

Airai State Pub. Lands Auth. v. Aimeliik State Gov't, 15 ROP 37 (2008)
AIRAI STATE PUBLIC LANDS AUTHORITY,
Appellant,

v.

AIMELIIK STATE GOVERNMENT and
AIMELIIK STATE PUBLIC LANDS AUTHORITY,
Appellees.

CIVIL APPEAL NO. 07-019
Civil Action No. 98-357

Supreme Court, Appellate Division
Republic of Palau

Decided: January 29, 2008¹

Counsel for Appellant: John Rechucher

Counsel for Appellees: J. Roman Bedor

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; ROSE MARY SKEBONG, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

MATERNE, Justice:

Airai State Public Lands Authority (“Airai”) appeals the Decision on Remand, issued by the trial court in this matter on April 25, 2007, which resolved a boundary dispute between the parties in favor of Appellees Aimeliik State Public Lands Authority and Aimeliik State Government (jointly referred to as “Aimeliik”). Airai maintains that this Court should reverse and remand the trial court’s decision for a third time because the trial court failed to explain why it discredited certain evidence offered by Airai in support of its claim regarding the correct location of the boundary. Airai requests that this Court remand the matter back to the trial court with instructions on how it should determine the location of the boundary. We affirm the trial court's decision because the trial court’s factual and legal findings are not erroneous and, thus, should be upheld.

138 BACKGROUND

This lawsuit involves a boundary dispute between the states of Airai and Aimeliik.

¹ The panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. P. 34(a).

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Aimeliik leased certain lands to Henaro Antonio, Ulai Teltull, and Andres Madraisau (jointly referred to as “Lessees”). Relying on the leases, the Lessees cleared the lands, erected buildings, tilled soil, and planted certain trees and plants thereon. On November 20, 1998, Airai filed a civil case against Aimeliik and the Lessees for trespass, seeking ejectment, accounting of rent paid, general damages, punitive damages, and for other relief that the Court may have deemed just and appropriate. Airai asserted that the defendants had leased, occupied, and used public lands within the boundaries of Airai State without authority or Airai’s consent. Aimeliik answered Airai’s complaint by denying that the lands they leased to Lessees are within the public lands of Airai State. That denial raised the issue regarding the specific location of the boundary line between Aimeliik State and Airai State.

On March 10, 1999, the Court ordered the Director of the Bureau of Lands and Surveys (“BLS”) to survey the Airai State boundary as described in the Airai Municipal Charter. The survey was completed; however the worksheet that was prepared based on that survey was not clear as to the location of the lands in dispute.

On June 9, 1999, the Court issued a second order directing the Director of BLS to survey the specific land areas that the Lessees occupy and show them on the worksheet. Upon Aimeliik’s motion, a third order was issued - an Amended Order dated June 11, 1999, to include in the ordered survey the boundary of Aimeliik and Airai based on the Japanese monuments. Since the locations of the Japanese monuments were not known to the survey team, the representatives of Aimeliik and Airai were invited to show their locations. The representatives of Aimeliik were Tmatk Timulch, Sariang Timulch, Aimeliik High Chief Rengulbai Brikul, Attorney Oldiais Ngiraikelau, and TC Roman Bedor. The representatives of Airai were Governor Tmewang Rengulbai, Roger Illuches, Marcelino Augustine, and Teriong Beouch. After the second survey, a revised worksheet was prepared and presented to the Court.

On January 19, 2001, the trial court issued a fourth order to continue the trial in this matter that was set to commence on January 22, 2001, and ordered the Director of BLS to conduct a third survey. The trial court ordered BLS to “use its best efforts to plot the boundaries of Aimeliik State based first on its municipal charter; and next, based on the Aimeliik State Constitution. The two boundaries shall be plotted on the existing Worksheet No. 99-M-02 in different colored-ink to differentiate boundaries based on the different references.” That survey was completed and, as a result, Worksheet No. 99-M-002A was prepared and submitted to the Court.

