

*Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169 (2007)  
**SECHEDUI LINEAGE/HEIRS OF UKELOI,**  
**Appellant,**

v.

**ESTATE OF JOHNNY REKLAI,**  
**Appellee.**

CIVIL APPEAL NO. 05-023  
LC/N 02-188 TO LC/N 02-193

Supreme Court, Appellate Division  
Republic of Palau

Decided: September 26, 2007<sup>1</sup>

Counsel for Appellant: Ernestine K. Rengiil

Counsel for Appellee: William L. Ridpath

BEFORE: LARRY W. MILLER, Associate Justice; LOURDES F. MATERNE, 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 Sechedui Lineage/Heirs of Ukeloi challenges the Land Court's determination granting ownership of part of the land known as *Ngersung* to Appellee Estate of Johnny Reklai. Having considered the arguments of the parties, we affirm the determination of the Land Court.

### **BACKGROUND**

The parcel of land in dispute, part of a larger tract of land commonly known as *Ngersung*, is Lot 03N001-002 located in Ngersung Hamlet of Airai State ("the Lot"). The Land Court found that Tungelel Clan originally owned the Lot that they called *Mesebsils*. Tungelel Clan transferred ownership of the land to Setsko Techur as individual property. In 1998, Johnny Reklai purchased the Lot from Techur. The Land **1170** Court awarded ownership of the Lot to Johnny Reklai, who has since died.

The Land Court awarded Appellant Sechedui Lineage/Heirs of Ukeloi ("the Lineage") with ownership of Lot BL-424 located across a road from Lot 03N001-002 and found their use of the land was restricted to BL-424. The Lineage contend that they also own Lot 03N001-002

---

1

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).

*Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169 (2007)

because it was part of an area of land that originally belonged to Esuroi Clan and was given to Ukeloi, a woman from the Lineage, as elbechiil and children's property. The Lineage claims that its members have continuously used the Lot since before the war up to the present time.

## 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). 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

### A. Use of the Land

The Lineage claims the Land Court erred in finding that their use of the land was restricted to Lot BL-424 and that they did not use Lot 03N001-002. The Lineage claims that its members used Lot 03N001-002 before the war for farming and leased it to Japanese nationals and after the war farmed the land. Adalbert Eledui, Kewii Techeltoech, and Ngerdelungch Mineichi testified that following the war members of the Lineage farmed and lived upon the land. The Land Court found that there was a "considerable amount of testimony from credible witnesses establishing Tungelel's use of the land since the Spanish and German times." In particular, the Land Court mentioned the testimony of Geggie Anson, Ichiro Rechebei, and Iechad Rurcherudel as being specific of the location and description of *Mesebsils* and Tungelel Clan's ownership. Itei Marino, a member of Tungelel Clan, testified that she received rent payments from Japanese nationals. "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). Even if a few of the Lineage members used the land from time to time, there is not enough evidence to find that the Land Court's determination was clearly erroneous. The Land Court did not clearly err when it found that the Lineage did not use Lot 03N001-002.

The Lineage also claims that the Land Court erred when it found that Umiich, a titleholder in Tungelel Clan, and his wife Kebik, a member of the Lineage, lived on the land from Japanese times into the American period. Ngerdelungch Mineichi, one of the oldest and strongest members of the Lineage, testified that Umiich lived on the land because it is Tungelel Clan's property; however, she identified the land as simply a taro patch but located the land in the same position as the Lot. Mariano Carlos testified that Belechel Ngiruchelbad, a senior strong member of Tungelel Clan, told him that Umiich used **1171** *Mesebsils* from the Japanese to American times. Itei Marino testified that Umiich lived on *Mesebsils*. The Land Court did not err when it found that Umiich lived on the Lot.

### B. Ejectment Action

*Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169 (2007)

The Lineage claims that the Land Court erred in finding that Techur's action in filing an ejectment case against Ngirbauliad demonstrates her ownership of the Lot. The Lineage argues that Techur only filed an action against one of their members while others were also using the Lot, but the Land Court made no finding of fact that other Lineage members were using the Lots. Techur's legal action to eject Ngirbauliad from the property is evidence of ownership. See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435-36 (1982) ("The power to exclude has traditionally been considered one of the most treasured strands in an owner's bundle of property rights."). Also, Techur's action to transfer the case against Ngirbauliad to the Land Court for resolution through the claims proceedings demonstrates that she chose to allow the claims process to conclude instead of filing other ejectment actions. The Land Court did not err when it found that Techur's ejectment action demonstrated ownership.

**C. Location of *Mesebsils***

The Lineage claims the Land Court erred when it held that Techur and her witnesses were specific in testifying about the location and description of *Mesebsils*. The Lineage claims that *Mesebsils* is the name of a small spring, not land, on the left side of the road traveling to Ngersung dock and that Tungelel Clan only owned a small taro patch on the right side of the road. Ichiro Rechebei testified that *Mesebsils* is a piece of land on the right side of the road that belonged to Tungelel Clan. Itei Marino did not specifically testify what side of the road the land is located, but did say it was below the land of Children of Ngirmekur Ksau and near or adjacent to Surangel's warehouse, which would place *Mesebsils* in the location of the Lot. Marino also testified that *Mesebsils* bordered Kubesak's land, which would place it on the left side of the road. The Lineage argues that Marino's testimony is consistent with their argument that *Mesebsils* is not the Lot, but if anything her testimony would not definitively locate *Mesebsils* for either party. The Land Court heard the conflicting testimony of the competing witnesses about the location of *Mesebsils* and held that *Mesebsils* is Lot 03N001-002. Where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous. *Baules v. Kuartel*, 13 ROP 129, 131 (2006). Techur provided sufficient evidence to prove the location of *Mesebsils*. It is not clear error for the Land Court to credit one proffer of evidence over another so long as one view of the evidence supports the factfinder's decision. *Tangelbad v. Siwal Clan*, 9 ROP 169, 172 (2002). The Land Court did not err when relying on Techur's witnesses to locate *Mesebsils*.

The Lineage also claims that the Land Court erred in finding that Kyota Dengokl's Land Acquisition Record is persuasive evidence of *Mesebsils*. Dengokl drew the location of *Mesebsils* on the Land Acquisition form and appears to include the Lot, but also portions of other nearby lots. The Lineage claims it cannot be persuasive because it includes those other lots, but it is a hand L172 drawing done by Dengokl and is not presented as being entirely accurate. It demonstrates that *Mesebsils* is a large tract of land and not just a spring or taro patch as the Lineage claims. Minor inaccuracies do not render the evidence unpersuasive. The Land Court did not err in relying on Dengokl's Land Acquisition Record as evidence of the location of *Mesebsils*.

*Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169 (2007)

**CONCLUSION**

As the Land Court did not commit clear error in its factual findings, it properly granted ownership of Lot 03N001-002 to Reklai. The Land Court's determination is accordingly affirmed.