

**EKLBAI CLAN,**  
**Appellant,**

v.

**KEITY M. BANDARII,**  
**Appellee.**

CIVIL APPEAL NO. 10-026  
LC/B 08-0070

Supreme Court, Appellate Division  
Republic of Palau

Decided: August 24, 2011<sup>1</sup>

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

The doctrine of res judicata provides generally that a claim distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies. For res judicata to apply, the parties or privies must be identical, the claims in the two suit must be identical or based on the same set of facts, and there must be a final judgment on the merits. The party asserting res judicata has the burden of proving the necessary elements.

Counsel for Appellant: Raynold B. Oilouch  
Counsel for Appellee: Scott Hess

BEFORE: ARTHUR NGIRAKLSONG,  
Chief Justice; KATHLEEN M. SALII,  
Associate Justice; KATHERINE A.  
MARAMAN, Part-Time Associate Justice.

<sup>1</sup> Upon review of the briefs and the record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. P. 34(a).

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

PER CURIAM:

Appellant, Eklbai Clan, represented by Erica Ngirausui, appeals the Land Court's determination of ownership awarding four parcels of land in Koror State to Appellee Keity M. Bandarii. For the reasons set forth below, we **AFFIRM**.

### BACKGROUND

At issue in this dispute are four parcels of land identified as Worksheet Lot Nos. 181-132, 181-133, 181-134, and 181-136 on BLS Worksheet No. 2005 B 06, and located in Ngerchemai Hamlet, Koror State. Lots 181-132 and 181-133 comprise property known as *Ilab*, and Lots 181-134 and 181-136 comprise property known as *Techibai*. All of the Lots at issue make up Tochi Daicho Lot No. 372, and for ease of reference we will refer to the disputed property as TD Lot No. 372.

Appellee Bandarii appeared before the Land Court pursuing the claim of her late mother, Irorou Terteruich ("Irorou"), for individual ownership of TD Lot No. 372. TD Lot No. 372 is listed in the Tochi Daicho as individually owned by Ngirameong, who was the uncle of Irorou. According to Bandarii, Irorou took over the property sometime after Ngirameong passed away. Bandarii started cultivating the mesei portion of TD Lot No. 372 known as *Ilab* after her mother died in 1982, and with the exception of a few years spent in Kayangel, she has continued to maintain the property to the present. She also testified that she previously ejected persons

who came onto the property.

Erica Ngirausui appeared before the Land Court claiming TD Lot No. 372 on behalf of Eklbai Clan. In support of her claim, Ngirausui argued that a previous decision of the High Court of the Trust Territory of the Pacific Islands determined that TD Lot No. 372 is Eklbai Clan property and further litigation of that issue is barred by the doctrine of *res judicata*. Specifically, Ngirausui pointed to a July 25, 1975 “Judgment” issued by the Trial Division of the High Court in Civil Action No. 25-75. That judgment, which was introduced into evidence by Ngirausui, refers to another case, “Case No. 263,” in which judgment was apparently entered in September 1963 on an agreement by the parties regarding certain properties.<sup>2</sup> The Judgment in Civil Action No. 25-75 states that the file for Case No. 263 has been lost, but that counsel for the plaintiff in Case No. 263 recalled portions of the proceedings:

<sup>2</sup> The judgment in Civil Action No. 25-75 does not mention the when the judgment in Case No. 263 was issued. However, Ngirausui pointed to a decision from another case, *Yechadrechemai v. Ebau*, 3 TTR 551 (1968), that references a judgment issued in “Civil Action No. 263” on September 9, 1963. The *Yechadrechemai* decision notes that Civil Action No. 263 “held, among other matters that: – (1) the land *Eklbai* is clan land; and (2) the ‘present user’ of the land ‘is to be permitted to continue such use as long as he or she desires.’” 3 TTR at 512. The court held that defendants in that case were “present users” of *Eklbai* at the time the judgment in Civil Action No. 263 was issued, and therefore the right of the defendants to use the land was previously settled. *Id.* at 513. The decision in *Yechadrechemai v. Ebau* makes no reference to property at issue in this case.

His notes reflect that five parcels of land were included in the agreement and judgment. They were: Eklbai, Ilab, Iosch (the land in question here), Ngeding and Ngrural. The agreement and judgment based thereon was that these parcels had been registered in the Tochi Daichio as the individual property of Ngirameong. However, because of the death of Ngirameong the parcels described above would be Clan land of Eklbai Clan to be administered by Yechadrechamai Sumang. Certain use rights were given to Joseph Ebau.

