

**KAZUYUKI RENGCHOL and
SECUNDINA OITERONG AZUMA,
Appellants,**

v.

**UCHELKEIUKL CLAN
Appellee.**

CIVIL APPEAL NOS. 10-018 & 10-024
LC/M 01-745

Supreme Court, Appellate Division
Republic of Palau

Decided: October 7, 2011¹

[1] Appeal and Error: Record

That the adverse party's counsel is unavailable to assist in the correction of record due to hospitalization does not dispense with the requirements of Rule 10(e) of the ROP Rules of Appellate Procedure regarding correction of record.

[2] Appeal and Error: Record

A request that the Appellate Division remand the case to the Land Court for hearing is not among the procedures for correction of record under Rule 10(e) of the ROP Rules of Appellate Procedure.

¹ The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

[3] Appeal and Error: Credibility Determination

This Court will not reweigh evidence or reassess the credibility of witnesses.

Counsel for Appellant Rengchol: Raynold Oilouch

Counsel for Appellant Azuma: Rachel Dimitruk

Counsel for Appellee: Moses Uludong

BEFORE: KATHLEEN M. SALII; Associate Justice; ALEXANDRA F. FOSTER, Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice.

Appeal from the Land Court, the Honorable SALVADOR INGEREKLII, Associate Judge, presiding.

PER CURIAM:

Appellants Kazuyuki Rengchol and Secundina Oiterong Azuma each appeal the Land Court's April 22, 2010, Determination of Ownership. Appellant Rengchol seeks a remand of the case to the Land Court for hearing because the audio recording and transcript are incomplete. Appellant Azuma challenges the Land Court's award of Lot No. 03M011-001A-1, located in Ngerkeai Hamlet, Aimeliik State, to Appellee Uchelkeiukl Clan. As to Appellant Rengchol's request for remand, we **DENY**. As to Appellant Azuma's appeal, we find that the Land Court's determination is not clearly erroneous and therefore **AFFIRM**.

BACKGROUND

This appeal involves competing claims

to the ownership of properties located in Ngerkeai Hamlet, Airai State. The names of the lands claimed by the parties on appeal are *Edeched*, *Bailianged*, and *Techiir*.² Uchelkeiukl Clan claims *Edeched*, Secundina O. Azuma claims *Techiir*, and Kazuyuki Rengchol claims *Bailianged*. After a survey of the Bureau of Lands and Survey (BLS) showed that there was a boundary overlap of all the lots claimed, the Land Court ordered the matter to mediation. When no settlement resulted from this mediation, the Land Court held a hearing on the matter on November 16-20, 2009.

Uchelkeiukl Clan presented several witnesses in support of its claim. Dirrengechel Sariang Timulch testified that the land known as *Edeched* is a property of Uchelkeiukl Clan since time immemorial and members of the Clan have used the land since. She testified that Ngirngemelas, a member of the Clan, lived on the land before and after the war, and later when he was given the traditional chief title Secharmidal, he moved to *Kloublai* at lower Ngerkeai.³ She further testified that when she was about eight years old she attended school near Hamaichi and walked the land many times before the war. Dirrengechel testified further that *Techiir* is a mesei owned by the Clan, which was

² The original matter before the Land Court involved more land and parties than those to this appeal. The facts related to those lands and parties are omitted for the purposes of this appeal.

³ This section of Dirrengechel's testimony is not contained in the transcript. It is adopted from the Land Court's determination.

cultivated by Brobesong⁴ and his wife Ucheliou but never became their individual property.

Ongelibel N. Obakebau⁵ is a member of Uchelkeiukl Clan, has lived in Aimeliik State all her life, and knows that *Edeched* is owned by the Clan. She testified that she used to walk by *Edeched* with her mother and would pick pineapple from the farm belonging to Ngirngemelas, who was a member of Uchelkeiukl Clan, and lived on the land with his wife. Obakebau testified that *Edeched* shares a boundary with *Lemolen* where the tank is at the East, *Olbatel* at the West, and *Techiir* at the South, all of which are owned by the Clan. She testified that *Techiir* is a mesei owned by the Clan, which was cultivated by Besong, a member of the Clan, and his wife, but that it was never conveyed to him as his individual property.

