

Kikuo v. Ucheliou Clan, 15 ROP 69 (2008)
MISAKO KIKUO and SECHEDUI LINEAGE,
Appellants,

v.

UCHELIOU CLAN,
Appellee/Appellant,

v.

WIRANG LINEAGE, CHRISTINA NGIRBLEKUU, and SECHEDUI LINEAGE,
Appellees.

CIVIL APPEAL NO. 07-009
LC/R 00-455 to 470, 00-503, LC/R 01-223 to 242

Supreme Court, Appellate Division
Republic of Palau

Decided: April 3, 2008¹

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Counsel for Sechedui Lineage: John Rechucher

Counsel for Ucheliou Clan: Moses Uludong

Counsel for Wirang Lineage: Clara Kalscheur

Counsel for Christina NgirblekUU: *Pro Se*

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Senior Judge, presiding.

PER CURIAM:

In the period preceding World War II, the Japanese Government took control of Peleliu and evacuated the island's residents. Following the war, the four corner clans of Ngerkeiukl Hamlet filed claims with the Trust Territory Government. The Government denied these claims and title to the lands remained with the government. In 1962, however, the Trust Territory Government issued homestead quitclaim deeds to the four corner clans of Ngerkeiukl Hamlet. This case concerns various claims made to the Uchelkeiukl Clan Homestead Lot 161, marked on Worksheet No. 2005 R 003, Court Exhibit D. Associate Judge Keptot issued a notice for filing

¹ Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. P. 34(a).

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claims in 2000 and the hearing on the claims was heard in 2006 before Senior **L71** Judge Senior. The Land Court awarded lands in Ngerkeiukl Hamlet, Peleliu State, to Wirang Lineage, Christina Ngirblekuu, Sechedui Lineage, and Ucheliou Clan. Sechedui Lineage and Ucheliou Clan appeal the Land Court's Determinations of Ownership.

BACKGROUND*

A. Land Known as *Maungil*

The land known as *Maungil* is identified as parts of Tochi Daicho Lots 1769, 1770, and 1771 and depicted as Lots Y, Z, Lots R-112, R-108, and R-113A, as shown on Bureau of Lands and Surveys Worksheet No. 2005 R 003 and the worksheet map marked Court Exhibit D. The Land Court awarded this land to Wirang Lineage based on the testimony of Manuel Takami, Monique Eriang, and Sakaziro Yamanguchi. The Land Court found that these members of Wirang Lineage have been living on and farming the land for over fifty years and that Manuel has been living on the land without objection from Uchelkeiukl Clan or Christina Ngirblekuu for over sixteen years. The Land Court held that the Tochi Daicho listings in the name of Wirang Lineage members Ngirblekuu and Mad further support the lineage's claim of ownership. Although Christina's father Ngirblekuu is listed as the owner of Tochi Daicho Lots 1769 and 1770, she produced no testimony or other documents to support her claim of individual ownership of these lots. In fact, Ngirblekuu told his son Ngiramowai that the lands in Peleliu were owned by the lineage. Nor was this land given out at the eldecheduch of Ngirblekuu's wife. The Land Court did award Worksheet Lot R-112 (which is part of Tochi Daicho 1769 and 1770) as marked on Court Exhibit D to Christina because Wirang Lineage did not claim that land.

The Land Court also held that the 1962 quitclaim deed held by Uchelkeiukl Clan did not divest Wirang Lineage of ownership of the land. Wirang Lineage submitted evidence of its continued use and occupation of the land as well as the Tochi Daicho listing Wirang Lineage members as owners of the land. Uchelkeiukl Clan has not demonstrated any acts of ownership of the land since receiving the quitclaim deed in 1962.

B. Land Known as *Ngereklai*

The land known as *Ngereklai* is identified as parts of Tochi Daicho Lots 1971, 1972, 1973, 1974, and 1975, depicted as Worksheet Lots 291-016, 291-106-A, R-110 and R-111 as shown on Bureau of Lands and Surveys Worksheet No. 2005 R 003 and the worksheet map marked Court Exhibit D. The Land Court awarded this land to Sechedui Lineage based on the

* Editor's Note: The headings in this opinion have been changed from those used in the slip opinion for the sake of consistency within the reporter.

