Nakamura v Uchelbang Clan, 15 POP 55 (2008)

KUNIWO NAKAMURA and ROMAN TMETUCHL FAMILY TRUST,
Appellants,

v.

UCHELBANG CLAN, KERENGEL LINEAGE,
and AIMELIIK STATE PUBLIC LANDS AUTHORITY,
Appellees.

CIVIL APPEAL NO. 06-039
Civil Action No. 209-96

Supreme Court, Appellate Division
Republic of Palau

Decided: February 13, 2008[1]

Counsel for Nakamura: Roman Bedor

Counsel for RTFT: Johnson Toribiong

Counsel for Uchelbang Clan and ASPLA: Raynold B. Oilouch

Counsel for Kerengel Lineage: Salvador Remoket

BEFORE: ARTHUR NGIRAKLSONG, Chief ⊥56 Justice; KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice.

Appeal from the Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

MATERNE, Justice:

Roman Tmetuchl Family Trust ("RTFT") and Kuniwo Nakamura (together "Appellants") appeal the Decision and Order, issued by the trial court in this matter on January 15, 2004, and Judgment issued on October 17, 2006, which resolved a land ownership dispute between the parties in this lawsuit in favor of Appellees Uchelbang Clan and Kerengel Lineage. Appellants maintain that this Court should reverse the trial court's decision because the trial court committed clear error when it found by a preponderance of the evidence that the deeds granted to them regarding the contested land were ineffective. We affirm the trial court's decision because the trial court's factual findings are not clearly erroneous and should be upheld.

BACKGROUND

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

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The following are the background facts in this matter as the trial court explained them in its Decision and Order:

> This case is, in large part, a collateral attack on determinations of ownership issued by the Land Claims Hearing Office in November 1993, which were based on a Land Commission adjudication issued in July 1980. The Court denied motions to dismiss by defendants Roman Tmetuchl Family Trust and Kuniwo Nakamura, holding that plaintiff Uchelbang Clan (later joined by Kerngel Lineage) were entitled to a hearing at which to show that the determinations of ownership had not been properly served and therefore were not entitled to preclusive effect. Decision and Order, October 11, 1999. That hearing was held, and by Decision and Order dated June 13, 2000, the Court found that the determinations had not been served on plaintiffs. Because the upshot of this procedural failure was that it denied plaintiffs their right to an appeal, the Court concluded that plaintiffs were not entitled to a new hearing, but rather an opportunity "to show why, if they had had the chance to file a timely appeal, they or one of them would have prevailed." After subsequent briefing, however, in which plaintiffs laid out their grounds for an appeal, the Court ultimately concluded that the 1980 adjudication was legally faulty, and that plaintiffs were entitled to a new hearing supplementing the record from 1980. Decision and Order, July 16, 2001.
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> The land at issue is located to the north and west of ⊥57 the power plant in Ngchemiangel Hamlet of Aimeliik State. Plaintiffs each claim to have owned the land prior to its taking by the Japanese before the War. Defendants claim that, after the War, the land was conveyed by the Trust Territory to Blulkei Clan, and that one of its members, Skilang Rebechong, subsequently deeded portions of the land to each of them. Although one of the defendants argued in closing that a land claimant cannot rely upon the weakness of his opponent's claim, but must prove the strength of his own, this case turns, the Court believes, on the question whether Blulkei ever received title to the land from the Trust Territory. If it did not, then defendants' claims must fail, irrespective of the strength of Uchelbang's and Kerngel's claims.

The trial court found by a preponderance of the evidence that "Blulkei did not own the land and that the deeds from Skilang to defendants were therefore ineffective." The trial court found, inter alia, that "the homestead deed issued to Blulkei Clan in 1963 does not cover the land now in dispute, but rather lists the lot numbers of three islands and a piece of land to the west of that area." Consequently, it ruled in favor of plaintiffs Uchelbang Clan and Kerngel Lineage. A final judgment was issued in this matter on October 17, 2006. Appellants Nakamura and RTFT 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). The trial court's conclusions of law are reviewed *de novo. Roman Tmetuchl Family Trust v. Whipps,* 8 ROP Intrm. 317, 318 (2001).

DISCUSSION

The threshold question in this matter is whether the trial court clearly erred when it found that the contested land had not been conveyed from the Trust Territory to the Blulkei Clan. The trial court found that, although a "close case," a preponderance of the evidence indicates that Blulkei Clan did not own the land. For numerous reasons, the Appellants argue that the trial court clearly erred in making this finding.

