

**BILUNG GLORIA SALII and IBEDUL
YUTAKA GIBBONS,
Appellants,**

v.

**KOROR STATE PUBLIC LANDS
AUTHORITY,
Appellee.**

CIVIL APPEAL NO. 09-008
LC/B 07-35, 07-36, 07-37

Supreme Court, Appellate Division
Republic of Palau

Decided: April 16, 2010

Counsel for Appellants: Salvador Remoket

Counsel for Appellee: Oldiais Ngirakelau

BEFORE: ARTHUR NGIRAKLSONG,
Chief Justice; ALEXANDRA F. FOSTER,
Associate Justice; HONORA E.
REMENGESAU RUDIMCH, Associate
Justice Pro Tem.

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

PER CURIAM:

Appellants Bilung Gloria Salii and
Ibedul Yutaka Gibbons (“Appellants”) appeal
the Land Court’s *Summary of the
Proceedings, Findings of Fact, Conclusions of
Law, and Determination of Ownership*
 (“Determination of Ownership”) in a return-
of-public-lands case concerning the island

commonly known as Malakal. Specifically,
Appellants contend that the Land Court
committed reversible error by finding that
Appellants failed to prove that Malakal Island
was originally owned by Idid Clan, but was
rather chutem buai, or public land, prior to the
Japanese administration. For the reasons that
follow, we AFFIRM the Land Court’s
Determination of Ownership.

BACKGROUND

This case involves the ownership of
Malakal Island, specifically described by the
Land Court as Ngerungesiil/Ngemelachel,
located in Malakal, Koror State.¹ The Land
Court’s hearings spanned over one week,
commencing July 22, 2008, and concluding
August 6, 2008. Five parties filed timely
claims to all or part of the lands. These
claimants were (1) T pang Lineage (Estate of
Dilobesch Merar); (2) Ingeaol Clan; (3) Idid
Clan (Bilung Gloria Salii and Ibedul Yutaka
Gibbons); (4) Minoru Ueki; and (5) Koror
State Public Lands Authority (“KSPLA”).

On January 28, 2009, following the
submission of written and oral closing
arguments, the Land Court issued a
Determination of Ownership for Malakal
Island in favor of KSPLA. In the
Determination of Ownership, the Land Court
found that Idid Clan had not met its burden of
proving the elements of a return-of-public
lands claim. Specifically, the Land Court
found that Idid Clan failed to establish that it

¹ Lot No. 006 B09; Lot No. 006 B10; Lot
No. 006 B11; Tract 40585A; Tract 40398A; Lot
No. 006B 01; Lot No. 006 B02; Lot No. 006 B03;
Lot No. 006 B04, and Lot No. 40859 on Bureau of
Lands and Surveys Worksheet No. 006 B001.

owned Malakal prior to the taking by the Japanese administration. Thus, it concluded that the land should remain public land under KSPLA's authority.

In making this determination, the Land Court began by noting that Idid Clan had presented "a wealth of evidence" regarding the authority of the Ibedul over Koror during the mid-to-late 1800s. It conceded that the documentary and testimonial evidence presented by Idid Clan, including the textbook entitled the "*History of Palau*, letters of Andrew Cheyne, Dr. Kramer's manuscript, and Hijikata's work, support[ed] the idea that by the mid-1800s, the Ibedul was the most important chief in the Koror area of Palau and had authority over the affairs of Koror, including Malakal." See Determination of Ownership at 15. However, the Land Court ultimately concluded that Idid Clan insisted on asking the wrong question, i.e., the issue was not whether the Ibedul and Idid Clan exerted some authority over Malakal, but rather whether they exerted so much that they should be considered owners.

The Land Court remarked,

[o]ther than the evidence that the Ibedul is the paramount chief of Koror with some authority over who uses Malakal, Idid Clan has presented little evidence of other indicia of ownership, such as use of Malakal or occupation of the island by clan members. The historical documents indicate that Idid Clan was not the original owner of Malakal in terms of

first discoverers—the texts indicate that Ingeaol Clan, through Idesiar, was there first. Moreover, there is a large amount of evidence that many people, including several non-Palauans, lived and worked on Malakal in the late 1800s and early 1900s. Traders like Cheyne, Tetens, and Kubary ran their operations from Malakal. Moreover, by 1910 there were Japanese settlements on the island. Rubasch Olikong testified that his predecessors used Malakal as a site for a Tegang drying business. Although the Court found that Ingeaol Clan did not establish that Rubasch was in charge of Malakal, there is no evidence contradicting his claim that Rubasch Mouai used the island. The sheer number of non-Idid users of Malakal weakens Idid's claim of exclusive ownership.

