

Ketebengang v. Sechedui Clan, 16 ROP 101 (2008)
LAWRENCE KETEBENGANG,
Appellant,

v.

SECHEDUI CLAN,
Appellee.

CIVIL APPEAL NO. 07-017
(LC/R 05-221B through 05-310B; 06-01 through 06-18B)

Supreme Court, Appellate Division
Republic of Palau

Decided: December 12, 2008¹

Counsel for Appellant: Oldiais Ngiraikelau

Counsel for Appellee: Salvador Remoket

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEXANDRA F. FOSTER, Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice.

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

PER CURIAM:

On appeal is the March 26, 2007, findings of fact, conclusions of law, and determination of the Land Court awarding all of Homestead Lot No. 166, also known as Idelbong, to Sechedui Clan. Appellant Lawrence Ketebengang filed timely claims to four Tochi Daicho lots within Homestead Lot No. 166, and he challenges the decision of the Land Court. We affirm the Land Court's decision.

BACKGROUND

On January 29, 1962, the Trust Territory Government conveyed Homestead Lot No. 166 to Sechedui Clan.² Homestead Lot No. 166 occupies a large area of land commonly known as

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

²Due to a clerical error, the homestead map and the quitclaim deeds incorrectly awarded Idelbong, Homestead Lot No. 166, to Soweï Clan and the land known as Ngermidol, Homestead Lot No. 167, to Sechedui Clan. On September 5, 2001, the Trial Division ordered that the deeds be conformed to reflect what each Clan agreed was their traditional land. The Appellate Division affirmed the Trial Division on May 26, 2006. *See Soweï Clan v. Sechedui Clan*, 13 ROP 124 (2006); *see also Uchelkumer Clan v. Soweï Clan*, Civil Appeal No. 07-010 (January 7, 2008).

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Idelbong, located in Teliu Hamlet, Peleliu State. The Lot contains numerous Tochi Daicho lots under the names of different individuals. From December 18, 2006, through December 20, 2006, the Land Court heard claims to small parcels of land within Homestead Lot No. 166. Following the hearing, the Land Court found that the lots claimed by Appellant, Tochi Daicho Lots 2159, 2182, 2219, and 2220 were not located p.102 within Homestead Lot No. 166 and denied Appellant's claims.

The Court found it "unlikely" that Appellant would own land in an area traditionally owned by Sechedui Clan because Appellant was a high-ranking member of the Soweï Clan. The Court also pointed to Claim 120, filed by Ongklungel Iyechad on April 28, 1955, for the land known as Idelbong. In that claim, Iyechad listed Appellant as an adjacent landowner to Idelbong, which suggested that Appellant did not own any land within Homestead Lot No. 166. In a statement accompanying the claim, signed by Appellant, Iyechad stated that Idelbong traditionally belonged to Sechedui Clan. The Court also discredited Appellant's Exhibit D, a sketch purporting to show that the Tochi Daicho lots claimed by Appellant were within the boundaries of Homestead Lot No. 166. Appellant claimed he created Exhibit D during the monumentation of the land in the early 1990's. The Court held that the map was suspiciously akin to the Worksheet produced by the Bureau of Lands and Surveys (BLS) of the area, which was created after Exhibit D was allegedly created. The extensive and remarkably accurate details of Exhibit D led the Court to question whether the map was drawn during the 1990's monumentation by the BLS, as claimed by Appellant, or whether it was simply copied from the BLS Worksheet following the monumentation. Although the Court noted that Exhibit D was found to be credible evidence that Appellant owned certain lots within Homestead Lot No. 167, *see* Case Nos. LC/R 05-221A through 05-310A, the Court found the same sketch to be less credible as to the location of the lots currently claimed by Appellant within Homestead Lot No. 166.