A. Permit to Enter and Homestead Agreement

In their appeal, Appellant RTFT argues that the trial court committed clear error when it misconstrued the Permit to Enter and Homestead Agreement (the "Permit") by limiting its scope to ⊥58 cover only three islands and the peninsula off the coast of the mainland and relied on the oral testimonies of witnesses in awarding the land claimed by RTFT to Uchelbang Clan. Likewise, Appellant Nakamura asserts that the trial court erred by not taking into account the size of the homestead and limiting the Permit to three islands, namely Bischerad, Builmacheos and Iildesechakl.

> Although the Permit [] makes reference to these three islands, the homestead is defined as bounded by the north by ocean, on the east by Titimel and Mokoir and on the south by Dilbedul. The area of the three islands show the three islands and a peninsula at the tip of Aimeliik to be comprised of 9.47 hectares. This is much less than 21 hectares that was given to Blulkei Clan as its homestead.

Based on this erroneous view of the evidence, the Appellants maintain that the trial court erred when it determined that the homestead quitclaim deed ("homestead deed") issued to Blulkei Clan in 1963 did not include the land in dispute.

In its order, the trial court explained its analysis of the homestead deed as follows:

> The Court begins with what it characterized at closing argument as defendants' worst fact, namely, that the homestead deed issued to Blulkei Clan in 1963 does not cover the land now in dispute, but rather lists the lot numbers of three islands and a piece of land to the west of that area. This fact is problematic for numerous reasons, the first and foremost being that this is the only deed that was produced at this trial or, so far as the Court can gather, in any previous proceeding. Thus,

> there is no written document showing that the land transferred from Skilang to defendants was ever transferred to Blulkei Clan by the Trust Territory Government.

In addition, the trial court noted that the deed is problematic because it neutralizes "the most significant evidence in defendants' favor."

> In the midst of trial, and in response to a subpoena, Palau Public Lands Authority produced from its records a file that appeared to confirm Skilang's testimony before the Land Commission that the matter of Blulkei's homestead had been the subject of a Trust Territory investigation in the 1960's, and to show that Blulkei's homestead permit included the land now in dispute. In particular, that file contains a map which appears to show that the land at issue was once referred to - apparently mistakenly – as "Ildesachakl", and included in part of [sic] Blulkei's homestead area by that name. The problem, however, is ⊥59 that the file does not contain any record of the Trust Territory Land Title Officer's conclusions following his investigation, and the homestead map which accompanied the deed, both of which were issued shortly after the investigation was apparently completed, correctly identifies "Ideschakl" [sic] as one of the islands to be given to Blulkei and not as part of the disputed area. That is to say, after the investigation into Blulkei's homestead had been done, and whether as a direct result or not, the official action of the Trust Territory was to give Blulkei a deed that does not include the disputed land.

Although Appellants maintain that the trial court completely failed to consider that the Permit gave "21 hectares . . . to Blulkei Clan as its homestead," the actual language in the Permit states that the homestead shall involve "a tract of land not more than 21 hectares in area." In addition, it is not clear that the trial court inappropriately "relied on the oral testimonies of witnesses" in making its finding regarding the limits of the homestead deed. In fact, in its analysis, the trial court fails to mention the testimonies of any witnesses, but instead relies on the language of the homestead deed itself and records produced by the Palau Public Lands Authority.[2] Thus, Appellants have failed to demonstrate that the trial court's findings so lack

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[2] Appellant Nakamura also seems to argue that, pursuant to the ruling in *Tmetuchel v. Siksei,* 7 ROP Intrm. 102 (1998), the fact that the Trust Territory Government failed to issue a certificate of compliance to Blulkei Clan, establishing that it had complied with the homestead requirements and acquired a vested right in the contested land, is not dispositive in determining ownership of the land. Appellant Nakamura's reliance on *Tmetuchel,* however, is misplaced because, unlike in the case at bar, no deed was issued to the claimant in *Tmetuchel. Id.* at 103. Moreover, in *Tmetuchel,* the Appellate Division found that there was "unrebutted testimony adduced before the Land Registration Team . . . which remained unrebutted on the record below, [that Siksei had complied with the homestead requirements, thus] the trial court was entitled to conclude that Siksei had complied with the homestead requirements and had therefore become the owner of the property." Id. at 105. No such unrebutted evidence was presented to establish that Appellant Nakamura fulfilled the homestead requirements in order to obtain title to the contested land. Thus, the facts of *Tmetuchel* are clearly distinguishable from those presented

evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.

