Palau Pub. Lands Auth. v. Ngiratrang, 13 ROP 90 (2006)

PALAU PUBLIC LANDS AUTHORITY and NGARAARD STATE PUBLIC LANDS AUTHORITY,
Appellants,

v.

ONGALK RA NGIRATRANG,
Appellee.

CIVIL APPEAL NO. 05-034
LC/E 01-364, LC/E 01-366, LC/E 01-367, LC/E 01-368, and LC/E 01-369

Supreme Court, Appellate Division
Republic of Palau

Argued: April 14, 2006
Decided: April 19, 2006
⊥91
Counsel for Appellants: Christopher L. Hale

Counsel for Appellee: Raynold Oilouch

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

Appeal from the Land Court, the Honorable J. ROMAN BEDOR, Part-Time Judge, presiding.

PER CURIAM:

This appeal arises from a determination of ownership proceeding concerning Tochi Daicho Lot No. 483 (hereinafter, "TD Lot 483"), located in Ngaraard State. Tadashi Sakuma filed a return of public lands claim with respect to a portion of TD Lot 483 on behalf of Ongalk ra Ngiratrang. After concluding that the Japanese government had taken the lot from Ongalk ra Ngiratrang without compensation, the Land Court awarded ownership to Ongalk ra Ngiratrang. Palau Public Lands Authority and Ngaraard State Public Lands Authority now jointly appeal this determination of ownership. For the reasons set forth below, we affirm.

BACKGROUND[1]

This appeal involves a claim for the return of public lands under the Land Claims Reorganization Act of 1996, codified as 35 PNC § 1301 *et seq*. The contested property, located in Ngaraard State, is part of Tochi Daicho Lot 483. It has been designated ⊥92 Worksheet Lot No. 010 E 01 and is commonly known as *Ked ra Ungelel*.

[1] The following factual summary has been adapted from that set forth in the Land Court's Findings of Fact and Conclusions of Law.

Palau Pub. Lands Auth. v. Ngiratrang, 13 ROP 90 (2006)

During the Japanese administration of Palau, the Tochi Daicho for Babeldaob registered Lot No. 483 as "Palau chio," or public land. During the late 1970s, a number of individuals, including Sakuma's grandfather Ngiratrang, submitted claims for a number of parcels within TD Lot 483 to the Ngaraard Land Registration Team ("NLRT"). Tadashi Sakuma, then working for the Palau Public Lands Authority ("PPLA"), submitted a claim for TD Lot 483 on behalf of the PPLA. The NLRT held a formal hearing to consider these various claims in August 1980. During this hearing, Sakuma testified as to his belief that the entirety of TD Lot 483 was properly registered as public land. Following the hearing, the NLRT adjudicated ownership as to several of the lots within TD Lot 483, though, for reasons unknown, not the lot at issue in the present case.

On December 13, 1988, Sakuma filed, on behalf of Ongalk ra Ngiratrang, a claim for public land with respect to the Worksheet Lot No. 010 E 01, a large parcel of land known as *Ked ra Ungelel* located within TD Lot 483 (hereinafter, "the Lot"). In his claim, Sakuma claimed that the Lot had been owned by Ongalk ra Ngiratrang before being taken by the Japanese administration sometime between 1938 and 1941. In addition to Sakuma's claim, a number of other individuals filed claims for other parcels within TD Lot 483, and one other individual, Blaluk Ngirarois filed a claim for Lot 010 E 01.

On March 12, 2002, the Land Court heard the first of two days of testimony regarding the many claims to the multiple lots within TD Lot 483. Sakuma did not attend this first hearing due to a hospitalization. On the second day of testimony, on February 25, 2005, Sakuma testified that the Lot originally belonged to Ongalk ra Ngiratrang. According to Sakuma, his grandfather Ngiratrang's family planted betel nut trees, coconut trees, and other crops on the land. Finally, Sakuma testified that the Japanese government took the lot without compensation or permission.

Ngirangeboi Emaurois also testified in support of Ongalk ra Ngiratrang's claim. Emaurois, a former member of the Ngaraard Land Registration Team (NLRT"), testified that Ngiratrang and a number of other individuals filed claims for Lot 010 E 01 and other lots within TD Lot 483 in the 1970s. According to Emaurois, Ngiratrang's claim was lost sometime after its filing, and has been missing ever since.

