

*In re Cadastral Lots 050 b 02, et al.*, 14 ROP 191 (Tr. Div.)(2007)  
**IN THE MATTER OF OWNERSHIP OF LANDS Identified as CADASTRAL LOTS 050 B 02, 051 B 13, 051 B 14, 051 B 15, 051 B 16, and 051 B 18, located in Ikelau Hamlet, Koror State, Republic of Palau. AUGUSTINE MIKEL, SANTY ASANUMA/MARIA ASANUMA, JOHN RECHUCHER, LOLITA GIBBONS, MURAKO DECHERONG, AIS RDIAL, BILUNG GLORIA SALII, KSPLA,**

**Claimaints.**

CIVIL ACTION NO. 02-384  
Case Nos. LC/B 00-499 through 00-502

Supreme Court, Trial Division  
Republic of Palau

Decided: August 2, 2007

[counsel names not listed]

ARTHUR NGIRAKLSONG, Chief Justice:

The disputed lots in this case are Lot No. 051 B 15 and Lot No. 050 B 02. *See* Asanuma and Decherong's Exhibit J, similar to exhibits of other claimants. Sharing the northern boundary with Lot No. 051 B 15 are Lot No. 051 B 16, Lot No. 051 B 13, and Lot No. 051 B 14 owned by Mr. Santy Asanuma. Sharing the northern boundary with the second disputed Lot No. 050 B 02 is Lot No. 050 B 01. The title of this lot is vested in Murako Decherong. *See* Asanuma and Decherong Exhibit Q. To the east of Decherong's property is Lot No. 052 B 02 owned by Ais Rdiall.

Mr. Asanuma claims Lot No. 051 B 15 as a portion of the above northern adjacent lots sharing the boundary with the subject lot. Murako Decherong claims Lot No. 050 B 02 as a portion of Lot No. 050 B 01 for which she already has a Certificate of Title. Bilung Gloria Salii claims Lot No. 050 B 02 and Decherong's Lot No. 050 B 01 as an heir to William Gibbons who is listed in Tochi Daicho as the owner of lot 1063 which encompasses Cadastral Lot 050 B 01 and Lot No. 050 B 02. Ms. Lolita Gibbons claims Lot No. 050 B 02 as an heir of Charlie Gibbons who is the son of William Gibbons. Koror State Public Land Authority claims both Lot Nos. 051 B 15 and 050 B 02 as lands below the high water mark.<sup>1</sup> **¶192**

After a three-day hearing on these claims that began on July 17, 2007, the Court now finds and declares that KSPLA owns all of Lot No. 051 B 15 and about ninety percent (90%) of Lot No. 050 B 02 as lands below the ordinary high water mark. The Court further affirms Decherong's title to Lot No. 050 B 01 as valid against all claims, including Bilung Gloria Salii's.

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<sup>1</sup>EQPB Water Regulations, Republic of Palau, 2401-11-04(s) defines ordinary High Water Mark as:

“Ordinary High Water Mark” shall mean that line upon the shore or bank established by fluctuations of water and indicated by physical characteristics, such as a clean natural lined impressed on the bank, destruction of terrestrial vegetation, the presence of litter or debris, or other appropriate means.”

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First the Court dismisses Bilung Gloria Salii's claim on Lot No. 050 B 01 that Decherong has a Certificate of Title on. The ownership of this Cadastral Lot was previously determined by the Land Claim Hearing Office to be the fee simple property of Murako Decherong. *See* Determination of Ownership dated November 20, 1990 and Certificate of Title dated November 9, 1995. "That Determination of Ownership has never been appealed or set aside. If Claimant Salii has a remedy it is not by way of the instant proceeding." Senior Judge Cadra's Order at 3, of July 11, 2001. *See also* Asanuma and Decherong's Exhibit R.

KSPLA claims Lot Nos. 051 B 15 and 050 B 02 as lands below the ordinary high water mark. As such, KSPLA argues, it owns them.

