

*Ngiraiwet v. Telungalek Ra Emadaob*, 16 ROP 163 (2009)  
**MECHUTEDIL NGIRAIWET,**  
**Appellant,**

v.

**TELUNGALEK RA EMADAOB,**  
**Appellee.**

CIVIL APPEAL NO. 04-034  
LC/H 02-97

Supreme Court, Appellate Division  
Republic of Palau

Decided: May 21, 2009

Counsel for Appellant: J. Roman Bedor

Counsel for Appellee: Salvador Remoket

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; RICHARD H. BENSON, Part-Time Associate Justice.

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

PER CURIAM:

Appellant appeals a Determination of Ownership wherein the Land Court awarded a parcel of land called Ngerutang to Telungalek ra Emadaob (“Emadaob Lineage”). Because any error on the Land Court’s part was harmless with respect to Appellant, we **AFFIRM**.

### **BACKGROUND**

This case involves the land known as Ngerutang, which is described as Lot No. H-133 on Bureau of Lands and Surveys Worksheet No. H-003. Ngerutang is located in Ngardmau State. Six parties filed claims for Ngerutang: (1) Ngirutang Oit; (2) Techereng Baules; (3) Appellant Mechutedil Ngiraiwet; (4) Felix Gaag, on behalf of Emadaob Lineage; (5) Ucherriang Aderkeroi, on behalf of the lineage of Aderkeroi; and (6) Modesta Rubasech, on behalf of the children of Esuroi. After mediation, Modesta Rubasech withdrew her claim. The Land Court held a hearing that commenced on March 16, p.164 2004, and ended on April 6, 2004. At the beginning of the hearing, Ucherriang Aderkeroi consolidated her claim with that of Felix Gaag and stated that she would testify and argue on behalf of Emadaob Lineage.

The claimants’ theories of ownership can be summarized as follows. Appellee Emadaob

*Ngiraiwet v. Telungalek Ra Emadaob*, 16 ROP 163 (2009)

Lineage claimed Ngerutang through a man named Llengai and his son, Aderkeroi. According to the lineage, Llengai acquired Ngerutang as his individual property from a person named Ngirmang. Llengai leased the land to a Japanese national. After Llengai died, Aderkeroi collected rent from this Japanese national and later used the land. Emadaob Lineage argued that it owns the land through Aderkeroi. Techereng Baules, who has not appealed the Land Court's Determination of Ownership, also claimed the land based on Llengai's prior ownership. She asserted that Llengai owned Ngerutang individually and that the land should go to her as Llengai's last surviving child.

Ngirutang Oit did not deny that Llengai had some control over Ngerutang while he was alive. Instead, Oit argued that Llengai never owned Ngerutang individually, but rather acted akin to a trustee. Oit maintained that upon Llengai's death, the land returned to his relatives, who gave the land to him.

Appellant Ngiraiwet's claim to Ngerutang is based on the argument that the land was never owned by Llengai at all, either individually or as a trustee. Rather, Appellant claims that her father Uchel Ngerudeklei owned the land through his father. Appellant asserted that her father was absent during the first Japanese land survey and that in Uchel's absence Llengai had Ngerutang registered in his own name. According to Appellant, Uchel won Ngerutang back in a later hearing before the Japanese, but the documents reflecting his ownership were destroyed in a fire.

On September 29, 2004, the Land Court issued a Summary of the Proceedings; Findings of Fact; Conclusions of Law and Determination ("Decision") that awarded Ngerutang to Emadaob Lineage. In reaching this conclusion, the Land Court found that Llengai had owned Ngerutang as his individual property and that Aderkeroi succeeded to and assumed Llengai's interest in the land. The Land Court based these findings on Llengai and, later, Aderkeroi, having leased the land and collected rent from a Japanese national. This use of the land belied Oit's argument that Llengai was a trustee, the Land Court reasoned, because "[n]o one even suggested that Llengai or Aderkeroi shared the rent they collected with other members of the lineage or clan, or that they needed permission from the clan, or even that any clan member objected to their exclusive use of the land." Decision at 17. "These actions of leasing and collecting rent, and the subsequent uses of the land exclusively by Aderkeroi and his immediate family (again undisputed) for such a long period (before 1945 to the present) strongly affirms the finding of individual ownership." *Id.*

The Land Court further concluded that Llengai and Aderkeroi's conduct also undermined Appellant's assertion that her father Uchel won Ngerutang back from Llengai. The Land Court noted that according to Appellant's testimony, neither Uchel nor anyone else in her family ever used Ngerutang. The court p.165 considered her rationale for her family not using the land – that it was too big and that Aderkeroi was collecting rent – not credible. *Id.* at 18. Ultimately, the Land Court determined that "Llengai's ownership, and subsequently, Aderkeroi's ownership is inferred from acts consistent with their ownership, and the absence of any objection or challenge by [Appellant] and her father for such a long period." *Id.* at 19.

