. Subsequently, during the Japanese Administration, Lomisang collected rent from the bauxite mining company that occupied and used the Land. Two other claimants, Gracia Yalap and Ngiraidid Ilengelekei, confirmed this story. Lomisang later transferred the Land to his granddaughter Ruth.

After holding a hearing, the Land Court determined that Ruth Lomisang now owned the Land. The court discredited Kuiroy Arurang's testimony regarding his father's ownership, and Kuiroy's subsequent acquisition of the Land. Finding that no evidence supported Arurang's ownership of the Land except the appearance of his name in Japanese characters on the Ngardmau Daicho Map, as well as that "[t]here was no showing that Kuiroy ever became owner of [the Land] through his father's will, Cheldech duch, or court disposition of Arurang's estate except his self-serving registration statement of October 6, 1983 alleging ownership of his father of lot 14 in TD Map." Having concluded that Kuiroy had never owned the Land, the court reasoned that he could not have transferred the Land to Rechucher. In contrast, the court credited the testimony of Ruth Lomisang, Yalap, and Ilengelekei regarding Lomisang's ownership and transfer of the Land. Regarding the competing maps, the court found that when placed on the Merrongor Map, the Land fits into a portion of Lot 436, registered in the name of Lomisang. Although the Ngardmau Municipality Daicho Map listed the Land as part of Lot 14, registered in

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the name of Arurang, the court credited the Merrengor Map in light of the evidence and credible testimony of Lomisang's ownership as well as the doubts as to the accuracy of both maps.

STANDARD OF REVIEW

This Court employs the *de novo* standard in reviewing the lower court's conclusions of law. *Shmull v. Ngirirs Clan*, 11 ROP 198 (2004). The Land Court's factual findings are reviewed under the clearly erroneous standard. *Id.* 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. *Obak v. Joseph*, 11 ROP 124, 127 (2004). In reviewing the factual findings, this Court will not substitute its own judgment of the credibility of the witnesses or the weight of the evidence. *Cura v. Salvador*, 11 ROP 221, 222 (2004).

ANALYSIS

Rechucher raises three issues on appeal. First, he maintains that the Land Court committed clear error in finding that no evidence supported Kuiroy's claims that his father originally owned the Land, and later transferred the Land to him. Second, Rechucher argues that the Land Court erred in failing to apply the doctrine of *res judicata* to the issue of the relative credibility of the Merrengor Map and Ngardmau Daicho Map. Finally, he urges that the Appellee's claim is **L146** barred by the statute of limitations and adverse possession.

I. Land Court Factual Findings

Rechucher argues, first, that the Land Court erred in finding that no evidence supported Arurang's ownership of the Land, other than the appearance of his name in Japanese characters on the Ngardmau Daicho Map. The evidence cited by Rechucher, however, consists of nothing more than his own testimony presented during the Land Court hearing. The Land Court itself has already considered and discounted this testimony. The Land Court clearly chose to credit the testimony of Ruth Lomisang, and her supporting witnesses, over that of Kuiroy Arurang and John Rechucher. Having done so, this Court may not reweigh the evidence or reassess the credibility of Rechucher's witnesses. *Ebilklou Lineage v. Blesoch*, 11 ROP 142, 144 (2004). This Court's role is limited to determining whether the Land Court's findings can be said to be clearly erroneous. Based on the evidence presented at the Land Court hearing, they cannot.³

Rechucher also attacks the Land Court's findings in favor of Lomisang. Rechucher's entire argument rests on one portion of the transcript during the testimony of another claimant,

³ Rechucher also attacks the Land Court's additional conclusion that he had not presented any evidence that Kuiroy Arurang took the Land from his father through a will, *eldechoduch*, or other court disposition, other than Kuiroy's own "self-serving" registration. Rechucher asserts that this finding was erroneous because, regardless of the lack of such evidence, Kuiroy succeeded to the Land as a matter of law, pursuant to the then-existing intestacy statute, Palau District Code § 801(c). Putting aside the question of whether Rechucher's failure to raise this argument before the Land Court renders it waived, *see Kotaro v. Ngirchchol*, 11 ROP 235, 237 (2004), the issue becomes irrelevant in light of the Land Court's finding that Kuiroy's father never owned the Land in the first place.

