

CHILDREN OF MASANG MARSIL,
Appellant,

v.

ANASTACIA NAPOLEON,
Appellee.

CIVIL APPEAL NO. 10-020
LC/B 04-84

Supreme Court, Appellate Division
Republic of Palau

Decided: February 8, 2011

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

The Land Court's factual findings are reviewed for clear error. Under this standard, we will not set aside the 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.

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

Where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous.

[3] **Appeal and Review:** Standard of Review

The Land Court's conclusions of law are reviewed de novo.

[4] **Land Commission/LCHO/Land Court:** Burden of Proof

The Tochi Daicho is presumed to be accurate, and a party seeking to rebut it must present clear and convincing evidence.

Counsel for Appellant: Mark P. Doran
Counsel for Appellee: Pro Se

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:

The Children of Masang Marsil appeal the land court's May 12, 2010 Decision on Remand, awarding fee simple ownership of a parcel of land to Ngedlau Lineage. Finding no clear error as to the land court's determination regarding Tochi Daicho Lot 441, we **AFFIRM**, but finding clear error as to the land court's determination regarding Tochi Daicho Lot 439, we **VACATE** and **REMAND** to the Land Court for further consideration.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case concerns competing claims to a parcel of land in Ngerkesoaol Hamlet in Koror State. The property in question, commonly known as *Ngedlau*, is identified as BLS Lot 182-523 on Worksheet No. 04-B-001, as prepared by the Bureau of Lands and Surveys (BLS). In the initial case before the Land Court, Anastacia Napoleon, on behalf of the Ngedlau Lineage, claimed that BLS Lot 182-523 corresponds to either Tochi Daicho

Lot 439 or 441, which the Ngedlau Lineage received in 1994 during the distribution of properties in the Estate of Masang Marsil. The Children of Masang Marsil argued that the lot is a part of their land in Tochi Daicho Lot 440.

The Land Court heard the case on April 16, 2008. Napoleon was not present at the hearing, but she executed a power of attorney to Maria K. Mira, who appeared in her stead. Mira introduced a stipulation regarding the distribution of the Estate of Masang Marsil, which conveyed “Tochi Daicho Lot No. 441 or 439” to Ngedlau Lineage. To establish the location of these lots, Mira testified that a BLS representative told her that BLS Lot 182-523 is part of either Tochi Daicho Lot 439 or 441. Mira did not know the boundary of the adjacent lot, Tochi Daicho Lot 440, nor was she certain whether the land she claimed was part of Tochi Daicho Lot 439, 441, or both. She also claimed that the Ngedlau Lineage had always owned the land in Lot 182-523, and that she, her mother, and her grandmother has each lived on the land at various times.

The Children of Masang presented evidence that questioned the existence of Tochi Daicho Lots 439 and 441. The Children of Masang’s counsel stated that there is no listing for these two Tochi Daicho lots. The Land Court, after reviewing its own Tochi Daicho compilation, concurred, but indicated “that it is incomplete with relevant pages missing.” Land Ct. Decision, LC/B No. 04-84, at 3 (Apr. 24, 2008). The Land Court subsequently determined that Lot 439 did in fact exist, relying on two Japanese maps, attached to Masang Exhibit 10, that show Tochi Daicho Lot 439 adjacent to Lot 440.

The Children of Masang presented two witnesses, Lalii Markub and Sam Yoyo Masang. Markub, who owns land in the vicinity and claimed to know the history of the land, stated that BLS Lot 182-523 is part of *Ngedlau* and belongs to the Children of Masang as a portion of Tochi Daicho Lot 440. Sam Yoyo Masang also testified that BLS Lot 182-523 was a part of *Ngedlau*, which belonged to his family. Sam was born in *Ngedlau* and currently lives there, and he claimed that Urimch, Napoleon’s mother, asked the Masang family for permission to build a house on the disputed land.

The Children of Masang also introduced documents suggesting that BLS Lot 182-523 is a portion of Tochi Daicho Lot 440. Among them were two Japanese maps, which indicate that Tochi Daicho Lot 439 is a lot bordered by Lot 440 on the northwest and a road on the southeast, although each map is hand-drawn without coordinates. Tochi Daicho Lot 439 appears to correspond primarily to BLS Lot 182-524, commonly known as *Ongitekei*, which is adjacent to BLS Lot 182-523 and also bordered by the road on the southeast. Furthermore, the Children of Masang produced a Land Acquisition Record from 1974, which included a sketch showing the land between the road and Masang’s land in Tochi Daicho 440 as being claimed by Obaklubil, a member of the Ngedlau Lineage. Based on these maps, Lot 182-523 appears to be at or near the border of Tochi Daicho Lots 439 and 440. As for Tochi Daicho Lot 441, Mira produced no evidence of its existence or location.

