

Rechirikl v. Descendants of Telbadel, 13 ROP 167 (2006)
JOHANES RECHIRIKL and SIANG RECHIRIKL,
Appellants,

v.

DESCENDANTS OF TELBADEL OF NGERUKEBID LINEAGE,
Appellees.

CIVIL APPEAL NO. 05-017
LC/B 01-341, LC/B 01-342

Supreme Court, Appellate Division
Republic of Palau

Argued: June 28, 2006

Decided: August 8, 2006

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Counsel for Appellant: Oldiais Ngiraikelau

Counsel for Appellee: Johnson Toribiong

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; and J. UDUCH SENIOR, Associate Justice Pro Tem.

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

PER CURIAM:

BACKGROUND

This appeal follows the Land Court's adjudication of competing claims of ownership of land located in Ngermid Hamlet, Koror. The land subject to dispute is Tochi Daicho Lot 206, commonly known as *Etang*, and Tochi Daicho Lot 207, commonly known as *Medalarael*. The Land Court found that the Tochi Daicho lists Rechirikl Tiai ("Rechirikl") as the owner of both lots, however, the Land Court held that the Descendants of Telbadel had successfully overcome the Tochi Daicho's presumption of correctness by presenting evidence that Rechirikl was merely a trustee as opposed to the individual owner of the disputed lots.

Johanes and Siang Rechirikl ("Appellants") filed the instant appeal on behalf of Rechirikl's children, arguing that the Land Court erred in holding that the presumption in favor of the Tochi Daicho was overcome by clear and convincing evidence because the testimony below amounted to nothing more than a "swearing contest," which is never sufficient to rebut said presumption. At a minimum, Appellants urge the Court to remand this case to the Land

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Court with instructions to specifically identify the Descendants of Telbadel as including Rechirikl's children.

STANDARD OF REVIEW

The Land Court's findings of fact are reviewed under a clearly erroneous standard. *Aribuk v. Rebluud*, 11 ROP 224, 225 (2004) (citing *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998)). Under this standard, if the 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. *Id.* (citing *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000)); *see also Arbedul v. Romei Lineage*, 8 ROP Intrm. 30, 30 (1999) (noting that the trial court's finding that a Tochi Daicho listing is inaccurate is reviewed using the same standard as any other factual finding).

ANALYSIS

Appellants first assert that the Land Court erred in holding that the Descendants of Telbadel ("Appellees") had overcome the presumption of correctness as to the Tochi Daicho by demonstrating with clear and **L169** convincing evidence that Rechirikl was merely a trustee of Tochi Daicho Lots 206 and 207 ("Lots 206 and 207") for Appellees and not the individual owner of the land. Specifically, Appellants argue that the evidence amounted to nothing more than a "swearing contest" between an approximately equal number of witnesses for each side, which this Court has held is insufficient to rebut the presumption in favor of the Tochi Daicho.

In holding that the Tochi Daicho is presumed correct and placing the burden on the party contesting the listing to show by clear and convincing evidence that the Tochi Daicho is incorrect, this Court has noted that the Tochi Daicho "listed properties as 'lineage owned land, as land owned by a clan, and as individually owned land, making clear distinction between the different categories'" and making "careful provision for proof that the clan or lineage involved had consented to the transfer of particular lands to individual ownership." *Ngiradilubech v. Timulch*, 1 ROP Intrm. 625, 629 (1989) (quoting *Ngiruchelbad v. Merii*, 2 TTR 631 (App. Div. 1961)). Accordingly, "[w]hen the listing in the *Tochi Daicho* is for individual ownership(s), as here, the rebuttal evidence must be particularly clear and convincing." *Espangel v. Tirso*, 2 ROP Intrm. 315, 318 (1991) (emphasis in original and citations omitted). The presumption of validity of the Tochi Daicho cannot be rebutted by a mere "'swearing contest' between an approximately equal number of witnesses, [where] the evidence on each side is internally consistent." *Ngiradilubech*, 1 ROP Intrm. at 629. In situations where the testimony leads to two equally plausible conclusions uncontradicted by extrinsic evidence, the extrinsic evidence of the Tochi Daicho must be presumed correct. *Id.* at 626-29.

