

**SIKONG NGIRAKESAU and MOSES
NGIRASWEI,
Appellants,**

v.

**ONGELAKEL LINEAGE and
CHILDREN OF REHUHER,
Appellees.**

CIVIL APPEAL NO. 10-037
LC/E 07-0472
LC/E 07-0473
LC/E 07-0507

Supreme Court, Appellate Division
Republic of Palau

Decided: November 11, 2011

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

The Land Court must choose among claimants that appear before it.

**[2] Land Commission/LCHO/Land
Court: Claims**

The reasoning from *Marsil v. Telungalk re Iterkerkill*, 15 ROP 33 (2008) permits a court to consider the testimony from the hearing to determine whether a party is actually a claimant.

[3] Appeal and Error: Harmless Error

If an error has no practical impact, it is harmless.

[4] Land Commission/LCHO/Land Court: Reconsideration

The Land Court has the inherent authority to correct its own mistakes.

[5] Appeal and Error: Preserving Issues

If the statute of frauds defense is not asserted at the trial court level, it is waived.

[6] Appeal and Error: Basis of appeal.

The appellant, not the court, must search the record for errors.

[7] Property: Deeds

A purchaser cannot buy what a seller does not own.

[8] Courts: Stipulations

Courts have broad discretion in determining whether to enforce stipulations. A stipulation may be binding on the parties, but it is not binding on the court.

Counsel for Ngirakesau: Salvador Remoket
 Counsel for Ngiraswei: Raynold B. Oilouch
 Counsel for Children of Rehuher: J. Uduch Sengebau Senior, Esq.

BEFORE: ALEXANDRA F. FOSTER, Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice; and ROSE MARY SKEBONG, Associate Justice Pro Tem.

Appeal from the Land Court, the Honorable C. Quay Polloi, Senior Judge, presiding.

PER CURIAM:

Appellants Sikong Ngirakesau and Moses Ngiraswei seek review of the Land Court’s August 31, 2010 Decision and Order. Both Appellants take issue with the determination that Tochi Daicho Lot 226 consists of Worksheet Lot 2005E004-072B and is owned by Ongelakel Lineage, and Tochi Daicho Lot 233 consists of Worksheet Lot Nos. 2005E004-071, 072A, and 073 and is owned by the Children of Rehuher. For the following reasons, we affirm the Land Court’s Decision.¹

BACKGROUND

This appeal concerns the ownership of land located in Choll County of Ngaraard State known as *Derngas*. The claimants to this land were as follows: Sikong Ngirakesau claimed *Derngas* as Tochi Daicho Lot 227, corresponding to land identified as Worksheet Lot Nos. 2005E004-072A, 2005E004-072B, part of 2005E004-071, and 2005E004-073. Moses Ngiraswei claimed *Derngas* as Tochi Daicho Lot 226, corresponding to land identified as Worksheet Lot Nos. 2005E004-072A and 2005E004-072B. Olabeluu Rekwis Imedob for Ongelakel Lineage, represented by Riosang Salvador, claimed Tochi Daicho Lot 226, corresponding to land identified as Worksheet Lot Nos. 2005E004-072A and 2005E004-072B. Maria Rehuher for the Children of Rehuher claimed Tochi

¹ Appellants request oral argument. After reviewing the briefs and record, the Court finds this case appropriate for submission without oral argument. ROP R. Civ. P. 34(a) (“The Appellate Division on its own motion may order a case submitted on briefs without oral argument.”).

Daicho Lot 233, corresponding to the land identified as Worksheet Lot Nos. 2005E004-071, 2005E004-072A, 2005E004-072B, and 2005E004-073.

On October 25, 2007, the Land Court held a hearing on Tochi Daicho Lot 227 in LC/E 07-0472. Judge Rdechor presided over that hearing. At the conclusion, