

Rengechel v. Uchelkeiukl Clan, 16 ROP 155 (2009)
JOE RENGECHEL,
Appellant,

v.

UCHELKEIUKL CLAN & PRUDENCE TECHUR,
Appellees.

CIVIL APPEAL NO. 07-040
LC/M 01-737; LC/M 01-738; LC/M 01-740 through 01-744

Supreme Court, Appellate Division
Republic of Palau

Decided: April 22, 2009¹

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Counsel for Appellant: Imelda Bai Nakamura

Counsel for Techur: Clara Kalscheur

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice

Appeal from the Land Court, ROSE MARY SKEBONG, Associate Judge, presiding.

PER CURIAM:

Appellant Joe Rengechel challenges the determination of the Land Court of August 15, 2007, finding that of the fifteen lots disputed, two were the property of Appellant, two of Appellee Uchelkeiukl Clan, two of Appellee Prudence Techur, one of Basilius Mesechol, one of Elilai Clan and seven of the Aimeliik State Public Lands Authority (“ASPLA”). He argues that there were inadequate procedural rules in place to protect *pro se* claimants, that he was prevented from completely questioning certain witnesses, that the court failed to distinguish between two sets of lands in question, and that the court made an error of fact in determining that two of the lots in question were the property of Appellees Prudence Techur and Uchelkeiukl Clan. Appellee Uchelkeiukl Clan failed to file a response brief. Appellee Techur responds by arguing that he too was a *pro se* claimant, and that all *pro se* claimants were afforded many opportunities to examine the witnesses, present testimony and submit evidence throughout the hearing. Appellee Techur additionally submits that the Land Court made a satisfactory and detailed determination of which lots belonged to which set of lands in dispute. Because the transcript and Land Court’s findings and determinations supports Appellee’s position, we affirm the Land Court’s determinations in full.

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

BACKGROUND

On August 15, 2007, the Land Court determined the ownership between six claimants of fifteen lots of land contained within two areas known as Ngermeloched and Ngerberruuch, in Aimeliik State. At the Land Court hearing, Appellant, as well as Appellee Techur, and two other claimants were *pro se*, while three claimants had counsel, including Appellee Uchelkeiukl Clan. After a lengthy hearing, the Land Court first made findings of fact regarding which lots were contained within which of the two areas of land. The court found that lots 004, 005, 006, 007, 013, 014, 015, 018 and 019 were within Ngerberruuch, while lots 003, 008, 009, 010, 011 and 012 were within Ngermeloched.

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Next, the court made findings of fact based primarily on competing testimonies of witnesses, stating that in most instances, the court was called upon to make important credibility determinations. Appellant challenges the court's determinations of ownership regarding lots 004 and 005 only. The court awarded lot 004 to Appellee Techur, and lot 005 to Appellee Uchelkeiukl Clan.

A. Lot 004

Lot 004 was claimed by Prudence Techur and Uchelkeiukl Clan at monumentation in 2002, and later, at trial in 2006, by Appellant. Appellant claimed the land known as Ngerberruuch was owned by his father, Rengechel, who was given the land by his father, Ruchitong. During monumentation, Appellant did not claim lot 004 as part of Ngerberruuch, but at trial he testified that lot 004 was, in fact, part of Ngerberruuch, and therefore his land. According to Appellant, Ngerberruuch consisted of lots 004, 005, 018, and 019. He claimed that he was born in Ngerberruuch and lived there until he was six years old. Appellant additionally presented records from the Land Claims Office to corroborate his understanding that Ngerberruuch was given to him through his father's *eldecheduch*. Lastly, in claiming neighboring lots, claimant Basilius Mesechol testified that his father informed him that his land neighbored that of Rengechel on one side and Elilai on the other.

Appellee Techur claimed that Ngerberruuch consisted of lots 003 and 004. He attested that the land was given to him by his mother, Keremius, who inherited the property from her father, Salii. As description of the lots he claimed, Appellee testified that Ngerberruuch contains a taro patch and a stone platform that his mother told him was previously a village abai. Appellee's mother had previously shown him the markers, which he claims to have found easily during monumentation. In addition, a member of Uchelkeiukl Clan testified that Keremius had property in Ngerberruuch, though she was unsure how the land was acquired.

Uchelkeiukl Clan represented that they owned Ngerberruuch, and other lands in Aimeliik, because they were the highest ranking clan in the state, and claimed lots 004, 005, 006, 007, 009, 012, 013, 014, 015, 018 and 019. Various members of the clan testified at the hearing, and to some extent, presented conflicting stories. The primary witness, and Clan representative, Abina Etpison testified that Appellant Rengechel's father, Ruchitong, was a member of Uchelkeiukl Clan and resided in Ngerberruuch. When Ruchitong died, the Clan gave his land to his son,

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Appellant, as he was the only child of Ruchitong to reside in Ngerberruuch. However, as Etpison testified, Rengechel later asked the Clan to take back this property in exchange for land closer to Ngerkeai village. The Clan maintains that it did so, and gave him land called Ngertong. The Clan representative also refuted Appellee Techur's testimony that his mother owned lot 004, stating that a cemetery and a bai were on lot 004, and Keremius' taro patch was across the river, on lot 003. The Clan further denied that Basilius Mesechol ever owned land in Ngerberruuch, and claimed that he moved from one relative's residence to another.