Abina Etpison, a member of the Clan, testified that he was appointed in 1976 to represent the Clan in all its land matters and that he personally monumented *Edeched* for the Clan. He testified that the last people to live on this land were the three former holders of the traditional chief title Rengulbai of Uchelkeiukl Clan, namely: Ocheraol, Oukalsol, and Besokel. Etpison testified further that *Techiir*, a lkul a dui for Secharmidal, is a mesei owned by the Clan,

⁴ Brobesong is referred to interchangeably as Brobesong or Besong throughout the transcript and the Land Court's determination. The Court will refer to him as Brobesong.

⁵ Obakebau's testimony is not contained in the transcript. The facts contained herein are adopted from the Land Court's determination.

and Besong bore the traditional chief title Secharmidal and cultivated *Techiir* with his wife.

Appellant Rengchol filed his claim for ownership of *Bailianged* on behalf of Ngirur D. Rengchol's children. He testified that this land belonged to Ucheliou Clan, and Mesemong, who bore the traditional chief title Rurcherudel of Ucheliou Clan, gave it to his daughter Ngirur. He testified that the land is surrounded by other land, including *Techiir* and *Edeched*, owned by individuals. Appellant Rengchol's brother, Bob Ngirchebab Rengchol, who bears the traditional chief title Rurcherudel ra Ucheliou, testified that only those who have lived in Aimeliik all their lives know the land named *Bailianged*, and that unlike him, none of the claimants who testified in the matter have lived in Aimeliik all their lives. He testified that *Bailianged* is located in Ngerkeai and shares a common boundary with *Techiir*, a land owned by Ucheliou Clan and conveyed to Brobesong as his individual property.

Appellant Secundina O. Azuma filed her claim for individual ownership of Lot No. 03M011-001A-1, a land known as *Techiir*. She testified that *Techiir* has a mesei, dry land, and a small stream. She testified that this land was owned by Brobesong and his wife Ucheliou. She testified that when they could not pay her back after she helped them purchase a boat engine, they gave her *Techiir* as her individual property. She testified that Brobesong told her that he inherited the land from his father. She further testified that she has not used the land since the bequest.

Following the hearing, the Land Court made the following relevant findings of fact

based on a preponderance of the available credible evidence:

1. The claimed lands—*Edeched*, *Bailianged*, and *Techiir*—are located in Ngerkeai Hamlet, Aimeliik State.

2. Three former bearers of the chief title Rengulbai from Uchelkeiukl Clan, namely Ocheraol, Oukalsol, and Besokel, lived on *Edeched*.

3. Ngirngemelas, a member of Uchelkeiukl Clan, also lived on *Edeched* before and after the war.

4. The “bukl” or hill, where the water tank is situated, was used by the Ngerkeai warriors (Ngarachisau) as a look-out point. No one had resided on this buk.

5. There is no land in Aimeliik State known as *Bailianged*.

6. *Techiir* is a mesei owned by Uchelkeiukl Clan and was cultivated by Brobesong, a member of the Clan, and his wife Ucheliou.

7. *Techiir* was not conveyed to Brobesong as his individual property.

8. Brobesong and his siblings

were given land and a Palauan money pursuant to Palauan custom after the death of their father.

9. Most people who farmed *Edeched* were either members, or related to members, of Uchelkeiukl Clan.

Case No. LC/M 01-745, slip op. at 9-10 (Apr. 22, 2010).

In its conclusions of law, the Land Court ultimately determined that Uchelkeiukl Clan owns in fee simple the land known as *Edeched*, Worksheet Lot Nos. 03M011-001A, 03M011-001A-1, 03M011-001B, 03M011-002, 03M011-002A, 03M011-003, 03M011-004A, 03M011-004A-1, 03M011-004A-2, 03M011-004B, as shown on BLS Worksheet No. 06M001-B, located in Ngerkeai Hamlet, Aimeliik State. The court found the testimony of Dirrengchel, Obakerbau, and Etpison credible evidence of Uchelkeiukl Clan’s ownership of *Edeched*. As to Rengchol’s claim of ownership of *Bailianged*, the court repeatedly stated that Rengchol and his mother’s inaction to protect their alleged ownership interest in the land from government interference is strong evidence that they did not own the land. Finally, as to Azuma’s claim of ownership of *Techiir*, the court reached two conclusions: (1) Ucheliou had no authority to sell *Techiir* to Azuma because there was no evidence that Brobesong ever conveyed the land to his wife, and (2) Brobesong had no authority to sell *Techiir* to Azuma because *Techiir* was owned by Uchelkeiukl Clan and was never conveyed to Brobesong as his personal property. Appellants Rengchol and Azuma now appeal

the Land Court's determination.