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testimony of Misako Kikuo and Adelbeluu Timerong Sisior. At the time of the hearing, Sisior was 76 years old and Misako was 81 years old. Misako testified that a woman named Ulemikel gave the land known as *Mekaiu* to Sechedui Lineage and a woman named Metur gave the land known as *Ngereklai* to the Lineage. But Sisior testified that the women of Sechedui Lineage primarily farmed on *Ngereklai* during the Japanese time. According to the Land Court, Sisior testified that the land known as *Ngereklai* belonged to Sechedui Lineage but the land known as *Mekaiu* belongs to Ucheliou Clan. ^{L72} The Land Court credited Sisior's testimony because he has spent the majority of his 76 years in Peleliu while Misako has not lived in Peleliu since she was 20 years old.

C. Land Known as *Ngeriuang* or *Mekaiu*

The land known as *Ngeriuang* or *Mekaiu* (hereinafter *Mekaiu*) is identified as parts of Tochi Daicho Lots 1962, 1963, and 1964 and depicted as Worksheet Lots 291-003, 291-004-part, R-103, R-103A, R-105, R105A, R-105B, R-105C, R-106, and R-106A as shown on Bureau of Lands and Surveys Worksheet No. 2005 R 003 and marked on Court Exhibit D. The Land Court held that Ucheliou Clan presented suitable evidence to overcome Uchelkeiukl Clan's quitclaim deed to Homestead Lot 161. Uchelkeiukl Clan admitted in a document entitled Acknowledgment of Error and Agreement to Correct, dated July 21, 2006, that it does not own Homestead Lot 161 and has not demonstrated any form of ownership over the land. The Land Court held that the purpose of the quitclaim deeds given to the four corner clans of Peleliu was to provide a mechanism for the rightful owners of the lands to reclaim their lands through the clans, and cited the testimony of Sammy Ocheraol to this effect. The Land Court also cited a resolution of the Peleliu State Legislature urging the clans and lineages with quitclaim deeds to return the lands to their rightful owners.

D. Claims on Appeal

1. Sechedui Lineage

Sechedui Lineage appeals the Land Court Determinations of Ownership of the lots awarded to Ucheliou Clan, namely, the land known as *Mekaiu* as identified above. Sechedui Lineage designated the testimony of Misako Kikuo, Adelbeluu Timerong Sisior, Ungiltekoi Baulechong, Alonz Joseph, and Postol Remeliik as the record on appeal.

Sechedui Lineage argues that the Land Court erred in relying on the testimony of Adelbeluu Timarong Sisior in awarding *Mekaiu* to Ucheliou Clan. Sisior testified that members of Sechedui Lineage farmed *Mekaiu* and never said that the land belonged to Ucheliou Clan. Sechedui Lineage also points to the testimony of Misako Kikuo relating the story of how Sechedui Lineage acquired *Mekaiu* from a woman named Ulmikel, and to the registration of *Mekaiu* to Ngirchelui, who was the Adelbeluu for Sechedui Lineage. Sechedui Lineage members farmed *Mekaiu* before and after the war and stopped the government from building a power plant on *Mekaiu*. It was only the consent of Sechedui Lineage that permitted the government to build the power plant. Sechedui Lineage challenges the Land Court's conclusion that it was in fact Ucheliou Clan that consented to the power plant. The Land Court based this

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on the fact that Adelbeluu Postol Remeliik, chief of Ucheliou Clan, attended the meeting at which consent was given.

Sechedui Lineage also challenges the Land Court's finding that Adelbeluu is the chief of Ucheliou Clan. The Lineage asserts that the testimony of Misako Kikuo and Adelbeluu Timarong Sisor demonstrate that Adelbeluu is in fact the chief title of Sechedui Lineage. Finally, Sechedui Lineage argues that there is no evidence aside from Postol Remehik's testimony that *Mekaiu* belongs to Ucheliou Clan. In any event, Postol's testimony that the land is

173 clan land was based on a document -- a land claim filed by Baulechong on behalf of Ucheliou Clan -- that was never produced to the Land Court.

2. Ucheliou Clan

Ucheliou Clan appeals the Determinations of Ownership awarding land known as *Maungil as* identified above to Wirang Lineage and Christina Ngirblekuu and awarding land known as *Ngerekelai* as identified above to Sechedui Lineage. In other words, the Clan claims all the land that was before the court. Ucheliou Clan designated "the record of the hearing relating to testimonies of claimants to lands in Homestead Lot No. 161" to be made available to the parties on appeal. Ucheliou Clan later withdrew its designation of records and waived the transcript on appeal.

