

Ngirmang v. Oderiong, 14 ROP 152 (2007)
GABRIELA NGIRMANG,
Appellant,

v.

BARES ODERIONG and
ABEDNEKO RDIALUL,
Appellees.

CIVIL APPEAL NO. 05-030
LC/N 02-188 to LC/N 02-193

Supreme Court, Appellate Division
Republic of Palau

Decided: September 4, 2007¹

Counsel for Appellant: Oldiais Ngiraikelau

Counsel for Oderiong: Ernestine K. Rengiil

Counsel for Rdialul: Salvador Remoket

BEFORE: LARRY W. MILLER, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice; HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

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

MILLER, Justice:

Appellant Gabriela Ngirmang challenges the Land Court's determination awarding to Appellees Bares Oderiong and Abedneko Rdialul ownership of portions of the land known as *Ngersung*.² Having considered the arguments of the parties, we affirm the determination of the Land Court.

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BACKGROUND

The parcels of land in dispute, part of a larger tract of land commonly known as *Ngersung*, are Lots BL-428 and Lot BL-435 in *Ngersung* Hamlet of Airai State ("the Lots"). The

¹Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral arguments pursuant to ROP R. App. P. 34(a).

²Although her notice of appeal also challenged the award of a portion of *Ngersung* to Singeo Techong, her opening brief fails to identify any error as to that parcel or to seek any relief with respect thereto. Her appeal as to the determination of ownership in favor of Techong is therefore dismissed.

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parties agree that the Lots were owned by Ngirchomisaol Ulengel. The Land Court found that when Ngirchomisaol died, the Lots were given to Ngirchomisaol's adopted son Kubesak as his individual property at the eldecheduch. When Kubesak died in 1938, his adoptive mother Ibuuch had control over his lands and gave the Lots to Rdialul Torual. Rdialul sold a portion of BL-435, now identified as BL-435A, to Singeo Techong. On October 1, 1967, Rdialul gave BL-435 to Bares Oderiong who had begun farming BL-435 in 1962. Abedneko Rdialul inherited Lot BL-428 from his father Rdialul. The Land Court granted ownership of BL-435 to Oderiong and ownership of Lot BL-428 to Abedneko.

Ngirmang disputes the Land Court's findings of fact. She claims that when Ngirchomisaol died, the Lots were given to Ngirchomisaol's wife Ibuuch as elbechiil at the eldecheduch. Ibuuch was a strong member of Olngembang Lineage and Ngirmang now claims the Lots for Olngembang Lineage. Ngirmang also claims that she farmed the land from 1982 to 1987.

STANDARD OF REVIEW

This Court reviews the Land Court's findings of fact for clear error. *Ibelau Clan v. Ngiraked*, 13 ROP 3, 4 (2005). Under this standard, the factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 93 (2006). The Land Court's conclusions of law are reviewed *de novo*. *Id.*

DISCUSSION

This Court has heard a number of appeals challenging the factual determinations of the Land Court and appellants are extraordinarily unsuccessful. *See Children of Rengulbai v. Elilai Clan*, 11 ROP 129, 131 n.1 (2004). To prevail, an appellant must show that the Land Court's findings were clearly erroneous and that "the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion." *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 165 (2004). "It is not the appellate panel's duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *See Ngeribongel v. Gulibert*, 8 ROP Intrm. 68, 70 (1999). Therefore, we must affirm the Land Court's determination as long as the Land Court's findings were "plausible." *Ongklungel v. Uchau*, 7 ROP Intrm. 192, 194 (1999).

Ngirmang claims that the Land Court erred when it found that she did not farm the land from 1982 to 1987. Ngirmang testified that she planted taro and tapioca on the land. Alfonsa Bintorio testified that she saw Ngirmang farm the land and that she took some of the plants. Yasko Rudimch, whose also claimed to own BL-435 and claimed she farmed the land, testified that Ngirmang used the land. Martha Iechad, a resident of *Ngersung* since 1962, testified that she had not seen Ngirmang farm the land. The Land Court found that Iechad's testimony was **1154** credible and ruled that Ngirmang had not farmed the land. "We do not test the credibility of witnesses, but rather take into account the fact that the Land Court heard and observed the witnesses and accepted one version of events rather than another." *Remengesau v. Sato*, 4 ROP Intrm. 230, 233 (1994); *see also Sungino v. Blaluk*, 13 ROP 134, 137 (2006). Where there are

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two permissible views of the evidence, the court's choice between them cannot be clearly erroneous. *Baules v. Kwartel*, 13 ROP 129, 131 (2006). It was therefore not clearly erroneous for the Land Court to credit Iechad's testimony rather than the self-serving testimony of Ngirmang and Rudimch or the conflicting testimony of Bintorio. *Lakobong v. Tebei*, 8 ROP Intrm. 87, 89 (1999). The Land Court did not commit clear error when it found that Ngirmang did not farm the land.³

CONCLUSION

As the Land Court did not commit clear error in its factual findings, it properly granted ownership of BL-435 to Oderiong and ownership of Lot BL-428 to Abedneko. The Land Court's determinations are accordingly affirmed.

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Given this conclusion, we need not decide whether the purported error identified by Ngirmang would have justified reversal or remand, or was instead harmless.