*Ngiraiwet v. Telungalek Ra Emadaob*, 16 ROP 163 (2009)

The Land Court rejected Techereng Baules claim to Ngerutang on the grounds that she did not inherit Llengai's interest when he died. Rather, the interest passed to Aderkeroi, as evidenced by his use of the land after Llengai's death. As Emadaob Lineage was the only claimant who claimed Ngerutang through Llengai and Aderkeroi, the Land Court found that the lineage owns Ngerutang in fee simple.

### STANDARD OF REVIEW

We review land court findings of fact for clear error. *Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 168 (2006). "Under this standard, if the 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." *Id.* The Court reviews land court legal conclusions *de novo*. *Singeo v. Secharmidal*, 14 ROP 99, 100 (2007).

### DISCUSSION

Appellant argues that the Land Court's decision is insufficient because the Land Court did not explain (1) how Ngerutang passed from Llengai to Aderkeroi and (2) how Ngerutang passed from Aderkeroi to Emadaob Lineage. In light of this alleged failure to explain, Appellant requests that the Court remand the case to the Land Court for rehearing, or, in the alternative, set aside the determination of ownership and award Ngerutang to Appellant.

Although we recognize that a land court judge must "clearly set forth the basis for the determination, including a description of any custom upon which the court relied in making the determination," *Ellechel v. Lomongo*, 7 ROP Intrm. 222, 223 (1999), we affirm the Land Court's Determination of Ownership. We do so because the Land Court's alleged failure to explain how it reached its conclusions is harmless as far as Appellant is concerned.

The Appellate Division will not reverse a lower court decision due to an error where that error is harmless. *See West v. Iyong*, Civ. Appeal No. 06-022, at 10 (Nov. 19, 2007) (applying harmless error doctrine in civil appellate case); *Polloi v. ROP*, 9 ROP 186, 190-91 (2002). The "harmless error" doctrine is derived from ROP Rule of Civil Procedure 61, and, as noted above, applies at both the trial and appellate levels. *See 5 Am. Jur.2d Appellate Review* § 655 (2007) ("The Federal Rule of Civil Procedure that pertains to harmless error is followed by the courts of appeals in reviewing district court judgments."). Under this doctrine, "[t]he court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." ROP R. Civ. P. 61. Harmless errors are those that do not prejudice a particular party's case. *Polloi*, 9 ROP at 191; *Appellate Review* p.166 § 658.

Here, the alleged failure of the Land Court to explain how Ngerutang passed from Llengai to Aderkeroi and from Aderkeroi to Emadaob Lineage is harmless with respect to Appellant because the alleged error does not affect the Land Court's finding that Llengai owned Ngerutang in fee simple. Appellant's claim of ownership was based on the idea that Uchel owned Ngerutang, not Llengai. The Land Court's finding that Llengai owned the property was

*Ngiraiwet v. Telungalek Ra Emadaob*, 16 ROP 163 (2009)

fatal to Appellant's claim. Appellant has not, however, argued that this finding was clearly erroneous.<sup>1</sup> Thus, any error involving what happened to the land subsequent to Llengai's ownership is not relevant to Appellant. In other words, even had the Land Court erred when it found that Ngerutang passed from Llengai to Aderkeroi, or when it found that Ngerutang passed from Aderkeroi to Emadaob Lineage, this error would not change the fact that the Land Court found that Llengai owned the land, not Uchel. The only claimant who could possibly be prejudiced by the Land Court's alleged failure to explain is Techereng Baules, who claimed Ngerutang through Llengai but not Aderkeroi. Baules, however, has not appealed the Land Court's Determination of Ownership.

The Land Court's alleged error did not prejudice Appellant because it had no bearing on why Appellant lost below. As a consequence, the alleged error is harmless, and we are required to disregard it on appeal. Insofar as Appellant is attempting to use a harmless error to bootstrap her way into getting another bite at the apple on remand, Appellant's attempt is rejected.

### **CONCLUSION**

The Determination of Ownership awarding Ngerutang to Emadaob Lineage is **AFFIRMED**.

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<sup>1</sup>Nor is this a surprise, as the Land Court's finding in this regard was supported by ample evidence. That is, had Appellant argued that the Land Court's finding that Llengai owned the land was clearly erroneous, we would have disagreed and affirmed.