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Ngiraidid Ilengelekei. According to Rechucher, while Ilengelekei had earlier testified that Lomisang collected rents for the Land during the Japanese Administration, he later expressed uncertainty and confusion on the issue. Land Court Hearing Transcript at 308. Rechucher urges that this confusion was, in effect, a retraction of his earlier testimony. As a result, he submits that the Land Court's reliance on Ilengelekei's testimony regarding Lomisang's collection of rent from the Japanese bauxite mining company was clear error.

While Ilengelekei did express some confusion during the cited portion of his testimony, read as a whole, this uncertainty relates to the validity of the competing maps, not, as Rechucher suggests, the Land for which Lomisang was collecting rent. The testimony cited by Rechucher came in response to a question regarding the fact that Lomisang's name, while appearing on the Merrengor Map, does not appear on the Ngardmau Daicho Map. Ilengelekei's response⁴ does not stand as a clear retraction of his earlier testimony that Lomisang received the Land as a gift and later collected rent from the mining company. LC Hearing Transcript at 300. If anything, the testimony stands in support of the Land Court's conclusion that neither the Merrengor nor **¶147** Ngardmau Daicho Maps can stand as conclusive proof of ownership. In any event, the testimony is not so clear that a reasonable trier of fact would have been forced to disregard Ilengelekei's testimony entirely. To the contrary, a reasonable trier of fact could have reached the conclusion that Lomisang collected rent from the Japanese bauxite mining company and thus owned the Land at the time. Therefore, the Land Court's factual findings are not clearly erroneous.

II. Issue Preclusion

Rechucher also objects to the Land Court's failure to apply the doctrine of *res judicata* to hold that judgments in earlier determination of ownership actions between Rechucher, Lomisang, and other claimants involving nearby land conclusively found the Ngardmau Municipal Daicho Map to be accurate. Lomisang, in turn, argues that the Land Court's findings regarding the Daicho Map were not essential to those earlier judgments, which turned on the specific testimony and evidence of ownership outside of the map listings.

Under the Restatement (Second) of Judgments, applicable in Palau pursuant to 1 PNC § 303, "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Restatement (Second) of Judgments § 27 (1982). For a determination in a previous case to be conclusive under *res judicata*, it must have been "essential to the judgment." *Saka v. Rubasch*, 11 ROP 137, 140 (2004) (citing Restatement (Second), *supra*, § 27). Thus, "[i]f issues are determined but the judgment is not dependent upon the determinations, relitigation of those issues in a subsequent action between the parties is not precluded." Restatement (Second), *supra*, § 27, cmt. h. See also *Saka*, 11 ROP at 140; *Sers v. Ucherbuuch*, 1 ROP Intrm. 595, 595 (1989).

⁴ "That is why I'm not sure about it, and that is why there are many – Rechucher, these – you were Governor and attorney, so in Ngardmau, you are well off – these maps – I say we, the people of the Ngardmau, do not accept these to use them. That's the one I'm confused of." LC Hearing Transcript at 308.

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Rechucher cites two prior Land Court determinations of ownership involving land near or adjacent to *Osiuchermel*, to which both Lomisang and Rechucher were party. In each of these cases, the Land Court held that the claimants asserting ownership based on the Merrengor Map's listing of Lomisang had failed to present any supporting evidence (besides the map itself) or to explain the different ownership listing in the Ngardmau Daicho Map. In light of these unexplained contradictions, the Court awarded ownership based on the more convincing evidence supporting the Daicho Map's ownership listing:

The only evidence presented by claimants Gracia Yalap and Ngeribongel Mariur to support their claim of ownership to Lot H 187 is the fact that Lomisang's name appears on Lot 439 in the Merrengor Map. Neither claimant tried to convince this court that the Merrengor Map was accurate and reliable, nor did they have any explanation for the contradicting Ngardmau Municipality Daicho Map, which gives a different listing from the map that they produced. Without any other proof of ownership by Lomisang, and in light of the more convincing evidence that Edekroi exercised ownership of the land, the claims of Gracia Yalap and Ngeribongel L148 Mariur to Lot H [are] rejected.