Id. at 15-16.

The Land Court went on to discuss the testimony of Idid Clan's witnesses, which purported to establish, *inter alia*, that (a) the Ibedul lived on Malakal and was buried there; (b) there was an area on Malakal known as Kingelela Bilung, which is a stone platform where the Bilung allegedly went to dry her hair after bathing; (c) in 1952, Bilung Ngerdokou directed some women to clear a taro patch on the island; and (d) the "whole of Koror" knows that Idid Clan owns Malakal. In appraising the testimony, the Court decided

that the “evidence is not as impressive as it might appear.” *Id.* First, the Land Court noted that other testimony elicited at the hearing suggested that the Ibedul resided on Malakal not because Idid owned the island, but rather because the Ibedul was ill and the people of Koror did not want other villages to know their leader was weak. Second, the Land Court voiced concern that the stone platform upon which the Bilung allegedly dried her hair was mentioned nowhere in Dr. Kramer’s detailed manuscript. And finally, the Land Court observed that Idid Clan’s assertion that the “whole of Koror” knows that Malakal belongs to Idid Clan was undermined *ab initio* by the existence of the current lawsuit, i.e., at the very least, the witnesses of T pang Lineage and Ingeiaol Clan begged to differ.

The Land Court then scrutinized the evidence presented by the parties opposing Idid Clan’s claims, stating that, in addition to Idid Clan’s “evidence of ownership being underwhelming, there is contrary evidence that suggests that the land was not owned by the clan.” *Id.* For example, it observed that Cheyne’s purchase of Malakal required the signatures of all the chiefs of Koror, not just the Ibedul’s. In doing so, it inferred that “Malakal is something other than clan land.” *Id.* Likewise, the Land Court noted that no *omsolel a blai* (principal house site), no *lkul a dui* (chief’s wife’s taro patch), nor *klobak* (village council) exist on Malakal. These facts, it concluded, lend credence to KSPLA’s argument that Malakal was not owned by any clan prior to the Japanese administration, but rather was public land.²

² The Land Court also pointed out that Malakal is now, and was at the time immediately

In conclusion, the Land Court conceded that the determination that Malakal was most likely public land rather than the property of Idid Clan was a “close call.” However, it observed that the failure of Idid Clan to file a claim for Malakal when given the opportunity to do so in the 1950s nudged the Land Court further away from Idid Clan’s position. In doing so, it was careful to quote from *Idid Clan v. Olngembang Lineage*, 12 ROP 111, 117 (2005), which states that “[w]hile it is clear that a claim for public land should not be denied merely because it was not claimed during the 1950s, we cannot say that, in a closely contested case like this one, the failure of Idid Clan to claim the land—where Idid’s representatives sought the return of other lands, but not this one—was wholly immaterial.” *Id.* at 17 (quoting *Idid Clan*, 12 ROP at 117).³ In the end, the Land Court determined that the evidence, at best, indicates that the Ibedul had some authority over Malakal as the highest ranking chief of Koror—but not outright ownership—and that Malakal fit more precisely within the context of public land during the time immediately prior to the Japanese administration.

prior to the Japanese administration, volcanic and heavily forested. It stressed that this topography is entirely consistent with traditional notions of public land, which includes the interior of Babeldoab and “the numerous islands of the Chelebacheb complex, the mangrove swamps and the sea and reefs.” *Determination of Ownership* at 17 (citing KSPLA Ex. F(1) at 296).

³ According to Bilung Salii’s testimony below, Idid Clan did file a claim in the 1950s, but the files were subsequently destroyed by an employee of KSPLA. The Land Court discredited this testimony.

Idid Clan and Ingeaol Clan timely appealed the Land Court's Determination of Ownership. On September 18, 2009, the Appellate Division dismissed Ingeaol Clan's appeal, leaving Idid Clan as the sole Appellant in this appeal.

