

**DMIU CLAN and SYLBESTER
ALFONSO,
Appellants,**

v.

**EDARUCHEI CLAN, BLAU FAMILY,
CHILDREN OF REMELIHK,
SECHEDUI CLAN,
Appellees.**

CIVIL APPEAL NO. 08-054
LC/R 06-411

Supreme Court, Appellate Division
Republic of Palau

Decided: March 29, 2010

[1] **Appeal and Error:** Standard of Review

Findings of fact are reviewed for clear error. 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. In reviewing for clear error, the Appellate Division must refrain from substituting its own judgment of the credibility of the witnesses or the weight of the evidence. When two permissible views of the evidence are present, a lower court's decision between the competing views cannot be clearly erroneous. A lower court's 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.

[2] **Property:** Tochi Daicho

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.

Counsel for Appellants: Ernestine K. Rengiil

Counsel for Edaruchei Clan: Raynold B. Oilouch

Counsel for Sechedui Lineage: John K. Rechucher

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:

Dmiu Clan and Sylbester Alfonso cumulatively appeal 21 determinations of land ownership by the Land Court within Homestead Lot 162 located in Ngerkeiukl Hamlet in Peleliu State. Because we cannot say that these determinations were made in clear error, we affirm the findings of the Land Court.

BACKGROUND

On July 29, 2008, the Land Court 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

for 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).¹

This appeal concerns the claims of two frustrated claimants, Dmiu Clan and Sylbester Alfonso.² Dmiu Clan seeks reversal of the denial of its claims to fifteen lots: Worksheet Lot R-130 (awarded to Family of Blau), Worksheet Lot R-132 (awarded to Children of Remeliik), Worksheet Lot R-133 (awarded to Sechedui Lineage), and Worksheet Lots 291-013, 291-018, 291-019, 291-019A, 291-021,

¹ These eight lots are the subject of a separate appeal by Edaruchei Clan, 17 ROP 127 (2010), wherein Edaruchei Clan claims that it should have been awarded all 87 worksheet lots within Homestead Lot 162.

² The claim of Sylbester Alfonso, who is deceased, was made on behalf of Children of Ngirakelbid and was represented by George Kebekol.

291-021A, 291-022, 291-026, 291-027, 291-028, 291-046, and R-131 (awarded to Edaruchei Clan). Dmiu Clan holds a quitclaim deed to Homestead Lot 160 (which is adjacent to Homestead Lot 162)³ and claims that these fifteen lots are actually part of Homestead Lot 160 rather than Homestead Lot 162. Sylbester Alfonso appeals the Land Court's award of six lots (Worksheet Lots R-526, R-527, R-528, R-529, R-530, and R-545) to Edaruchei Clan rather than to Children of Ngirakelbid.

On appeal we have received briefs from appellants Dmiu Clan and Alfonso and appellees Edaruchei Clan and Sechedui Lineage. Neither Family of Blau nor Children of Remeliik has responded to Dmiu Clan's opening brief.

STANDARD OF REVIEW

[1] The parties are in agreement that the relevant standard of review, given that we are asked to review the Land Court's findings of fact, is for clear error. (Dmiu Clan Br. at 3; Alfonso Br. at 2; Edaruchei Clan Br. at 7-8; Sechedui Lineage Br. at 2.) 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*,

³ We make no determination in this opinion as to the ownership of any lot within Homestead Lot 160.

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 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

I. Dmiu Clan's Claims

A. Worksheet Lot R-130 – Blau Family

The Land Court awarded Worksheet Lot R-130, land known as *Bairrak*, to Blau Family. *See* LC/R No. 06-411, Decision at 5-6 (Land Ct. July 29, 2008). Dmiu Clan appeals that decision based on two pieces of evidence: (1) Idesong Sumang's testimony that *Bairrak* was owned by Dmiu Clan despite Blau Family's residence on the land; and (2) language in a 1977 Trust Territory District Court judgment stating that those in the *Bairrak* Lineage occupied land owned by Dmiu Clan.

Although Dmiu Clan does not dispute that Blau Family resided on *Bairrak*, Dmiu Clan maintains that the land was owned by the clan and not Blau Family. Idesong Sumang testified that older relations had told him that the house of *Bairrak* was on Dmiu Clan land. (Tr. 798:11-15.) Dmiu Clan also presented the judgment in *Obechabraucheliou v. Tuchedesang*, Civ. Act. No. 67-77 (Trust Terr.