Ucheliou Clan first claims error in the Land Court's finding that Uchelkeiukl Clan "cannot retain or own land in Homestead 161 when it did not claim 161 in the first place." The argument seems to be that the Land Court erred when it awarded *Maungil* to Wirang Lineage when it reasoned that because Uchelkeiukl Clan did not demonstrate ownership of *Maungil* it must belong to Wirang Lineage. Ucheliou Clan offers the quitclaim deed issued by the Trust Territory Government in 1962 as evidence for why it should be declared owners of *Maungil* as opposed to Wirang Lineage. Ucheliou Clan also cites three other Peleliu land cases involving quitclaim deeds as supporting their ownership of the land through the quitclaim deed; *Etpison v. Sugiyama*, 8 ROP Intrm. 208 (2000); *Nasiou v. Ngeskesuk Clan*, 8 ROP Intrm. 209 (2000); and *Sugiyama v. Tikei Clan*, 9 ROP Intrm. 73 (2002).

Ucheliou Clan further argues that the claims of Wirang, Christina, and Sechedui, "based on their relationship with Tochi Daicho owners namely Mad, Ngirchelui, and Ngirblekuu and long use by certain members" are not supported by evidence in the record. The Clan argues that the "mere testimony of witnesses" is not enough to overcome the individual ownership listing in the Tochi Daicho. Finally, the clan argues that the Land Court erred when it awarded land to Christina only because Wirang Lineage did not claim it.

STANDARD OF REVIEW

The Appellate Division reviews the Land Court's findings of fact for clear error. *Tesei v.*

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Belechal, 7 ROP Intrm. 89, 90 (1998). “Under this standard, if the Land Court’s findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made.” *Obak v. Joseph*, 11 ROP 124, 127 (2004) (citation omitted). Deference is also accorded to Land Court findings on the credibility of witnesses. *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 37 (1999). The Land Court’s conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

DISCUSSION

A. Ucheliou Clan

Ucheliou Clan’s first argument, that the Land Court erred when it found that Uchelkeiukl Clan cannot claim ownership in Homestead Lot No. 161 when it made no such claim, is rather perplexing and does not require much discussion. 174 Uchelkeiukl Clan was not awarded any land below and the Land Court acknowledged and accepted the agreement between Ucheliou Clan and Uchelkeiukl Clan delineating the clerical error regarding the switch in Homestead Lots.² Although the Land Court discussed Uchelkeiukl Clan as the party in possession of the quitclaim deed for Homestead Lot 161 instead of Ucheliou Clan, Ucheliou Clan does not point to any evidence of its use of Lot 161 that would change the Land Court’s analysis. The Land Court divested Uchelkeiukl Clan of the Lot 161 because it had not demonstrated any ownership over the land. The Land Court felt obligated to return the lands to the lineages and clans that held the land before the war and that demonstrated ownership of the lands following the war. Ucheliou Clan does not divulge how or why it is entitled to relief based on this part of the Land Court’s determination and does not offer any evidence of its use of the land either before or after the war.

Ucheliou Clan’s primary argument is that the Land Court should have awarded it the entire Homestead Lot No. 161 based on the 1962 quitclaim deed. The first question is whether, as a matter of law, the Land Court could determine that the claims of ownership based on testimony of various claimants and Tochi Daicho listings could defeat the quitclaim deed, or if the previous Peleliu land cases have already determined the validity of these quitclaim deeds.

Ucheliou Clan seems to ignore the nature of a quitclaim deed.

Under a conveyance by a quitclaim deed, the grantee can acquire no better interest than the grantor had If the grantor himself has no title or interest to the property conveyed, the grantee takes nothing under a quitclaim deed, and the instrument is regarded as merely a release or formal disclaimer on the part of the grantor, notwithstanding the use of additional words of grant.

² Homestead Lot 161 is listed as belonging to Uchelkeiukl Clan, and Homestead Lot 163 is listed as belonging to Ucheliou Clan. The two Clans acknowledged that this was a clerical error and agreed that the Homestead Lots should be switched. The Land Court accepted this agreement.

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See 23 Am. Jur. 2d *Deeds* § 276 (2002). Here, there is no evidence that the Trust Territory Government ever claimed to bestow perfect title to the homestead lots on the four corner clans, and Ucheliou Clan does not so argue. This is not a quiet title action brought by Ucheliou Clan in an attempt to fortify its deed. Rather, the Land Court issued a notice for filing claims in 2000, which suggests that the land was open to anyone who filed a claim and could prove ownership. Other means of proving ownership aside from quitclaim deeds issued by occupying governments must have been contemplated, otherwise the Land Court would have simply awarded the lands based on the quitclaim deeds. In fact, the history of the quitclaim deeds and the homestead program, as well as the evidence in the record including the resolution passed by the Peleliu State Legislature and the testimony of the witnesses at the hearing, suggest that the Trust Territory Government always intended to return the land to the various clans, lineages and individuals. This is what led the Land Court to hold hearings regarding the proper owners of the 175 land, and Ucheliou Clan's sole reliance on the quitclaim deed to prove ownership is therefore misplaced.