After considering this evidence, the Land Court concluded that, although Tochi

Daicho Lots 439 and 441 exist and referred to property somewhere, they do not encompass BLS Lot 182-523. The court noted that Mira had produced no evidence to connect BLS Lot 182-523 to Tochi Daicho Lot 439, other than an alleged statement to that effect by a BLS representative. Rather, the court determined that Lot 182-523 was a portion of Tochi Daicho Lot 440. The court cited testimony from Sam Yoyo Masang, as well as the Japanese maps and the 1974 Land Acquisition Record indicating that Tochi Daicho Lot 439 referred to the land adjacent to the road; *i.e.*, BLS Lot 182-524. The Land Court determined that Masang's Tochi Daicho Lot 440 was split at some point into two BLS Worksheet Lots: Lots 182-522 and 182-523.

Consequently, on April 24, 2008, the Land Court issued a Determination of Ownership of BLS Lot 182-523 in favor of the Children of Masang. Napoleon appealed. Specifically, Napoleon claimed that the Land Court clearly erred in finding that the disputed parcel was part of a Tochi Daicho lot owned by Masang, rather than an adjacent lot purportedly owned by the Ngedlau Lineage. To support her argument, Napoleon raised an issue not presented to the Land Court. Napoleon argued that the entire area of Tochi Daicho Lot 440 is approximately the same as the recorded area of BLS Lot 182-522, which indisputably belongs to Masang and is adjacent to BLS Lot 182-523. To support this argument, Napoleon attached to her opening brief a Certificate of Title for BLS Lot 182-522, which was submitted for the first time on appeal. The implication of the new evidence presented on appeal was that Tochi Daicho Lot 440 could not possibly encompass both BLS Lots 182-522 and 182-523, meaning that Tochi Daicho Lot 440 must correspond only

to Lot 182-522. The Appellate Division, despite its reluctance to consider issues for the first time on appeal, took judicial notice of the Certificate of Title, which potentially stood in direct tension with the land court's determination. Accordingly, on November 4, 2009, the Appellate Division remanded the matter to the Land Court for further proceedings.

After remand, the Land Court requested from the parties written briefs and arguments addressing the following issues: (1) whether the Land Court committed error when it determined that BLS Lot 182-522 represents Tochi Daicho Lot 440, and (2) whether the outcome should change. The court further informed the parties that if they wished to be heard beyond the briefs, that they should make such a request in their written briefs. The deadline for filing briefs came and went without either party filing anything. Based on the record, the Land Court issued its Decision on Remand on May 12, 2010. The Land Court determined that BLS Lot 182-523 is not a part of Tochi Daicho Lot 440 because including BLS Lot 182-523 in Tochi Daicho Lot 440 would increase the size of the lot beyond its listed size. Thus, the Land Court concluded that BLS Lot 182-523 corresponds to either Tochi Daicho Lot 439 or 441, and issued a Determination of Ownership that the Ngedlau Lineage owns the lot in fee simple. The Children of Masang subsequently appealed.

II. DISCUSSION

[1-3] Appellants challenge the land court's factual findings, which we review for clear error. *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007). We will not

set aside the 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). Where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous. *Ngirmang v. Oderiong*, 14 ROP 152, 153 (2007). We review the land court's conclusions of law de novo. *Sechedui Lineage*, 14 ROP at 170.

On appeal, Appellants' primary contention is that the land court's finding that BLS Lot 182-523 is either Tochi Daicho Lot 439 or Lot 441 is clearly erroneous. In support of this contention, Appellants presented three arguments. First, they contended that the Land Court erred by not taking into account the size of Tochi Daicho Lot 442. Second, they argued that Tochi Daicho Lot 439 cannot be part of Napoleon's claim against Appellants because that lot is claimed by Obaklubil. Third, they contended that Tochi Daicho Lot 441 has no record of existence or location, and that the Land Court committed reversible error because it points to no evidence to support that BLS Lot 182-523 corresponds to Tochi Daicho Lot 441. Napoleon did not respond to Appellants' opening brief.