On March 26, 2001, Airai filed a motion for partial summary judgment based on Worksheet No. 99-M-002A, a memorandum signed by the Director of BLS, Mr. Fritz Koshiba, and the BLS Report of Jerrold E. Knight. On December 13, 2001, the trial court entered an order granting partial summary judgment in favor of Airai. The court ruled that based on the boundary lines either as described in the Airai Municipal Charter or the Aimeliik Municipal Charter, the lands occupied by Lessees fall within Airai State. The trial court, **L39** however, concluded that the resolution of the boundaries of the former municipalities remained an unresolved issue in the case. On March 18, 2002, Aimeliik filed a motion under Rule 60(b)(1) and 60(b)(2) of the Rules of Civil Procedure for relief from the December 13, 2001 Partial Summary Judgment and to set it

Airai State Pub. Lands Auth. v. Aimeliik State Gov't, 15 ROP 37 (2008) aside. Lessees joined that motion. On April 15, 2002, the trial court denied the motion.

The trial commenced on April 23, 2002, on the issues regarding the actual location of the boundary line between the two states. At trial, over repeated objections by Airai's counsel, the court allowed the testimonies of Aimeliik's witnesses regarding the alleged boundary of Aimeliik Municipality contrary to the already determined boundary of Aimeliik Municipality described in its charter as previously ruled by the trial court in its December 13, 2001 Summary Judgment Order. On August 20, 2002, the trial court entered its judgment in favor of Aimeliik. In reaching its decision, the trial court decided, sua sponte, to reconsider and reverse its prior partial summary judgment ruling that was entered in favor of Airai regarding the location of the boundary. Airai appealed.

In the first appeal, Airai argued that the trial court erred in reconsidering sua sponte its grant of partial summary judgment without giving Airai notice and an opportunity to be heard. On December 4, 2003, this action was remanded to allow the parties to present additional evidence in light of the trial court's decision to deny Airai partial summary judgment. *Airai State Pub. Lands Auth. v. Aimeliik State Gov't*, 11 ROP 39, 42 (2003).

After holding a second trial, the trial court identified the issue on remand as a determination of the Airai-Aimeliik boundary based on their respective municipal charters. Specifically, the trial court characterized the boundary dispute as between a line connecting Japanese Marker 1 ("JM-1") and Japanese Marker 2 ("JM-2") and a line connecting JM-1 and Japanese Marker 3 ("JM-3").² The court noted that if the JM-1 to JM-2 line, or as it concluded the boundary as described in Aimeliik's Charter, is the correct boundary than the leased property in dispute is within Aimeliik, but if the JM-1 to JM-3 line, or the boundary as defined by Airai and plotted by BLS as the boundary described in the Aimeliik Charter, is the proper boundary than the lessees would be utilizing Airai's property without permission. The trial court held that the boundary as represented by the JM-1 to JM-2 line constitutes the Airai-Aimeliik border. Relying on the testimony of Aimeliik's witnesses, the court concluded that JM-2 is part of the correct boundary as it is most likely the area described as Tebadel in Aimeliik Charter's boundary description. Accordingly, the trial court entered judgment in favor of Aimeliik. Again, Airai appealed.

In the second appeal, the Appellate Division remanded the case to the trial court again with the instruction that the trial court provide sufficient analysis of the evidence and explain its reasons for rejecting certain evidence in reaching its factual conclusions. Specifically, the Appellate Division noted that the trial court L40 "clearly chose to discount BLS's determination that 'JM-3 is accepted as being the best available evidence of the position of the boundary at Bsachelimeliik as described in the Aimeliik Municipal Charter' and plotting of Aimeliik Charter's boundary line on Worksheet No. 99M-002." The Appellate Division stated that "[t]he trial court's decision reveals no reason for discrediting BLS's finding that both charters place the

² The location of JM-1 is agreed upon by both parties. JM-2 is the boundary point identified by witnesses for Aimeliik and is the only boundary point not marked by an actual marker. JM-3 is the boundary point identified by BLS as the boundary point described in the Aimeliik Charter and is also the point identified by Airai.

Airai State Pub. Lands Auth. v. Aimeliik State Gov't, 15 ROP 37 (2008) disputed land within Airai State.” Consequently, upon remand, the Appellate Division instructed the trial court to “more fully analyze the evidence and provide a reason for declining to rely on BLS’s plotting of the line as described in the Aimeliik Charter.”

The trial court issued its Decision on Remand on April 25, 2007, again ruling in favor of Aimeliik. Airai timely appealed.