Our previous cases are not to the contrary. None of the three Peleliu cases purported to decide the validity of the quitclaim deed in the Appellate Division. *See Basiou*, 8 ROP Intrm. at 211 (“Because Appellants concede that the [Trust Territory Government] properly quitclaimed the land to the Clan, any arguments concerning the validity of the [Government’s] title are of no moment.”); *Etpison*, 8 ROP Intrm. at 208 (“Appellant’s counsel agree that quitclaim deeds to the clans were agreed to by the people of Peleliu.”); *Sugiyama*, 9 ROP at 76-78 (quitclaim deed not questioned on appeal). Although those cases upheld Determinations of Ownership anchored on quitclaim deeds, in those cases the quitclaim deed was the best evidence of ownership, and the validity of the quitclaim deed was not challenged on appeal. It is axiomatic that the outcome of Determinations of Ownership for different parcels of land may turn on different evidence and therefore may differ in result. Here, the Land Court found the testimony of witnesses and the Tochi Daicho listings more convincing than the quitclaim deed. Ucheliou Clan has never argued that the Trust Territory Government passed perfect title through the quitclaim deed, nor is there any foundation for such a premise in the record. Other cases awarding other Homestead Lots to clans based on quitclaim deeds are not enough by themselves to overturn the Land Court’s decision here that title to certain portions of Homestead Lot No. 161 lie with individuals and lineages, not Ucheliou Clan. In *Sugiyama*, appellant argued that the trial division gave too little weight to the Peleliu Tochi Daicho and too much weight to the quitclaim deed. The appellate division dismissed this argument as “little more than an invitation to reweigh the evidence presented to the trial court. Such reweighing would only be appropriate if we found that the court's factual findings were clearly erroneous.” *Sugiyama*, 9 ROP at 77. Here, the Land Court weighed the evidence and determined that, for certain parcels within Homestead Lot No. 161, the Peleliu Tochi Daicho and the testimony of witnesses were more convincing evidence of ownership than the quitclaim deed. This finding was not clearly erroneous, and we are therefore obligated to uphold the Land Court’s decision that the quitclaim deed was overcome by other evidence of ownership in this case.

We turn next to Ucheliou Clan’s attempt to challenge the Land Court’s findings of fact. The Land Court relied on the Tochi Daicho listing individual members of Wirang Lineage,

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relatives of Christina Ngirblekuu, and members of Sechedui Lineage as owners of various plots of land and on the testimony of the claimants elicited at the hearing in awarding various portions of Homestead Lot No. 161 to Wirang Lineage, Christina Ngirblekuu, and Sechedui Lineage. Ucheliou Clan's challenge to the Land Court's findings of fact must fail because the clan did not put the transcript of the proceedings below into evidence. The Land Court awarded the land known as *Maungil* and the land known as *Ngereklai* based on testimony presented by representatives of Wirang Lineage and Sechedui Lineage at the hearing. Specifically, the Land Court found the testimony of Manuel Takami, Monique Eriang, and Sakaziro Yamanguchi credible evidence of Wirang Lineage's ownership of the land known as *Maungil*. Although Sechedui Lineage produced a transcript of the testimony of claimants to the lands known as 176 *Ngereklai* and *Mekaiu*, the testimony regarding the land known as *Maungil* was not placed in the record, precluding appellate review of the Land Court's findings of fact regarding that land. *See Fanna & Merir Mun. Gov'ts v. Sonsorol State Gov't*, 8 ROP Intrm. 9 (1999) (citing Rule 10(b) of ROP R. App. P.); *Smau v. Emilian*, 6 ROP Intrm. 31 (1996). We cannot review Ucheliou Clan's argument that the claims of Wirang, Christina, and Sechedui, "based on their relationship with Tochi Daicho owners namely Mad, Ngirchelui, and Ngirblekuu and long use by certain members" are not supported by evidence in the record because that record is not available. As for the clan's position that the "mere testimony of witnesses" is not enough to overcome the individual ownership listings in the Tochi Daicho, the Peleliu Tochi Daicho is not accorded the same presumption of accuracy as it is in other states, and the Land Court was free to accept testimony of witnesses as the best evidence of ownership of the land. *Mesebeluu v. Uchelkumer Clan*, 10 ROP 68, 70-71 (2003). Ucheliou Clan's claim to *Maungil* is therefore denied.³

B. Ucheliou Clan/Sechedui Lineage Challenges to *Ngereklai* and *Mekaiu*

The remaining dispute on appeal is between Sechedui Lineage and Ucheliou Clan over lands known as *Ngereklai* and *Mekaiu*. Sechedui Lineage was awarded *Ngereklai* and claims on appeal that it should have been awarded *Mekaiu* as well. Ucheliou Clan was awarded *Mekaiu* but also claims *Ngereklai*. Sechedui Lineage did put the transcript of the proceedings regarding claims to these two lands in the record on appeal, and we review the Land Court's findings of fact for clear error.