The underlying issue in this case is the resolution of the competing claims to BLS Lot 182-523. On appeal, Appellants do not contest the land court's finding that BLS Lot 182-523 does not correspond to Tochi Daicho Lot 440. However, Appellants' argument is not entirely clear. Although their basic argument is that the Land Court erred in

concluding that BLS Lot 182-523 corresponds to Tochi Daicho Lot 439 or 441, it is not entirely clear what their claim to the lot is. The Court infers from Appellants' opening brief that their argument is that BLS Lot 182-523 corresponds to Tochi Daicho Lot 442.

First, the Land Court did not commit clear error by not taking into account the size of Tochi Daicho Lot 442. Appellants' brief fails to explain why the Land Court should have taken into account the size of Tochi Daicho Lot 442 when determining the ownership of BLS Lot 182-523. The Court speculates that Appellants may have meant that BLS Lot 182-523 corresponds to Tochi Daicho Lot 442. If that is Appellants' argument, it is without merit because Tochi Daicho Lot 442 was already determined by the Land Court to correspond to BLS Lot 182-520.¹ Although the Land Court did not discuss this evidence, it is in the record and supports the land court's decision to not consider Tochi Daicho Lot 442 as the corresponding lot for BLS Lot 182-523. Further, the evidence in the record reflects that it is highly unlikely that BLS Lot 182-523 corresponds to Tochi Daicho Lot 442; *i.e.*, BLS Lots 182-520A and 182-520B, because Tochi Daicho Lot 440, *i.e.* BLS Lot 182-522, is situated directly in between the borders of BLS Lots 182-520B and 182-523. Appellants have presented no evidence to support that Tochi Daicho Lot 442 includes a lot that does

¹ On October 20, 2004, the Land Court issued a determination of ownership based on the parties' settlement as to BLS Lot 182-520 (Tochi Daicho Lot 442). The parties agreed to divide BLS Lot 182-520 equally between themselves into lots numbered BLS Lots 182-520A and 182-520B. Masang Exhibit 4, Determination of Ownership No. 12-339, LC/B 04-85 (Oct. 20, 2004).

not share a border with it. Thus, the land court's failure to take into account the size of Tochi Daicho Lot 442 is not clearly erroneous because the Land Court has already acknowledged that it corresponds to BLS Lots 182-520A and 182-520B, and there is no evidence in the record to support that Tochi Daicho Lot 442 includes BLS Lot 182-523.

Because Appellants did not contest the land court's finding that BLS Lot 182-523 does not correspond to Tochi Daicho Lot 440 and because the Land Court did not clearly err by not considering Tochi Daicho Lot 442 as the corresponding lot for BLS Lot 182-523, Appellants no longer have a claim to BLS Lot 182-523. However, this does not resolve the ownership of BLS Lot 182-523 or whether the Land Court was clearly erroneous in finding that BLS Lot 182-523 corresponds to Tochi Daicho Lot 439 or 441.

Second, the land court's finding that Tochi Daicho Lot 441 exists is supported by the record. The August 22, 1994 stipulation regarding the distribution of Masang Marsil's estate provided that, in consideration for withdrawing their claims to Tochi Daicho Lots 440 and 442, among others, the Ngedlau Lineage was given Lot 441 or 439. Masang Exhibit 8. The trial court entered an order in accordance with the stipulation on August 23, 1994. Masang Exhibit 9. Common sense suggests that Napoleon would not have agreed to give up her claims in exchange for a lot that did not exist. Also, the stipulation contains an implicit concession on the part of Sam Yoyo Masang that Tochi Daicho Lot 441 exists because he offered it to Napoleon in consideration for withdrawing her claims. Moreover, as the Land Court found in its first decision in this case, Lot 441 falls within the

sequence of numbers listed on the Japanese maps entered into evidence by Masang (400 to 600 series), and it would make little sense for the Tochi Daicho to list numbers for lots that do not exist.

[4] Furthermore, the record does not contain official Tochi Daicho maps, and the Land Court also did not have a complete compilation of the Tochi Daicho. Although the Japanese maps in the record contain Tochi Daicho listings, they are not necessarily official Tochi Daicho maps. The Tochi Daicho is presumed to be accurate, and a party seeking to rebut it must present clear and convincing evidence. *Orak v. Terael*, 10 ROP 105, 108 (2003). However, "when the Tochi Daicho for an area is not available and the parties dispute the manner in which the property they are claiming was registered therein, although the court may make a finding concerning how the property was listed in the Tochi Daicho, no presumption of correctness attaches to the listing." *Bausoch v. Tebei*, 4 ROP Intrm. 203, 206-07 (1994). The reason for this "is because, unlike cases where the Tochi Daicho is available for inspection, whatever advantage is gained by the accuracy of the Tochi Daicho listing is offset by the fact that it can never be known to a certainty just how the land at issue was listed therein." *Id.* at 206. When a Tochi Daicho loses its standard presumption of accuracy because the Tochi Daicho is unavailable, or otherwise lacks the usual indices of reliability, this Court has recognized that a Land Court, in making a determination as to ownership, may rely on the evidence and testimony presented. *Rechucher v. Lomisang*, 13 ROP 143, 148 (2006).