(Appellant’s Ex. 1.) The Judgment states that since no evidence to the contrary was introduced,

[i]t is therefore Adjudged and Decreed that Tochi Daichio lot # 529 consisting of 461 Tsubos and also known as Iosch is Clan land of Eklbai Clan . . . . Civil Action 263 is *res judicata* as to this parcel of land.

*Id.*

After hearing from the parties, the Land Court issued its findings of fact and determinations of ownership. The Land Court rejected Ngirausui’s argument that the Case No. 263, as referred to in Civil Action No. 25-75, qualified as a final judgment regarding the

ownership of TD Lot No. 372. The court noted that while the judgment in Civil Action No. 25-75 mentions *Ilab* among the five parcels of land that were apparently at issue in Case No. 263, Civil Action No. 25-75 concerned land known as *Iosch* (TD Lot No. 529) only. The Land Court went on to find that, aside from the 1975 Judgment, Ngirausui presented no evidence rebutting the presumption that the Tochi Daicho listing Lot No. 372 as individually owned by Ngirameong is correct. On the other hand, the Land Court credited Bandarii's testimony that she and her mother maintained a presence on the property for considerable time, and that she ejected others from the property. Considering all the evidence, the Land Court awarded the Lots to Bandarii.

#### 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 only if such findings are so lacking in evidentiary support 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). The Land Court's determinations of law are reviewed de novo. *See Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007).

#### DISCUSSION

[1] Eklbai Clan presents one issue on appeal: it contends that the Land Court erred when it failed to give res judicata effect to Case No. 263, as referred to in Civil Action No. 25-75, with regard to ownership of TD

Lot No. 372. The doctrine of res judicata provides generally that a claim "distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies." 47 Am. Jur. 2d Judgments § 464 (2006); *see generally e.g., Idid Clan v. Demei*, 17 ROP —, Civ. App. No. 09-013 (July 12, 2010) (discussing doctrine of res judicata); *Rechucher v. Lomisang*, 13 ROP 143, 147 (2006) (discussing issue preclusion). For res judicata to apply, the parties or privies must be identical, the claims in the two suit must be identical or based on the same set of facts, and there must be a final judgment on the merits. 47 Am. Jur. 2d Judgments § 474. The party asserting res judicata has the burden of proving the necessary elements. *Id.* § 642-48. Further, Rule 18 of the Rules and Regulations of the Land Court provides that the Land Court must accept as binding final determinations of ownership issued by the Land Claims Hearing Office, the Land Commission, or a court of competent jurisdiction.

For our purposes, Eklbai Clan's position requires, among other things, findings that Case No. 263 concerned ownership of TD Lot No. 372, and that the court issued a valid, final judgment awarding that property to Eklbai Clan. However, the only evidence of what may have transpired in Case No. 263 is a reference by another court in another case that involved different property. There is no final judgment or determination of ownership regarding TD Lot No. 372 in the record. While it appears that the High Court in Civil Action No. 25-75 attempted to piece together the judgment in Case No. 263 from an attorney's notes, that court's reliance on those notes in determining ownership of land called

*Iosch* was not binding on the Land Court in this matter. The High Court's passing reference to land called *Ilab* may be evidence (though not necessarily strong evidence) supporting Eklbai Clan's claim to such property, but nothing in the record requires a finding that Eklbai Clan's ownership of TD Lot No. 372 was previously settled.<sup>3</sup> See generally 47 Am. Jur. 2d Judgments § 471 ("For purposes of issue or claim preclusion, courts resolve all doubts in favor of permitting parties to have their day in court on the merits of a controversy."). In short, the Land Court's refusal to give Case No. 263 any preclusive effect with regard to the ownership of TD Lot No. 372 was not error. And, inasmuch as the Land Court's findings regarding ownership of TD Lot No. 372 are supported by evidence in the record, they will not be disturbed. See e.g., *Sungino v. Blaluk*, 13 ROP 134, 137 (2006).

### CONCLUSION

For the reasons stated above, the decision of the Land Court is **AFFIRMED**.

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<sup>3</sup> Though the parties agree that portions of TD Lot No. 372 are known as *Ilab*, Eklbai Clan contends that Case No. 263 resolved ownership of all the property at issue in this case (TD Lot No. 372), including the portion known as *Techibai*.