With the difficult task of interpreting these three conflicting stories, the Land Court awarded p.158 lot 004 to Appellee Techur, as it found his testimony to be the most credible, while the other claimants to lot 004 contradicted themselves at times. For example, Appellant Rengechel did not claim lot 004 in 2002 at monumentation, and waited until trial in 2006 to finally lay claim to the land. Likewise, a member of Uchelkeiukl Clan testified that he agreed with Appellee Techur's claim. Furthermore, the Court found that Techur's testimony was corroborated by witnesses claiming other plots of land, who had no personal interest in lot 004 themselves. Claimants Nakamura, Obakerbau, Skilang and Mesechol all made reference to the land owned by Techur's mother, or the taro patch she tended on lot 004. Therefore, the Court awarded lot 004 to Appellee Techur.

B. Lot 005

The Court awarded lot 005 to Uchelkeiukl Clan. Appellant claimed lot 005, again arguing that it was his father's land, and was given to Appellant at his father's eldecheduch. He refuted the argument of Uchelkeiukl Clan, stating that his father told him that only he, Mesechol and Elilai clan owned property in Ngerberruuch. Appellant denied that Uchelkeiukl Clan ever owned any lands in Ngerberruuch. Uchelkeiukl Clan claimed lot 005 as part of the land it owned by virtue of its status as the highest ranking clan in Aimeliik. Again, the Clan's position was that Appellant's father did live on the land, which the Clan had given him, but then subsequently Appellant gave back the land in exchange for Ngertong.

The Land Court found Appellant's testimony less credible than testimony from witnesses for Appellee Uchelkeiukl Clan, and awarded the land to the Clan. It found that Appellant contradicted himself by stating that Uchelkeiukl never owned land in Ngerberruuch, but admitting on cross-examination that he was given lands in Ngerberruuch and Ngertong by the Clan. Conversely, the Court found the Clan's testimony more credible, and held that although lots 018 and 019 were given to Appellant, lot 005 was never conveyed. Thus, the Court held that lot 005 remained in the possession of the Clan.

Appellant filed this timely appeal on September 7, 2007. Uchelkeiukl Clan also filed an appeal, but failed to file a timely opening brief. The Clan also failed to file a response to Appellant's opening brief.

STANDARD OF REVIEW

This Court reviews the trial court's findings of fact for clear error. *Ongidobel v. ROP*, 9

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ROP 63, 65 (2002). In addition, “where ‘there are two permissible views of the evidence, the fact finder’s choice between them cannot be clearly erroneous.’” *Palau Pub. Lands Auth., et al. v. Tab Lineage*, 11 ROP 161, 165 (2004)(citing *Iderrech v. Ringang*, 9 ROP 158, 160 (2002)). The trial court’s conclusions of law are reviewed *de novo*. *Ilebrang Lineage v. Omtiliou Lineage*, 11 ROP 154, 156 (2004).

DISCUSSION

A. Land Court Rules

Appellant contends that the Land Court Rules do not comply with the requirements of RPPL 4-43, and therefore deny him the protection intended by the Legislature. Appellant p.159 cites RPPL 4-43, section 9, which states that “the Land Court, in consultation with the Chief Justice of the Supreme Court, shall promulgate special procedural and evidentiary rules designed to allow claimants to represent themselves without the aid of legal counsel, and so that proceedings may be conducted in Palauan.” Appellant then points to several sections of the Land Court Rules, the Land Court Rules of Procedure, RPPL 4-43 and the ROP Rules of Evidence, pointing out areas where the rules are identical. He purports that because these choice sections are identical, the Land Court Rules were not changed to protect *pro se* claimants, as intended by RPPL 4-43.

Appellee Techur responds first by stating that he, too, was *pro se*, and second, that the Land Court Rules were changed after RPPL 4-43 was enacted. Appellee additionally points out that aside from ASPLA, the *pro se* claimants were awarded most of the land in dispute. Lastly, Appellee notes that Appellant was in no way prevented from full participation in trial because he was unrepresented, citing parts of the transcript where the *pro se* claimants presented testimony, witnesses, evidence, and conducted examinations, cross-examinations and re-cross examinations of witnesses.