B. Homestead Map

Appellants Nakamura and RTFT also contend that the homestead map establishes that all the parties have homesteads or land within the area, and the trial court erred by only recognizing the homesteads of Uchelbang Clan and Kerengel Lineage. They argue that the trial court gave too little weight to the map, as such an official document carries more weight than the testimony of witnesses because there is a presumption that public officials act within the laws and regulations that govern them.

In discussing its review of this evidence, the trial court explained the following:

> The homestead deed also makes it harder to place much weight on the portion of the homestead map that appears to support defendants' claims and that has been the likely source of much of the subsequent confusion about this land. That map, which bears the legend "Blulkei Clan Homestead", contains the word "Blulkei" in large letters in the heart of the area now in dispute, and looks on first glance to identify that location as the site of the homestead land. Upon closer inspection, however, one finds that to the west of that area, there is a piece of the mainland and three islands, each of which is labeled "Blulkei Clan,"each of which has lot numbers that conform to the numbers listed on the homestead deed, and each of which contains a land area that, when totaled, adds up to the 9.47 hectares stated on the deed. By contrast, the word "Blulkei" is not identified by a lot number, is not accompanied by a lot area and, indeed, is not set off by any boundary lines from the designation "Government Land" which appears on the map to the left and a little bit above it. Rather, the only writing that accompanies the word "Blulkei" are two apparent compass readings and a six-pointed star which is identified by the legend below as "Secondary Control". Why a secondary control point should be called "Blulkei", why it should be identified in larger letters than the names of the lands that were indisputably actually awarded to Blulkei Clan, and why there should be a secondary control point at all at the top of the mountain far to the east of the land with which the map was concerned, is something of a mystery. But the difficulty of answering those questions is in the end "secondary" to the question of how it could be that a single point on a map, without any boundary lines surrounding it, without any lot number, and without any area measurement, can be understood as identifying a land that was given to Blulkei Clan.

W e may not reweigh or draw inferences from the evidence reviewed by the trial court. *Omenged,* 8 ROP Intrm. at 233. Regardless of the fact that the homestead map carries, in some form, the words "Blulkei," "Blulkei Clan," "Uchelpang," and "Ngermedngil," Appellants have failed to demonstrate that the trial court's findings regarding the word "Blulkei" so lack

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here.

evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. The trial court did not commit clear error in finding that the homestead map did not indicate that Blulkei Clan owned the contested land.

C. Land Purchased by Aimeliik Municipal Government

Lastly, Appellant Nakamura argues that the trial court gave too little weight to the evidence indicating that Aimeliik Municipal Government bought from Skilang a portion of the contested land in order to build an elementary school. Appellant Nakamura points out that the trial court acknowledges this purchase "but seems to downplay that such selling of the land is an evidence [sic] of ownership of the land by Skilang." In addition, Appellant Nakamura maintains that the trial court, in determining the weight of this evidence, inappropriately relied on the testimony of Meruk Rengulbai, which was evidence that was not introduced in this case.

The trial court noted its concern regarding this sale of a portion of the contested land in a footnote in its order. The court explained that while this fact remained troubling, it was "not weighty enough to change the Court's ultimate conclusion." Specifically, the trial court stated the following:

> If there were clear evidence that the Trust Territory was aware of and consented to that sale, that might serve as circumstantial evidence that the land had been given out by the Trust Territory to Blulkei Clan in the first place. But no school was ever built there, and the record contains testimony by Meruk Rengulbai at another Land Commission hearing suggesting that Skilang's claim to the land was disputed by the Trust Territory and that Aimeliik tried to get its money back. Moreover, the map of the school site that was prepared by the Trust Territory and that was mentioned by Skilang in his Land Commission testimony identifies all of the surrounding areas as public land.

Again, we may not reweigh or draw inferences from the evidence reviewed by the trial court. *Omenged,* 8 ROP Intrm. at 233. Moreover, Appellant Nakamura's contention that the trial court erred by relying on testimonial evidence that was not admitted in this case is misplaced. The testimony of Meruk Rengulbai was included in Uchelbang's Exhibit 6, which was admitted into evidence in this case without objection from the parties.

CONCLUSION

Appellants have failed to demonstrate that the trial court's findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusions. Accordingly, the trial court did not commit clear error in finding that the contested land was not conveyed from the Trust Territory to the Blulkei Clan. In light of the foregoing, we affirm the trial court's decision.