

**SECHEDUI LINEAGE,  
Appellant,**

v.

**DMIU CLAN and SANDRA S.  
PIERANTOZZI,  
Appellees.**

CIVIL APPEAL NO. 08-027  
LC/R 06-410

Supreme Court, Appellate Division  
Republic of Palau

Decided: January 8, 2010

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

Where there is evidence supporting two different factual conclusions, the trial court does not clearly err by crediting one over the other.

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

The doctrine of *res judicata* 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.

Counsel for Appellant: John K. Rechucher

Counsel for Dmiu Clan: Ernestine K. Rengiil

Counsel for Pierantozzi: Oldiais NgiraiKelau

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 SALVADOR INGEREKLII, Associate Judge, presiding.

PER CURIAM:

This appeal arises from a Land Court proceeding involving twenty-two Tochi Daicho lots and twenty-six worksheet lots, as depicted on the Bureau of Lands and Surveys (BLS) Worksheet No. 2001 R 02. Among numerous claimants, the only appealing party is the Sechedui Lineage, which challenges the Land Court's determination that it was not the rightful owner of certain of these properties. After considering the Sechedui Lineage's arguments, we find no error below.

### **BACKGROUND**

This case involves property in Ngerkeyukl Hamlet, Peleliu State. The disputed land before the Land Court consisted of multiple Tochi Daicho and worksheet lots within the property known as Homestead Lot 160, commonly called *Ngeriwang*.<sup>1</sup> The Sechedui Lineage claimed ownership of some of these disputed lots, which are the only ones

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<sup>1</sup> As we address below, the Sechedui Lineage disputes on appeal that the land called *Ngeriwang* includes all of the property included in Homestead Lot 160.

at issue in this appeal.<sup>2</sup> The Dmiu Clan claimed ownership of all of the disputed land.<sup>3</sup>

This proceeding has been ongoing for some time. The Land Court first noticed this matter for hearing in 2001, and an initial hearing occurred from January 21 to 31, 2002. The case then sat dormant for a number of years until the Land Court held a second and

final hearing over four days in late February, 2007. After reviewing the testimony presented in the 2001 hearing and presiding over the hearing in 2007, the Land Court issued its final determination on March 26, 2008.

At the hearings, the Dmiu Clan claimed that it has owned *Ngeriwang*—the land that later became Homestead Lot 160—from time immemorial until 1938, when the Japanese government pushed them from their land. The Dmiu Clan argued that it then regained possession of the property in 1959, when it became a homestead lot, and ownership of the land in 1962, when the Trust Territory issued a quitclaim deed to the property. The Clan stated that it has maintained ownership and control from that time to the present.

To support their alleged ownership, the Dmiu Clan presented evidence of its history on the land and the proceedings by which it eventually received a quitclaim deed to Homestead Lot 160. In 1938, the Japanese government took possession of *Ngeriwang* and occupied it during the war, after which the Trust Territory government inherited possession. In 1955, the Dmiu Clan's chief titleholder, Remeliik, sought to regain ownership of the land and filed Claim No. 115 with the Trust Territory government. In 1956, a Land Title Officer of the Trust Territory found that, although the Dmiu Clan owned *Ngeriwang* prior to 1938, the Japanese government took the property by eminent domain and properly compensated the Clan. The Dmiu Clan did not pursue its claim further at that time, and the property was released to the Trust Territory government.

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<sup>2</sup> In its brief, the Lineage separated its claims into three disputed lands: (1) *Delbochel*, (2) *Debed*, and (3) *Sechedui*. According to the lineage, *Delbochel* refers to Tochi Daicho Lots 1806, 1817, and 1825, which purportedly correspond to BLS Worksheet Lots 291-005, 005A, 005-part, 006, 007, 009A, 010A, 011D. *Debed* refers to Tochi Daicho Lots 1828, 1836, and 1861, which purportedly correspond to BLS Worksheet Lots 291-009, 010, 011, and 011C. Finally, *Sechedui* refers to Tochi Daicho Lot 1862, which purportedly corresponds with BLS Worksheet Lot 291-009A. On appeal, the Sechedui Lineage challenges the Land Court's determinations regarding only *Debed* and *Sechedui*.

<sup>3</sup> Appellee Sandra Pierantozzi claimed that the Dmiu Clan conveyed to her certain lots within *Ngeriwang*, Homestead Lot 160. She supported her claim with a Warranty Deed executed in 1983. The Land Court found her testimony credible and therefore held that the Dmiu Clan conveyed the property to her with the knowledge and support of the Clan's senior members. The Dmiu Clan has not appealed this determination and it is not at issue before this Court. Pierantozzi's ownership of this property, therefore, depends on the Dmiu Clan's broader claim to ownership of *Ngeriwang*. That is, if the Dmiu Clan did not own Homestead Lot 160, it could not have conveyed part of that land to Pierantozzi, and she would not be the rightful owner. We will therefore limit our discussion to the Dmiu Clan's claim.