STANDARD OF REVIEW

We review the trial court’s findings of fact for clear error. *Ongidobel v. ROP*, 9 ROP 63, 65 (2002). We may not “reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence.” *Omenged v. United Micronesia Dev. Auth.*, 8 ROP Intrm. 232, 233 (2000) (quoting *Remoket v. Omrekongel Clan*, 5 ROP Intrm. 225, 227 (1996)) (internal quotation marks omitted). “Under the clear error standard, the lower court will be reversed ‘only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.’” *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162,164 (2002) (citation omitted). Although a trial court need not discuss all the evidence relied on to support its conclusions, the court’s decision must “‘reveal an understanding analysis of the evidence, a resolution of the material issues of fact that penetrate beneath the generality of ultimate conclusions, and an application of the law to those facts.’” *Fritz v. Blailes*, 6 ROP Intrm. 152, 153 (1997) (citation and internal quotation marks omitted). The trial court’s conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

DISCUSSION

On appeal, Airai argues that the trial court has failed again to adequately explain why it rejected the finding reached in the BLS Report that JM-3 is the best evidence of the boundary point described in the Aimeliik Charter. First, Airai maintains that the trial court failed to provide any analysis of the evidence to explain why it rejected the finding in the BLS Report. Airai asserts that the trial court mistakenly relied on the testimony of Aimeliik residents who testified about the “traditional” boundary of the states instead of the location of the Japanese monuments, which were identified by Airai Governor Tmwang Rengulbai and Marcelino Augustine in the BLS Report. Additionally, Airai argues that the BLS Report was also based on other evidence, including research conducted at the National Archives, National Museum, Research Library, PPLA and BLS records, all of which it alleges was disregarded by the trial court.

Second, Airai argues that the boundary should follow the Airai boundary because, pursuant to the doctrine of repeal by implication, the Aimeliik Municipal Charter, which was issued on April 12, 1958, was superceded and repealed by the Airai Municipal Charter, which was issued on February 18, 1963. Consequently, Airai **L41** encourages this Court to direct the trial court on remand to determine the boundary between Airai and Aimeliik to be that from JM-1 to JM-3 or to designate a new boundary that is “equidistant from the outer reach of each encroaching boundary, like an equitable compromise.”

A. The BLS Report

The threshold question in this matter is whether the trial court adequately explained why it discredited the BLS Report finding that JM-3 is the best evidence of the position of the boundary point described in the Aimeliik Charter. In response to this Court's instruction on remand, the trial court prepared its Decision on Remand and filed it on April 25, 2007. In discussing Airai's evidence and the BLS Report, the trial court noted the following:

On remand, Airai's evidence consisted of witness testimony and the BLS Investigative Report and map which was prepared in response to a court order to survey the boundaries of the two States based on their respective charters. The BLS report concluded that the Aimeliik Municipal Charter describes the boundaries by reference to physical features with a general mention of directions and no distances were used Put another way, the BLS report plotted Aimeliik's boundaries based on references to physical features, a not uncommon method of describing boundaries by municipalities, and *further relied on the testimony of Airai residents*, to plot the boundaries of Aimeliik. (emphasis added).

In contrast, the trial court noted that Aimeliik called several witnesses at trial who testified in support of its contention that the proper boundary line is JM-1 to JM-2. In its Decision on Remand, the trial court stated that it reaffirmed "its decision to accept the testimony of [the Aimeliik] witnesses as more credible than those witnesses testifying for Airai, with respect to identifying the boundaries of Aimeliik."

The trial court further explained the following:

In the face of the testimony of Aimeliik's witnesses, Airai's arguments that the boundary line should be JM-1 to JM-3, including the BLS investigative report, are unpersuasive. During the first trial, Airai argued that the boundary line description in its charter is more detailed and therefore more accurate than the description in Aimeliik's charter. However, this Court did not accept Airai's argument. Relying on the testimony of Airai's own witness, Thomas O. Remengesau, who was with the Island Affairs Office for Palau District under the TTPI High Commissioner's Office at the time Palau's municipalities were drafting their charters, this Court found that the description of municipal boundaries in Aimeliik's charter is adequate **142** and neither more reliable nor less reliable than the description in Airai's charter.

Thus, the trial court seems to explain its discredit of the BLS Report on the fact that the bases of the Report's conclusion, the Aimeliik Municipal Charter and identifications made by two Airai residents, were no more credible or reliable than evidence indicating alternative conclusions.