Dist. Ct. 1977) as evidence that Dmiu Clan owned *Bairrak*. That judgment stated that members of Bairrak lineage occupied lands owned by Dmiu Clan. *Obechabraucheliou*, Civ. Act. No. 67-77, at 2.

The Land Court instead chose to credit the testimony of Ngetchur Ngiralmu that *Bairrak* belonged to Blau Family. (Tr. 70:19-72:4.) Ngiralmu's testimony that *Bairrak* was given to Blau Family was corroborated by Adalbert Eledui and Ungiltekoi Baulechong. (Tr. 89:25-92:15; 63:25-64:9).

We cannot find that the Land Court acted unreasonably or clearly erroneously in awarding *Bairrak* to Blau Family. Dmiu Clan essentially asks us to reweigh the evidence to arrive at a different conclusion, which of course we cannot do. Both sides presented testimonial evidence and the Land Court found Blau Family's evidence more convincing. The Land Court was not bound to follow the statements made by the District Court for the Trust Territory in *Obechabraucheliou* as that case featured entirely different parties and dealt with an entirely different issue.⁴ Given the high standard Dmiu Clan must meet on appeal and the evidence supporting the Land Court's

decision, we will not disturb the award of *Bairrak* to Blau Family.

B. Worksheet Lot R-132 – Children of Remeliik

Dmiu Clan also appeals the award of Worksheet Lot R-132, a land known as *Meltalt*, to Children of Remeliik. The Land Court based its decision on testimony of Postol Remeliik. Land Ct. Decision at 8-9. Postol Remeliik testified that his father resided on the land until the war and that his family used the land after the war. (Tr. 605:1-606:20.) The Tochi Daicho listed this lot of land in the name of Remeliik. (Tr. 605:1-3.) Furthermore, Remeliik's children received war claims compensation for the land. (Tr. 605:19-26.)

On appeal Dmiu Clan argues that the award of *Meltalt* to Children of Remeliik was clearly erroneous because Idesong Sumang testified that although Remeliik occupied the land it was owned by Dmiu Clan. (Dmiu Clan Br. at 4-5.) Again, Dmiu Clan asks us to reweigh competing evidence and reach a conclusion contrary to the Land Court. The Land Court, hearing live testimony, was in a superior position to judge the credibility of the witnesses and arrive at factual determinations. Based on the cold transcript before us we cannot find that this determination was clearly erroneous.

C. Worksheet Lot R-133 – Sechedui Lineage

The Land Court awarded Worksheet Lot R-133, a land known as *Lulk*, to Sechedui Lineage based on testimonial evidence. Land Ct. Decision, at 7-8. Ebert Mabel testified

⁴ The issue in Civil Action No. 67-77 was: "After the death of Adelbeluu Baulechong, then the chief of Ucheliou clan in Ngerkiukl, who ha[s] the full right and authority to appoint a person to succeed the deceased and bear Adelbeluu in this clan?" *Obechabraucheliou*, Civ. Act. No. 67-77, at 5. Further, just because members of Bairrak Lineage occupied lands owned by Dmiu Clan, it does not follow that a land named *Bairrak* belongs to Dmiu Clan.

that his father's adoptive father, Ngirchelui (a member of Sechedui Lineage), resided on *Lulk* before the war and that his father, Mabel, occupied the land after the war without interference. (Tr. 531:11-536:3.) Postol Remeliik, a neighbor, corroborated this testimony and stated that he saw Ebert Mabel's ancestors working the land after the war. (Tr. 541:5-542:4.)

Dmiu Clan offers virtually no evidence in support of its claim to *Lulk*. (Dmiu Clan Br. at 4.) Without argument supporting Dmiu Clan's claim, this Court cannot say that the Land Court acted clearly erroneously by awarding *Lulk* to Sechedui Linage rather than Dmiu Clan based on the testimonial evidence.

