NGARAMEKETII AND RUBEKUL KLDEU and MARGARITA BORJA DALTON,
Appellants,

v.

KOROR STATE PUBLIC LANDS AUTHORITY,
Appellee.

CIVIL APPEAL NO. 09-023
LC/B 08-1090
LC/B 08-1091

Supreme Court, Appellate Division
Republic of Palau

Decided: February 3, 2011[1]

[1] **Return of Public Lands:** Elements of Proof; **Land Commission /LCHO /Land Court:** Burden of Proof

The Land Claims Reorganization Act of 1996, 35 PNC §§ 1301 *et seq.*, provides that ownership of public land shall be returned to any citizen of Palau who can prove (1) she is a citizen who has filed a timely claim; (2) she is either the original owner of the land, or one of the original owner's "proper heirs"; and (3) the claimed property is public land previously acquired by a government through force or fraud, or without just compensation or adequate consideration. The burden of proof remains on the claimants, not the governmental land authority, to establish by a preponderance of the evidence that they satisfy all the requirements of the statute.

[2] **Evidence:** Testimony of Witnesses

A judge may choose to disbelieve even uncontroverted evidence.

[3] **Appeal and Error:** Standard of Review; **Evidence:** Weight of Evidence

An appellate panel is not bound to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence.

[4] **Land Commission/LCHO/Land Court:** Claims; **Return of Public Lands:** Nature of Claim

Return of public lands and superior title claims are fundamentally different, with different burdens of proof and different defenses applicable to each. Unlike a return of public lands case, a claimant asserting superior title claims the land on the theory that it never became public land in the first place. Such a claimant stands on equal footing with the governmental entity claiming the land, but the claimant must confront the availability of affirmative defenses not available to the government in Article XIII claims.

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

The Land Court's findings of fact will be reversed only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.

Counsel for Appellant Ngarameketii and Rubekel Kldeu: J. Roman Bedor

[1] 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).

Counsel for Appellant Dalton: Mark P. Doran
Counsel for Appellee: J. Uduch Sengebau Senior

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEXANDRA F. FOSTER, Associate Justice; RICHARD H. BENSON, Part-Time Associate Justice.

Appeal from the Land Court, the Honorable ROSE MARY SKEBONG, Associate Judge, presiding.

PER CURIAM:

Ngarameketii and Rubekul Kldeu (also referred to in these proceedings as "Klobak er Oreor" or "Klobak") and Margarita Borja Dalton appeal the Land Court's determination of ownership awarding land known as *Ngeremdiu* on *Ngeruktabel* island to the Koror State Public Lands Authority (KSPLA).[2] For the reasons stated below, we **AFFIRM**.

BACKGROUND

The property at issue is popularly known as the rock island *Ngeremdiu*— though *Ngeremdiu* is actually part of a larger rock island known as *Ngeruktabel*. It comprises *Ngeremdiu* Lot 001 and *Ngeremdiu* Lot 002 on Bureau of Lands and Surveys Worksheet "Ngeremdiu Island." Dalton filed a claim on November 29, 1988, for portions of Lot 002 referred to as *Oimaderuul* and the small adjoining beach of *Kekerelechol*,[3] seeking return of public lands under Article XIII, Section 10 of the Palau Constitution. Ngarameketii and Rubekul Kldeu, through Alexander Merep as Rechucher-ra-Techekii, filed a claim of ownership on November 7, 2006, for the entire area of *Ngeremdiu* asserting that they hold superior title to the land.[4]

During a four day hearing before the Land Court, the claimants presented evidence in support of their claims. KSPLA introduced evidence showing that the Japanese Navy acquired *Ngeremdiu* in 1914 and that *Ngeremdiu* later passed to the Trust Territory government and eventually to KSPLA. KSPLA's records show that the District Land Office held a hearing in February 1956 to determine ownership of certain rock islands, including *Ngeremdiu*. The notice of hearing

[2] Other claimants in this action included Ngerbeched Council of Chiefs, Ngerbeched Hamlet, and Ngerchemai Hamlet. Ngerbeched Council of Chiefs and Ngerbeched Hamlet consolidated their claims before the Land Court with the claim of Ngarameketii and Rubekul Kldeu. Ngerchemai Hamlet did not appeal the Land Court's decision.