In 1958, however, Remeliik appealed the determination that *Ngeriwang* was government property, arguing that the Japanese took the land by threat and without just compensation. The Dmiu Clan settled the case, agreeing to take a homestead permit for *Ngeriwang*, which at that point became Homestead Lot 160. Less than four years later, in January 1962, the Trust Territory issued the Dmiu Clan a quitclaim deed for Homestead Lot 160. The deed was recorded on October 26, 1963, and the Dmiu Clan claims ownership ever since.

The Sechedui Lineage disputed the Dmiu Clan's claims to certain parts of Homestead Lot 160. At the hearings, the Lineage argued that it has owned and controlled the lands *Debed*, *Delbochel*, and *Sechedui* from time immemorial, long before the Japanese administration. The Lineage presented testimony regarding its ancestral history, when its forefathers sailed by canoe from Angaur and settled in Peleliu at *Debed* and *Delbochel*. The Lineage claimed that at no time did it convey its land to the Japanese government or any foreign power, nor did it occupy the land with permission from the Dmiu Clan. It argued that this land, unlike *Ngeriwang*, never became public property, and the Trust Territory had no right in the land to convey via the 1962 quitclaim deed.

After hearing these claims, the Land Court first determined that the land *Ngeriwang* represented the same property as that in Homestead Lot 160, meaning that *Ngeriwang* encompassed *Debed*, *Delebochel*, and *Sechedui*. The court then held that *Ngeriwang* belonged to the Dmiu Clan, relying primarily on Remeliik's 1955 Trust Territory claim and the 1962 quitclaim deed.

The court found that members of the Dmiu Clan had lived on *Ngeriwang* before the Japanese occupation, ceded their property to the Japanese, and then reclaimed it after the war. Their persistence in pursuing the property indicated prior ownership; the 1962 quitclaim deed from the Trust Territory was evidence of their subsequent ownership.

The court rejected the Sechedui Lineage's claim that it had always owned the disputed property. The court determined that the claimants on behalf of the Lineage had lived on and used the property as members of the Dmiu Clan, not as land owners. As part of this determination, the Land Court cited a 1977 Palau District Court judgment, which found in pertinent part that a man named Sisor Tuchesang and his relatives were members of the Bairrak Lineage of the Dmiu Clan, who later became members of the Sechedui Lineage of the Ucheliou Clan after performing certain work for them. *See Ucheliou Clan v. Sisor Tuchesang, et al.*, Civ. Action No. 67-77 (Palau Dist. Ct. Sept. 14, 1977). The 1977 judgment also held that Sisor Tuchesang and his relatives lived on land owned by the Dmiu Clan, not individually owned property. *Id.* Sisor Tuchesang is the uncle of Misako Kikuo, the claimant and a primary witness for the Sechedui Lineage; he is also the father of Timarong Sisor, a witness for the Lineage. The court also relied on testimony from the Dmiu Clan's primary witness, Idesong Sumang, and a statement by Kikuo's other uncle, Baulechong, who formerly held the second-highest title in the Sechedui Lineage (Adelbeluu). Baulechong signed the Dmiu Clan's 1955 claim to *Ngeriwang*, attesting that the land belonged to that clan.

The Land Court therefore issued its final determination of ownership, granting the land disputed in this appeal to the Dmiu Clan. The Sechedui Lineage claims error in the Land Court’s determinations regarding the properties *Debed* and *Sechedui*.

### ANALYSIS

The bulk of the Sechedui Lineage’s appeal challenges the Land Court’s factual findings, which we review for clear error. *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007). We will not set aside the findings so long as they are supported by evidence such that any reasonable trier of fact could have reached the same conclusion, unless we are left with a definite and firm conviction that an error has been made. *Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 168 (2006). We review the Land Court’s conclusions of law *de novo*. *Sechedui Lineage*, 14 ROP at 170.

#### I. Land Court’s Factual Findings

The Sechedui Lineage first attacks the Land Court’s factual finding that the Dmiu Clan has owned *Debed* and *Sechedui* since time immemorial and continues to do so today. As one component of this argument, the Lineage avers that these lands are not part of the property known as *Ngeriwang*, but rather separate lands that also comprised Homestead Lot 160.

