

Wasisang v. Palau Pub. Lands Auth., 16 ROP 83 (2008)
JOWAS WASISANG and ESTATE OF SABINO BEKBEMAD,
Appellants,

v.

PALAU PUBLIC LANDS AUTHORITY,
Appellee.

CIVIL APPEAL NOS. 07-035, 07-036
Civil Action Nos. 05-445, 05-446, 05-447, 05-448, and 05-449

Supreme Court, Appellate Division
Republic of Palau

Decided: December 3, 2008¹

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Counsel for Wasisang: J. Uduch Sengebau Senior

Counsel for Bekbekmad: Moses Y. Uludong

Counsel for Appellee: Attorney General Jeffrey Beattie

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

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

PER CURIAM:

This case is an appeal of a land court determination of ownership, pursuant to 35 PNC § 1310. The Determination of Ownership, issued June 29, 2007, awarded Lot Nos. 025 E 19 and 025 E 20 to Palau Public Lands Authority (hereinafter, “PPLA” or “Appellee”). Both lots are known to be part of Tochi Daicho Lot 1319. Appellant Estate of Sabino Bekbekmad (“Bekbekmad”) claimed “Area E” of 025 E 19 and Appellant Jowas Wasisang, on behalf of the children of Wasisang, (“Wasisang” or collectively, “Appellants”) claimed Lot 025 E 20.

¹Both Appellant Wasisang and Appellee PPLA request oral argument. However, as the following discussion illustrates, the parties’ detailed briefs and the record in this case adequately present all legal and factual issues on appeal. Accordingly, oral argument would not assist in the judicial resolution of this case. Pursuant to ROP R. App. P. 34(a), the parties’ request for oral argument is denied.

BACKGROUND

The determination of ownership dealt with the claims of several different parties, each of which laid claim to part of Tochi Daicho Lot 1319, the present site of Ngaraard Elementary School. Out of these claims, only the claims of the Children of Blailes and the Ngerudil Clan succeeded. Both of those two claims were considered claims for return of public land claims under 35 PNC §1304(b) (“Section 1304(b)”). Section 1304(b) allows claims for return of government land that the claimant had owned, or was an heir to, and which had been taken by force, fraud, or without just compensation. To be timely, all claims under that statute must be filed on or before January 1, 1989. 35 PNC §1304(b)(2).

Upon determining that Ngerudil Clan and the Children of Blailes originally owned land that became government land, and that no compensation was given for that land, the land court determined that the land transfer was without adequate compensation or consideration and thus, required transfer back, under the terms of Section 1304(b). All the remaining claims, including those of each Appellant, were dismissed by the land court. The land court determined that Appellants’ claims were untimely under Section 1304(b), in that both were filed in 2005, sixteen years after the statutory deadline.

The land court also considered Appellants’ claims as claims for superior title, which are not subject to the 1989 filing deadline. Claims for superior title proceed on a different theory than claims for return of public land: “In asserting superior title, a claimant is ‘claim[ing] the land on the theory that it never became public land in the first place.’” *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 168 (2004) (quoting *Kerradel v. Ngaraard State Pub. Land Auth.* , 9 ROP 185, 185 (2002)). Although the strict statutory guideline does not apply, claimants asserting superior title have the p.85 added burden of establishing by clear and convincing evidence that any adverse Tochi Daicho listing is incorrect. *Id.*; *Taro v. Sugino* 11 ROP 112, 116 (2004) (holding that “[t]he identification of landowners in the Tochi Daicho is presumed to be correct, and the burden is on the party contesting a Tochi Daicho listing to show by clear and convincing evidence that it is wrong”). The land sought by both Appellants is listed in the Tochi Daicho as government property. The land court determined that Appellants failed to present clear and convincing evidence to rebut the accuracy of this listing, so their claim was denied.

STANDARD OF REVIEW

The Appellate Court reviews land court findings of fact for clear error. *Children of Dirrabong v. Children of Ngirailild* , 10 ROP 150, 151 (2003); *Rechelulk v. Tmichol* , 6 ROP Intrm. 1, 2-3 (1996). The land court’s legal conclusions are reviewed *de novo* . *Fanna v. Sonsorol State Gov’t*, 8 ROP Intrm. 9, 9 (1999).

DISCUSSION

Appellants contest the land court ruling on several fronts. Firstly, they argue that the land court made a factual error in determining that their suit was time barred. Secondly, they argue that the land court made a legal error in determining that Appellants’ evidence did not prove

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ownership to a clear and convincing degree. Finally, they argue that the land court erred in accepting the Blailes suit, filed 18 days after the January 1 deadline, as timely for a return of public lands case.