[3] Dalton's Application for Land Registration specifies the "name of land claimed" as "Oimaderuul ma Ngerchumelbailechol, parts of Ngeremdiu and Ngeruktabel." It further describes the land as "2 parcels of land along the sea (with beaches) named as follow: Ngerkekangel and Kekerelelechol." Dalton testified that she is not claiming *Ngerkekangel*, which is also referred to as "Dave Shay's beach." The parties refer to the portion of *Ngeremdiu* claimed by Dalton as "Oimaderuul and the small adjoining beach of Kekerelelechol." All of the land claimed by Dalton is located within *Ngeremdiu* Lot 002.

[4] The Land Court dismissed Ngarameketii and Rubekul Kldeu's return of public land claim as untimely. The court noted that under 35 PNC § 1304(b)(2), claims for the return of public land must be filed on or before January 1, 1989, and that Ngarameketii and Rubekul Kldeu missed this deadline by about twenty years.

was published at various sites throughout Palau and stated that the islands were on record as belonging to the Japanese government, seized by the U.S. government, and now in control of the Alien Property Custodian, Trust Territory. Anyone claiming an interest in the land was required to attend the hearing. Several statements were received by the District Land Office, including one signed on February 29, 1956, by fourteen representatives of Koror and Peleliu, stating that *Ngeremdiu* was taken by the Japanese Navy in 1914 and that "all the chiefs of Palau" signed a document at that time approving the transfer. Thereafter, the District Land Title Officer issued findings of fact to this effect. On November 28, 1956, the Land Title Officer issued a "Determination of Ownership" that *Ngeremdiu* is the property of the Trust Territory of the Pacific Islands. Additional documents submitted to the Land Court show that ownership of *Ngeremdiu* passed from the Trust Territory government to the Palau Public Lands Authority and ultimately to KSPLA through a series of quitclaim deeds and orders. KSPLA also produced lease agreements for parts of *Ngeremdiu* issued by the Trust Territory in 1959 and 1967; and an agreement signed in 2004 by KSPLA, Koror State Government, and Koror State Legislature, authorizing film production companies Clear Water Inc. and SEC Inc. to use certain rock islands (including *Ngeremdiu*) in filming the television show "Survivor."

Dalton does not dispute that *Ngeremdiu* was acquired by the Japanese in or around 1914. Her position is that *Ngeremdiu* was her family's land prior to the takeover. Dalton's tie to *Ngeremdiu* is through her adoptive father, Jesus Borja (Borja is actually Dalton's grandfather, but Dalton was raised by Borja and always considered him to be her father). Dalton testified that Borja told his children that in the early 1900s, he built two large canoes for Ibedul Louch, who, in exchange for the canoes, gave him the beach at *Oimaderuul*.

According to Dalton, Borja would spend a few weeks at the beach and a few weeks in Koror through the 1930s, and moved to Aimeliik during World War II. Emilio, Borja's son, stayed nearby at *Ngerkekangel* beach (also referred to as Dave Shay's beach) after Borja left *Oimaderuul* for Aimeliik. Dalton further stated that Emilio and his family left *Ngerkekangel* beach after his wife was injured by a Japanese soldier's grenade. After the war, Borja, along with Dalton who was born in 1942, returned occasionally to the beach. During this time, Borja maintained the beach area, clearing plants and growing corn. In 1959 Borja and his family moved to Guam, where he died about a year later.

Dalton testified that when she returned to Palau in 1977, her uncle, Ngirturong, told her to take care of the beach because it is her family's land. Dalton hired local men to help her clear the beach area, and in 1979, she built an A-frame house on the beach. She made improvements to the house in the early 1980s and later built a few "summer houses."

Dalton also produced a handwritten note found among Borja's possessions that she believes to be in Borja's handwriting. The note, written in Spanish and purportedly translated by Father Felix K. Yaoch on April 9, 1980, reads:

Notes on Land Parcels in

> Rock-Islands. Oimaderuul, as well as Ngerchumelbailechol, parts of Ngeremdiu in Ngeruktabel, 2 parcels of land along the sea (with beaches), belong to Jesus Borja y Leon Guerrero, native of Guam and resident of Palau. He was born in the year 1884 and took up residence in Palau in the year 1894, when he was 10 years of age. He also established residence in Malakal in the year 1946.

