

**ESTATE OF ICHIRO DINGILIUS,
represented by Francis Matsutaro,
Appellant,**

v.

**PELELIU STATE PUBLIC LANDS
AUTHORITY,
Appellee.**

CIVIL APPEAL NO. 11-005
LC/R 10-0011

Supreme Court, Appellate Division
Republic of Palau

Decided: June 5, 2012

**[1] Land Commission/LCHO/Land
Court: Appeals**

The appellate court reviews findings of fact for clear error. The lower court does not commit clear error when it finds, based on the sufficiency of the evidence, that a landowner did not establish ownership prior to occupation by a foreign power.

Counsel for Appellant: Mariano Carlos

BEFORE: LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice; and RICHARD H. BENSON, Part-Time Associate Justice.

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

PER CURIAM:

The Estate of Ichiro Dingilius (the Estate), represented by Francis Matsutaro, appeals the Land Court's January 31, 2011, determination that land located in Peleliu State and identified as Cadastral Lot 003 R 07 (also known as *Draiang* or *Elochel*) is public land owned by the Peleliu State Public Lands Authority (PSPLA). Appellee PSPLA does not oppose this appeal. Nonetheless, we are not persuaded by the Estate's arguments and, accordingly, we affirm the Land Court's Adjudication and Determination.

BACKGROUND

This case focuses on the size of land that the Estate believes Dingilius's father owned before the Japanese government wrongfully seized it in 1935. The claimed land spans two lots in the Tochi Daicho. The Estate maintains that Dingilius's father owned a large parcel of land, which the Japanese government subdivided. A portion of the land was registered to Dingilius's father in the Tochi Daicho and has already been awarded to him. The Japanese government claimed the rest, a high rocky ridge with a strip of flat land, and, accordingly, its ownership was recorded as Japanese-owned once the Tochi Daicho was created in 1938. However, the Estate believes Dingilius is entitled to the entire plot.

In 1988, Dingilius filed a claim to Cadastral Lot 003 R 07, the lot which had been rewarded as Japanese government land in the Tochi Daicho. He wrote on his claim form that, after the Japanese government's acquisition, the land was used for storage and for harvesting trees. He also wrote that the land was acquired through "unfair payment,"

and he listed the name of a person receiving payment for the land (his father).

On July 6 and 7, 2010, the Land Court held a hearing to determine ownership of Cadastral Lot 003 R 07 (also known as *Draiang*) and several rock islands claimed to be public lands near Peleliu. Dingilius, age 84, testified that the Japanese took away part of his land, without compensation, for phosphate mining in 1935. He explained the land was called *Draiang* because that word means "dryer," and the phosphate was dried in the area after it was mined. The parties and the Land Court conducted a site visit on July 15, 2010.

After considering the briefs, the testimony, and the site visit, the Land Court found that Dingilius failed to prove by sufficient evidence that his father owned Lot 003 R 07. The court concluded that the evidence instead supported the conclusion that the strip of rocky ridge was used for an officers' clubhouse, not for drying phosphate as Dingilius had claimed. "The court believes that [Dingilius]'s father's land that the Japanese used is the land that has already been awarded to him," the court wrote. "There was insufficient proof that his property extended to the ridge that is Lot 003 R 07." It also wrote that the evidence related to the taking of the land "consisted of very general statements that the Japanese took the land without their consent and did not pay for it." The Estate appeals this determination, claiming that the Land Court committed reversible error.

STANDARD OF REVIEW

Factual findings of the lower court are reviewed under the clearly erroneous standard.

Dilubech Clan v. Ngeremlengui State Pub. Lands Auth., 9 ROP 162, 164 (2002). Under this standard, the findings of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached that conclusion. *Id.* Legal conclusions are reviewed *de novo*. *Children of Dirrabong v. Children of Ngirailild*, 10 ROP 150, 151 (2003).

ANALYSIS

The return of public lands is governed by 35 PNC § 1304(b). To succeed, a claimant must demonstrate that (1) he or she is a citizen who has filed a timely claim; (2) he or 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 that a previous occupying power took through force, fraud, or without just compensation or adequate consideration.

The Estate's sole argument on appeal is that the Land Court committed reversible error by not awarding Dingilius the land in question. The Estate argues that it has met the requirements for return of public land, and it challenges the Land Court's finding that Dingilius had not established that his father was the original owner of the land.

The court below found that Dingilius failed to prove by sufficient evidence that his father owned Lot 003 R 07. The evidence showed that the land was used for phosphate drying, based on the name, *Draiang*, which comes from the machinery equipment for drying the mined material. However, the court concluded that a visit to the actual site revealed the land was rocky and elevated and

did not seem large enough to accommodate a phosphate processing or storage facility. The court found that the flat area was more likely the site of a clubhouse.

What is more, the court did not commit clear error when it found that Dingilius had not established that his father owned the land before the Japanese began to use it. Dingilius was asked whether his father owned the land, and he first answered "yes," then answered "no," then said he was confused, then said that he learned his father owned the land when they collected songai (insurance). He also explained that he was first taken to the land after the war. Finally, he testified that he knew the land belonged to his father "because we were there together."

[1] The court's determination that Dingilius did not own this land is not clearly erroneous: Dingilius's testimony does not establish that his father owned the land, and the evidence about what the land was used for does not show that Dingilius was the original owner. These factual findings are reasonable and supported by the evidence, and thus this Court must affirm. *See Dilubech Clan*, 9 ROP at 164. The Estate has not shown that the land was his, and therefore he has not satisfied the second element for the return of public lands under 35 PNC § 1304(b).

CONCLUSION

The Land Court did not commit clear error in its factual findings, and it properly found that PSPLA is the owner of Cadastral Lot 003 R 07. Accordingly, we **AFFIRM** the Land Court's determination that Cadastral Lot 003 R 07 is public land under PSPLA.