

**SECUNDINA OITERONG AZUMA,
Appellant,**

v.

**IKED ROY NGIRCHECHOL, LYNN
MEREP, and KOROR STATE PUBLIC
LANDS AUTHORITY,
Appellees.**

CIVIL APPEAL NO. 08-026
LC/B 07-197, LC/B 07-198

Supreme Court, Appellate Division
Republic of Palau

Decided: January 8, 2010¹

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

The Court reviews the Land Court's factual findings for clear error and will set aside the lower court's factual determinations only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record.

[2] **Civil Procedure:** Res Judicata

The doctrine of issue preclusion states that when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.

¹ The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

[3] **Property:** Tochi Daicho

Ownership by the landowner listed in the Tochi Daicho is presumed to be correct. To rebut this presumption and challenge such ownership, a claimant must prove by clear and convincing evidence that it is incorrect.

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

The question on clear error review is not whether the Court agrees with the trial court's outcome or whether it would have reached the same conclusion had it heard the evidence first-hand, and it will not reweigh the evidence or draw new inferences from it.

Counsel for Appellant: J. Uduch Sengebau Senior

Counsel for Koror State Public Lands Authority: Imelda Bai Nakamura

Counsel for Ngirchechol and Merep: Pro se

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:

Appellant Secundina Azuma challenges the Land Court's determination granting ownership of disputed tracts of land to the various Appellees. Azuma claims that her interest in the land commonly known as

Demkerang extends beyond the boundary determined by the Land Court. Having considered the parties' arguments, we find no error below.

BACKGROUND

This dispute concerns competing claims to parcels of land in Ngerbodol, Ngerchemai Hamlet, Koror State. The property in question, commonly known as *Idong*, *Bailked*, and *Demkerang*, corresponds to Tochi Daicho Lots 261, 262, 263, and 272, and is identified as seven different parcels on Worksheet 2005 B 04, prepared by the Bureau of Lands and Surveys (BLS). Specifically, the parties dispute ownership of BLS Lots 181-084A-1, A-2, B, C, D, E, and F.

Azuma claimed below that she acquired the land in question in 1993 through a conveyance from Ngirachelbaed, the original registered owner of Tochi Daicho Lots 261 and 262. Azuma asserted that Ngirachelbaed was her father, although he was more commonly called Benjamin Ngiraingas Oiterong. Although skeptical, the Land Court found Azuma's claim that Ngirachelbaed was her father to be credible, meaning that Azuma legally received her father's interest in Tochi Daicho Lots 261 and 262. The remainder of the Land Court's decision discussed the precise boundaries of the interest that Azuma's father conveyed.

Azuma explained that her father showed her the boundaries of his land on separate occasions during the 1970s and 1980s. She averred that his land included all of the property now at issue, with the exception of BLS Lot 181-084D. Azuma's brother, Isaias, offered similar testimony,

except he did not include BLS Lot 181-084C when describing his father's land. Two witnesses testified that they knew Benjamin Oiterong and farmed the disputed land, and one witness claimed to have asked permission to build a house that encroached onto the property. On May 14, 1993, Oiterong conveyed his interest in land described as Tochi Daicho Lots 261 and 262 to Azuma, who then built a house on the land and has lived there since 1993. Regarding BLS Lot 181-084C, Azuma testified that her father gave this land to Koror State with the understanding that it would be used for a road. Because Koror State never built the road, Azuma claims that she still owns the property.

The Land Court heard competing claims for portions of the disputed land from the Koror State Public Lands Authority (KSPLA), Iked Roisisbau Ngirchechol (on behalf of the Idong Lineage), and Lynn Merep (on behalf of the children of her late father, Ngirboketereng Merep). After hearing the evidence, the Land Court determined that Azuma was the owner in fee simple of Lot 181-084A-1, but that the competing claimants had superior claims to the remaining parcels.

KSPLA claimed that it owned BLS Lots 181-084D, E, and F, as well as the above-mentioned planned road, which was platted but not built on Lot 181-084C. KSPLA based its claim to Lots D, E, and F on a purported conveyance of this land from Azuma's father to the Japanese government in 1941. The Land Court ruled in KSPLA's favor, finding that Oiterong conveyed a portion of the land described as *Demkerang*—which the court concluded was the same land described as Tochi Daicho Lots 261 and 262—to the Japanese. In 1954,

Oiterong filed a Statement of Claims (Claim No. 64) with the Trust Territory government, claiming that he unwillingly sold this portion of his land in 1941. The record from the 1954 proceedings is unclear, but what documentation exists suggests that the Trust Territory government denied his claim in 1956, meaning the land remained publicly owned. Nothing in the record indicates that Oiterong subsequently recovered the land involved in Claim No. 64, and the government has maintained control of it since 1956. Neither Oiterong nor Azuma has ever filed a claim for the return of public land, and Azuma expressly stated that this is not such a proceeding.²