According to Dalton, at no point did anyone, including the other claimants in this action, object to Borja's and Dalton's presence on the beach. In fact, Dalton testified that people would contact her for permission to use what many refer to as "Margie's beach." It was not until 2004, as preparations were being made to film "Survivor," that she was informed by KSPLA that her improvements on *Ngeremdiu*, including her houses, would have to be removed.

The other claimants, Ngarameketii and Rubekul Kldeu, contend that *Ngeremdiu* is a traditional hamlet of Koror under the authority and control of the chiefs of Koror. They contend that *Ngeremdiu*'s status as chutem buai, or community property, has never been altered and that KSPLA cannot show that Ngarameketii and Rubekul Kldeu ever released control over *Ngeremdiu*.

After considering the evidence presented, the Land Court issued a written decision finding that *Ngeremdiu* is public land subject to the procedures set forth in 35 PNC § 1304(b). It concluded that the Japanese government acquired *Ngeremdiu* in 1914 with the knowledge and agreement of the chiefs of Palau, and that through a series of transactions, ownership was properly transferred to the Trust Territory government and eventually to KSPLA. It found that Dalton failed to establish that Borja owned any portion of Lot 002 and failed to establish that *Oimaderuul* was taken from her family by force or fraud or without adequate compensation. Further, the Land Court found that Ngarameketii and Rubekul Kldeu knew that *Ngeremdiu* was public land under the control of the government and that they failed to prove superior title.

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).

ANALYSIS

A. Dalton's Claim

We start with Dalton's claim for return of public lands under Article XIII, Section 10 of the Palau Constitution and its enabling statutes. As noted, Dalton claims only portions of *Ngeremdiu* Lot 002 known as *Oimaderuul* and the immediate surrounding

areas (the parties refer to the entire area as *Oimaderuul* or "the beach").

[1] The Land Claims Reorganization Act of 1996, 35 PNC §§ 1301, *et seq*., provides that ownership of public land shall be returned to any citizen of Palau who can prove (1) she is a citizen who has filed a timely claim; (2) she is either the original owner of the land, or one of the original owner's "proper heirs"; and (3) the claimed property is public land previously acquired by a government through force or fraud, or without just compensation or adequate consideration. *See* 35 PNC § 1304(b); *Markub v. Koror State Pub. Lands Auth*., 14 ROP 45, 47 (2007); *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 93-94 (2006). "'[T]he burden of proof remains on the claimants, not the governmental land authority, to establish by a preponderance of the evidence, that they satisfy all the requirements of the statute.'" *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 224 (2009) (quoting *Ngiratrang*, 13 ROP at 94). Here, the Land Court concluded that Dalton failed to prove the second and third elements.

[2] Dalton contends that the Land Court erred in finding that Borja did not own the beach prior to 1914, when it was acquired by the Japanese. She emphasizes that her testimony regarding the transfer from Ibedul Louch to Borja is undisputed, and that the handwritten note by Borja confirms the transfer. However, the Land Court was not required to accept her version of events, even if it was not directly rebutted. *See Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth.*, 12 ROP 148, 151 (2005) (noting "the clearly established precedent that a judge may choose to disbelieve even uncontroverted evidence") (citing *Ngerungor Clan v. Mochouang Clan*, 8 ROP Intrm. 94, 96-97 (1999)). Though Dalton was told that the beach at *Ngeremdiu* was her family's land, and she improved the beach without interference for many years starting in the late 1970s, she was unable to produce any evidence to corroborate her story of how Borja came to own the beach. The Land Court discounted the handwritten note purportedly found among Borja's possessions in Guam because, among other things, it lacked any information regarding how Borja came to own the beach. In contrast, KSPLA presented documentary evidence that the chiefs of Palau properly transferred *Ngeremdiu* to the Japanese Navy in 1914.

[3] "It is not the appellate panel's duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *Ebilklou Lineage v. Blesoch*, 11 ROP 142, 144 (2004) (citing *ROP v. Ngiraboi,* 2 ROP Intrm. 257, 259 (1991)). And upon review of the record, there are no grounds for upsetting the Land Court's findings and conclusions. Inasmuch as Dalton cannot show that Borja was the original owner of *Ngeremdiu*, her argument that the Land Court erred in finding that there was no fraud or force in the government's acquisition of the land is moot.