STANDARD OF REVIEW

We review Land Court factual findings 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.* Importantly, "[i]t is not the appellate panel's duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007). Where there are two permissible views of the evidence, the Land Court's choice between them cannot be clearly erroneous. *Sambal v. Ngiramolau*, 15 ROP 125, 126 (2007) (citing *Baules v. Kuartel*, 13 ROP 129, 131 (2006)). Unless the Land Court made a clear error, the Appellate Division cannot reverse, even if it would have weighed the evidence differently. Put simply, Land Court determinations are affirmed so long as the factual findings are plausible. *Kawang Lineage*, 14 ROP at 146.

DISCUSSION

The Constitution provides for the return of public land to its original owners when the land became public due to its "acquisition by previous occupying powers or their nationals through force, coercion, fraud,

or without just compensation or adequate consideration." ROP Const. art. XIII, § 10. This constitutional directive is implemented by 35 PNC § 1304(b). "To prove a claim under section 1304(b), a claimant must demonstrate that: (1) he or she is a citizen who has filed a timely claim; (2) he or she is either the original owner of the land, or one of the original owner's 'proper heirs;' and (3) the claimed property is public land which attained that status by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration." *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 94 (2006); *see also Markub v. Koror State Pub. Lands Auth.*, 14 ROP 45 (2007); *Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth.*, 12 ROP 148, 150 (2005). If a claimant fails to prove these three necessary elements, title cannot be transferred pursuant to §1304(b), and the property remains public land. At all times, the burden of proof is on the claimants, not the governmental land authority, to satisfy these three elements. *Ngiratrang*, 13 ROP at 93-94.

In their opening brief, Appellants contend that the main issue on appeal is whether the Land Court erred by finding that Appellants failed to prove that Malakal Island was originally owned by Idid Clan, but was rather public land prior to the Japanese administration. In arguing that the Land Court committed clear error, Appellants largely recapitulate their arguments before the Land Court below. Indeed, Appellants begin by recounting the evidence it presented at the Land Court, pointing to the historical accounts showing control by the Ibeduls and Bilungs, and to Dr. Kramer's description of Malakal in the early 1900s, which indicated that Malakal was the county seat of the Ibedul. Appellants

also rehash the argument relating to the area called Kingelel a Bilung, the stone platform where the Bilungs allegedly dried their hair. Finally, Appellants cite to various portions of testimony indicating that users of the land in Malakal, such as taro farmers, were required to ask the Ibedul for permission. At no point in this discussion do Appellants seek to discount the testimony of the other claimants that ran contrary to these assertions. Rather, they lodge a final complaint, “What else could a claimant for return of public land submit as evidence to meet its burden?” (Appellants Br. at 6.)

Appellants’ complaint here wholly fails to address the competing evidence, which was presented by the other claimants at the hearing and which undermined Idid Clan’s claims to exclusive ownership. Indeed, the Land Court received evidence from four other claimants for the same property, all of whom cited, with varying degrees of persuasion, reasons both supporting their own ownership claims and undermining Idid Clan’s. The Land Court thoroughly discussed all such evidence in its Determination of Ownership and found, in the end, the “close call” favored KSPLA. Appellants here make no attempt to discuss the insufficiency of this competing evidence, nor the Land Court’s error in crediting KSPLA’s claims over theirs. Rather, Appellants repeat the arguments they made below, only this time in a louder, more appellate-sounding voice.

As a final note, in asserting that the Land Court committed clear error, Appellants misapprehend their own burden. In their opening brief, Appellants state “there was a clear error committed by the Land Court. No testimony or evidence below proved that the

land was chutem buai.” (Appellant’s Br. at 6.) The law clearly states that, at all times, the burden of proof is on the claimants, not the governmental land authority, to satisfy the three elements of §1304(b). *Ngiratrang*, 13 ROP at 93-94. It was not KSPLA’s burden to prove that Malakal was public land immediately prior to the Japanese administration. Rather, it was Idid Clan’s burden to prove that it was more likely that Idid Clan owned it. The Land Court determined, after detailed consideration of the evidence on both sides, that Idid Clan failed to meet its burden. We agree and reemphasize that “[i]t is not the appellate panel’s duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence.” *Kawang Lineage*, 14 ROP at 146.

CONCLUSION

For the reasons set forth above, the Findings of Fact, Conclusions of Law, and Determination of Ownership of the Land Court is AFFIRMED.