We agree with Appellee’s contentions that the Land Court Rules do comply with the mandates of RPPL 4-43 and that Appellant was in no way injured by the absence of more specific Land Court rules. The Land Court Rules were made with *pro se* claimants in mind, and did change as a result of RPPL 4-43. For example, the rules state that all hearings must be conducted in Palauan, a rule designed specifically to benefit *pro se* claimants. Simply pointing out individual sections of the rules as identical to their counterparts in other rules does not necessarily mean that the rules in their entirety are the same. Moreover, Appellant has failed to point to any error made by the Land Court. The Land Court’s conduct during the hearing complied with the Land Court Rules, and Appellant has not shown otherwise. Without an error by the Land Court, we are without authority to reverse its findings.

Lastly, Appellant has not shown an injury, as is required by the standing doctrine. He has not shown that the Land Court’s findings would have been different had there been different Land Court rules in place at the time of the hearing. The court’s determinations of ownership were based on credibility determinations of the witnesses, all of whom had a fair chance to testify and cross-examine one another. Without an injury-in-fact, this court is without

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jurisdiction to afford any relief to Appellant. *See Gibbons v. Seventh Koror State Legislature*, 11 ROP 97, 104 (2004) (stating that “[t]he Palau Constitution imposes limitations on the rights of litigants to bring claims in courts of law. Those limitations, commonly known as the ‘standing’ doctrine, require a court to verify that a party has suffered an injury that the court is capable of redressing.”).

In addition, credibility determinations are rarely reversed and require clear error. *Tab Lineage*, 11 ROP at 165. Appellant has failed to show that the court made any error in applying the rules, much less a clear one warranting reversal. Therefore, Appellant’s claim for relief on this ground is denied.

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B. Protection of *Pro Se* Claimants

Appellant next contends that *pro se* claimants were at a disadvantage during the hearing because the judge failed to tell them how to examine witnesses. He cites a part of his cross-examination of Appellee Techur, claiming that the court failed to inform him how to rephrase his questions of the witness. Appellee again points out that he, too, was *pro se* during the hearing, and that neither he nor Appellant were denied the opportunity to examine witnesses fully.

We agree with Appellee, and find that Appellant was given ample opportunity, and did in fact, question witnesses, present documents and testify on his behalf. *See* Tr. Vol. 1 at 30 (Appellant’s cross examination of Appellee Techur); *see also* Tr. Vol. 1 at 72 (admitting two of Appellant’s exhibits into evidence). It is not judicial error to allow a *pro se* party to represent himself, even if he may disadvantage himself by doing so. *See United States v. Pinkey*, 548 F.2d 305, 311 (10th Cir. 1977). Where, as here, there is no Palauan case law directly addressing an issue of law, this Court looks to United States case law for guidance. 1 PNC § 303. In *U.S. v. Pinkey*, the Tenth Circuit stated,

The hazards which beset a layman when he seeks to represent himself are obvious. He who proceeds *pro se* with full knowledge and understanding of the risks does so with no greater rights than a litigant represented by a lawyer, and the trial court is under no obligation to become an ‘advocate’ for or to assist and guide the *pro se* layman through the trial thicket.

Id. at 311. The same can be said for the Land Court in the instant matter. Although Palau has special Land Court rules designed to help *pro se* litigants, there is nothing in the rules that instructs a Land Court judge to act as an attorney for those parties choosing to represent themselves.

Moreover, the example cited by Appellant in his brief only serves to defeat his argument. The Land Court instructed Appellant that he is not permitted to testify while asking a question of the witness, and instructed him to ask a question, rather than continue his discourse. The court then provided Appellant with the opportunity to ask further questions, which he did throughout the entire hearing. *See* Tr. Vol. 1 at 32. In fact, after the court informed Appellant that he must

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ask questions of the witnesses rather than testify, he did so. The remainder of his examination was as follows:

Q: Okay. The *bai* that you said was built on the *odesongel*, do you know who built it?

A: No.

Q: And you're saying it's inside 004, eh? Correct?

A: Yes.

Q: Ok, I have no other questions.

Tr. Vol. 1 at 32-33. There is no injury resulting from Appellant's representation of himself at trial, as he was clearly able to ask questions of the witnesses, present evidence and testify on his behalf. Therefore, there was no clear error, and Appellant's claim in this respect is denied.

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C. Lot 004

Appellant claims that the Land Court made an error of fact in concluding that Appellee Techur's testimony was more credible than his own. In addition, Appellant contends that the court precluded him from fully cross-examining Appellee Techur. As noted above, Appellant had ample opportunity to cross-examine Appellee Techur, and only ended his cross-examination by stating that he had no more questions. Tr. Vol. 1 at 33. Indeed, Appellant cross-examined Appellee Techur a second time, and again concluded with the statement that he had no further questions. Tr. Vol. 3 at 24240-43. Therefore, the Court finds no error by the Land Court, and denies Appellant's claim that he was somehow precluded from fully examining Appellee Techur during the hearing.