STANDARD OF REVIEW

Appellant Azuma challenges 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.

DISCUSSION

Appellant Rengchol argues that the case should be remanded to the Land Court for hearing because the audio recording and transcript are incomplete, and therefore the Court cannot meaningfully review the Land Court's determination. Appellant Azuma argues that the Land Court clearly erred in determining that Uchelkeiukl Clan owns Lot No. 03M001-001A-1 because there was insufficient evidence to support that finding.

I. Appellant Rengchol is Not Entitled to a Rehearing

ROP R. App. P. Rule 10(e) provides the procedure for correction of the record, including when a transcript is incomplete:

If any party considers that the record assembled by the Clerk of Courts is inaccurate or incomplete in any important respect, he or she shall notify the other parties of the alleged error or omission and endeavor to secure written agreement as to what correction or addition should be made in the record. [] If the parties cannot agree upon such correction or addition, the party claiming the error shall arrange with the trial judge for a hearing and shall notify the other parties of the time and place. Any party unable to be present or represented may submit views in writing at or before that time. After giving all parties an opportunity to be heard, the trial judge will correct or add to the record as the facts warrant and will notify each party. If any party still feels that the record, as amended by agreement of the parties or by the trial judge, is incorrect or incomplete in any important aspect, he or she may by written motion, supported by affidavits, request the Appellate Division to make further change, specifying particularly the change desired.

In his opening brief, Appellant Rengchol states that he wishes to challenge the testimony of Appellees' witnesses; however, the audio recording of their

testimony is incomplete and therefore the transcript also is incomplete. Appellant Rengchol asserts that he was unable to reconstruct the lost testimony because Appellees' counsel was unavailable due to hospitalization.

[1,2] Appellant Rengchol's argument that he is entitled to a remand of the case to reconstruct testimony is without merit. Rule 10(e) sets forth the procedure for reconstructing testimony, and Appellant has not satisfied its requirements. First, Appellant Rengchol provides no indication that he attempted to comply with Rule 10(e). Further, although, Appellees' counsel may have been unavailable due to hospitalization at some point before Appellant Rengchol filed his brief on March 8, 2011, he has not been hospitalized during the entire time that this matter has been on appeal. Appellee's counsel filed a motion for enlargement of time to file responses on March 30, 2011, which the Court granted and set the deadline for April 29, 2011. Then, Appellee's counsel was again hospitalized, so Appellee was granted a further enlargement to file its responses. During the nearly two months that elapsed between the filing of Appellant Rengchol's opening brief and Appellee's response, Appellant could have made attempts to reconstruct the record with Appellee's counsel in accordance with the procedures of Rule 10(e). The Rules do not prohibit Appellant Rengchol from attempting to complete the transcript without Appellee or after Appellant has submitted his opening brief. He had an opportunity to demonstrate his compliance with Rule 10(e) by filing a motion with the Land Court or a reply brief or other paper with this Court. Indeed, Appellant Rengchol did nothing. Second, Appellant Rengchol's

requested relief is procedurally defective because remanding the matter to the Land Court for hearing is not among the procedures listed in Rule 10(e) for correction of record. Accordingly, Appellant Rengchol's request for a remand to the Land Court for hearing is **DENIED**.