B. Ngarameketii and Rubekul Kldeu's Claim

[4] In contrast to Dalton's return of public lands claim, Ngarameketii and Rubekul Kldeu argue that they hold superior title to *Ngeremdiu*. "[I]t is important to bear in mind that the two types of claim[s] are fundamentally different, with different

burdens of proof and different defenses applicable to each." *Espong Lineage v. Airai State Pub. Lands Auth*., 12 ROP 1, 5 (2004). Unlike a return of public lands case in which the claimant does not dispute the government's ownership of the land or the occupying power's previous acquisition, "a claimant asserting superior title is 'claim[ing] the land on the theory that it never became public land in the first place.'" *Id.* (quoting *Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185, 185 (2002)). "Such a claimant stands on equal footing with the governmental entity claiming the land, but the claimant must confront 'the availability of affirmative defenses not available to the government in Article XIII claims.'" *Id*. (quoting *Kerradel*, 9 ROP at 186 n.2).

As noted, Ngarameketii and Rubekul Kldeu contend that *Ngeremdiu* was, and still is, a traditional hamlet of Koror. It is considered chutem buai,[5] the use of which is controlled by the village chiefs. They assert that nothing in the record shows that Ngarameketii and Rubekul Kldeu consented to the transfer of *Ngeremdiu* to the Japanese government or any other authority, and therefore the Land Court erred in finding that *Ngeremdiu* became government-owned public land. Accordingly, all subsequent transfers of ownership—from the Japanese to the Trust Territory government to the Palau Public Lands Authority to KSPLA—must be invalid. Moreover, according to Ngarameketii and Rubekul Kldeu, the Trust Territory government had a sacred duty to protect the interest of the Council of Chiefs of Koror, and therefore it should have made additional efforts to ensure that the Klobak participated in the 1956 hearing before the District Land Office.

At the outset, it is important to define the scope of the claim under the circumstances of this case. This case does not require the Court to delve into the role of state land authorities versus traditional leaders in the administration of public land. *Cf. e.g., House of Traditional Leaders v. Koror State Gov't*, 17 ROP 101, 107-08 (2010); *Gibbons,* 13 ROP 156. Here, the question on appeal is whether the Land Court's findings that *Ngeremdiu* is public land, and that the Klobak failed to establish superior title, are clearly erroneous in light of the evidence presented.

For the most part, the arguments presented on appeal by Ngarameketii and Rubekul Kldeu are the same ones presented to the Land Court. The record shows that the Land Court considered the evidence put forward by Ngarameketii and Rubekul Kldeu along with that of the other claimants. At the hearing, Ngarameketii and Rubekul Kldeu presented only general testimony about the role of the village chiefs in administering chutem buai. And, even accepting as true that the Klobak once had control over the rock islands including *Ngeremdiu*, the Land Court concluded that the evidence overwhelmingly supports KSPLA's position that any such control over *Ngeremdiu* was relinquished in

[5] This Court has had occasion to discuss the traditional role of the council of chiefs over chutem buai in various land disputes. *See generally Ngiratrang*, 13 ROP at 96-97 n.5 (discussing concept of chutem buai); *Gibbons v. Seventh Koror State Legislature*, 13 ROP 156, 160-61 (2006); *Omenged v. UMDA*, 8 ROP Intrm. 232, 242 (2000). Under the circumstances of this case, however, Ngarameketii and Rubekul Kldeu's contention that the land was traditionally chutem buai does not impact the Land Court's findings or the parties' arguments on appeal.

1914. Multiple documents recovered from the District Land Office support the Land Court's conclusion that the chiefs of Palau consented to the transfer. Though Ngarameketii and Rubekul Kldeu contend that KSPLA's records are insufficient to establish a valid transfer, the Land Court's conclusion on this point cannot be considered clearly erroneous. *See Sechedui Lineage,* 14 ROP at 170, 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."). Ngarameketii and Rubekul Kldeu's reliance on *Orrenges Thomas v. Trust Territory*, 8 TTR 40 (1979) (noting that where only three of eighteen clans approved the transfer of land, the transfer cannot be effective against those clans that did not participate), and *Edeyaoch v. Timarong*, 7 TTR 54, 62 (Tr. Div. 1974) (finding no evidence in the record that the plaintiff, who was listed as the owner in the Tochi Daicho, sold the lots in question), is misplaced under these circumstances.

