

**NGERMENGIAU CLAN,  
Appellant,**

**v.**

**DILUBECH RECHEBEI,  
Appellee.**

CIVIL APPEAL NO. 09-003  
LC/B 08-0072

Supreme Court, Appellate Division  
Republic of Palau

Decided: February 3, 2010

[1] **Descent and Distribution:** Heirs

In the absence of contrary evidence, it is not erroneous for the Land Court to presume that individually-owned land of a decedent passes to the decedent's children.

Counsel for Appellant: J. Roman Bedor

Counsel for Appellee: Susan Kenney-Pfalzer

BEFORE: ARTHUR NGIRAKLSONG,  
Chief Justice; KATHLEEN M. SALII,  
Associate Justice; ALEXANDRA F.  
FOSTER, Associate Justice.

Appeal from the Land Court, the Honorable  
SALVADOR INGEREKLII, Associate Judge,  
presiding.

PER CURIAM:

Appellant Ngermengiau Clan appeals the Land Court's determination that Dilubech Rechebei is the owner of the taro patch commonly known as *Lemau*. Because

Ngermengiau Clan's challenge does not convince us that the Land Court's determination was clearly erroneous, we affirm the Land Court's decision below.

### BACKGROUND

This appeal concerns the Land Court's Determination of Ownership No. 12-622 finding that Dilubech Rechebei is the fee simple owner of Worksheet Lot No. 181-180 on BLS Worksheet No. 2005 B 06. We will refer to the determined land by its common name, *Lemau*. *Lemau* is a taro patch located in Ngerchemai Hamlet in Koror State. *See* Land Ct. Case LC/B 08-0072, Decision at 1 (Land Ct. Jan. 14, 2009).

Four claimants sought ownership of *Lemau* in the Land Court's October 22, 2008 hearing: David Olkeriil Rubasch, Dilubech Rechebei, George Kebekol, and Ngermengiau Clan represented by John Sugiyama.<sup>1</sup> *See id.* at 2-3. The Land Court made the following pertinent findings of fact: (1) *Lemau* was listed in the Koror Tochi Daicho as the individual property of Iterir; (2) when Iterir died in 1965 there was no discussion regarding the disposition of *Lemau*; (3) Iterir only had one adopted child who survived her death, Ilong Isaol; (4) claimant David Olkeriil Rubasch, a grandchild of Ilong Isaol, lived with Iterir and her husband, but was not

adopted by Iterir; (5) Tikei (appellant's mother) started using *Lemau* in about 1939 and had complete control of it until she died in 1968; (6) after Tikei's death, Tikei's relatives used and controlled *Lemau* with no complaints from anyone until the present day; and (7) Ilong Isaol never used *Lemau*. *See id.* at 3-4.

Upon weighing the evidence, the Land Court found that Iterir owned *Lemau* in fee simple and conveyed *Lemau* to Tikei in 1939. *See id.* at 5-6. The Land Court found that Tikei's use and control of *Lemau* was not a mere "use right," but indicated actual ownership of the property. *See id.* Based on Tikei's ownership, the Land Court awarded *Lemau* to Tikei's daughter Rechebei. *See id.* at 8.

Ngermengiau Clan appeals the award of *Lemau* to Rechebei. Ngermengiau Clan's claim before the Land Court was that (1) Iterir was the owner of *Lemau*; (2) Iterir did not have children to inherit the land; (3) *Lemau* was not given out during Iterir's eldecheduch; (4) and, therefore, under Palauan custom, the elders of Ngermengiau Clan are entitled to decide the disposition of the property. (*See* Land Ct. Tr. at 68:16-69:5.) Ngermengiau Clan's representative, John Sugiyama, testified that he did not know whether Iterir gave out any of her land during her lifetime. (*See id.* at 72:24-27.)

### 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, we will deem the Land Court's findings clearly erroneous and will reverse

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<sup>1</sup> The Land Court decision refers to "Ngermengiau Lineage" but the Land Court's decision was appealed to us by "Ngermengiau Clan." During the hearing, John Sugiyama stated that he presented the claim of Ngermengiau Clan. (*See, e.g.*, Land Ct. Tr. at 77:18-23.) We therefore use the clan designation throughout this opinion.

only if such findings are 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). To the extent that the Land Court’s determinations of law are appealed, we review those *de novo*. *See Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007).

## DISCUSSION

Ngermengiau Clan bases its appeal on two grounds: (1) the Land Court’s decision is based on speculation and conjecture; and (2) the Land Court relied on the wrong standard in its finding that *Lemau* was conveyed to Tikei. (Ngermengiau Clan Br. at 3.) We address each of these issues in turn.

### I. Ngermengiau Clan’s Argument that the Land Court’s Decision is Based on Speculation

Ngermengiau Clan states that no evidence was presented that Iterir agreed to convey her interest in *Lemau* to Tikei. (*Id.* at 3-4.) Ngermengiau Clan argues that the Land Court inappropriately transformed a grant of the right to use *Lemau* by Iterir to Tikei into a conveyance of title to the land. (*Id.* at 4-5.) Without pointing us to specific portions of the record, Ngermengiau Clan contends that the evidence in the record suggests that Tikei held only a use right in *Lemau* and was not the owner. (*Id.* at 7.)