In re Ownership of Land Known as Ongesachel-Kism, LC/H 01-97 (Determination dated Nov. 25, 1998, at 6). In a determination issued by the same court one month later, the court came to the same conclusion (using identical language) regarding the failure of Yalap and Mariur to introduce evidence supporting the Merrengor Map's listing in favor of Lomisang, and the more convincing evidence in favor of the claimant listed in the Ngardmau Daicho. *In re Ownership of Land Known as Tennis Court*, LC/H 01-97 (Determination dated Dec. 30, 1998, at 6).

It is clear from the foregoing that in the above cases the Land Court's determination did not turn on the Ngardmau Daicho listing, but rather on the evidence and testimony presented on behalf of the claimants listed in (or taking from) those persons listed in the Daicho. Moreover, the court did not hold that the Daicho Map was entirely accurate, or even completely accurate as to land in the vicinity of *Osiuchermel*. Instead, the Land Court's reasoning in these prior cases was consistent with that in the present case: in the absence of an original Tochi Daicho survey map, and with the presence of two conflicting maps of questionable veracity, the court considered the ownership listing in both the Ngardmau Daicho Map and the Merrengor Map, as well as other evidence of ownership, when making its determination of ownership. Such an approach comports both with the testimony of Taro Ngiraingas, who testified in the present case that he did not believe either map to be entirely accurate or reliable,⁵ as well as the general policy that where the Tochi Daicho is unavailable, or otherwise lacks the usual indices of reliability, it loses its standard presumption of accuracy. *See Bausoch v. Tebei*, 4 ROP Intrm. 203, 206 (1994) ("Where, as here, the Tochi Daicho has been destroyed or is otherwise unavailable, it loses its value as extrinsic evidence of the results of the carefully conducted land survey performed by the

⁵ When asked by Rechucher which of the maps the Land Court usually relied on, Ngiraingas responded that in his experience, attorneys generally choose and rely on the map that contains the listing favorable to their party. LC Hearing Transcript at 341. Ngiraingas also testified in the prior cases cited by Rechucher. His testimony in those hearings is not part of the record in the present action.

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Japanese administration just before World War II.”); *Ngiraingas v. Isechal & Bank of Hawaii*, 1 ROP Intrm. 34, 41 (Tr. Div. 1982) (holding that the Peleliu Tochi Daicho will not be accorded a presumption of accuracy because the map does not exhibit the usual care, formality, and completeness present in other Tochi Daicho maps).

In the above cases, the Land Court found not that the Ngardmau Daicho is generally more reliable than the Merrengor Map, but rather that, with respect of the individual lots at issue, the bulk of the evidence supported the listing of the Ngardmau Daicho over that of the Merrengor Map. Thus, while the court may have believed that the Daicho map, on the whole, is more accurate than the Merrengor Map, its factual findings were limited to the conclusion that, in that instance, the Daicho listing was more accurate. Thus, any belief on the part of the Land Court that the Ngardmau Daicho is superior to or more accurate than the **L149** Merrengor Map was not essential to the judgment. For this reason, the Land Court correctly concluded that it was not bound by the prior determinations.

III. Adverse Possession/Statute of Limitations

Finally, Rechucher argues that Lomisang’s claim to the Land should have been barred by the doctrine of adverse possession and/or the running of the statute of limitations. Having failed to raised these issues before the Land Court, however, he is barred from raising them here. This Court has consistently refused to consider issues raised for the first time on appeal. *Kotaro v. Ngirchchol*, 11 ROP 235, 237 (2004) (“No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited the issue, even if it concerns a matter of constitutional law.”) (citing *Tell v. Rengiil*, 4 ROP Intrm. 224 (1994)). Neither of the two recognized exceptions to this general rule – which allow the court to consider an issue first raised on appeal (1) “to prevent the denial of fundamental rights,” and (2) “when the general welfare of the people is at stake” – is present here. *Tell*, 4 ROP Intrm. at 226. Thus, the Court will not address Rechucher’s adverse possession/statute of limitations claim.

CONCLUSION

For the reasons set forth above, we affirm the Land Court’s determination of ownership.