In the instant action, the Tochi Daicho lists Rechirikl as the individual owner of Lots 206 and 207. The testimony before the Land Court demonstrated that it is uncontested that Rechirikl and his children have never lived on these lots and that Tekuu, Rechirikl's sister, and several of Rechirikl's nephews and nieces have built houses and lived on the land. It was also unchallenged that Rechirikl was the only male son of Telbadel alive at the time the Tochi Daicho

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was prepared and that neither lot was passed to Rechirikl's children at Telbadel's eldecheduch.

At trial, the witnesses did not agree as to whether Rechirikl was listed in the Tochi Daicho because he was the individual owner of Lots 206 and 207 or because he was simply a trustee of these lots for all of the descendants of his mother, Telbadel. Eight witnesses, including one of the witnesses for Appellants, who is herself a child of Rechirikl, testified either specifically that Rechirikl was merely a trustee of the lots for the Descendants of Telbadel or that he was given the land because he was responsible for a lot of children, namely his children, nieces, and nephews as Descendants of Telbadel. On the other hand, only two witnesses for Appellants testified that Rechirikl was not a trustee but was in fact the individual owner of the lots. While none of the witnesses for Appellants could testify as to how the property was acquired, four witnesses testified that it was Rechirikl's sister, Tekuu, who received Lot 206 from Uchelkiukl as a result of her adoption. Finally, in an affidavit attached to a Land Use Agreement submitted as evidence, Siang Rechirikl and his cousin, the son of Tekuu and grandson of Telbadel, attested that they both owned Lot 206.

Based on the testimony, the unchallenged actions of the parties, and the affidavit supporting the Land Use Agreement, **L170** the Land Court held that Appellees, the Descendants of Telbadel, had rebutted the presumption of validity of the Tochi Daicho by clear and convincing evidence; therefore, Rechirikl was found to be a trustee of Lots 206 and 207 for the Descendants of Telbadel, and not the individual owner of the land. A thorough review of the testimony reveals that there were significantly more witnesses who testified in support of the Land Court's finding that Rechirikl held these lots as trustee for his children, nieces, and nephews. Furthermore, Appellants' evidence was internally inconsistent, with one witness, herself a child of Rechirikl, testifying that her father was given Lots 206 and 207 because he was responsible for a lot of children, including his nieces and nephews. Moreover, although there was not a significant amount of extrinsic evidence in support of the Land Court's finding, there was extrinsic evidence in the form of the affidavit in which one Appellant essentially admitted that the contested lots were owned by the Descendants of Telbadel. As the instant action is not one in which the evidence was equal or internally consistent on each side, the evidence did not amount to a mere "swearing contest" such that the Land Court erred in finding the Tochi Daicho had been rebutted. Instead, the evidence was such that a reasonable trier of fact could have reached the same conclusion as the Land Court; therefore, the Land Court's determination of ownership was not clearly erroneous and must be affirmed.

At a minimum, Appellants urge the Court to remand this case to the Land Court with instructions to specifically identify each of Rechirikl's children by name as Descendants of Telbadel. We can anticipate that more disputes may arise as to Lots 206 and 207 unless the descriptive category of Descendants of Telbadel is more clearly defined. *See Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 152 (2003) (remanding action to the Land Court to clarify who comprised the group "Ongalk ra Ngirailild, Bukurrow, ma Dirrabang"). Accordingly, this action will be remanded for the limited purpose of identifying the Descendants of Telbadel by name based on the evidence submitted below.

CONCLUSION

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For the above reasons, the Land Court's Determinations of Ownership are affirmed; however, this action is hereby remanded for the limited purpose of identifying the Descendants of Telbadel by name.