

*Worswick v. Kedidai Clan*, 14 ROP 160 (2007)  
**HENRY WORSWICK, JR.,**  
**Appellant,**

v.

**KEDIDAI CLAN,**  
**Appellee.**

CIVIL APPEAL NO. 06-032  
LC/S 00-269

Supreme Court, Appellate Division  
Republic of Palau

Decided: September 12, 2007<sup>1</sup>

Counsel for Appellant: Mariano W. Carlos

Counsel for Appellee: Yukiwo P. Dengokl

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 ROSE MARY SKEBONG, Associate Judge, presiding.

MILLER, Justice:

Appellant Henry Worswick, Jr., appeals from the Land Court decision that Kedidai Clan is the rightful owner of Lot 356 located in Angaur. We affirm the Land Court's determination.

### **BACKGROUND**

The Land Court found that Kedidai Clan received a quitclaim deed to Lot 356 from the Trust Territory government on June 8, 1962, as part of the Angaur land settlement agreements. Although Appellant's relatives have occupied Lot 356 continually since at **L161** least 1955, the Land Court found that they did so with the consent of the Kedidai Clan. The Land Court further found that ownership interest in Lot 356 was never transferred to Appellant or any of his ancestors and, as such, Appellant did not own any interest in the Lot.

Appellant's association with Lot 356 can be traced back to his great-grandfather, Kelbesang, who held the title Ucherremasech, the chief title of Kedidai Clan. Though in dispute at trial, the Land Court found as fact that Ucherremasech Kelbesang gave his daughter, Kamril,

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Upon 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).

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the permission of Kedidai Clan to live on Lot 356. The Land Court further found that when Kamril's daughter, Margar, the mother of Appellant and granddaughter of Ucherremasech Kelbesang, subsequently took up residence on Lot 356, she did so with the consent of the Kedidai Clan. The Land Court concluded that Appellant had failed to show that his family's occupancy of Lot 356 was based on anything other than his mother's relationship to his grandmother, who had the permission of the Kedidai Clan. The Land Court also believed that the Trust Territory's return of the land to Kedidai Clan in 1962, rather than to Appellant's parents, indicated that the Clan retained ownership of the land, despite Appellant's family history of occupying that Lot.

Although Appellant presented the Land Court with Henry Worswick Exhibit 1, a document dated January 5, 1964, purporting to be a written confirmation of the oral conveyance of Lot 356, the Land Court found this document to be without credibility. The document, entitled "Oidel a chutem ra kebliil el mo kloklel a tal chad" or "Transfer of Clan Land to the Ownership of an Individual," was purportedly signed by seven witnesses and allegedly memorialized the oral conveyance of Lot 356 from Ucherremasech Kesol, the chief titleholder of Kedidai after the demise of Kelbesang, to Kamril. The Land Court stated that even if the document were credible, such a transfer lacked the necessary consent of the senior members of the clan at that time and, as such, Lot 356 was never conveyed by Kedidai Clan to Kamril, orally or otherwise. As Appellant's claim of ownership was based on the conveyance of the property to him by Kamril, Appellant's claim failed.

### STANDARD OF REVIEW

The Appellate Division reviews the Land Court's findings of fact for clear error. *Pierantozzi v. Ueki*, 12 ROP 169, 170 (2005). Under that standard, factual findings will not be set aside as long as they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion. *Tmiu Clan v. Hesus*, 12 ROP 156, 157 (2005). The trial judge is best situated to make credibility determinations and the Appellate Division will generally defer to the lower court's findings regarding the credibility of witnesses and evidence. *Id.* at 158; *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 37 (1999).

### ANALYSIS

Most of Appellant's allegations of error relate to the issue of the oral conveyance and the Land Court's determination that Henry Worswick Exhibit 1 is not credible. The Land Court found as fact that Lot 356 was never conveyed by Kedidai Clan to Kamril. This factual finding is well supported by the testimony offered at trial. While **L162** Appellant's family's long use of the Lot weighs in his favor, *Ikluuk v. Udui*, 11 ROP 93, 96 (2004), the Land Court reasonably determined based on the evidence presented that Kedidai Clan was the rightful owner of the Lot. As the evidence supports this determination, it will not be reversed.

In the course of his argument, Appellant attempts to advance several legal theories that rely on a factual finding that the oral conveyance occurred. These theories rest on a misreading of the Land Court's decision. The Land Court's decision, in expressing skepticism over the

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asserted oral transfer, includes an observation that any such transfer was unlikely to have occurred before July 8, 1962, “since that is when Lot 356 was quitclaimed to Kedidai Clan.” Appellant seems to read into this comment a legal conclusion that any pre-1962 conveyance would have been ineffective, and thus argues repeatedly that the doctrine of after-acquired title would have operated in Appellant’s favor. We read the Land Court’s comment to say only that the return of the land to the Clan—and not to Appellant’s grandmother—serves to undermine Appellant’s contention that Kedidai Clan had orally transferred the land to Kamril before 1962. Since the Land Court made no finding that Lot 356 was orally transferred before 1962, Appellant’s argument fails, as do his other arguments which depend on a factual finding that the alleged conveyance actually occurred.<sup>2</sup>

Appellant further contends, and Appellee concedes, that the record does not reflect evidence demonstrating that Ucherremasech Kelbesang gave Kamril permission to live on Lot 356, as the Land Court found. Although the record does not clearly establish which Ucherremasech, Kelbesang or Kesol, granted Kamril permission to live on Lot 356, the Land Court’s decision was based on testimony demonstrating that Kamril had the consent of Kedidai Clan to live on the Lot. Several witnesses, including even Appellant himself, testified that Kamril had moved onto the Lot with the permission of the chief Ucherremasech of the Kedidai Clan. Although the testimony is unclear regarding which individual was bearing the Ucherremasech title at the time permission was granted, evidence presented by both Appellant and Appellee support the Land Court’s finding that Kamril was living on the property with the permission of the Kedidai Clan.

Appellant finally accuses the Land Court of abuse of discretion, contending that the Land Court improperly speculated on matters outside the evidence. Appellant claims that the Land Court erred by questioning the Clan for allegedly conveying the Lot orally. The Land Court did pose several probative questions in its decision, all of which led to the Land Court’s finding that ¶163 the conveyance of Lot 356 never occurred. Such probative questioning does not constitute speculation because, in the end, the Land Court left those questions unanswered. Simply because a question cannot be answered from the evidence does not mean that the court should not ask those questions. Answers to those questions, such as when the transfer took place, why such a transfer was not put in writing at the time it was made, and why several senior members of the Kedidai Clan did not sign the document, might have given credibility to Henry Worswick Exhibit 1. However, in the absence of answers, the court is not left in a vacuum. The court must use common sense and inference in the exercise of its discretion, especially when making credibility determinations.

## CONCLUSION

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Appellant likewise asserts that the Land Court erroneously failed to note that the language of the quitclaim deed included not only Kedidai Clan, but also its heirs, successors and assigns. If the Land Court had found that Lot 356 was orally conveyed to Kamril prior to the quitclaim deed in 1962, the language regarding heirs, successors and assigns might impact our analysis, but instead the Land Court found that Lot 356 was not ever conveyed by Kedidai Clan to Kamril.

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The Land Court's factual findings and credibility determinations are supported by the record and will not be disturbed on appeal. We affirm the determination of the Land Court.