STANDARD OF REVIEW

This Court reviews the Land Court's conclusions of law *de novo*. *Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 46 (2006). The lower court's findings of fact are reviewed under the clearly erroneous standard. *Id.* Thus, the factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Id.*

DISCUSSION

Appellant presents three points on appeal. First, he argues that the finding of the Land Court that the Tochi Daicho Lots claimed by Appellant are outside Homestead Lot No. 166 was clearly erroneous. Appellant argues that no claimant disputed the authenticity of Appellant's Exhibit D and that no evidence supported the Land Court's assertion that Exhibit D was not credible. The Land Court is not required to accept uncontradicted testimony as true, *see Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth.*, 12 ROP 148, 151 (2005), and the Land Court provided cogent reasons for disbelieving Exhibit D. Specifically, the Land Court stated that "[t]he seemingly detailed observations made by [Appellant] for markers such as cement, round bars, red tape nailed and the control point lead [the Land Court] to wonder if [Appellant] actually created this very clean and clear map of Bkulabeluu in the early 1990's. . . . The extensive and remarkably accurate details of the location of Tochi Daicho lots 2219 and 2220 on p.103 [Appellant's] Exhibit D are suspect." *Findings of Fact, Conclusions of Law, and Determinations of Ownership*, Case Nos. LC/R 05-221B through LC/R 05-310B; LC/R 06-01 through 06-18B (hereinafter Opinion below) at 21. As Appellant recognizes in his brief, the Land Court believed that Appellant used the BLS map to create his own sketch and conveniently place Tochi Daicho lot numbers on plots that he wanted. Given the "remarkable detail" of Exhibit D and the similarity to the BLS Worksheet Map, a reasonable trier of fact could reach this same conclusion and we cannot reverse the Land Court on this point.

Next, Appellant quarrels with the Land Court's acceptance of an observation made by the Trial Division in its order correcting the clerical error in the quitclaim deeds to Homestead Lot Nos. 166 and 167. The court stated that "in all proceedings leading up to the issuance of the quitclaim deed . . . Sechedui Clan had claimed the land known as Idelbong, which corresponds to Homestead Lot No. 166." Opinion below at 20. The Land Court did not base its conclusion that Sechedui Clan traditionally claimed the land known as Idelbong solely on the Trial Division's observation. Although the Land Court quoted language from a Trial Division opinion, the Land Court supported its conclusion that Sechedui Clan traditionally owned Idelbong, or Homestead Lot No. 166, with other information. Namely, the quitclaim deed issued in 1962, and the claim of Ongklungel Iyechad, filed in 1955, on behalf of Sechedui Clan for the land known as Idelbong. Appellant also takes issue with the weight the Land Court placed on Iyechad's claim, arguing that because it was filed before Homestead Lot No. 166 existed, it cannot be evidence of Sechedui Clan's ownership of Lot No. 166. It can, however, evidence Sechedui Clan's ownership of the land known as Idelbong, leaving Appellant to argue only that Idelbong does not correspond to Homestead Lot No. 166. He does not so argue. Finally, Appellant disagrees with the Land Court's observation that Appellant's membership and chiefly title in the Soweï Clan weaken his claim to land traditionally owned by Sechedui Clan. This is a reasonable observation. It is far more likely that Appellant's individually owned lands are contained within the homestead of the Soweï Clan, where Appellant enjoys a chiefly title, than in the homestead of the Sechedui Clan, of which Appellant is not a member. The Land Court provided cogent reasons supporting its finding that the lands claimed by Appellant fall outside of Homestead Lot No. 166. The Court also noted that there was no evidence, aside from Exhibit D, to support Appellant's claim to land in Homestead Lot No. 166, unlike the Homestead Lot No. 167 proceeding, where Appellant introduced substantial documentary evidence and a convincing oral

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history of the land. After a careful review of the evidence, we conclude that the Land Court did not clearly err in finding that the lands claimed by Appellant were outside of Homestead Lot No. 166.