Moreover, Ngarameketii and Rubekul Kldeu's claim is premised on the contention that *Ngeremdiu* never became public land in the first place. *See Espong Lineage,* 12 ROP at 5; *see also Tab Lineage,* 11 ROP at 167-68 (noting that where the land at issue is listed in the Tochi Daicho as under government control, a claimant asserting superior title must show by clear and convincing evidence that such a listing is wrong).[6] However, as noted by the Land Court, the record reflects that for decades, KSPLA and its predecessors have exercised complete control over *Ngeremdiu* as public land through, among other things, lease transactions, contracts, and letters. Ngarameketii and Rubekul Kldeu were well aware of KSPLA's authority over *Ngeremdiu*. For example, Alexander Merep, who submitted the November 6, 2006 claim for *Ngeremdiu* on behalf of the Ngarameketii and Rubekul Kldeu, testified that he previously filed claims of ownership over certain public lands, including *Ngeremdiu*, on behalf of KSPLA when he was the director.[7]

[5] As repeatedly noted by this Court, the Land Court's findings of fact will be reversed "only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion." *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002). Here, the Land Court's determination that *Ngeremdiu* is public land under the

[6] Though Ngarameketii and Rubekul Kldeu's "Claim of Land Ownership" filed on November 6, 2006, states that *Ngeremdiu* is listed as "public land" in the Tochi Daicho, the Land Court made no such findings and the parties do not argue on appeal that *Ngeremdiu* is listed as public land in the Tochi Daicho.

[7] Merep's December 5, 1988 filing states on its face that the claim is made "by Koror State Public Lands Authority and by Koror State Government" for lands designated as public lands including the rock islands. It goes on to state that various quitclaim deeds, attached to the claim, show KSPLA's "ownership and nature of its title and interest" in the public lands, including *Ngeremdiu*. Merep testified that he believed this document was also filed on behalf of the Klobak because at the time the Klobak was in charge of KSPLA. The Land Court concluded, however, that to the extent the 1988 filing is submitted as proof of a timely return-of-public-lands claim under § 1304(b) on behalf of the Klobak, such an argument is twenty years too late, and that there is no other evidence showing any attempt by the Klobak to inject a separate interest in the rock islands through KSPLA's 1988 filing.

control and authority of KSPLA is sufficiently supported by the record.

In the alternative, Ngarameketii and Rubekul Kldeu briefly contend that *Ngeremdiu* is a "resource" within twelve miles of Koror State, and thus is rightly under the Klobak's authority pursuant to Article I, Section 2 of the Palau Constitution.[8] To this end, they argue that the Article I, Section 2's reference to "State" is not a reference to the state government but instead to the traditional "beluu" administered by the council of chiefs—in this case Beluu ra Oreor. However, Ngarameketii and Rubekul Kldeu provide no authority in support of this broad interpretation, and "it is not the Court's duty to interpret this sort of broad, sweeping argument, to conduct legal research for the parties, or to scour the record for any facts to which the argument might apply." *See Idid Clan v. Demei*, 17 ROP 221, 229 n.4 (2010).[9]

Regardless, the Land Court's finding that KSPLA holds title to *Ngeremdiu* as public land is supported by the record, thus undermining Ngarameketii and Rubekul Kldeu's argument on this point.

CONCLUSION

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

[8] Article I, Section 2 reads: "Each State shall have exclusive ownership of all living and non-living resources, except highly migratory fish, from the land to twelve (12) nautical miles seaward from the traditional baselines; provided, however, that traditional fishing rights and practices shall not be impaired."

[9] A quick review of the Constitutional Convention Summary Journal reveals that members debated use of the word "beluu" and its appropriate English counterpart in various contexts, though the debate does not appear to help Ngarameketii and Rubekul Kldeu under the circumstances. *See e.g.,* Palau Constitutional Convention, Fiftieth-Day Summary Journal, at 2; Palau Constitutional Convention, Fifty-First Day Summary Journal, at p. 39-41; *State of Peleliu v. State of Koror*, 6 ROP Intrm. 91, 93 n.3 (1997). Morever, Ngarameketii and Rubekul Kldeu's interpretation appears to conflict with the statutory scheme for determination of land ownership, and constitutional interpretations by this Court. *See generally House of Traditional Leaders v. Koror State Gov't*, 17 ROP 101, 107-08 (Feb 9, 2010) (interpreting Article 1, Section 2 as a transfer of authority to state governments).