The Land Court concluded that BLS Lots 181-084D, E, and F represent the portion of Oiterang's land that he conveyed in 1941 and described as *Demkerang* in Claim No. 64. KSPLA produced evidence that the land in Claim No. 64 corresponds to the state's current subdivision lots, which are public lands held by KSPLA. The Land Court also noted the similarity of the name—*Demkerang*—used in both Claim No. 64 and Azuma's current claim, as well as the similarity of the size of the disputed lots. In 1954, Oiterang stated that *Demkerang* was 1137.25 tsubos; Tochi Daicho Lots 261 and 262 are registered as a combined size of 1131.1 tsubos. The Land Court therefore

² Nor could Azuma bring such a claim at this time. A citizen who asserts a claim for the return of public land that was conveyed to a previous occupying power through force, coercion, fraud, or without just compensation or adequate consideration must have filed the claim on or before January 1, 1989. See 35 PNCA § 1304(b). Azuma has never filed such a claim.

found that Lots 181-084D, E, and F are public land belonging to KSPLA.

As for BLS Lots 181-084A-2 and B, the Land Court credited the testimony of Iked Roisisbau Ngirchechol, who appeared for Idong Lineage. Ngirchechol stated that he was intimately familiar with the Lineage's property, having received instructions about the land from former Ikeds Etpisong and Ngirboketereng Merep, as well as having accompanied Iked Etpisong during its monumentation in the 1970s. Based on this knowledge, Iked Ngirchechol claimed that Lots 181-084A-2 and B belonged to the Lineage. Ngirchechol acknowledged, however, that the Lineage conveyed Lot 181-084B to Ngirboketereng Merep's children at his eldecheduch. The Lineage also argued that BLS Lot 181-084A-2 and B are part of Tochi Daicho Lot 272—which it owns—and not Azuma's Lot 262.

The Land Court was persuaded by Iked Ngirchechol's testimony and found that the Idong Lineage owned BLS Lots 181-084A-2 and B because they were part of Tochi Daicho Lot 272. The court also determined that Iked Ngirchechol's testimony, in addition to Lynn Merep's, established that Lot 181-084B became property of the children of Ngirboketereng Merep at his eldecheduch.

Finally, the Land Court determined that BLS Lot 181-084C also belonged to the children of Ngirboketereng Merep. Ngirboketereng built his home on this lot in 1996 and farmed the surrounding land without objection, and he filed a claim for the land named *Bailked* in 1997. Iked Ngirchechol supported Lynn Merep's claim to this land, testifying that the senior females of the

Lineage gave the land occupied by Ngirboketereng to his children. The court did not credit Azuma's testimony that her father had provided permission to KSPLA to use the land for an access road, and it rejected KSPLA's argument that platting the road established an ownership interest.

Azuma now appeals the Land Court's determinations, claiming that each of its factual findings were clearly erroneous.

STANDARD OF REVIEW

[1] We review the Land Court's factual findings for clear error. *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007). We will set aside the lower court's factual determinations only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record. *Id.* We review the Land Court's conclusions of law *de novo*. *Id.*

ANALYSIS

Azuma presents various issues, each of which distills to whether the Land Court properly determined the ownership of the disputed property. We address the court's determinations in turn.

I. BLS Lots 181-084D, E, and F: KSPLA's Claims

Azuma contends that the Land Court erred by finding that BLS Lots 181-084D, E, and F became public land as a result of her father's 1941 conveyance of a portion of *Demkerang* to the Japanese. Specifically, she argues that there is no evidence from which the Land Court could have concluded that the

three BLS lots (which she claims correspond to Tochi Daicho Lots 261 and 262) were the same property at issue in Claim No. 64. Despite Azuma's contention to the contrary, there was sufficient evidence in the record to support the Land Court's determination.

First, in 1954, Benjamin Ngiraingas Oiterong labeled the land he claimed from the Trust Territory government in Claim No. 64 as a portion of "*Demkerang*," the same common name Azuma used to describe the presently disputed property. Azuma notes that neither her father nor the Trust Territory government recorded the Tochi Daicho lot numbers in Claim No. 64, leaving the identity of the property ambiguous. But the absence of the Tochi Daicho lot numbers does not resolve the question of whether *Demkerang* was the same land as Tochi Daicho Lots 261 and 262. It only means that it was not labeled as such in 1954, and the Land Court made a permissible finding that the lands were the same. Second, Oiterong recorded in Claim No. 64 that *Demkerang* was 1137.25 tsubos, a number nearly identical to the combined registered area of Tochi Daicho Lots 261 and 262. This similarity supports the Land Court's finding that the land disputed in Claim No. 64 concerned a portion of Tochi Daicho Lots 261 and 262. The Land Court was somewhat unclear regarding the extent to which Tochi Daicho Lots 261 and 262 became government property,³ but its final determination made

³ Although the Land Court ultimately determined that Azuma's father conveyed only a portion of his property to the Japanese government, it stated at one point that "Lots 261 and 262 became public land in Claim No. 64, and [are] currently held by the KSPLA." This

clear that it found that Claim No. 64 related to a portion of *Demkerang* now registered as Tochi Daicho Lots 261 and 262.

