

NGARNGEDCHIBEL,
Appellant,

v.

KOROR STATE PUBLIC LANDS
AUTHORITY,
Appellee.

CIVIL APPEAL NO. 11-032
LC/B 09-0135
LC/B 09-0136
LC/B 09-0170
LC/B 09-0171

Supreme Court, Appellate Division
Republic of Palau

Decided: July 2, 2012

[1] Return of Public Lands: Burden of Proof

The burden remains at all times on a private claimant seeking return of public lands.

[2] Return of Public Lands: Burden of Proof

Rusiang Lineage does not apply to cases involving the return of public lands. Instead, the governing case is *Masang v. Ngirmang*, 9 ROP 215, 216-17 (2002), which held that a land authority may retain ownership when a private party fails to meet its burden even if the land authority does not participate in the proceedings.

Counsel for Appellant: Clara Kalscheur
Counsel for Appellee: J. Uduch Sengebau
Senior

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

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

PER CURIAM:

This case concerns Lot No. 2006 B 012-016, land which is now part of the Palau Community College (PCC) campus. Appellant Ngarngedchibel, the council of chiefs of Ngerbeched, argues that it was entitled to the return of the land pursuant to 35 PNC § 1304(b); however, because Ngarngedchibel failed to meet its burden of proof under the statute, we affirm.

BACKGROUND

The facts in this case are thoroughly addressed in the Land Court’s Findings of Fact and Determination of Ownership. We recite only those facts relevant to this appeal.

The Land Court held separate hearings on several different parcels of land in Medalaii Hamlet, Koror State. Appellant Ngarngedchibel, representing the claims of Ngerbeched Hamlet and its chiefs, was a claimant below. It argued, pursuant to 35 PNC § 1304(b), for return of public lands to Ngerbeched. It presented evidence that the Ibedul and Ngarameketii of Koror awarded Ngerbeched the land in light of Ngerbeched’s assistance in defeating warriors from Ngerkebesang, who were a threat to the peace and safety of Koror.

The land that is currently PCC, Appellant admits, somehow came to be administered by Palau Public Lands Authority (PPLA). However, it appears that PPLA never formally transferred control over the PCC lands to KSPLA. PPLA was not a claimant below, but KSPLA was.

The Land Court determined that Ngarngedchibel failed to satisfy its burden to prove (1) that it owned the land prior to the land becoming public and (2) that the land was wrongfully taken by a foreign government. *See* 35 PNC § 1304(b). Ngarngedchibel appeals, arguing (1) the Land Court erred in awarding the land to KSPLA because PPLA was the proper public owner, and (2) the Land Court erred by refusing to award the land to Ngarngedchibel even though Ngarngedchibel was the only valid claimant before it.

STANDARD OF REVIEW

We review the factual determinations of the Land Court for clear error and its legal conclusions *de novo*. *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 93 (2006).

ANALYSIS

A private party seeking the return of wrongfully taken public land must show:

(1) that the land became part of the public land . . . as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just

compensation or adequate consideration, and

(2) that prior to the acquisition the land was owned by the citizen or citizens or that the citizen or citizens are the proper heirs to the land

35 PNC § 1304(b). The Land Court concluded that Ngarngedchibel did not prove facts sufficient to satisfy either element of Section 1304(b)'s conjunctive test. It found that Ngarngedchibel's case for ownership was weak because of the lack of testimony from a representative of the Ngarameketii of Koror. The court further was unable to identify any specific testimony concerning the wrongful taking of the land. Appellant does not appear to contest these factual findings. Instead, Ngarngedchibel argues that it should have won by default in light of the weakness of KSPLA's claim to the land and the strength of its evidence of ownership.

[1] This appeal revisits issues and events that we addressed in *Ngarngedchibel v. Koror State Public Lands Authority*, 19 ROP 60 (2012). In that case, we affirmed a similar Land Court decision awarding a portion of the PCC campus to KSPLA. Ngarngedchibel argued in the earlier case that, because PPLA never quitclaimed the PCC lands to KSPLA, it should prevail on its claim as the only other claimant. We declined to consider the argument because Ngarngedchibel did not raise it before the Land Court and therefore waived it. *Id.* at 64. However, we went on to note that, regardless of whether the Land Court was able to identify the proper public owner of the parcel, the burden remains at all times on a private claimant seeking return of

public lands. *Id.*; *see also Ngiratrang*, 13 ROP at 93.

Turning to Ngarngedchibel's arguments in the instant appeal, we first address the contention that the PCC lands at issue here were never transferred to KSPLA and, therefore, the Land Court should have awarded the land to Ngarngedchibel. The relative merits of KSPLA's claim vis-à-vis PPLA's do not support Ngarngedchibel's claim to the land. As we suggested in the earlier appeal, a private claimant is not relieved of its statutory burden simply because a public claimant has failed to adequately vindicate its ownership. *Ngarngedchibel*, 19 ROP at 64; *see also Ngiratrang*, 13 ROP at 96 n.5. The Land Court in this case found that Ngarngedchibel was unable to show that the land was illegally taken from it by a colonizing power as required by 35 PNC § 1304(b). On appeal, Ngarngedchibel advances no argument whatsoever that this determination was in error. It cites no evidence in the record that would support such an argument. Thus, it has failed to carry its burden to show that it was entitled to the return of the land.

[2] Second, we consider the related argument that the Land Court erred by failing to abide by the rule in *Rusiang Lineage v. Techemang*, 12 ROP 7, 9 (2004), which requires the Land Court to award contested land to a claimant before it. This argument was squarely addressed in *Ngarngedchibel*, in which we stated that *Rusiang Lineage* does not apply to cases involving the return of public lands. *Ngarngedchibel*, 19 ROP at 63. Instead, the governing case is *Masang v. Ngirmang*, 9 ROP 215, 216-17 (2002), which held that a land authority may retain

ownership when a private party fails to meet its burden even if the land authority does not participate in the proceedings. Further, in the case below, KSPLA was a claimant. Thus, Ngarngedchibel's second argument also fails.

CONCLUSION

Because Appellant did not show that the Land Court erred in determining that Ngarngedchibel failed to carry its statutory burden, we **AFFIRM** the Land Court's decision.