Appellant's claim that the Land Court made an error in awarding lot 004 to Appellee Techur is likewise denied. Findings of fact are given deference by this Court, and "reversal under the clearly erroneous standard is warranted 'only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.'" *Tab Lineage*, 11 ROP at 165 (citing *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002)). The Land Court was faced with conflicting testimony between Appellant and Appellee, and made its determination based upon credibility determinations, in addition to corroborating statements from other witnesses at the hearing. Because at least three other witnesses, claiming unrelated lots, made statements corroborating Appellee's testimony, the Land Court found Appellee's statements more credible than Appellant's. Appellant presents no evidence that would make this finding clearly erroneous, and therefore, this Court must defer to the credibility determinations of the Land Court. Appellant's claim to lot 004 is therefore denied.

D. Lot 005

Appellant next claims that the Land Court was clearly erroneous in awarding lot 005 to Uchelkeiukl Clan. Appellant argues that the court failed to consider the testimony of Rengulbai Brikul Ngiruchelbad ("Rengulbai"), a member of Uchelkeiukl Clan, who testified in a previous Land Court matter that Ngerberruuch was the property of Ruchitong's children. Although Rengulbai testified again at the hearing in this matter on behalf of Uchelkeiukl, Appellant

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contends that because he was *pro se*, he did not know to cross-examine him regarding this previous testimony. Lastly, Appellant claims that the Land Court erred in its determination of ownership because it failed to adequately explain the basis for its determination.

Appellant's contention that the court failed to consider and weigh the testimony of Rengulbai is unfounded. In the Land Court's "Summary of the Proceedings; Findings of Fact; Conclusions of Law; Determination" ("Determination") of August 15, 2007, the court stated, "[t]he statement on Rengechel Exhibit 1 relied on by Joe Rengechel was Rengulbai's testimony that land in Ngerberruuch was given to Rengechel's children at Rengechel's eldecheduch. Claimant himself even testified on cross-examination that Uchelkeiukl Clan gave Ngerberruuch and Ngertong to him and his siblings." Determination at 20. The Land Court thus not only considered the evidence, but found **p.162** that it supported Uchelkeiukl Clan's claim that the land was occupied by Ruchitong, who gave it to his son, Rengechel Ruchitong, who passed it along to his son, Appellant Rengechel, who exchanged the land with Uchelkeiukl Clan for land called Ngertong.

The Land Court was faced with contradicting testimony by both parties, and found that Uchelkeiukl Clan's testimony as a whole was more credible than Appellant's. Again, we defer to the credibility determinations of the Land Court in the absence of clear error. *Tab Lineage*, 11 ROP at 165. Because there is testimony in the record to support both Appellant and Appellee Uchelkeiukl Clan's claims, we cannot find that there has been clear error. We therefore reject Appellant's claim that the Land Court clearly erred in awarding lot 005 to Uchelkeiukl Clan.

E. Defining Ngerberuuch and Ngermeloched

Appellant finally claims that the Land Court clearly erred in failing to distinguish between the lands known as Ngermeloched and those known as Ngerberuuch, and therefore improperly apportioned the properties amongst the claimants. He argues that Uchelkeiukl Clan owned Ngerberuuch, while Elilai Clan owned Ngermeloched, and that Appellee Techur claimed lands which bordered the two.

The record below supports that the Land Court clearly defined the areas of Ngerberuuch and Ngermeloched. In its Determination, the Land Court identified which lots were part of Ngerberuuch and which were part of Ngermeloched, stating that "Ngerberruuch consists of lots 004, 005, 006, 007, 013, 014, 015, 018, and 019," and that "Ngermeloched consists of lots 003, 008, 009, 010, 011 and 012." Determination at 13. Because each of these lots was clearly defined on Exhibit H-1, Worksheet 02 M 005, the Land Court adequately and accurately defined the limits of both Ngerberruuch and Ngermeloched. In addition, we are disinclined to consider the statements made on appeal that Uchelkeiukl Clan owned Ngerberuuch, Elilai Clan owned Ngermeloched and Appellee Techur claimed lands bordering the two. Appellant's testimony was considered during the hearing, and found to be less credible than Appellees' testimony. Without evidence pointing to clear error in the Land Court's credibility determinations, we will not reverse its findings. Appellant's final claim for appeal is therefore denied.

CONCLUSION

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The Court holds that the Land Court acted in conformity with the Land Court Rules of Procedure, as well as with RPPL 4-43. Appellant was not prejudiced as a result of his status as an unrepresented claimant, and was given a full and fair opportunity to be heard. Further, we hold that the Land Court's determinations of ownership were not clearly erroneous. We therefore **AFFIRM** the findings of the Land Court in full.