

**NGETIUNGEL NGIRATEREKED,**  
**Appellant,**

**v.**

**MATHIAS ERBAI,**  
**Appellee.**

CIVIL APPEAL NO. 10-001  
LC/F 08-0103 & 08-0107

Supreme Court, Appellate Division  
Republic of Palau

Decided: February 1, 2011

[1] **Appeal and Error:** Preserving Issues

This Court has consistently refused to consider issues raised for the first time on appeal. Issues raised for the first time on appeal are deemed waived.

[2] **Appeal and Error:** Clear Error

The Land Court does not commit clear error by failing to take evidence into account that was not introduced at trial.

[3] **Appeal and Error:** Preserving Issues

The waiver rule is important, particularly in land litigation, because in order to bring stability to land titles and finality to disputes, parties to litigation are obligated to make all of their arguments, and raise all of their objections, in one proceeding.

[4] **Appeal and Error:** Preserving Issues

The Appellate Division will only consider an issue first raised on appeal (1) to prevent the

denial of fundamental rights, and (2) when the general welfare of the people is at stake.

Counsel for Appellant: John K. Rechucher  
Counsel for Appellee: Salvador Remoket

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice.

Appeal from the Land Court, the Honorable C. QUAY POLLOI, Senior Judge, presiding.

PER CURIAM:

Ngetiungel Ngiratereked appeals the Land Court's Decision and Determination of Ownership issued on December 2, 2009. She now raises an issue that was not raised in the Land Court. Because she has waived consideration of that issue, we **AFFIRM**.

## **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

This case involves two parcels of real property located in Ngebei Hamlet of Ngarchelong State. The properties in question corresponded to Tochi Daicho Lots 854 and 844, which were listed as the private properties of Erbai, who was also known by the name Erbai Ibedul ("Erbai"). Erbai died on August 30, 1984 at the age of 95. All of the parties are related to Erbai. Appellant Ngetiungel Ngiratereked is Erbai's niece; her mother is Brengiei Ngiratereked, a biological sister of Erbai. Appellee Mathias Erbai (hereinafter "Mathias" or "Appellee") is a biological grandson of Erbai, who was adopted and raised by Erbai.

In the Land Court proceedings, both Appellant and Appellee were pro se. Ngetiungel claimed the lands for the children of Brengiei by way of her inheritance under Palauan custom. Mathias claimed the lands as his own private property through an inter vivos transfer from Erbai based on a Deed of Transfer dated July 3, 1984. The deed states:

KNOW ALL MEN BY THESE PRESENTS that, I, Erbai Ibedul, of Ngerchelongs State, Republic of Palau, for and in consideration of love, services and affection unto my beloved son, Mathias Erbai, . . . have by these presents grant, convey and forever quit claim unto him . . . all those parcels of land located in Ngerchelongs State . . . registered under the Japanese Tochi Daicho as my private properties and more particularly described as follows.

(Mathias Erbai Exhibit #1). Among other lands, the deed then lists the properties at issue. The deed is signed by Erbai Ibedul on July 3, 1984, and witnessed by Etei Erbai, Maria Isamu, and Lidia Ellechel. It was later registered with the Land Commission Office on May 7, 1985.

At the Land Court trial, Ngetiungel testified as to her family history and the history of the land at issue. She stated that the land in question, although in Erbai's name, actually belonged to Erbai and his three siblings, and that she had never heard Erbai say that the two properties at issue were for Mathias. (Trial Tr. 18:7–19:27). Hayes

Ngiratereked's testimony questioned whether Mathias is an adoptive son of Erbai and also challenged the validity of the Deed of Transfer on three points. (Trial Tr. 36:17–37:9). First, he claimed that the witnesses to the deed were on the side of Mathias. Second, he asserted that the deed was executed in secret. Third, he claimed that Erbai's signature was not a personal signature because it was a written name. Mathias Erbai testified that he cared for Erbai from 1976 until he died in 1984. Before Erbai passed away, Erbai told Mathias that he wanted to transfer his personal properties to him. Mathias testified that he and Erbai took a paper from the Land & Survey to the Land Commission for a document to be prepared. They were told that the Land Commission would research to make sure that Erbai actually owned the properties and that they could return to get the document once it cleared. After Erbai passed away, the Land Commission called Mathias for him to pick up the document. (Trial Tr. 28:3–24).

