

**EDARUCHEI CLAN,
Appellant,**

v.

**SECHEDUI LINEAGE, CHILDREN OF
REMELIÏK, FAMILY OF BLAU,
TAMIKO NGESKEBEI, CHILDREN OF
EMAUTELNGAL, and LEORY
NGIRAMOWAI,
Appellees.**

CIVIL APPEAL NO. 08-051
LC/R 06-411

Supreme Court, Appellate Division
Republic of Palau

Decided: March 29, 2010

[1] **Property:** Property Seized by
Occupying Powers

The fact that claimants' ancestors may have left the land—or even have been evacuated from the land—during World War II does not prove that the Japanese administration actually expropriated the land.

[2] **Property:** Alienating Land

A clan lacks the authority to dispose of non-clan land because one cannot convey away land which does not belong to him.

Counsel for Appellant: Raynold B. Oilouch

Counsel for Sechedui Lineage: John K.
Rechucher

Counsel for Ngeskebei: Yukiwo P. Dengokl

BEFORE: LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice.

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

PER CURIAM:

Edaruchei Clan appeals eight determinations of land ownership made by the Land Court regarding land located within Homestead Lot 162 in Ngerkeiukl Hamlet in Peleliu State. We find no clear error in seven of the Land Court's awards, but we vacate the determination of Worksheet Lot 291-017A and remand for further consideration.

BACKGROUND

On July 29, 2008, the Land Court, per Judge Skebong, issued findings of fact, conclusions of law, and determinations of ownership concerning Homestead Lot 162. The actual determination of ownership certificates were issued on August 13, 2008. Over 200 claims were filed to land within Homestead Lot 162. The Land Court heard testimony over the course of nine days in March, 2007.

Homestead Lot 162 comprises 87 smaller worksheet lots. The entirety of Homestead Lot 162 was purportedly transferred from the Trust Territory government to Edaruchei Clan by quitclaim deed in 1962. Relying primarily on that quitclaim deed, the Land Court awarded ownership of 79 worksheet lots to Edaruchei Clan. The remaining 8 worksheet lots were

awarded to Family of Blau (Worksheet Lot R-130), Tamiko Ngeskebei (Worksheet Lots R-532, R-537, and 295-002A), Sechedui Lineage (Worksheet Lot R-133), Leory Ngiramowai (Worksheet Lot 291-034), Children of Remeliik (Worksheet Lot R-132), and Children of EmauteIngal (Worksheet Lot 291-017A). Edaruchei Clan appeals these eight determinations and claims that it should have been awarded all 87 worksheet lots in Homestead Lot 162.¹ Only Sechedui Lineage and Tamiko Ngeskebei filed briefs responding to Edaruchei Clan's opening brief on appeal.

STANDARD OF REVIEW

We review the Land Court's findings of fact for clear error. *See Ngerungel Clan v. Eriich*, 15 ROP 96, 98 (2008). Under this high standard, "findings will not be set aside as long as they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion." *Etpison v. Tmetbab Clan*, 14 ROP 39, 41 (2006). In reviewing for clear error, this Court will refrain from substituting its own judgment of the credibility of the witnesses or the weight of the evidence. *See Rechucher v. Lomisang*, 13 ROP 143, 145 (2006). When two permissible competing views of the evidence are present, a lower's court decision between the competing views cannot be considered clearly erroneous. *See Sungino v. Blaluk*, 13 ROP 134, 136 (2006). A lower court's

¹ Several of these same worksheet lots are also the subject of a separate appeal filed by Dmiu Clan. *See Dmiu Clan v. Edaruchei Clan*, 17 ROP 134 (2010). Dmiu Clan claims error in the Land Court's denial of its claims to, *inter alia*, Worksheet Lots No. R-130, R-132, and R-133.

finding of fact will be deemed clearly erroneous only when it is so lacking in evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *See Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 165 (2004).

DISCUSSION

Edaruchei Clan presents several recurring arguments that it (literally) repeats throughout its brief. Instead of repeating our denial of these arguments as applied to each contested worksheet lot, we will address them universally at the outset.

I. Edaruchei Clan’s Recurring Arguments

A. The Japanese Taking of Ngerkeiukl Hamlet

Edaruchei Clan’s first recurring argument is that testimony that the entire Palauan population of Ngerkeiukl Hamlet was evacuated by the Japanese administration during World War II leads to the inevitable inference that the hamlet became wholly Japanese land and then Trust Territory government land. (Edaruchei Clan Br. at 9-10, 12, 16-17, 19, 22, 26.) Therefore, according to Edaruchei Clan, the 1962 quitclaim deed covering land located in Ngerkeiukl Hamlet effectively conveyed all the land in Homestead Lot 162. Edaruchei Clan further cites testimony of Postol Remeliik stating that when the people returned to the hamlet after the war, it was entirely “government land.” (Tr. 222:18-27.)

