

**ANTONIO MOSES, represented by
Victorio Uherbelau
Appellant,**

v.

**NGERBUUCH CLAN,
Appellee.**

CIVIL APPEAL NO. 10-019
LC/S 08-0824

Supreme Court, Appellate Division
Republic of Palau

Decided: February 16, 2011¹

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

Ultimately, in a dispute over land where one party presents evidence to support its ownership claim and the other does not, the latter cannot succeed.

Counsel for Appellant: Pro Se
Counsel for Appellee: Brien Sers Nicholas

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

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

PER CURIAM:

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)

Appellant, the late Antonio Moses, through his “representative,” Victorio Uherbelau, appeals the Land Court’s determination of ownership awarding land known as *Roisbuked*, located in Angaur State, to Appellee Ngerbuuch Clan. Appellee has moved to strike the opening brief and dismiss the appeal, asserting that Uherbelau is not authorized to practice law before this Court, and that he improperly filed Appellant’s opening brief. The Court requested full briefing on the motion to dismiss, and suspended further proceedings.

We have reviewed the materials submitted by the parties and the record in this case. We are not convinced that this appeal should proceed given that Moses is deceased and Uherbelau has not clarified how he may continue to represent Moses’s interests.² Even if the appeal were properly filed, however, it is apparent from the opening brief that Appellant cannot succeed. Therefore, we affirm the determination of the Land Court and dismiss Appellee’s motion as moot.

² Normally, a motion to dismiss an appeal for procedural defects will be resolved prior to a discussion on the merits. Here, however, resolution of the procedural concerns is not possible based on the record. The Appellee’s motion to dismiss rests on several assumptions that were not sufficiently established at the time the motion was filed. The Court ordered that Appellant show cause why the appeal should not be dismissed for the reasons stated in the motion, but the response to the Order to Show Cause produced more questions than answers. Ultimately, we have determined that further briefing on this point is not necessary. As discussed herein, even giving Appellant the benefit of the doubt on the procedural questions, this appeal cannot succeed.

BACKGROUND

The land at issue is identified as Roisbuked Island, Lot 05 S 001-027 on the Bureau of Lands and Surveys Worksheet No. 05 S 001, in Ngerbelau Hamlet, Angaur State. Antonio Moses filed his individual ownership claim for *Roisbuked* on November 5, 1997. Ngerbuuch Clan filed its claim through Natsko Sers Nicolas on April 1, 2005, and through Santos Edward on April 4, 2005.

Before the Land Court, Moses, through his representative, Victorio Uherbelau, contended that he should be awarded ownership of *Roisbuked* because Ngerbuuch Clan's claim was untimely. Moses also argued that because the Land Court rejected Ngerbuuch Clan's position in another case concerning land in Angaur, Case No. LC/S 07-47, Ngerbuuch Clan cannot succeed on its claim in this case.

As to the first argument, Moses presented evidence that under a "Notice for Filing Claim, Monumentation, Mediation Session, and Hearing on Land" issued by the Land Court on July 6, 2000, claims for *Roisbuked* had to be filed by September 29, 2000. However, further proceedings pursuant to that notice did not go forward. On February 28, 2005, the director of the Bureau of Lands and Surveys ("BLS") issued a new "Notice of Monumentation and Survey" for lands including *Roisbuked*. This second public notice states that the period for filing claims begins March 16, 2005, and ends April 14, 2005. Ngerbuuch Clan filed claims for *Roisbuked* on April 1, 2005, and April 4, 2005. Moses argued that the second notice was not intended to invite new claims, and therefore Ngerbuuch Clan's claim was

untimely. For support, Moses produced a letter dated March 27, 2007, from Land Registration Officer Ignacio Santiago to a Land Court administrator explaining, among other things, why the second public notice was issued in 2005. Santiago testified that it was not the intention of BLS to reopen the filing of claims. On cross examination, Santiago conceded that he did not know why the BLS director issued the new notice, and that under that new notice, Ngerbuuch Clan's claim was timely filed.

Ngerbuuch Clan presented three witnesses. Two of the witnesses testified that Ngerbuuch Clan has always owned *Roisbuked*, and that Ngerbuuch Clan's ownership of *Roisbuked* is well known in Angaur. Ngerbuuch Clan also called Victorio Uherbelau, Moses's representative, who testified that he did not know why Moses claimed ownership of *Roisbuked*.

Following the hearing, the Land Court issued its findings of fact and conclusions of law. It found that while it was not entirely clear why BLS issued the second notice, the record did not establish that the notice was improper or that Ngerbuuch Clan's claim was untimely. Importantly, the Land Court determined that Moses put forward "absolutely no evidence to indicate any ownership interest in the land." (Land Ct. Order of April 30, 2010 at 3.) In fact, Moses's representative could not speak to the nature of his interest. In contrast, two witnesses testified that Ngerbuuch Clan owns and always has owned *Roisbuked*. The Land Court awarded *Roisbuked* to Ngerbuuch Clan, as the only claimant presenting evidence in support of its claim.

ANALYSIS

Our review of the Land Court’s findings of fact is for clear error. *See Ngerungel Clan v. Eriich*, 15 ROP 96, 98 (2008). And, 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).

On appeal, Moses essentially concedes that he has no evidence to support his claim of ownership, but he contends that the Land Court committed reversible error by accepting Ngerbuuch Clan’s claim of ownership. The argument follows that *Roisbuked* belongs to Moses because regardless of any actual ownership interest, no one else filed a claim pursuant to the first notice of monumentation and survey. However, as discussed, the Land Court reviewed the record and concluded that Ngerbuuch Clan’s claim was timely filed. “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)). Because the Land Court’s factual findings are supported by evidence, they will not be disturbed. *See Tab Lineage*, 11 ROP at 165.

Moses’s remaining argument, that the Land Court’s determinations in Case No. LC/S 07-47 somehow bars Ngerbuuch Clan from claiming ownership over *Roisbuked*, is

unclear and without apparent merit. Case No. LC/S 07-47 involved a boundary dispute between Ngerbuuch Clan and Orakiblai Clan regarding certain lots in Angaur near *Roisbuked*. The Land Court ultimately determined that Ngerbuuch Clan did not present sufficient evidence to support its boundary claim in that case. Apparently, the parties in LC/S 07-47 mentioned *Roisbuked*; therefore, according to Moses, the cases are “connected.” But, the Land Court made no findings with regard to *Roisbuked* in Case No. LC/S 07-47—it is an entirely separate case involving different parties, different arguments, and different parcels of land. Here, the Land Court essentially dismissed Moses’s argument on this point during the hearing, noting that this is a “totally different case.” It was right to do so.

[1] Ultimately, in a dispute over land where one party presents evidence to support its ownership claim and the other does not, the latter cannot succeed. Here, after finding that Ngerbuuch Clan filed a timely claim for *Roisbuked*, the Land Court was obligated to award the land to Ngerbuuch Clan as the only party presenting a colorable claim of ownership. *See generally Basilius v. Basilius*, 12 ROP 106, 111 (2005) (affirming the Land Court’s determination of ownership, noting that “it is clear that, after finding that Romana had failed to prove her one and only claim by a preponderance of the evidence, . . . the Land Court awarded the property to the only other claimant with a colorable claim”).

CONCLUSION

For the reasons stated above, the decision of the Land Court is **AFFIRMED**, and the Appellee’s motion to strike the

opening brief and dismiss the appeal is
DISMISSED AS MOOT.