A. Time Barred Claims

Appellants each argue that the court erred in determining that the suit was time-barred for the reason that they intended to assert claims for superior title, not claims for return of public lands. This argument is unconvincing; as described above, the land court evaluated Appellants' claims under both frameworks and determined that the claims failed as either return of public land claims, or claims for superior title. The land court's determination that Appellants' claims were barred, to the extent that they sought return of public land, was accurate: the statute required such claims to be filed by January 1, 1989, but Appellants' claims were not filed until 2005.

B. Refutation of Tochi Daicho

1. Standard

Appellants also argue that they established, to a clear and convincing degree, that the Tochi Daicho listing was wrong. To succeed on this claim, Appellants must show not only that they presented sufficient evidence that, if credited by the land court, would amount to clear and convincing evidence that the listing was wrong, but also that the land court's failure to credit that evidence was clearly erroneous- that no reasonable fact finder could have concluded otherwise. *Ebilkhou Lineage v. Blesoch*, 11 ROP 142, 144 (2004). "It is not the appellate panel's duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *Id.* (citing *ROP v. Ngiraboi*, 2 ROP Intrm. 257, 259 (1991)).

2. Bekbekmad

Bekbekmad claims that the land court's factual findings require the conclusion that the p.86 land never transferred out of his family's possession and, in the alternative, the evidence submitted establishes that fact to a clear and convincing degree.

a. Conclusions from the Land Court's Factual Findings

The land court made a series of factual findings, based on the evidence before it. Bekbekmad claims that the land court determined that the land was never purchased or transferred to the Japanese authority, which should lead to the conclusion that the Tochi Daicho listing, describing the land as belonging to the Japanese authority, is wrong. Additionally, Bekbekmad states that the land court found that, when the school site expanded, Rdialul allowed the teacher housing to be built on his land.

However, these statements do not accurately reflect the factual findings made by the land court. The land court determined that the Japanese government did not purchase the land, but did not determine that the land was never transferred. This finding does not require a conclusion that the land never transferred to the Japanese authority; it is consistent with the PPLA's argument that the land was donated for the creation and expansion of the school. Most

importantly, the land court found that the school site was public land, which directly contradicts Appellants' theory that their ancestors' land never passed into public hands

b. The Evidence Before the Land Court

Bekbekmad argues that, to the extent the land court did not adopt findings of fact which support his claims, the court clearly erred; he asserts that the evidence before the court established the validity of his claims to a clear and convincing degree and should be fully credited. Bekbekmad supported his claim only with his testimony, recounting that the land had been given by the Ngerudil Clan to his deceased maternal uncle, Rdialul, for the purpose of planting coconuts. He did not know this information firsthand, but was told of Rdialul's claim by his grandmother. He did not present any additional evidence, but adopted the evidence presented by Blailes and Wasisang. Testimony presented by Feliciano Blailes supports Bekbekmad's claim that Rdialul was one of the original owners of the land and that the Japanese sought his permission to use the land for their school. In addition, Drawing No. 4040/70, dated September 10, 1970, by the Trust Territory Division of Land and Surveys, notes that Rdialul has an unresolved claim for a portion of the school land. The map and corresponding documents do not validate Rdialul's claim, but do verify that claims for ownership were made as far back as 37 years ago.

As noted above, to succeed Bekbekmad must show that there was enough evidence to support his claim, to a clear and convincing degree, that the land never transferred to the Palau authority and that the land court's decision not to credit such evidence was clear error. He does not meet this very onerous standard. If credited fully, the evidence presented would show that Rdialul once owned a portion of the school site and has made a claim for such land for many years. While certainly relevant, that evidence does not establish that ownership never transferred out of Rdialul's hands.

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Even if the testimony and other evidence presented had contradicted the Tochi Daicho listing to a clear and convincing degree, it was not clearly erroneous for the land court not to credit that testimony. The land court chose not to give full credit to the testimony of Blailes or Bekbekmad, noting that the testimony of an interested party is inherently limited in reliability. Instead, the land court gave full credit to the testimony of Madrangeboked Thomas Remengesau, Senior (hereinafter "Remengesau"), the District Administrator during the Trust Territory period. Remengesau testified that, when he was a child attending Ngaraard Elementary School, the head of a pig was given to Ngerudil, the head of the Ngerudil Clan, in appreciation for the Clan's donation of the land for the school. Remengesau also testified that, as of 1971, the land was understood to be the property of Ngaraard Municipality. This testimony was supported by the 1971 lease agreement between the municipality of Ngaraard and the Trust Territory government for use of the land.

The land court was presented with evidence both supporting and contradicting the Tochi Daicho listing. The evidence refuting the Tochi Daicho listing did not meet the clear and convincing standard. Additionally, the land court's decision to credit some testimony and some evidence over others is not clearly erroneous. A reasonable trier of fact could have made the same credibility determinations and beyond that, it is not this Court's role to reweigh the

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evidence. “Where there are two permissible views of the evidence, the court’s choice between them cannot be clearly erroneous.” *Uchelkumer Clan v. Isechal*, 11 ROP 215, 219 (2004). For that reason, the land court’s decision to dismiss Bekbekmad’s claim must be affirmed.