Finally, KSPLA presented testimony from Roman Remoket, the individual who prepared BLS Worksheet 2005 B 04, which demarcated the boundaries of the property in dispute and the undisputed surrounding land. Remoket testified that the property at issue in Claim No. 64 included public land that is now divided into state subdivision lots. Specifically, he testified that the land in Claim No. 64 encompasses BLS Lots 181-084D, E, and F, an assertion supported by the subdivision maps produced at trial.

Most importantly, Azuma has not produced evidence that Claim No. 64 related to any other property that her father owned at the time. KSPLA has maintained control of the disputed lots for over fifty years, and neither Azuma nor her father filed a claim for the return of public land. The subdivision maps indicate that the lots are public property. This evidence is more than a sufficient basis for the Land Court's determination that BLS Lots 181-084D, E, and F became public land.

Azuma also asserts that the Land Court improperly precluded her from claiming ownership of Tochi Daicho Lots 261 and 262 based on the Trust Territory government's 1956 determination that her father legitimately sold a part of his property to the Japanese government. Azuma's argument is misplaced because the Land Court did not bestow

statement is overly broad, but the Land Court clarified this statement in the remainder of its decision.

preclusive effect on the Trust Territory's determination in Claim No. 64. Azuma properly notes that Claim No. 64 did not litigate the true location of the disputed land; the only issue determined by the Trust Territory government was whether Azuma's father willingly and legitimately sold it.⁴ But Azuma conceded that this is not a return of public lands claim, and she is not challenging Claim No. 64's underlying determination. Rather, the relevant issue before the Land Court was whether the land that Azuma's father sold in 1941 was a part of Tochi Daicho Lots 261 and 262. The Land Court accepted evidence from both parties regarding the location of the disputed land—evidence that included the records from the 1956 Trust Territory determination in Claim No. 64—and it did not preclude Azuma from litigating the issue of whether her father's claim related to part of the land described as Tochi Daicho Lots 261 and 262, or some other land.

[2] The doctrine of issue preclusion states that “[w]hen an issue of fact or law is actually

⁴ We express no opinion as to whether the 1956 Trust Territory government's determination of ownership in Claim No. 64 would be entitled to preclusive effect for any issue at all. There may be dispute about whether the 1956 parties had a full and fair opportunity to litigate the issues; whether the determination was a valid and final judgment; whether the Trust Territory government represents a proper judicial entity for preclusion purposes; or whether the parties are aligned closely enough to merit preclusion. The Land Court in this case did not apply the doctrine of issue preclusion, rather it used documentation from that proceeding to determine the location of the property in question, and that is as much as we need to find to reject Azuma's argument.

litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.” *Trolii v. Gibbons*, 11 ROP 23, 25 (2003) (quoting Restatement (Second) of Judgments § 27 (1982)). The Land Court did not misapply the doctrine of issue preclusion, nor did it err in finding that the land Azuma's father conveyed in 1941 was a portion of Tochi Daicho Lots 261 and 262. The Land Court cited sufficient evidence to support its conclusion that the property became public and therefore is currently owned by KSPLA.

II. BLS Lot 181-084C: Lynn Merep's and Idong Lineage's Claims

Turning to Azuma's claim for BLS Lot 181-084C, we again find no clear error by the Land Court. The court heard competing evidence from Azuma and the other claimants, namely Lynn Merep and Iked Roisibau Ngirchechol. The court credited the testimony of Merep and Iked Ngirchechol that the land belonged to Idong Lineage and was granted to the children of Ngirboketereng Merep at his eldecheduch. Lynn testified that in 1997, Ngirboketereng filed a claim for the land, commonly known as *Bailked*, and he built and occupied a house on Lot 181-084C and farmed the surrounding areas.

Azuma's claim to BLS Lot 181-084C rested solely on her contention that her father gave the parcel to Koror State under a good faith understanding that it would be used for a public road. The government never built the road, so Azuma seeks return of the property. But Azuma did not present sufficient evidence demonstrating that her father gave the state

permission to build a road over the land, and even Azuma's own witnesses—her brother, Isiais, and BLS Land Registration Officer Ignacio—did not identify Lot 181-084C as a parcel belonging to Azuma's father. Without evidence of the initial understanding with the Koror State government, Azuma faced an uphill battle.