KSPLA relies on statutory and case law. The applicable statute is 35 PNCA § 102, which provides ". . . All marine areas below the ordinary high water mark belong to the government . . ." [sic] In *PPLA v. Salvador*, 8 ROP Intrm. 73, 75 (1999), the Court explains that even after a land below the ordinary high water mark has been filled in by man, the land remains government-owned. Further, in footnote 2, the *Salvador* court acknowledges that this concept of public ownership of lands is consistent with Palauan custom.

Public ownership of lands below the high water mark is consistent with a public trust doctrine which states that lands below the high water mark are like water resources that must be owned by the state and held in trust for the enjoyment of all people. *See County of Hawaii v. Sotomura*, 517 P.2d 57, 63 (1973) (internal citations omitted).

Mr. Terangue Gillham is a licensed engineer who was hired by KSPLA to do a study on whether the subject lands are lands below the high water mark. He was qualified as an expert witness. His testimony and report support the conclusion that all of Lot No. 051 B 15 and ninety percent (90%) of Lot No. 050 B 02 are lands below the high water mark. KSPLA Exhibit 1.

Mr. Gillham explained his study in detail. He did a sketch on the subject lands based on an aerial photograph of the area. He dug two holes at different places on Lot No. 051 B 15 to about thirty (30) inches deep to measure the tide levels. The result of this test showed that the entire Lot No. 051 B 15 was inundated by sea water during the high tide inspection. During high tide, these two holes were filled up with saltwater. KSPLA Exhibit 1, site Map 2.

Mr. Gillham also studied and found the soil on both subject lands to be "muddy soil typically found in mangrove areas" and part of Lot No. 051 B 15 where houses and barracks are located are filled with white 1193 gravel. KSPLA Exhibit 1, at 1. The houses and barracks on both subject lands are built on posts or stilts as high tides come under the houses.

The vegetation on the lands include those that grow in mangrove swamps and plants that tolerate contact with or the presence of saltwater. The two lots are located in a "very low lying area." *Id.*

For the most part, Mr. Asanuma's testimony supports Mr. Gillham's factual findings. Mr. and Mrs. Madraisau who live north and adjacent to Lot No. 050 B 02 testified that they have

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been filling the subject lot for years. The cross-examinations by opposing counsel of Mr. Gillham's report and his testimony failed to discredit the credibility, reliability, and integrity of Mr. Gillham's testimony and report. The Court also convened on the site, and there is nothing material from that field visit that contradicted the only expert witness' testimony and report.

The delineation of the subject lands as below the high water mark is not precise. KSPLA Exhibit 1, site Map 2. The line should be drawn twenty-one (21) feet seaward and must not encroach upon the existing taro patches. The remainder of Lot. No. 050 B 02 that is not below the high water mark is declared to be owned by those who have titles to the adjacent lands like Decherong.

For his closing argument, counsel for Asanuma and Decherong argued that the subject lands are listed in the Tochi Daicho and so they must have existed at one time as dry land. If by erosion the lands have become lands below the high water mark and therefore become government-owned, counsel argued that this is taking without compensation, quoting the "taking" and due process clauses of the Palau Constitution.

The Court disagrees. First, no evidence was introduced at the hearing on erosion. It is not clear to the Court who would bear the burden of proving erosion. Regardless, the Court hereby adopts the legal authority stating that even a registered or titled land lost by erosion returns to the government and no compensation to the original owner is required for the lost portion of the land. "The loss of lands by the permanent encroachment of the waters is one of the hazards incident to littoral . . . ownership . . . [W]hen the sea . . . gradually and imperceptibly encroaches upon the land, the loss falls upon the owner, and the land thus lost by erosion returns to ownership of the state." *Sotomura*, 517 P.2d at 62-63 (internal citation omitted).

Given the trust doctrine in preserving land below the high water mark for the enjoyment of the public which is consistent with our statute, case and customary laws on such lands, the Court declares that KSPLA has title to all of Lot No. 051 B 15 and ninety percent (90%) of Lot No. 050 B 02. The claims of the remaining claimants are dismissed.

Entered this 2<sup>nd</sup> day of August 2007.