3. *Wasisang*

Wasisang argued that the Tochi Daicho listing is incorrect in that part of Lot 1319, Lot No. 025 E 20, should be included in Lot 1317, which is acknowledged to be his father’s property. He claims that when the school expanded, Wasisang’s land became part of the school’s area. However, because Wasisang’s claim, like Bekbekmad’s claim, can only succeed as a superior title claim, he must have established that he (or his father) has retained ownership of the land.

To support his claim, Wasisang testified that the original school plot bordered his father’s land. Tr. at 11. Then, when the school expanded, permission was sought and given from Wasisang’s father’s older brother. *Id.* at 20. Between 1938 and 1941, Wasisang’s father attempted to survey his land, but was unable to survey and register the part of his land used by the school. *Id.* at 12, 26. In 1971, according to Wasisang’s testimony, Wasisang’s father signed a land use agreement with a 25 year duration, allowing the land to be used for school and other public purposes “as long as the need exists.” *Id.* at 14, 16, 21. When questioned as to the clause “as long as the need exists” in the land use agreement, Wasisang testified that his father did not understand the lease to the extent it lasted beyond 25 years. *Id.* at 21- 22.

In addition to his own testimony, Wasisang relies upon statements written by his father and hamlet chief Beches Rengiil on p.88 September 17, 1969, to substantiate his assertion that some of the school property had originally been his father’s land. Appellant’s Br. at 12-13. Additionally, Wasisang cites the 1971 statement of fact, issued by the Trust Territory Division of Lands and Surveys, to establish that there were outstanding claims of the school property and that those claiming ownership asserted to the Trust Territory government that the property should have reverted back to the owners at the end of the Japanese Administration. *Id.* at 13.

As with Bekbekmad’s claim, the extrinsic evidence presented by Wasisang, even if fully credited by the land court, does not establish that he retained ownership of the land. Wasisang presents some persuasive evidence to show that his family has claimed this land for a long time and that the land at one point belonged to his family; however, those arguments do not require the conclusion that the land never passed out of his family’s hands. Wasisang also does not explain why he waited for nine (9) years after he believed the government lease of his land expired to take action.

Based upon this record, it was not clear error for the land court to determine that Wasisang’s evidence does not establish to a clear and convincing degree that the Tochi Daicho listing is incorrect. *See Ongesii v. Children of Silmai*, 12 ROP 131, 132 (2005) (determining that the standard to rebut the presumption in favor of the Tochi Daicho listing is met when a party presents four uninterested and informed witnesses whose testimony contradicts the Tochi Daicho against one interested and insufficiently informed witness).

To the extent that Wasisang’s own testimony demonstrates that ownership of the land

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remained in his hands, it was not clearly erroneous for the land court to decline to credit that testimony. As a claimant, Wasisang is clearly an interested witness; it is entirely reasonable to view such testimony skeptically. Additionally, Wasisang admits that he was not present, and was still a child, when the agreement was signed between his father and the Trust Territory government, which makes his testimony on the intent of the parties unreliable. Tr. at 22.

Although Wasisang has made a strong showing as to his family's history with the land, he has not met the onerous burden of showing that the land court's decision against his claim was clear error. Because Wasisang has not shown that the land court's decision was clear error, the land court's decision rejecting his claim must be affirmed.

C. Blailes' Late Filing

Both Appellants argue that it was error for the land court to allow Blailes' claim for return of public lands, but bar Appellants' claims as untimely. Blailes' claim was filed January 19, 1989, eighteen (18) days after the statutory deadline, and was accepted by the Senior Land Claims Hearing Officer. Because the Land Claims Hearing Officer, Jonathan Koshiba, accepted Blailes' claim as timely, the land court allowed the claim to proceed without discussion. Wasisang's and Bekbekmad's claims were filed on June 2, 2005, and May 23, 2005, respectively, sixteen (16) years after the statutory deadline. They argue that it is improper for the court to allow one late claim but not others, and urge that to remedy any different treatment, their **p.89** claims should be accepted as timely as well.

The timeliness of Blailes' claim does not impact Wasisang's and Bekbekmad's claims. There is no overlap between the land successfully claimed by Blailes and the land sought by Appellants. Even if there had been error in accepting Blailes' claim as timely, the remedy for that error would not save Appellants' claims. Accordingly, the Court need not discuss the propriety of accepting Blailes' claim as timely.

CONCLUSION

For the foregoing reasons, the land court's Determination of June 29, 2007, is **AFFIRMED** in its entirety.