II. The Land Court Did Not Commit Clear Error in Determining that Azuma Does Not Own *Techiir*.

Appellant Azuma contends that the Land Court clearly erred in determining that Azuma does not own *Techiir*. Although Appellant Azuma phrases her question presented as a challenge to the sufficiency of evidence to support the Land Court's determination, the substance of her argument is focused on the court's credibility determinations. Specifically, Appellant Azuma argues that the Land Court erred in crediting testimony of Uchelkeiukl Clan witnesses over that of Rurcherudel Bob Rengchol, Demei Obak, Skeras Ucherrengos, and Dirrai Rengchol. In support, Appellant Azuma points to Bob Rengchol's lifelong residency in Aimeliik State and his familiarity with the land at issue, as well as her own confrontation of Besechel about the use of the property. Conversely, Appellant Azuma claims Uchelkeiukl Clan witnesses were not lifelong residents of Ngerkeai Hamlet or Aimeliik State and were therefore not as familiar with the land; Abina Etpison's testimony was discredited during the hearing; and the Clan failed to take any action when Besechel was using *Techiir*.

[3] The Land Court did not commit clear error in crediting the testimony of Uchelkeiukl Clan witnesses. A review of the record

supports the Land Court's factual findings. Dirrengchel Sariang Timulch and Abina Etpison testified consistently with each other that *Techiir* is a mesei owned by the Clan and that Brobesong, a member of the Clan, cultivated the land with his wife but was never conveyed the land as his individual property.⁶ After observing the witnesses and examining the evidence, the Land Court chose to discount Appellant Azuma's evidence and credit the testimony of Uchelkeiukl Clan's witnesses and accept its version of the events. This Court will not reweigh the evidence or reassess the credibility of witnesses. *Ebilklou Lineage v. Blesoch*, 11 ROP 142, 144 (2004).

Appellant Azuma's attempts to discredit Uchelkeiukl Clan's witnesses are unavailing. Contrary to her contention, at least one of the Clan's witnesses that the Land Court found credible (Obakebau) was a lifelong resident of Aimeliik.⁷ And although Abina Etpison may not have been a lifelong resident of the state, for 31 years he was Uchelkeiukl Clan's representative for all land matters and personally monumented *Edeched* for the Clan. Appellant Azuma also questions Sariang's knowledge of the physical areas of *Edeched* and *Techiir* because it is based on her memory from when she was eight years old. However, Sariang's description of *Techiir* as a taro patch and an area down below *Edeched*

is consistent with Abina Etpison's description of the land. Appellant Azuma further contends that Abina Etpison's testimony was discredited by his admission of having filed a claim for lands he knew were not owned by Uchelkeiukl Clan. Although such testimony may cause concern for a fact-finder, it is not the duty of the appellate court to test the credibility of witnesses, but rather to defer to the lower court's credibility determination. *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 165 (2004). Both parties presented evidence and testimony in support of their claims, and the Land Court's finding was not so unreasonable that a reasonable trier of fact could not have reached the same conclusion. *Remeskang v. West*, 10 ROP 27, 29 (2002).

Finally, Appellant Azuma's evidence that Brobesong owned *Techiir* is not so conclusive as to cause this Court to be left with a definite and firm conviction that an error has been made. She relies on the testimony of Demei Obak, Skeras Ucherrengos, and Dirrai Rengchol, none of whom expressly testified that Brobesong once owned the land. Obak testified that *Techiir* was "Senna's land," however, this statement alone does not establish that Brobesong owned the land and had authority to convey it to Azuma. Ucherrengos testified that he had heard that Brobesong owned land but that he did not know if it was *Techiir*. There is nothing in Ucherrengos's testimony connecting Brobesong to *Techiir*. Finally, Dirrai Rengchol⁸ merely confirmed, like

⁶ The Land Court also credited the testimony of Ongelibel N. Obakebau, which was consistent with Dirrengchel and Etpison's testimony. However, Obakebau's testimony is not contained in the transcript for this Court to review.

⁷ This fact is based on the Land Court's determination and not on the transcript. *See supra* n.3.

⁸ During Abina Etpison's testimony, he reiterated what Dirrai, his mother, testified during the first hearing and during an earlier discussion he had with her. Dirrai's testimony is among those missing from the transcript.

Obak, Azuma's purchase of *Techiir*, and not that Brobesong actually owned the land or how he came to own it. Accordingly, it was not clear error for the Land Court to determine that Uchelkeiukl Clan, not Appellant Azuma, owns *Techiir*.

CONCLUSION

For the reasons set forth above, we **DENY** Appellant Rengchol's request for remand and hearing, and **AFFIRM** the Land Court's determination as to Appellant Azuma's claim.