The Land Court entered its Decision and Determination of Ownership on December 2, 2009. The Land Court first determined that the Tochi Daicho listing of the lots at issue, naming Erbai as the individual owner, was accurate. Next, the Land Court determined that Erbai made a valid inter vivos conveyance of his ownership interests to Mathias by the July 3, 1984, Deed of Transfer. The Land Court concluded that Hayes's general attacks on the validity of the deed, without more, did not suffice to show that the deed is legally invalid. Because the Land Court found that the deed is valid and that title had transferred to Mathias before Erbai's death, the court did not need to address Ngetiungel's inheritance claim.

Appellant Ngetiungel, now represented by counsel, appealed the Land Court's determination of ownership in favor of Appellee Mathias.

## II. DISCUSSION

Appellant presented one issue on appeal. She contended that the Land Court erred in concluding that Erbai delivered the deed to Mathias. Appellant also proposed that this Court review the Land Court's determination de novo because the question of what acts constitute an effective delivery is a question of law. We will not address Appellant's argument because it was not raised in the Land Court.

[1, 2] “This Court has consistently refused to consider issues raised for the first time on appeal.” *Rechucher v. Lomisang*, 13 ROP 143, 149 (2006); *see also Ngereketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 43 (1998) (collecting cases). Arguments not raised in the Land Court proceedings are waived on appeal. *Children of Merep v. Youlbeluu Lineage*, 12 ROP 25, 27 (2004); *see also Kotaro v. Ngirchchol*, 11 ROP 235, 237 (2004) (“No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited that issue . . . .”). We will not consider issues on which the parties did not enter evidence before the Land Court. *Pierantozzi v. Ueki*, 12 ROP 169, 171 (2005). The Land Court does not commit clear error by failing to take evidence into account that was never introduced at trial. *Otobed v. Ongrung*, 8 ROP Intrm. 26, 27–28 (1999) (citing *Estate of Etpison v. Sukrad*, 7 ROP Intrm. 173, 175 (1999)).

[3] Here, Appellant never raised the issue of ineffective delivery in the Land Court. Although Appellant's witness Hayes questioned the validity of the deed itself, there was no testimony at trial or other evidence presented regarding whether Erbai's acts constituted a delivery of the deed to Appellee. Because Appellant failed to raise this issue in the Land Court or present evidence on the issue, there is no record from which this Court can review Appellant's argument that Erbai actions with respect to the deed did not have the legal effect of delivery. The waiver rule is particularly important in land litigation because “[i]n order to bring stability to land titles and finality to disputes, parties to litigation are obligated to make all of their arguments, and raise all of their objections, in one proceeding.” *Kotaro*, 11 ROP at 238 (quoting *Ngerketiit Lineage*, 7 ROP Intrm. at 43).

[4] Notwithstanding the rule that this Court will not consider an issue first raised on appeal, this Court recognizes two exceptions: (1) to prevent the denial of fundamental rights, and (2) when the general welfare of the people is at stake. *Rechucher*, 13 ROP at 149. However, neither of these circumstances is present here. Appellant is a civil litigant, not a criminal defendant, and neither her life, her liberty, nor any fundamental right is at stake. *See Kotaro*, 11 ROP at 237. The issue of whether Appellant could have proved that the deed was not effectively delivered does not implicate any fundamental right, nor does it affect the general welfare of the people. Accordingly, Appellant has waived this issue and we decline to address it on appeal.

### III. CONCLUSION

For the reasons set forth above, we **AFFIRM** the Land Court's Decision and Determination of Ownership.