D. Twelve Worksheet Lots Awarded to Edaruchei Clan

Dmiu Clan contends that twelve worksheet lots awarded to Edaruchei Clan were actually part of Homestead Lot 160 and therefore should have been awarded to Dmiu Clan instead. Adair Sumang attempted to demonstrate at the Land Court hearing that the contours of the Homestead Map of Peleliu did not match the contours of the worksheet map and that therefore these twelve lots (along with *Bairrak*, *Meltalt*, and *Lulk*) were truly part of Homestead Lot 160 instead of Homestead Lot 162. (Tr. 783:14-785:16.) This exercise did not convince the Land Court that the lots were improperly considered part of Homestead Lot 162.

Dmiu Clan's argument on appeal does not focus on mistaken contours or the similarities of maps, but rather on the testimony of Idesong Sumang. Idesong Sumang testified that these twelve lots at issue

were owned by Dmiu Clan as evidenced by a house site and a stone platform on the land. (Tr. 797:10-798:5.) Dmiu Clan contends that Idesong Sumang's testimony that an ancient Dmiu stone platform and a house of Dmiu Clan are present within the lots awarded to Edaruchei Clan demonstrates that the award was in error. (Dmiu Clan Br. at 5.) Dmiu Clan does not specify in its brief on which of the twelve lots at issue these structures may be found. Notwithstanding this omission, Dmiu Clan's argument here that occupation of the land demonstrates ownership is in strict contradiction to its earlier arguments that other claimants' residency on *Bairrak*, *Meltalt*, and *Lulk* did nothing to prove their ownership of those lots.

The Land Court did not credit Idesong Sumang's testimony in the face of the competing evidence of the 1962 quitclaim deed in Edaruchei Clan's favor. Because a rational decisionmaker could have reached this conclusion we do not find that it was clearly erroneous.

II. Alfonso's Claims

[2] Sylbester Alfonso appeals the Land Court's decision to the extent that it awarded six lots (R-526, R-527, R-528, R-529, R-530, and R-545) to Edaruchei Clan rather than to the Children of Ngirakelbid. The Land Court found that the only evidence in support of Alfonso's claim to the lots was that the lands were listed under his father's name in the Peleliu Tochi Daicho. Land Ct. Decision at 12. 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). The Land Court found that the Tochi Daicho listing was not sufficient to overcome Edaruchei Clan's evidence of ownership through its 1962 quitclaim deed. Land Ct. Decision at 12.

One of the Tochi Daicho lots, Tochi Daicho Lot 1821 (which constitutes Worksheet Lot R-545), was split between Homestead Lot 162 and Homestead Lot 163. In the Land Court case regarding Homestead Lot 163 the Court awarded the portion of Tochi Daicho Lot 1821 that is in Homestead Lot 163 to Alfonso. Alfonso argues that it is only sensible that he be awarded the rest of Tochi Daicho Lot 1821 (the portion that lies within Homestead Lot 162). (Alfonso Br. at 3.)

Determinations of land ownerships are, by their very nature, competitions. Although Alfonso may have had the superior claim to the portion of Tochi Daicho Lot 1821 that lies in Homestead Lot 163, that does not bar another claimant from presenting an even stronger claim to the portion of Tochi Daicho Lot 1821 that lies within Homestead Lot 162. Edaruchei Clan did not claim the portion of TD 1821 that lies within Homestead Lot 163. Therefore it would be unfair to hold the Land Court's determination in the adjudication of Homestead Lot 163 against Edaruchei Clan.

Alfonso further argues that the Land Court awarded Tochi Daicho Lot 1920 to Leory Ngiramowai based on very similar evidence to the evidence presented by Alfonso. (Alfonso Br. at 4.) Because of the similarity of the evidence Alfonso contends that the results should be the same—namely that he too should have been awarded his

claim. (Alfonso Br. at 4.) However, the evidence before the Land Court in the two claims was not as similar as Alfonso makes it out to be—another witness's testimony corroborated Ngiramowai's claim while Alfonso had no such corroborating testimony. And, even if the transcripts did read the same for both claims, the Land Court still could have fairly arrived at different results for the two claims based on the credibility and demeanor of the witnesses.

CONCLUSION

We cannot say that the appealed determinations of ownership were unreasonable. Although appellants may have felt that they had the stronger evidence, it is not our province to reweigh the evidence or overturn the Land Court's choice between two lines of plausible competing evidence. Accordingly, we AFFIRM the appealed determinations of ownership.