As to the first of these findings, the Lineage simply repeats the evidence it produced at the hearings. It summarizes its witnesses’ testimony and the alleged history of its ancestors and the land. We acknowledge, as have the Appellees, that there is some

evidence in the record that the Sechedui Lineage owned a portion of the property in Homestead Lot 160. But the Land Court heard this same evidence—along with competing evidence from the Dmiu Clan—and determined that the Dmiu Clan was the rightful owner. We now sit on appeal with a cold, paper record, unable to see the witnesses’ demeanor or hear their voices. There were at least twenty-five claimants in this case, meaning some claims were false, while some were truthful. It is up to the Land Court to decide between these competing versions of the evidence, which is precisely why we review its findings for clear error. *See Sechedui Lineage*, 14 ROP at 171 (“It is not clear error for the Land Court to credit one proffer of evidence over another so long as one view of the evidence supports the factfinder’s decision.”).

We find sufficient evidence in the record to support the Land Court’s finding that the Dmiu Clan has owned *Ngeriwang* since time immemorial. The Dmiu Clan presented evidence that it owned and possessed the disputed land until the Japanese took possession in 1938, reclaimed the land in 1955, appealed the adverse determination of that claim, and eventually obtained a quitclaim deed to the property in 1962. Idesong Sumang testified that the Dmiu Clan owned the land within Homestead Lot 160 before the Japanese government took it.

The Dmiu Clan also produced documentary evidence to support their assertions, including records from its 1955 claim before the Trust Territory government. Among these records is a statement by the Dmiu Clan claimant, Remeliik, which reflects that *Ngeriwang* belongs to the Dmiu Clan.

Eleven individuals signed this statement and verified its accuracy. One signatory was claimant Kikuo's uncle, Adelbeluu Baulechong, whose signature is probative of *Ngeriwang*'s ownership not only in its own right, but also because, as Adelbeluu and Kikuo's elder relative, Baulechong presumably knew the appropriate owner of the land better than his younger relative does many years later. The 1955 claim to *Ngeriwang* also included a map of the property, which corresponds closely with the contours of the property depicted as Homestead Lot 160. Finally, the Dmiu Clan produced the quitclaim deed to Homestead Lot 160, issued in 1962. We have previously held that a court may consider a quitclaim deed as evidence of ownership, *see Basiou v. Ngeskesuk*, 8 ROP Intrm. 209, 210 (2000), and this is particularly true where the deed was issued approximately thirty-five years before Misako Kikuo filed her claims to the land.<sup>4</sup>

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<sup>4</sup> The Sechedui Lineage correctly notes the axiomatic principle that one may only convey a property interest that one actually owns. *See, e.g.*, 63C Am. Jur. 2d *Property* § 35 (“As a matter of general property law, one who does not hold title to property . . . cannot pass or transfer title to that property.”). Nor could the Trust Territory properly create Homestead Lot 160 in 1959 from property it did not own. *See* 35 PNCA § 801 *et seq.* (defining homestead areas as “public lands”); *see also* 67 TTC § 201 *et seq.* (same). The Land Court, however, considered and rejected the Lineage's claim that it had owned the land since time immemorial, meaning that it found that the Trust Territory government properly owned the land when it created Homestead Lot 160 and when it subsequently issued the quitclaim deed in 1962. The deed, therefore, is relevant evidence of

As additional evidence, the Land Court cited Civil Action No. 67-77, in which the Palau District Court of the Trust Territory government found that Kikuo's uncle, Sisor Tuchesang, was a member of the Dmiu Clan and that he and his relatives occupied land owned by the Dmiu Clan. This evidence, although not determinative, provides further support for the Land Court's determination. The Land Court weighed all of this evidence against that of the Sechedui Lineage. The court then made permissible factual findings supported by that evidence.

The Lineage's second argument also fails. The Lineage asserts that the lands *Debed* and *Sechedui* are not a part of the land *Ngeriwang*, but rather are a distinct portion of Homestead Lot 160. During the proceedings below, both the Land Court and some of the parties referred to Homestead Lot 160 and the land known as *Ngeriwang* interchangeably. For example, the Land Court found that this proceeding was to determine “ownership of lands within the land known as *Ngeriwang*, Homestead Lot 160,” and specifically that *Debed* and *Delbochel* are lands within *Ngeriwang*. LC/R No. 06-410, Decision at 3-4 (Land Ct. Mar. 26, 2008).

In support of the Lineage's argument that Homestead Lot 160 encompasses more than just *Ngeriwang*, it notes that the Dmiu Clan's initial claim for *Ngeriwang* in 1955 described the land as located in the village Wosech, not in the village of Ngerkeyukl or Ngerkeiukl Hamlet where *Debed* and *Sechedui* are located. The Lineage also notes that Remeliik, the Dmiu Clan's claimant in

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ownership of the property.