Without guidance of where to look in the record, we reviewed the transcript of the Land Court hearing. In it, we found testimony from two claimants that Tikei was the owner—not just the possessor—of *Lemau*:

David Olkeriil Rubasch made numerous such statements (*see, e.g.*, Land Ct. Tr. at 6:24-27 (“I found out that the name of the land is Lemau and it’s also the land that my grandmother, all this time, had been saying is the taro patch of Tikei.”); 8:4-6 (“I’m here to say that I believe the land became the taro patch of Tikei, that’s all I know.”); 9:13-14 (“I always knew that it was a taro patch for Tikei.”); 17:24-25 (“When I became aware of my surroundings until now it’s a taro patch of Tikei.”); 18:15 (“It was [given] from Iterir to Tikei.”); 19:26-28 (“It’s still the taro patch of Tikei and [Rechebei is] using it.”); 27:10-12 (“I believe that it’s Tikei’s taro patch because of the relationship between my mother Iterir and [Tikei].”); 28:1-7 (“And also because I had never heard my grandmother or my mother Iterir or my mother Ilong say that ‘that is my taro patch’. I have never heard from anybody that this is my taro patch. They were telling us whenever we go to the taro patch not to climb on the guava tree, because the taro patch belongs to Tikei.”); 30:25-27 (“[I]t is Tikei’s taro patch, because that person whose name [is] listed on the Tochi Daicho had given it to [her].”)), as did Rechebei herself (*see, e.g.*, Land Ct. Tr. at 34:1-2 (“When I think about it now, Iterir gave the taro patch to the *mechas* Tikei.”); 42:20-23 (“[Ilong said] ‘I will not claim it, because I would defy what my mother had done, because she gave it to your mother. I will not claim it so go ahead and claim it.’”)).

Backed by this evidence, as well as the case law cited by the Land Court,<sup>2</sup> we cannot

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<sup>2</sup> *See Elewel v. Oiterong*, 6 ROP Intrm. 229, 233 (1997) (“While possession of land is not always an indication of ownership, we believe it

find that the Land Court was clearly erroneous in finding that Iterir conveyed title to *Lemau* to Tikei in 1939. That finding was not, as Ngermengiau Clan argues, based on speculation or conjecture. It was based on the sound application of case law to the evidence before the Land Court.

## II. Ngermengiau Clan's Argument that the Land Court Relied on the Wrong Standard

Ngermengiau Clan's second argument is that, because the conveyance between Iterir and Tikei was based on Palauan custom or traditional law, clear and convincing evidence is required to establish the conveyance. (*See* Ngermengiau Clan Br. at 8.) Ngermengiau Clan's argument confuses the Land Court's findings.

The Land Court did not find that the conveyance of *Lemau* from Iterir to Tikei was pursuant to custom or traditional law. The Land Court found that Iterir simply gave *Lemau* to Tikei in 1939. *See* Land Ct. Decision at 5. The only mention of "custom"

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a fair inference that occupation of the land by appellee's family following [the Tochi Daicholisted owner's] death and for the past thirty or more years is indicative of a tacit or de facto disposition of the land to them."); *see also* *Mesubed v. Iramek*, 7 ROP Intrm. 137, 138-39 (1999) (relying on the above-quoted language from *Elewel* and further stating that "[e]vidence regarding an individual's use and possession of land, and the absence of evidence that the adverse party acted consistent with ownership, is relevant in determining ownership of the land irrespective of whether the doctrine of adverse possession applies.").

in the Land Court's decision comes in tracing the land from Tikei to Rechebei:

The Court further concludes, as a matter of law, that Dilubech Rechebei has a superior right or claim under Palauan custom to inherit the individual property of Tikei and she is, therefore, the proper customary heir of Tikei.

*Id.* at 8.

[1] Even though the Land Court heard no expert evidence on Palauan custom, we have little problem affirming its decision that, out of the four claimants before it, Rechebei is the proper owner of *Lemau*. Having determined that *Lemau* was owned in fee simple by Iterir and then by Tikei, the Land Court was left to award the land to one of the four claimants before it, only one of whom (Rechebei) is Tikei's offspring. Ngermengiau Clan does not argue that it is a more worthy claimant of the land of Tikei than Rechebei.<sup>3</sup> We do not need expert testimony to find that the Land Court's award to Rechebei, the daughter of Tikei, was not clearly erroneous. *See* *Otobed v. Etpison*, 10 ROP 119, 121 (2003) (in the absence of

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<sup>3</sup> Indeed, Ngermengiau Clan's brief contains no argument whatsoever as to the strength of its own claim. It simply attempts to poke holes in Rechebei's claim. Because Land Court dispositions such as the one appealed to us are inherently competitions between claimants, disappointed claimants would do well to argue the respective merits of their own claims as well as the perceived deficiencies in the claims of their rivals.

contrary evidence, it is not erroneous for the Land Court to presume individually-owned land of a decedent passes to the decedent's children).

### **CONCLUSION**

For the aforementioned reasons, we affirm the Land Court's award of the land known as *Lemau* to Dilubech Rechebei.