

SEBASTIAN MARINO,
Appellant,

v.

DOMINICIANO ANDREW and
REGINA ANDREW,
Appellees.

CIVIL APPEAL NO. 10-022
LC/Y 09-0330

Supreme Court, Appellate Division
Republic of Palau

Decided: February 3, 2011¹

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

We review the Land Court's findings of fact for clear error. 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.

[2] **Land Commission/LCHO/Land Court:** Evidence

Challenges to the sufficiency of the evidence in Land Court proceedings are extraordinarily unsuccessful. The appellant must show that no reasonable finder of fact could have reached the same conclusion. In situations where there are two permissible views of the evidence, the court's choice between them

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).

cannot be clearly erroneous.

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

It is not the duty of the appellate court to test the credibility of the witnesses, but rather to defer to a lower court's credibility determination.

Counsel for Appellant: Yukiwo P. Dengokl
Counsel for Appellees: Pro Se

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

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

PER CURIAM:

Appellant Sebastian Marino appeals the Land Court's determination of ownership awarding certain property in Hatohobei State to Appellees Dominiciano Andrew² and Regina Andrew. For the reasons stated below, we **AFFIRM**.

BACKGROUND

The land at issue is identified as Lot

² The record includes various spellings of Appellee Dominiciano Andrew's first name (i.e. "Domiciano," "Dominciano," "Domisiano"). This is noted in Appellant's notice of appeal and request for records. We adopt the version used by the Land Court in its determination of ownership.

Y-67 on Bureau of Lands and Surveys Worksheet No. 2007 Y 01 in Hatohobei State. Appellant and Appellee agree that the land was individually owned by Martin Fareyarmasou, who is deceased.³ They disagree as to whom Martin conveyed the property to prior to his death. The parties proceeded pro se before the Land Court.

Dominiciano testified that he brought Martin to live with him and his mother. He cared for Martin when Martin was old and weak. According to Dominiciano, Martin gave Lot Y-67 to him as payment for his assistance. Before his death, Martin called together his siblings, Koseba and Kristobal, and Dominiciano and told them that he was giving the land to Dominiciano. After Martin died, Dominiciano and his mother mourned for Martin as a form of payment for the land. Dominiciano claims the land for himself and his daughter, Regina Andrew.

Sebastian's claim is based on his understanding that Martin gave the land to his (Sebastian's) father, Marino Fitihang. According to Sebastian, Marino was the chief of the village and brought Martin to live in a small house on his property. Marino directed his nephew, Appellee Dominiciano, to help care for Martin. Sebastian, then a young boy, would sometimes bring food to Martin. Thereafter, Martin gave coconut trees on Lot Y-67 to Dominiciano, but he gave the land to Marino.

After hearing testimony, the Land

³ It is unclear from the record when exactly Martin died. Dominiciano testified that he did not know when Martin passed away, only that he may have died "about ten years" ago. Sebastian testified that Martin died in 1964 or 1965.

Court issued its findings of fact and determination of ownership. The court noted that it is difficult to determine ownership where the evidence consists primarily of conflicting testimony. Nonetheless, after considering the evidence presented, the Land Court concluded that Dominiciano's testimony was more credible. It found that Dominiciano's claim of ownership stemmed from personal knowledge, and that his service to Martin, before and after Martin's death, was undisputed. In contrast, Sebastian's knowledge of events came from his father and was uncorroborated. The Land Court therefore awarded ownership of Lot Y-67 to Appellees.

STANDARD OF REVIEW

[1] 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

[2, 3] Appellant first contends that the Land Court committed reversible error because there was insufficient evidence to award the property to Appellees. He argues that Dominiciano's testimony was "internally inconsistent" and should not have been credited by the Land Court. Relatedly,

Appellant argues that neither witness's testimony was corroborated; therefore, the Land Court's decision to award the property to Appellee was "unfair and erroneous." However, as we have noted before, challenges to the sufficiency of the evidence in Land Court proceedings are "extraordinarily unsuccessful." *Singeo v. Secharmidal*, 14 ROP 99, 100 (2007) (citing *Children of Rengulbai v. Elilai Clan*, 11 ROP 129, 131 n.1 (2004)). The appellant must show that no reasonable finder of fact could have reached the same conclusion. Moreover, "it is not the duty of the appellate court to test the credibility of the witnesses, but rather to defer to a lower court's credibility determination." *Sungino v. Blaluk*, 13 ROP 134, 137 (2006) (quoting *Tab Lineage*, 11 ROP at 165)). Here, the Land Court was faced with conflicting testimony regarding the proper recipient of Martin's land. After weighing the evidence, the Land Court accepted Dominiciano's version of events. Because there is evidence in the record to support the Land Court's findings, they will not be disturbed. *See id.* ("In situations 'where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous.'") (quoting *Uchelkumer Clan v. Isechal*, 11 ROP 215, 219 (2004)).

Appellant presents two additional arguments. First, Appellant contends that the purported conveyance from Martin to Dominiciano is void because it violates the statute of frauds. Next, Appellant asserts that the matter should be remanded because the Land Court failed to consider whether to award the land to Appellant and Appellees as co-owners. Because Appellant never presented these arguments to the Land Court, they are waived. *See Estate of Remeskang v.*

Eberdong, 14 ROP 106, 109 (2007) ("[T]he Estate failed to raise the statute of frauds argument before the Land Court, thereby waiving the defense." (citing *Hanpa Indus. Corp. v. Black Micro Corp.*, 12 ROP 29, 33 (2004)); *Nakamura v. Sablan*, 12 ROP 81, 82 (2005) (stating that absent exceptional circumstances, arguments raised for the first time on appeal are deemed waived).

CONCLUSION

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