[1] Edaruchei Clan’s major premise is flawed because the fact that claimants’ ancestors may have left the land—or even

have been evacuated from the land—during World War II does not prove that the Japanese administration actually expropriated the land. It merely means that the residents left. Edaruchei Clan does not present any evidence, let alone evidence that would compel us to find the Land Court’s determination was clearly erroneous, that the Japanese administration actually took seven of the eight worksheet lots at issue.² And Postol Remeliik’s testimony that when the people returned to Peleliu after the war, the entire hamlet was “government land” is far from conclusive. A full reading of Postol Remeliik’s testimony indicates that the government claimed ownership of the lands, but the people disputed that claim. (Tr. 222:27-223:2 (“When the chief of these three hamlets, Ngerkiukl, Ngesias and Teliu discovered that their hamlets were government properties they tried to figure out ways to get their properties back because they were not government property.”).)

B. The Four Chiefs’ Accord

[2] Edaruchei Clan also hangs its hat on testimony that, upon learning that the hamlet had become Trust Territory government land, the four clans of Ngerkeiukl Hamlet got together and agreed to split the hamlet into four pieces by filing claims in the name of each clan. (*See* Edaruchei Clan Br. at 10, 13, 17, 20, 23, 27.) But any accord between the four clans to split the hamlet into four tracts of clan land has no effect on land that the clans did not own. In short, the clans lacked the authority to dispose of non-clan land. *See*

² For specific discussion of Worksheet Lot 291-017A, see section II(F), *infra*.

Riumd v. Tanaka, 1 ROP Intrm. 597, 604 (1989) (“One cannot convey away land which does not belong to him.” (quoting *Edeyaoch v. Timarong*, 7 TTR 54, 58 (Tr. Div. 1974))). Therefore such an agreement does nothing to prove that the individual lots at issue are clan-owned.

C. The Mention of War Claims Payments

Edaruchei Clan cries foul at each mention of the receipt of war claims payments by relatives of the claimants. (*See* Edaruchei Clan Br. at 11, 20.) Edaruchei Clan correctly states that receipt of war claims reparations does not *necessarily* prove landownership, as such payments were made in some instances for crops, houses, and other personalty rather than for the land itself. *See Uchelkumer Clan v. Isechal*, 11 ROP 215, 220 (2004). But such payments may still be considered along with other evidence, and the mere mention of the payments along with other evidence in support of the appellees’ claims does not demonstrate that the Land Court’s findings were clearly erroneous with respect to those worksheet lots.

D. Edaruchei Clan’s 1956 Land Claim

In 1956, Edaruchei Clan filed a claim with the government for the return of a large tract of land that purportedly includes all of the disputed lots. (Edaruchei Clan Br. at 6-7 & Ex. E.) That claim ultimately failed, but it appears to have laid the foundation for the later Homestead Lot and, eventually, the quitclaim deed. However, the then-chief of Edaruchei Clan, Uchelmekediu Ngireblekuu, and several supporters who attached their

names to Edaruchei Clan’s claim—Remeliik, Mabel, and Baulechong—are relevant to today’s dispute.

Four of the appellees—Leory Ngiramowai, Children of Remeliik, Sechedui Lineage, and Family of Blau—trace their claims to individual land ownership back to the signers of Edaruchei Clan’s 1956 land claim. Edaruchei Clan argues that it would be nonsensical for these four individuals to support Edaruchei Clan’s 1956 claim to the land in the name of the clan if, in fact, they were individual owners of the land. (*See* Edaruchei Clan Br. at 13-14, 17-18, 19-20, 26-27.) Therefore, according to Edaruchei Clan, the Land Court’s findings of individual ownership relating to these worksheets were clearly erroneous.

Edaruchei Clan’s inference is plausibly defeated by conflicting testimony. Postol Remeliik testified that the chiefs of the four clans of Ngerkeiukl Hamlet were advised that it would be a lengthy process if each individual landowner filed a claim for his or her land with the government. (Tr. 223:23-27.) Therefore, the chiefs decided that they would file four large claims in the name of the clans and then subsequently sub-divide the four large tracts internally among the individual landowners. (Tr. 225:24-226:26.) This testimony would explain why Ngireblekuu filed a claim for a large tract of land in the name of Edaruchei Clan—and Remeliik, Mabel, and Baulechong supported it—even though the tract included the signers’ personal property. Given this testimony, we do not find that the 1956 land claim demonstrates that the Land Court’s findings were clearly erroneous.

