

Ngirchomlei v. Children of Katosang Rimirch, 15 ROP 92 (2008)

MITSKO NGIRCHOMLEI,
Appellant,

v.

CHILDREN OF KATOSANG RIMIRCH,
Appellee.

CIVIL APPEAL NO. 06-021
LC/D 02-422 & 02-423

Supreme Court, Appellate Division
Republic of Palau

Decided: April 21, 2008¹

Counsel for Appellant: Micronesia Legal Services Corporation

Counsel for Appellee: John K. Rechucher

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; C. QUAY POLLOI, Associate Justice Pro Tem.

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

POLLOI, Justice:

Appellant Mitsko Ngirchomlei appeals from the Land Court decision holding that Appellee, the Children of Katosang Rimirch, is the rightful owner of the lands called *Beab* or *Merkos* (Tochi Daicho Lot No. 56), *Kelau* (Tochi Daicho Lot No. 60), *Oucherchar* (Tochi Daicho Lot No. 60-1), and Worksheet Lot No. 001 D 20, all of which are located in Ngiwal State. In this action, Appellant only appeals the Land Court's decision regarding *Kelau* (Tochi Daicho Lot No. 60) and *Oucherchar* (Tochi Daicho Lot No. 60-1) (together "Lots 60 and 60-1"). Appellant argues that the Land Court erred when, based on oral and written conveyances, and the doctrine of adverse possession, it found Katosang Rimirch ("Katosang") to have been the former owner of the contested lands. Specifically, Appellant challenges the validity of the conveyances and asserts that under the doctrine of adverse possession, Katosang's possession of the lands was not "hostile." We affirm the Land Court's determination regarding these plots of land because the Land Court did not clearly err when it found the oral and written conveyances of Lots 60 and 60-1 to be valid.

BACKGROUND

This lawsuit was originally brought by Mitsko Ngirchomlei, Ngiraibai Udui, the Children

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

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of Katosang Rimirch, and Etumai Lineage to determine ownership of the lands called *Beab* or *Merkos* (Tochi Daicho Lot No. 56), *Kelau* (Tochi Daicho Lot No. 60), *Oucherchar* (Tochi Daicho Lot No. 60-1), and Worksheet Lot No. 001 D 20, all of which are located in Ngiwal State. As the Land Court noted in its decision, the Tochi Daicho lists Lots 60 and 60-1 as **L93** property of the Etumai Clan. “The Tochi Daicho listing of property owners is presumed to be accurate, and the party who disputes the listing must rebut the presumption by clear and convincing evidence in order to prevail.” *Andres v. Desbedang Lineage*, 8 ROP Intrm.134,134 (2000). Both Ngirchomlei and the Children of Katosang argued that, despite what was listed in the Tochi Daicho, Olebuu was the true owner of Lots 60 and 60-1. The Land Court agreed, finding that Olebuu’s ownership of such lands is supported by clear and convincing evidence. Appellant does not challenge this finding. It is from this point, however, that the parties’ claims diverge.

Ngirchomlei argues that Olebuu was Ngerbol’s brother, and that Olebuu gave Lots 60 and 60-1 to Ngerbol. Ngirchomlei testified that Olebuu gave these lands to Ngerbol “because she was the only one who went to help him in his time of need.” Ngerbol was Ngirchomlei’s adoptive mother, thus she claims her mother's interest in the land after her mother died. In contrast, the Children of Katosang Rimirch maintain that Delemau Ngiratudelei (“Delemau”), Olebuu’s and Ngerbol’s brother, conveyed these lands to Katosang through written and oral conveyances in the 1950s and 1960s.

The Land Court ultimately agreed with the Children of Katosang, concluding that Katosang was the owner of Lots 60 and 60-1. Specifically, the Land Court made the following findings of fact:

3. Lot 60, a land known as Oucherchar, is listed in the Ngiwal Tochi Daicho as the individual property of Etumai Clan administered by Delemau.
4. Lot 60-1, a land known as Bungelkelau or Kelau, is listed in the Ngiwal Tochi Daicho as the property of Etumai Clan administered by Itotech.
...
9. In 1949 or 1950, Delemau permitted Katosang to build his house and live on the land known as Oucherchar, Tochi Daicho Lot 60.
10. On January 6, 1961, Delemau Ngiratudelei transferred ownership of Tochi Daicho Lot 60 to Katosang.
11. Katosang and his children have exclusively and continuously used, possessed and occupied the lands known as Oucherchar, Tochi Daicho Lot 60, and Kelau, Tochi Daicho Lot 60-1, for over forty years without permission of and objection from Etumai Clan or Etumai Lineage.
14. Delemau orally conveyed Tochi Daicho Lot 60-1 to Katosang in 1965.

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Additionally, the Land Court found that in the 1970s the late Katosang Rimirch recorded and monumented his lands as shown in the Land Acquisition Record dated October 11, 1975, and subsequently filed his claim on September 22, 1982, to register the lands as his individual properties. The Land Court concluded that 194 Katosang acquired ownership of Lots 60 and 60-1 by oral and written conveyances, and, in the alternative, acquired ownership of the lands through the doctrine of adverse possession.