Azuma invokes the theory of common-law dedication, which states that a dedication of land to the public transfers only a servitude or easement, not fee simple ownership. *See Itolochang Lineage v. Ngardmau State Pub. Lands Auth.*, 14 ROP 136, 139 (2007). Therefore, she argues, she remains the fee simple owner of the property because KSPLA never fulfilled the purpose of the servitude or easement. The Land Court determined that Lot 181-084C was not owned by Azuma's father in the first place, however, meaning that he could not have dedicated it to Koror State. Instead, the Land Court found that the land upon which Ngirboketereng Merep built his house was Idong Lineage land that became property of Merep's children at his *eldecheduch*. There was evidence in the record to support this factual determination, and it was not clearly erroneous.

III. BLS Lots 181-084A-2 and B: Idong Lineage's and Lynn Merep's Claims

[3] The next dispute is the proper ownership of BLS Lots 181-084A-2 and B, which appear to fall within Tochi Daicho Lots 261 and 262 on BLS Worksheet 2005 B 04. Azuma notes that ownership by the landowner listed in the Tochi Daicho is presumed to be correct. *See Kerradel v. Ngaraard State Pub. Lands Auth.*, 14 ROP 12, 15 (2006). To rebut this presumption and challenge such

ownership, a claimant must prove by clear and convincing evidence that it is incorrect. *Rechiriki v. Descendants of Telbadel*, 13 ROP 167, 169 (2006).

In this case, however, the Land Court did not find against Azuma's ownership of Tochi Daicho Lot 262. Instead, the Court determined that the property depicted by BLS Lots 181-084A-2 and B fell within Tochi Daicho Lot 272, rather than Lot 262. Consequently, the Land Court did not negate the presumed accuracy of Azuma's ownership of Lot 262; it merely determined what land is encompassed by that particular lot. The presumption and elevated standard of proof arising from the Tochi Daicho listing are therefore inapplicable.

We are left, then, with competing evidence regarding the proper Tochi Daicho characterization of BLS Lots 181-084A-2 and B. Azuma claimed that the property was part of Tochi Daicho Lot 262. Azuma, her brother, and various other witnesses testified that this property has always belonged to Azuma and her father; that various individuals farmed and used the property with the family's permission; and that Azuma built her house on Lot 181-084A-2 in 1993. Azuma has been living on Lot 181-084A-2 for over fifteen years, and she testified that not once has Idong Lineage objected or complained.

On the other side, Iked Ngirchechol testified that Lot 181-084A-2 and B belong to the Idong Lineage. He testified about the history of the land and that he received instructions from elders that the land should be retained for the Lineage. He purportedly accompanied Iked Etpisong on the land on various occasions, including during a

monumentation in 1972. He therefore asserted that the land was not part of Tochi Daicho Lot 262, but was instead a portion of Tochi Daicho Lot 272. Lynn Merep, whose father built his house in the lot adjacent to BLS Lot 181-084B (Lot C), continuously maintained trees and plants on Lot B.

The Land Court credited Iked Ngirchechol's testimony over the evidence produced by Azuma. The Court noted that Ngirchechol knew the lands, and his testimony was substantiated by the available record, namely Land Acquisition Records showing that Iked Etpisong participated in a monumentation in the 1970s. The Land Court also remarked on Ngirchechol's sincerity in carrying out his responsibilities and his honesty in declining to claim any of the lands within Claim No. 64 or Azuma's Lot 181-084A-1, knowing that they were not Idong Lineage property. Regarding BLS Lot 181-084B, the Land Court heard testimony from both Iked Ngirchechol and Lynn Merep that the property belonged to the Idong Lineage and was conveyed to the children of Ngirboketereng Merep at his eldecheduch.

[4] We reiterate that our task when reviewing the Land Court's factual findings is to determine whether there was clear error. See *Sechedui Lineage*, 14 ROP at 170. The question is not whether we agree with the outcome or whether we would have reached the same conclusion had we heard the evidence ourselves, and we will not reweigh the evidence or draw new inferences from it. See *Children of Rengulbai v. Elilai Clan*, 11 ROP 129, 131 (2004). Here, the Land Court heard competing evidence regarding the boundaries of Tochi Daicho Lots 262 and 272. The court concluded that the testimony of

some witnesses was more credible than that of others. We find that there was sufficient evidence before the Land Court to support its factual findings regarding the ownership of BLS Lots 181-084A-2 and B, and we therefore affirm them.

CONCLUSION

The disputes in this case were not simple and required the Land Court to make difficult factual determinations. The litigants proffered competing views of the evidence, and the Land Court properly based its decisions on evidence in the record. See *Sechedui Lineage*, 14 ROP at 171. We are not "left with a definite and firm conviction that a mistake has been made," *Tmiu Clan v. Ngerchelbuchebe Clan*, 12 ROP 152, 153 (2005), and we therefore AFFIRM the Land Court's determinations regarding ownership of the disputed property.