First, the trial court compared the identifications of the Airai residents, which were used

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in the BLS Report, and the testimony of Aimeliik residents who personally testified at trial. The BLS Report noted that “JM-3 was identified by Airai Governor Tmwang Rengulbai and Marcelino Augustine as having been there for many years including the Japanese times and being on the boundary of the two states.” In a prior decision, the trial court explained the following in regard to the testimony of the Aimeliik residents who testified at trial:

Abina Etpison and Demei Obak, the representative Speaker of the Legislature and Governor of Aimeliik State, testified that Aimeliik’s boundary runs from JM-1 to JM-2, and that JM-2 refers to the area described as Tebadel, the former hamlet of Aimeliik as described in Aimeliik's charter, and from that point out to Bsachelimeliik, described as a melkesokl or stretch of shallow water within the deep waters inside the reef. Neither witness recalled any leaders of Aimeliik, whether traditional or elected, agreeing to alter its boundaries.

Kiueluul Mekemad, 84 years old, has been fishing in the waters within the area for nearly seventy (70) years. He described the various fishing grounds and specific coral mounds in the water between points 1 and 2, including Bsachelimeliik. These areas are located within JM-1 and JM-2, inclusive of areas within JM-1 to JM-3 of the Exhibit. He named the various fishing spots therein, and no evidence to contradict his testimony was presented. Each witness testified to having fished in the areas over the years and continuing up until the present time. At least sixteen (16) spots located in the water and on land were named by the witnesses, as identified on Antonio Exhibit G, each in the water within points JM-1 and JM-2. Moreover, these three witnesses testified to having seen the Japanese markers at or near a pile of corals which point is indicated as JM-2, during the late 1960’s and early 1970’s.

...

Paulino Eriich and Dr. Minoru Ueki also testified in Aimeliik’s case-in-chief. They testified that in the land area between JM-1 and JM-2, other people in addition to Antonio, Madraisau and Teltull reside or **L43** have farms thereon, and all are citizens of Aimeliik State or occupy the property through some relation to citizens of Aimeliik

Although JM-2 has not been located, whether by the surveyors or by the representatives from each state, and no one was able to testify as to what exactly happened to this marker, the Court finds the testimony of these witnesses as to the location of JM-2 to be credible and accepts such testimony. The uncontradicted testimony of these witnesses supports Aimeiiik’s claim that its boundaries, as described in its municipal charter, includes that point from JM-1 to JM-2

The trial court made a credibility determination in regard to this testimony, finding the Aimeliik residents’ testimony credible and more reliable. We may not reweigh this evidence, test the credibility of these witnesses, or draw inferences from the evidence. *Omenged*, 8 ROP Intrm. at 233.

Second, the trial court analyzed the Airai and Aimeliik charters, concluding that neither charter was more reliable than the other. The Airai Charter “establishes boundaries using course and distances” In contrast, the Aimeliik Charter “describes the boundary by reference to physical features[,] . . . [providing] only [a] general mention of directions and no distances were used.” Appendix 8 at 4. The trial court explained that Airai’s own witness, Thomas O. Remengesau, testified that “the general practice [during the Trust Territory Administration] was to describe boundaries using the place names and descriptions of lands rather than coordinates.” Accordingly, the trial court found neither charter to be more reliable or valid than the other.

Although prior case law holds that state boundaries in Palau are confined to the boundaries of the former municipalities, *Peleliu State v. Koror State*, 6 ROP Intrm. 91 (1997), the trial court sufficiently explained its reasoning for not adhering to this rule. The trial court noted that the Appellate Division in *Peleliu State* specifically left unanswered the issue of when two or more states have a legitimate boundary dispute based on an unresolved conflict between the former municipalities as to their appropriate boundaries. The trial court stated in its decision that “[t]he issues raised in this matter clearly fall into the space left open by that unanswered in *Peleliu State v. Koror State*. In this case, the testimony clearly established that the municipalities of Airai and Aimeliik had unresolved conflicts as to their respective boundaries, as witnesses for both parties testified.”

In *Peleliu State*, the Appellate Division considered a boundary dispute between the states of Koror and Peleliu. *Id.* at 92. Koror State argued that its boundaries were those contained in its constitution, which were the same as the boundaries of the former Municipality of Koror. *Id.* On the other hand, Peleliu State asserted that its boundaries extended to its traditional limits, which were larger than the boundaries of the former Municipality of Peleliu. *Id.* The court ultimately agreed with Koror State, concluding that “the boundaries of the States, at 144 the time of their creation, were confined to the boundaries of the former municipalities.” *Id.* at 94. The court found that “Peleliu’s reading of the Constitution to permit the States to adopt their ‘traditional’ boundaries is unsound, because the court has no meaningful way of determining what the ‘traditional’ boundaries of the States are.” *Peleliu State*, 6 ROP Intrm. at 94. However, the court noted that “[t]here may yet be cases where two or more States have a legitimate boundary dispute based on an unresolved conflict between the former municipalities as to the appropriate boundaries. The Court makes no decision about such cases today.” *Id.* The case at bar falls into this distinguishable category of cases.

