

Estate of Remeskang v. Eberdong, et al., 14 ROP 106 (2007)

**ESTATE OF REMESKANG,
Appellant,**

v.

**ALBERT EBERDONG, JOSHUA EBERDONG, PAULUS EBERDONG, SIMEON
EBERDONG, RICHARD EBERDONG, TECHEBOET EBERDONG, JONATHAN
EBERDONG, NINA EBERDONG, KATSUE EBERDONG, RAMONA EBERDONG, EVA
MARIA EBERDONG, and NAOMI EBERDONG,
Appellee.**

CIVIL APPEAL NO. 06-008
LC/N 00-276(A)

Supreme Court, Appellate Division
Republic of Palau

Decided: April 18, 2007

Counsel for Appellant: Raynold B. Oilouch

Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
LOURDES F. MATERNE, Associate Justice.

Appeal from the Land Court, RONALD RDECHOR, Associate Judge, SALVADOR
INGEREKLII, Associate Judge, and ROSE MARY SKEBONG, Associate Judge, presiding.

SALII, Justice:

Appellant Estate of Kikuo Remeskang (“Estate”) appeals from the Land Court’s determinations of ownership concerning two parcels of land located in Airai State. The parcels are designated as Lot Nos. 166-1114A and 166-1114B on the Bureau of Lands and Surveys Worksheet Map No. 166 and are commonly known as Moked. For the reasons stated below, the Land Court’s determinations are affirmed in all respects.

I. BACKGROUND

In 2000, the Land Court conducted extensive hearings regarding the ownership of a large tract of land in Airai State, including **¶107** the lots at issue here. During that proceeding, the Land Court dismissed the Estate’s claim to Moked as an untimely return of public lands claim. On appeal, the Appellate Division concluded that the Estate was claiming superior title (*i.e.*, that the land had never become public land in the first place) and remanded the matter to the Land Court to hear the Estate’s claim. *Espong Lineage v. Airai State Public Lands Auth.*, 12 ROP 1, 6

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(2004).

At an August 2005 hearing, the Estate submitted evidence tending to show that Moked was originally owned by Debkar Clan, that Kikuo Remeskang's adoptive mother, Mekesong, asked for and was given Moked to hold on behalf of Kikuo, and that Kikuo farmed or leased parts of Moked from 1978 onward. The Children of Eberdong, on the other hand, presented evidence that Mekesong's name would have appeared on the Tochi Daicho if one were available, that her son, Eberdong, and his children used the land both before and after the war, and that Eberdong had claimed the land as his own in 1976. A three-judge panel of the Land Court again determined that the Children of Eberdong¹ own Moked. The Estate now appeals, arguing that the Land Court's determinations of fact were clearly erroneous.

II. STANDARD OF REVIEW

We review the trial court's findings of fact for clear error. *Ongidobel v. ROP*, 9 ROP 63, 65 (2002). Under this standard, the factual determinations of the lower court will not be set aside if 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. *Espong Lineage v. Airai State Pub. Lands Auth.*, 12 ROP 1, 4 (2004).

III. ANALYSIS

The claimants presented two competing stories, both of which were supported by evidence in the record. After summarizing the evidence, the Land Court adopted the Children of Eberdong's version of events and awarded Moked to them. The Estate argues that the Land Court failed to consider crucial evidence and improperly rejected uncontradicted testimony. The Estate wants the determinations of ownership reversed because, although there is evidence to support them, a review of the record gives rise to "a definite and firm conviction that a mistake has been made." *Tmiu Clan v. Ngerchelbuche Clan*, 12 ROP 152, 153 (2005).

Contrary to the Estate's argument, the Land Court clearly considered the testimony of Albertang Rengiil, Tipkang Nakamura, Anatanio Kikuo, and Misako Kikuo. The testimony of each of these witnesses is summarized in the Land Court's decision. More importantly, the Land Court understood that each of the witnesses testified that Mekesong had asked for and/or received a parcel of land from Debkar Clan to hold for her son, Kikuo. Albertang Rengiil's testimony regarding Mekesong's participation in the Japanese land survey was specifically addressed by the Land Court when analyzing **¶108** the evidence. The Estate's "suggestion that the Land Court could not discount [Albertang's] testimony because it was undisputed ignores the clearly established precedent that a judge may choose to disbelieve even uncontroverted evidence." *Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth.*, 12 ROP 148, 151 (2005).