Following the two days of testimony, the Land Court held that Ongalk ra Ngiratrang owned the Lot and that the Japanese administration took the land without compensation. In support of this determination, the Land Court relied on the testimony of Sakuma, which it deemed credible. Additionally, the court cited the failure of either the Palau Public Lands Authority or the Ngaraard Public Lands Authority to offer any evidence contradicting his testimony or Ongalk ra Ngiratrang's claim. Noting that the key issues in a return of public lands claim revolve around whether the land in question was owned by the claimant before becoming public land and whether the land was taken without compensation by a foreign occupying power, the court wrote:

> Japan's interest [in the Lot] as a public land must have come from somewhere. There is no evidence that establishes how 'Japanese Government' or ⊥93 Japan as

> a foreign occupying power came to have an interest [in the Lot] as a public land.
>
> There is no evidence either that Germany acquired interest [in the Lot] as public land during its colonial days. Therefore, it could [not] be said that Japan acquired its interest from Germany as its successor in interest.

In re Tochi Daicho Lot No. 483 , Case Nos. LC/E 01-364 - LC/E 01-369 (Findings of Fact, Conclusions of Law and Determinations, dated June 30, 2005 (hereinafter "Land Court decision") at 14.) In the absence of evidence of an alternative means of acquisition by the Japanese administration, the Land Court credited Sakuma's credible testimony regarding his family's ownership and the subsequent appropriation without compensation by the Japanese. PPLA and NSPLA now jointly appeal the Land Court's determination of ownership.

STANDARD OF REVIEW

We review the Land Court's factual findings under the clearly erroneous standard. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). 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. *Id.* at 90. Thus, we will usually defer to the Land Court's findings regarding the credibility of witnesses. *Kerradel v. Elbelau* , 8 ROP Intrm. 36, 37 (1999). The Land Court's conclusions of law are reviewed *de novo* . *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

ANALYSIS

PPLA and NSPLA jointly appeal the Land Court's determination of ownership on two grounds. First, they urge that the Land Court did not apply the correct burden of proof in considering Ongalk ra Ngiratrang's return of public lands claim. In addition, they argue that the Land Court erred in failing to consider the contradictory testimony given by Sakuma during the August 1980 NLRT hearing. The Court will consider these claims in turn.

1. Burden of Proof

The Land Claims Reorganization Act of 1996, 35 PNC § 1301 *et seq* , provides that ownership of public land shall be returned to any citizen or citizens of Palau who can prove:

> (1) that the land became part of the public land . . . as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force coercion, fraud, or without just compensation or adequate consideration, and
>
> (2) that prior to that acquisition the land was owned by the citizen or citizens or that the citizen or citizens are the proper heirs to the land.

35 PNC § 1304(b). At all times, the burden of proof remains on the claimants, not the

governmental land authority, to establish, by ⊥94 a preponderance of the evidence, that they satisfy all requirements of the statute. *Masang v. Ngirmang*, 9 ROP 125, 128 (2002); *Estate of Rimat Ngiramechelbang v. Ngardmau State Pub. Lands Auth.*, 12 ROP 148, 151 (2005). Thus, to prove a claim under section 1304(b), a claimant must demonstrate that: (1) he or she is a citizen who has filed a timely claim; (2) she is either the original owner of the land, or one of the original owner's "proper heirs;" and (3) the claimed property is public land which attained that status by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration. *Masang*, 9 ROP at 128; *Rengulbai Lineage v. Medorm Hamlet*, 9 ROP 118, 119 (2002).

In the present case, Appellants maintain that the Land Court misapplied the burden of proof with respect to both the alleged Japanese taking of the Lot and Ongalk ra Ngiratrang's original ownership of the Lot. With regard to the former, Appellants focus on the Land Court's statement that "There is no evidence that establishes how [the] 'Japanese Government' or Japan as foreign occupying power came to have an interest [in the Lot] as a public land." According to Appellants, this statement represents "a blatant misapplication of the solid jurisprudence establishing that the return of public lands claimant must prove each and every element of the claim, including a showing as to how the claimed land was wrongfully acquired by the occupying power."