1. *Ngereklai*

The Land Court awarded *Ngereklai* to Sechedui Lineage based on the testimony of Misako Kikuo and Adelbeluu Timarong Sisior. Ucheliou Clan again complains that "the mere testimonies of witnesses in 2006 that such properties were not individual property as listed in the Daicho but belong to their Lineage is not sufficient to defeat the TD ownership." Putting aside for the moment the question of how Ucheliou Clan would succeed in claiming the land if the individuals listed in the Tochi Daicho listings were given ownership of the land, the Clan's understanding of the Peleliu Tochi Daicho is flawed. The Peleliu Tochi Daicho "maybe given evidentiary weight but it does not carry the presumption of accuracy of the Tochi Daichos of

³ Even if this panel were to consider Ucheliou Clan's challenge to *Maungil* on its merits, the affidavits of the various members of Wirang Lineage constitute a fair approximation of the testimony at the hearing. These affidavits provide strong evidence to support the Land Court's findings of fact and subsequent determinations of ownership.

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other states.” *Mesebeluu v. Uchelkumer Clan*, 10 ROP 68, 70-71 (2003). Many members of Sechedui Lineage testified to their continuous use of *Ngerekelai*, both as farmland and as a residence. The Land Court weighed the historical and customary evidence against the Tochi Daicho listings and resolved the dispute in favor of Sechedui Lineage. It was not clear error to do so.

2. *Mekaiu*

The Land Court awarded *Mekaiu* to Ucheliou Clan, and Sechedui appeals this 177 determination. The Land Court held that the historical evidence of Ucheliou Clan’s ownership of *Mekaiu* outweighed Uchelkeiukl Clan’s homestead quitclaim deed. The Land Court credited Adelbeluu Timarong Sisor’s testimony that *Mekaiu* belonged to Ucheliou Clan, and bolstered this conclusion by inferring that consent for the state power plant was given by Ucheliou Clan as represented by Postol Remeliik. Sechedui Lineage claims that it was the lineage who stopped construction on the power plant; construction which was resumed only upon the consent of the lineage, not Ucheliou Clan. Sechedui Lineage asserts that the Land Court falsely characterized Adelbeluu Timarong Sisor’s testimony as supporting Ucheliou Clan ownership of the land, challenges as implausible the Land Court’s inference of Ucheliou Clan’s ownership of the land based on Postol Remeliik’s attendance at the power plant meeting, challenges the Land Court’s statement that Adelbeluu is the chief title of Ucheliou Clan, and states that Ucheliou Clan never actually claimed *Mekaiu*.

The question of the true title of Ucheliou Clan is not relevant to this land dispute, and even if it was, there is evidence in the record to support the Land Court’s finding. Postol Remeliik testified that Adelbeluu is the chief title of Ucheliou Clan, and there are documents in the record that support this conclusion. Civil Action No. 67-77, Trust Territory District Court 1977; Acknowledgment of Error and Agreement to Correct, July 21, 2006. Also, there is irrefutable evidence from Postol’s testimony, Land Court Calendar B, and a claim filed by Augustine Mesebeluu that Ucheliou Clan did in fact claim *Mekaiu*. Sechedui Lineage is correct, however, that Sisor never actually testified that *Mekaiu* belonged to Ucheliou Clan. In fact, Sisor was called as a witness for Sechedui Lineage, but he did testify that Sechedui Lineage did not farm on *Mekaiu* following the war because that is where the power plant was built. The only witness to testify directly to Ucheliou Clan’s ownership of *Mekaiu* was Postol Remeliik. Postol testified that Ucheliou Clan’s claim stems from a claim filed by Adelbeluu Baulechong after the war. The Land Court was free to credit this testimony, especially when bolstered by Sisor’s testimony that *Mekaiu* was not farmed by Sechedui Lineage. Although the Land Court may have mis-stated Sisor’s testimony in its determination of ownership, such error was harmless because of the other evidence relied on by the Land Court. The Land Court’s ultimate conclusion was not clearly erroneous.

CONCLUSION

The decision of the Land Court is affirmed.