As noted by this Court in its most recent opinion, filed on October 12, 2006, both charters, as reviewed by Mr. Knight, define boundaries that place the area of land that was originally contested in this action within Airai. This conflicts with the trial court’s finding that the correct boundary is from JM-1 to JM-2, placing the contested land completely in Aimeliik. However, the boundaries, as defined in the two municipal charters and plotted on Worksheet No. 99-M-002A, overlap and conflict with each other. Thus, as concluded by the trial court, the holding in *Peleliu State* does not directly apply here where two states have a legitimate boundary dispute based on an unresolved conflict between the former municipalities as to their appropriate boundaries.

Moreover, neither charter, as reviewed by Mr. Knight, establishes the boundary to be either of those claimed by Airai or Aimeliik in this action. (Appendix 7.) Airai's charter defines a boundary that is located north of the JM-1 to JM-3 boundary argued by Airai in this case. Additionally, according to Mr. Knight, the Aimeliik Charter defines a boundary that is located north of the JM-1 to JM-2 boundary, as argued by Aimeliik, and the JM-1 to JM-3 boundary, as argued by Airai. In the face of this ambiguity, the trial court disregarded the BLS Report's conclusion regarding the location of the boundary, which was significantly based on the descriptions listed in the Aimeliik Charter, and completed its own analysis based on the evidence.

In addition, Airai argues that the trial court erred when it failed to consider the "research" and "maps and documents" referred to in the BLS Report. In the report, Mr. Knight stated that he conducted research at the "National Archives, National Museum, Research Library, PCC Library, PPLA and the records of BLS." Mr. Knight does not specify what information he obtained in these locations in regard to the boundary. He lists numerous maps that he reviewed, however he indicates that these maps either show no municipal boundaries or lack "original data that would further assist in interpreting the boundary descriptions." In fact, he notes that "[n]o map was found that contains all of the features with names spelled as in the Charter, but maps were found that had features with similar names except for the point 'Bsachelimeliik' [which is the boundary point disputed by the states as JM-2 or JM-3] and the 'Oidosebgong Reef BLS found no maps that indicate a position with the name of 'Bsachelimeliik.'"

The trial court need not discuss all the evidence relied on to support its conclusions; however, its decision must reveal an understanding analysis of the evidence. The "research" and "maps and documents," although referred to by Mr. Knight in the BLS Report, were left undefined by Mr. Knight and fail to shed any light on the ultimate question of this case; the location of the boundary between Airai and Aimeliik. Thus, the trial court's failure to discuss or analyze this "evidence," or lack thereof, was not erroneous.

Overall, the trial court's decision reveals an understanding analysis of the evidence, a resolution of the material issues of fact that penetrate beneath the generality of ultimate conclusions, and an application of the law to those facts. Its findings of fact regarding the conflict between the municipal charters are not clearly erroneous. Thus, the trial court's conclusion that this matter is distinguishable from the circumstances in *Peleliu State* was appropriate. The trial court's finding of fact regarding the location of the boundary between Airai and Aimeliik does not lack evidentiary support in the record where no reasonable trier of fact could have reached the same conclusion.

B. Doctrine of Repeal by Implication

Airai's argument that the Airai Charter repealed by implication the Aimeliik Charter's boundary description does not warrant reversal of the decision below. Airai raised this issue in a previous appeal; however this Court has not yet considered the merits of this argument. Airai asserts that the boundary as described in its Charter should prevail as it was issued by the High

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Commissioner of the Trust Territory, who also issued Aimeliik's Charter, at a later date than the Aimeliik Charter. However, "[f]or one statute to repeal another by implication they must both relate to the same object or purpose." 73 Am. Jur. 2d. *Statutes* § 286 (2001). The two municipal charters at issue here have different purposes as they relate to the creation of two separate municipalities. Therefore, the trial court did not err in finding the application of the doctrine to be inappropriate in this action.

CONCLUSION

We affirm the trial court's decision.