While the passage cited by Appellants may, standing alone, suggest that the Land Court misapplied the burden of proof, we agree with Appellees that, taken as a whole, the Land Court decision demonstrates that the court applied the correct burden. In the paragraph following the quoted passage the Land Court made clear that its conclusion that the Lot had been taken without compensation by the Japanese was based not only on the lack of alternative explanations, but also the credible testimony of Sakuma:

> The credible evidence shows that Ongalk ra Ngiratrang owned [the Lot] before the Japanese Government established its holding in Palau. Tadashi Sakuma testified that [the Lot] was owned by Ongalk ra Ngiratrang and that it was taken by the "Japanese Government" without compensation and became a part of the bigger Tochi Daicho 483. He also testified that members of Ongalk ra Ngiratrang used the land by planting betel nut trees, coconut trees and other crops on the land without consent from anyone. His testimonies were not challenged by NSPLA/PPLA. The court finds Tadashi Sakuma a credible witness.

Land Court decision at 15. In light of this passage, the Land Court's comments regarding the lack of evidence regarding the means by which the Japanese Administration acquired the Lot cannot fairly be said to represent a shifting of the burden of proof from the claimant to the government land authorities. Rather, it merely stands as a partial explanation for the court's conclusion that Sakuma was a credible witness. [2] The ⊥95 Land Court was certainly within its discretion in considering the lack of evidence supporting alternative theories when making its

[2] Likewise, the court's comments regarding Appellants' failure to challenge Sakuma's testimony were offered not to shift the burden of proof to the government land authorities, but rather as further support for its conclusion that Sakuma's testimony was credible.

decision as to the credibility of Sakuma's testimony.

II. Sakuma's Prior Testimony

Appellants also urge that the Land Court committed clear error in failing to consider testimony given by Sakuma in 1980 while he was an employee of the PPLA. During this time, Sakuma filed a claim on behalf of PPLA for the entirety of TD Lot 483. In the resulting hearing, Sakuma testified that he believed the Tochi Daicho listing of TD Lot 483 as public land was accurate:

Claimant: I ask the Government's representative – Does he accept the Japanese Tochi Daicho records as accurate?

Sakuma: Yes.[3]

Appellants urge that Sakuma's 1980 testimony is inconsistent with his testimony given during the Land Court hearing and that the Land Court's failure to acknowledge or discuss this inconsistency rendered its decision clearly erroneous.

We disagree. There is no inconsistency between Sakuma's 1980 testimony regarding the accuracy of the Tochi Daicho records and his later testimony that prior to the creation of the Tochi Daicho, the Lot had been owned by his grandfather and taken without compensation by the Japanese Administration. As we have previously noted, in a return of public lands case under 35 PNC § 1304, the claimant does not seek to challenge the government's ownership of the land. "Rather, the claimant acknowledges that an occupying power acquired the land but attempts to prove that the acquisition was wrongful." *Palau Pub. Lands Auth. v. Tab Lineage* , 11 ROP 161, 168 (2004). Thus, "[t]he question raised by a claim for the return of public lands is not whether the government acquired the land, but whether 'the land became part of the public land . . . through force, coercion, fraud, or without just compensation or adequate consideration' and whether 'prior to that acquisition the land was owned' by the claimant or his or her predecessors."[4] *Id. (*quoting 35 PNC § 1304(b)(1), (2)). The Tochi Daicho listing does not answer either of these questions; a listing in favor of the Japanese Administration ⊥96 only shows that the government had acquired the land by the time of the land survey. *Tab Lineage*, 11 ROP at 168.

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[3] Appellee objects to Appellants' submission of their own translation of the 1980 hearing transcript. It urges that, having failed to request a transcription of these records, Appellants are barred from submitting their own translation. We disagree. The original transcript of the 1980 hearing, which is in Palauan, is a part of the record. If Appellee believes Appellants' translation of that transcript from Palauan into English contains errors, it is free to raise those errors to the Court's attention or prepare its own translation.

[4] In contrast, a claimant asserting that he or she has superior title to a piece of property for which the government claims ownership "must confront an 'adverse Tochi Daicho listing, and the availability of affirmative defenses not available to the government in Article XIII claims.'" *Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185, 186 n.2 (2002) (quoting *Carlos v. Ngarchelong State Pub. Lands Auth.* , 8 ROP 270, 272 n.8 (2001)). *See also Tab Lineage*, 11 ROP at 168.