STANDARD OF REVIEW

The Appellate Division reviews the Land Court's findings of fact for clear error. *Pierantozzi v. Ueki*, 12 ROP 169, 170 (2005). Under that standard, factual findings will not be set aside as long as they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion. *Tmiu Clan v. Hesus*, 12 ROP 156, 157 (2005). The trial judge is best situated to make credibility determinations, and the Appellate Division will generally defer to the lower court's findings regarding the credibility of witnesses and evidence. *Id.* at 158; *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 37 (1999).

DISCUSSION

Appellant challenges the trial court's finding that Katosang was the owner of Lots 60 and 60-1 "based on one unauthorized written document and one highly questionable oral conveyance." Specifically, Appellant argues that the oral conveyance did not occur. Additionally, Appellant maintains that both of the alleged conveyances were invalid because "(1) Delemau had no authority to transfer the land himself and (2) the proper owner, Ngerbol, had never given permission to her brother, Delemau, to transfer the land and also had no knowledge of the alleged transfer until at least 1973 or 1974." Basically, Appellant maintains that Delemau had no right to transfer ownership of Olebuu's lands to Katosang, thus any such transfer was invalid.

In regard to the oral conveyance of Lot 60-1, Appellant states that she "questions whether there was a conveyance at all . . . by Delemau . . . [because] he had already done a written transfer of Lot No. 60; Katosang clearly was an intelligent man and a business man; he knew how to protect himself." Thus, Appellant seems to suggest that Katosang would not have accepted an oral conveyance but would have required a written conveyance. Appellant argues that the Land Court erred when it failed to consider this.

It is not clear that this argument was raised by Appellant before the Land Court. In any event, in determining whether Katosang owned the property, the Land Court considered evidence of Katosang's acts on the contested land that were consistent with Appellees' claims of ownership. Specifically, the Land Court noted that

[t]he testimonies and photographs presented by the children of Katosang Rimirch demonstrate by clear and convincing evidence that Katosang and his children possessed, occupied and used the lands known as Oucherchar and Kelau to the exclusion of others for over 50 years. Katosang constructed at least [sic] three

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different houses on the land known as Oucherchar during that time period.

Thus, regardless of whether Katosang would have “required” a written conveyance, the Land Court did not clearly err in finding that Katosang acted as though he owned the contested land.

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In addition, Appellant maintains that Delemau had no right to transfer ownership of Olebuu’s lands to Katosang, thus any such transfer was invalid. This argument was raised and considered by the Land Court. In its decision, the court found that,

the undisputed testimony of Wataru Elbelau established by clear and convincing evidence that under Palauan custom Delemau Ngirtudelei as the younger brother of Olebuu had the authority to dispose of Olebuu's properties. Wataru Elbelau testified that under generally recognized Palauan custom, a woman has no authority over her brother’s properties.

The existence of a custom must be proved by clear and convincing evidence. *Iderrech v. Ringang*, 9 ROP 158,161 (2002). Based on the un rebutted testimony of Wataru Elbelau, the Court finds by clear and convincing evidence that Delemau had greater authority and control over Olebuu’s properties than Ngerbol and that Delemau had the authority to transfer ownership of Olebuu’s lands to Katosang Rimirch.

The Land Court did not find that Ngerbol owned the contested lands. It also noted in its order that even if she did own the lands, her brother legitimately transferred ownership of the lands to Katosang in the 1950s and 1960s.

The Court is not persuaded that Ngerbol owned these lands. Even if we were to accept Darrou’s testimony as true that Ngerbol owned the lands prior to the war, she subsequently allowed her brother Delemau Ngirtudelei to transfer ownership of Tochi Daicho Lots 60 and 60-1 to Katosang in the 1950s and 1960s without any objection. This is consistent with general concepts of Palauan custom as testified to by the expert witness and the Court must conclude that the oral and written conveyances of Tochi Daicho Lots 60 and 60-1 from Delemau to Katosang were valid.

Appellant does not identify any evidence that it presented to the Land Court that disputed the testimony of Wataru Elbelau regarding the custom. Therefore, the Land Court did not clearly err in finding that, under Palauan custom, Delemau Ngirtudelei had the authority to dispose of Olebuu’s properties. The Land Court’s conclusions that Delemau validly conveyed Lots 60 and 60-1 to Katosang, and that, consequently, Katosang was the rightful owner of such lands, were appropriate. In light of this result, we need not analyze Appellant’s challenge to the Land Court’s decision regarding Katosang’s acquisition of the land through the doctrine of adverse possession.

CONCLUSION

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Appellant has failed to demonstrate that the Land Court's findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusions. Accordingly, the Land Court did not commit clear error in finding that Lots 60 and 60-1 were conveyed from Delemau to Katosang. In light of the foregoing, we affirm the Land Court's decision.