1955, described *Ngeriwang* as including part of an airfield, a description that apparently does not apply to *Debed* and *Sechedui*.

We are unable to find that the Land Court clearly erred in finding that *Debed* and *Sechedui* are a portion of the land described as Homestead Lot 160 and *Ngeriwang*. The Lineage relies on summary descriptions of the land in a claim made over fifty years ago. The parties do not dispute, however, that in 1955, the Dmiu Clan *only* claimed a property named “*Ngeriwang*,” and this claim eventually resulted in the Trust Territory conveying Homestead Lot 160 to the Clan. The Land Court did not commit clear error by thus concluding that the two are the same. Homestead Lot 160, by definition, could only have encompassed the land that the Dmiu Clan claimed in 1955; the creation of Homestead Lot 160 was a settlement of that very claim. The Clan also included a map of property with its 1955 claim, which corresponds to what later became Homestead Lot 160. To the extent that the Sechedui Lineage argues that the description in the 1955 claim was overly broad, we are left wondering why they waited over forty years to say so.

[1] We acknowledge that Misako Kikuo presented testimony that *Ngeriwang* did not include the disputed lands *Sechedui* and *Debed*. The Sechedui Lineage, however, admitted that the disputed land was within Homestead Lot 160. The Land Court considered all of the evidence and concluded that the land comprising Homestead Lot 160 properly belonged to the Dmiu Clan. Where there is evidence supporting two different factual conclusions, the court does not clearly err by crediting one over the other. See *Sechedui Lineage*, 14 ROP at 171; *Rechucher*

*v. Lomisang*, 13 ROP 143, 146 (2006). Here, the Land Court did not err by choosing to credit the Dmiu Clan’s evidence over that presented by Kikuo and the Sechedui Lineage.

## II. Doctrine of *Res Judicata*

As its next claim of error, the Sechedui Lineage argues that the Land Court improperly applied the doctrine of *res judicata* to preclude it from litigating a factual issue. As evidence against the Sechedui Lineage’s claim, the Land Court cited the aforementioned 1977 Palau District Court judgment, which found in pertinent part that Sisor Tuchesang and his relatives were part of the Dmiu Clan and had lived on land owned by the Dmiu Clan. The Land Court noted that Misako Kikuo’s testimony conflicted with these findings.

[2] The Lineage now claims that by referring to this judgment, the Land Court improperly applied the doctrine of *res judicata*, which states that “[w]hen 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.” *Rechucher*, 13 ROP at 147 (quoting Restatement (Second) of Judgments § 27 (1982)).

The Sechedui Lineage properly notes that the 1977 proceeding involved issues distinct from those before the Land Court in 2008. That case involved a dispute over the appointment of the highest title of the Ucheliou Clan. The Lineage is also correct that the prior proceeding involved different

parties. Indeed, the Lineage has a good argument that the 1977 judgment should not receive any preclusive effect, although we need not make that determination here.

Where the Lineage's argument goes awry, however, is that the Land Court did not give preclusive effect to the 1977 judgment. It did not bind the Lineage to the judgment, nor did it preclude the Lineage from litigating any particular fact. The Land Court referred to the decision as additional evidence in considering both (1) the ownership of the disputed properties, and (2) the credibility of the Lineage's witnesses, particularly Misako Kikuo. The Land Court noted that Kikuo's testimony that her ancestors owned the land long ago was contrary to the 1977 judgment, which found that her ancestors were part of the Dmiu Clan and had lived on the property with that Clan's permission.<sup>5</sup> The court considered the inconsistency as evidence of the witness's credibility and the proper ownership of the land. The Sechedui Lineage was free to present evidence refuting the 1977 findings; indeed, most of the Lineage's evidence was offered to dispute those precise facts. The Land Court therefore did not improperly apply the doctrine of *res judicata*

and did not err by referring to the 1977 judgment as additional evidence in this matter.

### CONCLUSION

The Land Court rendered its decision in this protracted and bulky proceeding based on the evidence before it. Although the Sechedui Lineage presented some evidence in its favor, so too did the Dmiu Clan, and we cannot say that the Land Court clearly erred by finding in favor of the latter. We therefore affirm.

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<sup>5</sup> The 1977 judgment expressly states that the Ucheliou Clan in Ngerkiukl Hamlet encompasses three original lineages, one of which is the Sechedui Lineage. *Tuchedesang*, Civ. Action. No. 67-77, at 2. The Palau District Court found that "[t]he defendants, Sisor Tuchedesang and others of his relation, are members of Bairrak lineage of Dmiu clan." The court further found that "Sisor Tuchedesang and others of his relation all occupy lands *owned by Dmiu clan*, with no land of Ucheliou clan in their possession at present time." *Id.* (emphasis added).