With this in mind, Sakuma's 1980 testimony regarding the accuracy of the Tochi Daicho listing is not inconsistent with his later assertion that, prior to the Tochi Daicho survey, the Lot had been owned by his grandfather. In 1980, Sakuma was asked whether he believed the Tochi Daicho's listing of Lot 483 as public land was accurate. His answer that he did does not speak to whether he believed the Japanese Administration had obtained the land by legitimate means. Indeed, regardless of whether or not the Japanese had acquired the land without compensation or by coercive means, the Tochi Daicho listing was accurate if, at the time of the survey, the land was indeed public land in the hands of the Japanese Administration. As noted above, the Tochi Daicho does not purport to address the means by which the land was acquired. Moreover, when his opponent suggested that TD Lot 483 may have been acquired by means of intimidation, Sakuma did not deny the possibility. Rather, he stressed only that his opponent (who had brought a claim for TD Lot 483) had presented no evidence of such an illegitimate appropriation:

Claimant: Are you aware that the Japanese used intimidation during the land survey in Palau?

Sakuma: I wish to have you answer to your own question. Can you show or demonstrate an incident where the Japanese used intimidation involving your own property?

Claimant: I can. The land I mentioned yesterday was seized by them through intimidation.

Sakuma: Your honor, I think it was clear and understood yesterday through his testimony that he was not involved with the discussion of that land, so he wouldn't know that it was seized by intimidation or another.

Sakuma's assertion that the claimant had not presented any evidence of an improper seizure of TD Lot 483 is not inconsistent with his later presentation of evidence that a portion of that lot had in fact been so seized.

As an appellate court, we will not substitute our own judgment of a witness' credibility for that of the trial court. *Rechucher v. Ngiraked* , 10 ROP 20, 22 (2002); *Heirs of Dilbedul v. Ngerucheoch Lineage* , 8 ROP Intrm. 305, 306-07 (2001). The Land Court expressly found Sakuma's testimony to be credible. We see nothing in his earlier testimony given while an employee of PPLA to render that conclusion clearly erroneous.[5]

[5] Appellants also argue that Sakuma's testimony regarding his family's harvesting of crops on the Lot is insufficient to establish Ongalk ra Ngiratrang's pre-occupation ownership of the Lot. In support of this argument, they cite *Uchelkeyukl v. KSPLA*, 7 ROP Intrm. 98, 101 n.4 (1998), for the proposition that "proof of occupation is not, standing alone, proof of ownership." In making this argument, Appellants ignore the fact that Sakuma testified that his family owned and cultivated crops on the Lot prior to its taking by the Japanese Administration. This is in contrast with the facts of *Uchelkeyukl*, in which the land in question had "at various times [been] used by different clans and people for a variety of purposes, none of which [were] tantamount to ownership of the [land]." *Id.* at 101. The Appellate Division upheld the Land Court Hearing Officer's conclusion that "[s]uch intermittent use of the wild vegetation and small parts of the island for clan rituals are not sufficient to establish ownership of the land." *Id.* In light of Sakuma's credible testimony regarding Ongalk ra Ngiratrang's ownership and cultivation of the Lot, the Land Court's decision cannot be said to be clearly erroneous.

⊥97

CONCLUSION

For the reasons set forth above, we affirm the Land Court's award of the Lot to Ongalk ra Ngiratrang.

Nevertheless, in light of the relatively small amount of evidence put forward by Sakuma and Ongalk ra Ngiratrang, we would be remiss if we did not caution the Land Court that it must not presume that the land at issue in return of public land cases was originally in private hands. To the contrary, as discussed during oral argument, the concept of chutem buai, or community-owned public land, is well established. *See, e.g.*, *Omenged v. UMDA* , 8 ROP Intrm. 232 (2000). Thus, when considering a return of public lands case, the Land Court must recognize that there are at least three possible origins of land registered as public land in the Tochi Daicho: (1) the land was originally privately owned and later obtained by the Japanese Administration (or previous foreign occupying power) via a legitimate transaction; (2) the land was privately owned before being obtained by the foreign occupying power through force or without compensation; or (3) the land was originally public land. Only in the second of these three possibilities may the land's original owner (or his or her heirs) bring a successful return of public lands case.

On the other hand, we must note that while the public lands authorities have no obligation to appear or present evidence at a return of public lands hearing, *see Masang v. Ngirmang*, 9 ROP 215, 216-17 (2002), they must recognize that their failure to do so is not without consequence. As this case amply demonstrates, while a public lands authority's decision not to appear and/or not to present evidence at a return of public lands hearing does not lessen the claimant's burden of proof, by failing to do so a public lands authority risks facing a formidable clearly erroneous standard upon appeal, should the Land Court reach factual findings in the claimant's favor. In such a situation, the Appellate Division will not reverse, even if it disagrees with the factual findings of the Land Court, unless "the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion." *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002).