After considering the documents and testimony presented by both claimants, the Land

¹There are twelve Children of Eberdong, namely Albert, Joshua, Paulus, Simeon, Richard, Techeboet, Jonathan, Nina, Katsue, Ramona, Eva Marie, and Naomi.

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Court found that the weight of the evidence did not support the Estate's claim. This finding is adequately supported by the record. All parties agree that Mekesong took part in the Japanese land survey: the dispositive question seems to be whether she participated in order to claim land for herself or for the benefit of Kikuo. Whether the land originally belonged to Debkar Clan (which would support the Estate's claim) or Espong Lineage (which would support the Children of Eberdong's claim) is not clear from the record and the Land Court made no findings in this regard. There is, however, evidence from which one could reasonably conclude that, at the time of the survey, Kikuo was old enough to hold property in his own name, making it less likely that Mekesong participated in the survey on Kikuo's behalf.² In addition, Kikuo's son testified that Mekesong continued to ask Siabal for an allocation of property for Kikuo as late as 1966 or 1967, decades after the Estate says Moked was given out to Mekesong for the benefit of Kikuo. When Eberdong publicly claimed Moked during the monumentations in 1976 and 1986, Kikuo neither participated nor objected. It was not until 1998, after both Mekesong and Eberdong had died, that Kikuo first made a public claim to Moked. Based on the record before it, the Land Court found that Mekesong owned Moked, that both Kikuo and the Children of Eberdong used parts of it, and that Mekesong transferred the land to Eberdong at some point before the 1976 monumentation.³

These findings are not the only conclusions that could have been drawn from the record. But where, as here, "there are two permissible views of the evidence, the [Land Court's] choice between them cannot be clearly erroneous." *Uchelkumer Clan v. Isechal*, 11 ROP 215, 219 (2004). *See also Pierantozzi v. Ueki*, 12 ROP 169, 170 (2005). The Land Court's determinations of ownership are adequately supported by the evidence: a review of the record does not give rise to a firm conviction that a mistake has been made. The Land Court's determinations will not, therefore, be disturbed on appeal.

¶109

Finally, the Estate argues that, even if Mekesong owned Moked and transferred it to Eberdong, the transfer violated the statute of frauds and was therefore ineffective. The Estate asserts that, at the time Mekesong died, "the statute of frauds was already in effect in Palau, thus requiring any transfer of lands to be in writing." Whether the statute of frauds would invalidate a transfer made in 1980, the year Mekesong died, is irrelevant since the Land Court found that the transfer at issue in this case occurred in or before 1976. *See n.3 supra*. In addition, the Estate failed to raise the statute of frauds argument before the Land Court, thereby waiving the defense. *Hanpa Indus. Corp. v. Black Micro Corp.*, 12 ROP 29, 33 (2004). Appellate courts generally decline to entertain arguments raised for the first time on appeal (*Basilus v. Basilus*, 12 ROP 106, 110 (2005)), and there is no reason to vary from that rule here.

IV. CONCLUSION

²According to Albertang Rengiil, she participated in the Japanese land survey in order to claim land in her own name. Because she was only a few months older than Kikuo, the Land Court could reasonably determine that Kikuo was also old enough to put his name on the survey lists if that were truly the intent of the interested parties.

³The Estate argues that the Land Court made inconsistent findings regarding the date of the transfer to Eberdong. The year 1976 was important to the Land Court's decision only because it was the first time Eberdong asserted a public claim to Moked. Taken in context, the Land Court's findings simply mean that the transfer occurred while Mekesong was alive and prior to the 1976 monumentation.

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The Land Court's determinations of ownership in favor of the Children of Eberdong are affirmed.