

**TMUR OMECHELANG and ROSE
ONGALIBANG,
Appellants,**

v.

**NGCHESAR STATE PUBLIC LANDS
AUTHORITY and PALAU PUBLIC
LANDS AUTHORITY,
Appellees.**

CIVIL APPEAL NO. 10-030
LC/P 08-1118

Supreme Court, Appellate Division
Republic of Palau

Decided: April 18, 2011

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

The Appellate Division reviews the Land Court's conclusions of law de novo and its factual findings for clear error.

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

The Appellate Division will not set aside the Land Court's factual 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.

[3] **Return of Public Lands:** Elements
of Proof

To prove a claim for return of public lands, a claimant must demonstrate that the claimant is

a citizen who has filed a timely claim; the claimant is either the original owner of the claimed property, or one of the proper heirs; and that the claimed property is public land which became public land by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration.

[4] **Return of Public Lands: Burden of Proof**

In a return of public lands case, the burden of proof is on the claimants to establish, by a preponderance of the evidence, that they satisfy all requirements of 35 PNC § 1304(b).

Counsel for Appellants: Siegfried B. Nakamura

Counsel for Appellees: William L. Ridpath

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; and ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Land Court, the Honorable RONALD RDECHOR, Associate Judge, presiding.

PER CURIAM:

Appellants Tmur Omechelang and Rose Ongalibang appeal a June 23, 2010, Land Court Determination of Ownership, awarding Lot No. 121-9024 to Appellees Palau Public Lands Authority and Ngchesar State Public Lands Authority.¹ Appellants

¹ The Land Court's Determination of Ownership also awarded Lot No. 044 P 01-part to PPLA and NSPLA. Appellants do not appeal the

argue that the lower court erred in its determination by applying facts not in evidence and the incorrect standard of proof. For the reasons that follow, we **AFFIRM** the land court's Determination of Ownership.

I. BACKGROUND

In this return-of-public-lands case, Rose Ongalibang (Rose) and Tmur Omechelang (Tmur) filed, on December 29, 1988, a Claim for Public Land described as Ngerucheyall. The following day, they filed a Claim for Public Land described as Debochel. These lands are contained within BLS Lot No. 121-9042 in Ngersuul Hamlet, Ngchesar.²

According to Rose and Tmur, Lot No. 121-9042, which is comprised of lands known as *Ngerucheyall*, *Debochel*, and *Ngerchelideu*, was originally owned by Ridochel, a rubak from Ngemingel, Ngchesar. Ridochel gave the land to Imeong Clan some time before the Japanese occupation. Imeong Clan then gave the land to Elsau, a mechas of Imeong Clan, who in turn gave the land to her daughter Kerngel. Kerngel had three children: Etmachel Belai (mother of Rose); Tmur; and Oseked Belai (deceased).

According to Rose and Tmur, the Japanese government subsequently took the land and used it. They claimed in their written closing argument that the Japanese

determination of ownership as to this lot.

² During the pendency of the case below, Rose and Tmur asserted claims over lands known as *Ngerucheyall*, *Debochel*, and *Ngerchelideu*. However, because neither woman filed a claim for the land *Ngerchelideu*, the Land Court considered only their claims to *Ngerucheyall* and *Debochel*.

government “did not purchase said land and simply took it without any compensation to Kerngel or her heirs.” After the Japanese left, Rose and Tmur asserted that Kerngel and her heirs re-occupied the land and cultivated it. Rose’s mother, Etmachel Belai, even built a house on the land.

In support of their claims, Rose and Tmur presented four witnesses at the land court hearing. Their first witness, seventy-seven year old Risong Saito, testified that the lands had been owned by Imeong Clan prior to their being given to Kerngel as her individual property, and that some women from Ngersuul used taro paddies and other parts of the land only with the permission of Kerngel. Saito also testified that she did not know how or when the Japanese government acquired the lands. Although she did not know if the Japanese purchased the lands, she did remember hearing that people were in court over these properties.

The second witness, sixty-four year old Paulus Ongalibang, testified to his memory of the land *Ngerchelideu*. He remembers planting coconut trees and yellow taro on the land, as well as living in a house, built on the land in 1957, which he claims belonged to his father Ongalibang and his mother Etmachel. His testimony never addressed the Japanese occupation.

Rose and Tmur appeared as the third and fourth witnesses. Rose testified that Tmur had told her that she remembered seeing her mother Kerngel using taro paddies on the lands. Rose’s testimony never substantively addressed the Japanese occupation. Finally, Tmur testified that prior to the Japanese occupation, she and other women of Ngersuul

used and cultivated the lands as their own.³ Tmur testified that the lands were owned by Imeong Clan—not her mother Kerngel—when they were taken by the Japanese, and that after the occupation, it was Imeong Clan that re-occupied the land. She did not elaborate on the means by which the Japanese took control of the land, other than to say that the Japanese stated that the lands were for the government and simply occupied them.

II. STANDARD OF REVIEW

[1,2] The Appellate Division reviews the Land Court’s conclusions of law *de novo* and its factual findings for clear error. *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007). We will not set aside the factual 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).