Appellant next argues the Land Court deprived him of due process of law when it did not accept Exhibit D as credible. In Case Nos. LC/R 05-221A through 05-310A, the Land Court heard various claims to Homestead Lot No. 167, the land known as Ngermidol. In that proceeding, the Land Court awarded Appellant three Tochi Daicho lots, because Appellant “introduced into evidence a substantial number of p.104 documentary evidence that leads this Court to find and conclude that [Appellant] individually owned [the three Tochi Daicho lots].” Among the substantial corroborating evidence offered by Appellant in that case was his Exhibit D, which the Land Court found “is clear and convincing evidence of [Appellant’s] individual ownership” of the lands in Homestead Lot No. 167. Appellant now complains that the Land Court cannot rely on Exhibit D in its determinations concerning Homestead Lot No. 167, and discredit Exhibit D in this proceeding without providing Appellant with notice and an opportunity to be heard.

The Land Court had no obligation to find Exhibit D a credible representation of the location of Appellant’s land claims in Homestead Lot No. 166. Appellant argues that *Airai State Pub. Lands Auth. v. Aimeliik State Gov’t*, 11 ROP 39 (2003), holds otherwise, but in that case the court reconsidered its own partial summary judgment *in the same case*. *Id.* at 41-42. The proceeding currently under our review is separate from the earlier proceeding to register Homestead Lot No. 167. Appellant points to no reasons why the parties would be entitled to rely on a finding made in a different case regarding different lands, simply because the same map is used in both proceedings. Although Appellant argues that the Land Court did not specifically limit its finding in the Homestead Lot No. 167 proceeding, it would have been error for the court in that proceeding to declare Appellant’s Exhibit D as binding on all other proceedings involving land shown on that map. By necessity the Land Court’s earlier finding that Exhibit D was credible evidence as to Appellant’s ownership of lots within Homestead Lot No. 167 was limited to that particular case. The land in Homestead Lot No. 166 was not before the Land Court in the proceeding to register Homestead Lot No. 167, and the Land Court did not focus on whether Exhibit D was good evidence as to ownership of any land other than the land that was before it. Furthermore, in that earlier proceeding, the Land Court listed other persuasive reasons why Appellant owned land within Homestead Lot No. 167, including testimony, a March 4, 1977, affidavit, and a substantial amount of documentary evidence to support Appellant’s claim. Also, as previously mentioned, it makes sense that Appellant owns land in Homestead Lot No. 167, given his position in the Soweï Clan. In this case, concerning Lot No. 166, Appellant produced no evidence to corroborate Exhibit D. Appellant was not entitled to a finding that his Exhibit D was credible in this case based solely on a credibility finding in another case and we find no violation of law in the Land Court’s refusal to do so.

Appellant’s final point on appeal is that the Land Court erred in awarding the entire Homestead Lot No. 166 to Sechedui Clan based on the quitclaim deed from the Trust Territory government. Appellant argues that the Trust Territory government did not possess title to the land that would enable it to deed the land to Sechedui Clan. We agree that a quitclaim deed

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“passes only the title that the grantor may have had. It does not promise that such title is valid.” *Giraked v. Estate of Rechucher*, 12 ROP 133, 147 (2005). But Appellant does not address the presumption that, as between a quitclaim deed and a listing in the Tochi Daicho, the quitclaim deed prevails. *See Basiou v. Ngeskesuk Clan*, 8 ROP Intrm. 209, 210 (2000). The Land Court p.105 correctly realized that claimants to the land “must overcome the strong presumption of ownership in favor of Sechedui Clan as possessor of the quitclaim deed.” Opinion below at 18. As stated above, Appellant produced no evidence aside from his Exhibit D. The Land Court did not commit clear error in refusing to credit Exhibit D, nor was this an error of law. The Land Court relied on other evidence presented by Sechedui Clan that tended to prove the lands claimed by Appellant fall outside the land before the court. We find no reversible error in the opinion below.

CONCLUSION

Accordingly, the Findings of Fact, Conclusions of Law, and Determinations of Ownership issued by the Land Court on March 26, 2007, is **AFFIRMED**.