Accordingly, the Japanese maps in the

record do not share the same presumption of accuracy as the official Tochi Daicho maps. The fact that the maps in the record do not list Tochi Daicho Lot 441 does not preclude a finding that Tochi Daicho Lot 441 exists. Indeed, the 1994 stipulation suggests that it does exist. Further, Tochi Daicho Lot 441 falls within the sequence of numbers listed on the Japanese maps in Masang Exhibit 10, yet those maps curiously skip over Tochi Daicho Lot 441. The land court's factual finding that Tochi Daicho Lot 441 exists and that BLS Lot 182-523 corresponds to Tochi Daicho Lot 441 is not clearly erroneous because it is supported by evidence such that any reasonable trier of fact could have reached the same conclusion. The land court's choice between two permissible views of the evidence cannot be clearly erroneous. *Ngirmang*, 14 ROP at 153.

Third, and finally, the Land Court committed clear error in finding that BLS Lot 182-523 corresponds to Tochi Daicho Lot 439. In its first determination of ownership in this case, the Land Court found that BLS Lot 182-523 corresponded to Tochi Daicho Lot 440. On appeal, however, the Appellate Division remanded the case to the Land Court after taking judicial notice of a 2005 Certificate of Title for *Ngedlau*, which potentially stood in direct tension with the land court's determination. After reviewing the 2005 Certificate of Title, the Land Court issued a decision on remand, finding that because BLS Lot 182-523 could not correspond to Tochi Daicho Lot 440, it must then correspond to Tochi Daicho Lot 439 or 441. The Land Court did not provide any further explanation or support for its determination.

Standing in conflict with this

determination is evidence in the record that BLS Lot 182-524 corresponds to Tochi Daicho Lot 439. Appellants argue that Tochi Daicho Lot 439 cannot be part of Napoleon's claim against them because that lot corresponds to BLS Lot 182-524, which is claimed by Obaklubil. Appellants base their argument on the land court's first decision in this case, in which the court noted that testimonial evidence of Sam Yoyo Masang and the Japanese maps attached to Masang Exhibit 10 show that Tochi Daicho Lot 439 corresponds to BLS Lot 182-524, commonly known as *Ongitekei*, which is listed under the name Obaklubil.² Moreover, this Court's Opinion remanding the case to the Land Court noted that "Tochi Daicho Lot 439 appears to correspond primarily to BLS Lot 182-524." *Napoleon v. Children of Masang Marsil*, 17 ROP 28, 30 (2009).

The land court's decision on remand did not address Obaklubil's claim to BLS Lot 182-524 and its possible correspondence to Tochi Daicho Lot 439. Although this case does not directly concern the corresponding Tochi Daicho listing of BLS Lot 182-524, this determination may affect the disposition of Tochi Daicho Lot 439. Given the land court's lack of explanation for its current determination that BLS Lot 182-523 corresponds to Tochi Daicho Lot 439 and the factual evidence to the contrary noted by both the Land Court in its first determination in this case and this Court in its first Opinion, we hold that the Land Court clearly erred in its determination as to Tochi Daicho Lot 439. Although we are reluctant to remand this case

² The Land Court did not make a factual finding that BLS Lot 182-524 corresponds to Tochi Daicho Lot 439 in either its initial decision or most recent decision on remand.

for a second time to the Land Court, this factual issue must be resolved to ensure a well-supported determination of ownership. Accordingly, we **VACATE** the land court's finding that BLS Lot 182-523 corresponds to Tochi Daicho Lot 439, and **REMAND** to the Land Court to articulate specific reasons for how it determined that BLS Lot 182-523 corresponds to Tochi Daicho Lot 439, or else make a factual finding as to whether BLS Lot 182-524 corresponds to Tochi Daicho Lot 439.

III. CONCLUSION

For the reasons set forth above, we **AFFIRM** the land court's Decision on Remand to the extent that it finds that BLS Lot 182-523 corresponds to Tochi Daicho Lot 441. However, we **VACATE** the land court's finding as to whether BLS Lot 182-523 corresponds to Tochi Daicho Lot 439, and **REMAND** the matter for further proceedings consistent with this Opinion.