III. DISCUSSION

Appellants raise two arguments on appeal. First, they argue that the Land Court erroneously relied on facts that were not supported by the evidence, and therefore erroneously found that Appellants failed to meet their burden of proof. Second, they contend that the Land Court erroneously applied a heightened standard of proof.

³ Tmur testified that the land upon which she cultivated taro was known as *Ngerchelideu*, for which the Land Court had no record of any claim being filed.

A. General Legal Standard for Return-of-Public-Lands Cases

[3, 4] Article XIII, Section 10 of the Constitution provides for the return of public land to its original owners when the land became public due to its “acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration.” Palau Const. art. XIII, § 10. This constitutional directive is implemented by 35 PNC § 1304(b). To prove a claim under section 1304(b), a claimant must demonstrate that: “(1) the claimant is a citizen who has filed a timely claim; (2) the claimant is either the original owner of the claimed property, or one of ‘the proper heirs’; and (3) the claimed property is public land which became public land by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration.” *Markub v. Koror State Pub. Lands Auth.*, 14 ROP 45, 47 (2007). The burden of proof is on the claimants to establish, by a preponderance of the evidence, that they satisfy all requirements of the statute. *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 93-94 (2006).

B. The Land Court Did Not Commit Clear Error in Finding that Rose and Tmur Failed to Meet Their Burden of Proof as to the Second and Third Requirements of § 1304(b).

Appellants argue that the Land Court committed clear error in determining that they did not meet their burden of proof as to the second and third requirements of § 1304(b). Specifically, Appellants argue that the Land Court erroneously relied on facts that were not supported by the evidence to find that Rose

and Tmur failed to establish that: (1) they are the proper heirs of the original owner, and (2) the Japanese government took the lands by force or fraud, or without just compensation or adequate compensation. We will address each prong separately.

In support of their argument as to the second prong, Appellants submit that the Land Court erred in concluding that Rose and Tmur gave inconsistent testimony regarding the original ownership of the lot at issue. Appellants contend that they both testified that the lot belonged to Kerngel before and after the Japanese occupation. However, as Appellees properly indicate, Appellants’ argument misstates Tmur’s testimony. Tmur only once mentioned Kerngel’s name during her testimony to identify Kerngel as her mother. Indeed, Tmur did not testify that Kerngel owned the lands, but that Imeong Clan owned the lands:

These lands are . . . properties of Imeong and they belonged to our mothers from the old days until today, and our maternal uncles, and they were left fallow and then the Japanese took them for their use and when they left, we took them back because they are ours from the old days.

She further testified that Ngerchelideu is a property of Imeong. Because Appellants failed to establish who owned the lot prior to the Japanese occupation, the Land Court did not clearly err in finding that Appellants failed to establish by a preponderance of the evidence that they are the proper heirs of the original owner.

In support of their argument as to the third prong, Appellants submit that they proved through testimony that the Japanese took their lands and occupied them without compensation. However, the record is devoid of any such testimony. Only two of Appellants' witnesses—Saito and Tmur—testified as to the Japanese occupation. Saito's testimony revealed that she did not know how or when the Japanese government acquired the lands or whether the Japanese purchased the lands. All that she remembered hearing was that people were in court over these properties. The extent of Tmur's testimony was that the Japanese declared that the lands were for the government and then began occupying them. Based on this vague evidence, it was not clear error for the Land Court to find that Appellants failed to prove by preponderance of the evidence that the Japanese government took the lot without just compensation or adequate compensation.

C. The Land Court Applied the Proper Standard of Proof in Rejecting Appellants' Claim.

Appellants contend that the Land Court erroneously applied a clear and convincing standard of proof, rather than applying the lower standard of preponderance of the evidence. In support of this argument, Appellants cite the following passages from the Land Court's decision:

(1) Rose and Tmur have simply failed to provide any convincing evidence, apart from bald assertions, that the Japanese government took the land by force or fraud.

(2) Rose and Tmur testified that the Japanese took the land without compensation; however, neither woman provided any additional details or *convincing* documentary evidence to corroborate such assertions. Although neither § 1304(b) nor the decisional law interpreting it specifically outlines the exact quality and nature of the evidence that would potentially satisfy to § 1304(b)'s third prong, surely it requires something more than the testimony of self-interested witness [sic], accompanied by no testimonial or documentary corroboration.

Omechelang v. NSPLA, LC/P 08-1118, Determination of Ownership at 12-13 (June 23, 2010) (emphasis added). Appellants conclude that the Land Court applied a clear and convincing burden of proof based on the court's use of the word "convincing" in its discussion of Appellants' evidence.

Contrary to Appellants' argument, it is clear from the context of the Land Court's statements that the word "convincing" was used in the ordinary sense of the word to mean that Appellants presented insufficient evidence that the Japanese government took the land by force or fraud, or without just compensation or adequate compensation. As Appellees properly indicate, had the Land Court intended to use the word "convincing" as a legal term of art, it would have prefaced it with the words "clear and." The Court will not read into the Land Court's determination a legal term of art that is neither explicit nor

implicit. Accordingly, the Land Court applied the proper standard of proof in rejecting Appellants' claim.

IV. CONCLUSION

For the reasons set forth above, the Land Court's Determination of Ownership is hereby **AFFIRMED**.