II. Arguments Regarding Specific Worksheet Lots

A. Worksheet Lots 295-002A, R-532, and R-537 – Tamiko Ngeskebei

Edaruchei Clan claims error in the Land Court's award of Worksheet Lots R-532, R-537, and 295-002A to Tamiko Ngeskebei. Tamiko testified that her father used the three lots before and after World War II. (Tr. 200:4-201:2; 208:9-16.) Tamiko testified that her father had a house on one of the lots and that her father's brother received war claims payments related to the land. (Tr. 201:21-202:4; 208:22-26.) All three lots were recorded in Tamiko's father's name in the Peleliu Tochi Daicho.³

Beyond the contentions previously dispatched, Edaruchei Clan argues that Tamiko's father, a member of Edaruchei Clan, used the land as a clan member-tenant rather than as an owner. (Edaruchei Clan Br. at 10-11.) Edaruchei Clan presents no evidence in support of this theory. Edaruchei Clan simply wishes the Court to draw the inference that because Tamiko's father was a member of Edaruchei Clan and he used the land that therefore the land must belong to Edaruchei Clan. But that is not the only permissible inference. The Land Court drew a different inference—that use of the land evidenced

³ Although the Peleliu Tochi Daicho is not afforded the presumption of accuracy attendant to most of the Tochi Daichos, it may nonetheless be considered as evidence of ownership. For an overview of the Peleliu Tochi Daicho, see *Mesebeluu v. Uchelkumer Clan*, 10 ROP 68, 70-71 (2003).

individual ownership rather than clan ownership. We cannot say that the Land Court committed clear error in failing to draw Edaruchei Clan's preferred inference.

B. Worksheet Lot 291-034 – Leory Ngiramowai

The Land Court awarded Worksheet Lot 291-034 to Leory Ngiramowai. LC/R No. 06-411, Decision at 8 (Land Ct. July 29, 2008). The lot was listed in the Tochi Daicho as individual property of Leory's grandfather, Ngireblekuu. Leory testified that the land was given to him at the eldecheduch of his father, Ngiramowai. (Tr. 185:19-186:3.) A competing claimant, Hilario Ilab, confirmed that Ngireblekuu resided on the land and that the land was given out to be the property of Leory Ngiramowai. (Tr. 508:25-509:23.)

Edaruchei Clan argues that perhaps Ngireblekuu occupied that land as chief of Edaruchei Clan rather than as landowner. (Edaruchei Clan Br. at 14.) Edaruchei Clan is merely speculating. Such unsupported speculation does not demonstrate that the Land Court's decision was clearly erroneous. We affirm the Land Court's award of Worksheet Lot 291-034 to Leory Ngiramowai.

C. Worksheet Lot R-132 – Children of Remeliik

The Land Court awarded Worksheet Lot R-132, a land known as *Meltalt*, to Children of Remeliik. This lot appears as Tochi Daicho Lot 1848 under Remeliik's name. Edaruchei Clan does not proffer any arguments in support of its claim to Worksheet Lot R-132 beyond those discussed in section I, *supra*. Those arguments do not

cause us to find that the Land Court clearly erred in awarding Worksheet Lot R-132 to Children of Remeliik rather than to Edaruchei Clan.

D. Worksheet Lot R-133 – Sechedui Lineage

The Land Court awarded Worksheet Lot R-133, a land known as *Lulk*, to Sechedui Lineage, finding that *Lulk* never came under the control of the Japanese administration and therefore could not be conveyed by the Trust Territory government to Edaruchei Clan by quitclaim deed. Land Ct. Decision at 7-8.

The Land Court found that *Lulk* was the property of Ngirchelui (a member of Sechedui Lineage) before the war and that after the war Ngirchelui's son Mabel occupied the land without interference by Edaruchei Clan. Mabel's son, Ebert Mabel, testified to his family's occupation of *Lulk* before and after World War II and this testimony was corroborated by Postol Remeliik. (Tr. 531:11-536:3; 541:5-542:4.) Again, Edaruchei Clan presents no novel arguments in favor of its claim to this land beyond those previously discussed. And again, we find no clear error in the Land Court's finding.

E. Worksheet Lot R-130 – Family of Blau

The Land Court awarded Worksheet Lot R-130, a land known as *Bairrak*, to Family of Blau. Land Ct. Decision at 5-6. The family's representative, Ngetchur Ngiralmu, testified that the land was previously owned by Baulechong but occupied by Blau. (Tr. 71:25-72:4.) The land passed from Baulechong to Family of Blau. (Tr.

71:28-72:4.) Ngiralmu's testimony that Blau and her family occupied and then owned *Bairrak* was corroborated by other witnesses. (Tr. 63:25-64:9; 89:25-92:15.) Based on this testimony, the Land Court determined that *Bairrak* was not acquired by the Trust Territory government and therefore the quitclaim deed was not an effective conveyance of *Bairrak* to Edaruchei Clan.

Edaruchei Clan contends that Family of Blau is claiming the wrong land. (Edaruchei Clan Br. at 27-28.) Family of Blau traces its ownership of Worksheet Lot R-130 back to Baulechong and Tochi Daicho Lot 1850. Edaruchei Clan claims that Worksheet Lot R-130 is not Tochi Daicho Lot 1850—that is, it is not *Bairrak*. Adalbert Eledui testified before the Land Court that *Bairrak* comprises Worksheet Lots 291-013A and 291-013B and not Worksheet Lot R-130. (Tr. 96:11-26.) Therefore, according to Edaruchei Clan, Ngiralmu's testimony has been undermined and Family of Blau has no claim to Worksheet Lot R-130. (Edaruchei Clan Br. at 28.) Edaruchei Clan also argues that the Land Court's statement that the testimony of Adalbert Eledui "corroborated" Ngiralmu's testimony demonstrates that the Land Court's decision regarding Worksheet Lot R-130 is patently wrong. (Edaruchei Clan Br. at 28.)

Eledui did testify that Ngiralmu was confused regarding the location of *Bairrak*. (Tr. 96:21-26.) But the Land Court's decision to credit Ngiralmu's testimony over Eledui's testimony is not ours to question on appeal. Both witnesses gave plausible testimony; we will not second-guess the lower court's credibility determination based on a cold record. And the Land Court's statement that Eledui's testimony "corroborated"

Ngiralmu's testimony is a correct statement in the context in which it was made—Eledui's testimony did corroborate Ngiralmu's claim that Family of Blau owned the land known as *Bairrak*. (Tr. 89:25-92:15.) Edaruchei Clan has failed to demonstrate that the Land Court's award of Worksheet Lot R-130 to Family of Blau was clearly erroneous.

F. Worksheet Lot 291-017A – Children of Emautelngal

The Land Court awarded Worksheet Lot 291-017A, a land known as *Diliou*, to Children of Emautelngal. Land Ct. Decision at 9. The Land Court found that Emautelngal, who died during the Japanese time, had owned *Diliou*, and that his grandson, Renguul, maintained a house on *Diliou* until wartime evacuation and then returned to live in the cement Japanese structure that had been built on the former site of the house. The Land Court found that *Diliou* remained Emautelngal's property, and, thus, presumably, could not be conveyed by the Trust Territory government to Edaruchei Clan.

Unlike the other worksheet lots involved in this appeal, Edaruchei Clan presents specific evidence of a taking of Worksheet Lot 291-017A by the Japanese administration. Edaruchei Clan argues that it is undisputed that the Japanese administration took possession of *Diliou*, destroyed the house on the property, and built a cement structure on the land. (Edaruchei Clan Br. at 22.) Children of Emautelngal's representative, Misako Kikuo, testified accordingly. (Tr. 289:18-290:23.) Edaruchei Clan therefore concludes that, because the land was indisputably physically taken by the Japanese, the land was transferred to the Trust Territory

government and then effectively was conveyed to Edaruchei Clan by quitclaim deed. (Edaruchei Clan Br. at 22-23.)

The Land Court's opinion states:

The court believed [Misako Kikuo's] testimony that Renguul, grandson of Emautelngal, maintained his house on the land until he was evacuated just before the war; and that he returned and lived in the structure that the Japanese had built on the site where his house previously stood. This credible evidence is sufficient to prove that only the site of the museum, Worksheet Lot 291-017A remained Emautelngal's property and that it should be awarded to the children of Emautelngal

Land Ct. Decision at 9 (footnote omitted).

It is unclear to us what the Land Court means by "Worksheet Lot 291-017A remained Emautelngal's property." It is undisputed, and the Land Court found, that the Japanese removed the house that was on the property, built a cement structure in its stead, and occupied the land during the war. If the Land Court means that Worksheet Lot 291-017A remained the property of Emautelngal throughout the war because it was not physically taken by the Japanese, then that conclusion is clearly erroneous because it contradicts the Land Court's own findings. But if the Land Court means that title to Worksheet Lot 291-017A remained with

EmauteIngal (or his heirs) throughout the Japanese occupation, then we need a clarified record from the Land Court describing the legal and factual basis for this finding. Either way, we vacate the Land Court's award of Worksheet Lot 291-017A to Children of EmauteIngal and remand to the Land Court for clarification and reconsideration. The Land Court is free, upon clarification, to re-award the lot to Children of EmauteIngal if the law and facts support such a conclusion.

CONCLUSION

For the forgoing reasons we AFFIRM the Land Court's decision regarding Worksheet Lots R-130, R-132, R-133, R-532, R-537, 291-034, and 295-002A. We VACATE the Land's Court determination regarding Worksheet Lot 291-017A and REMAND for further decision.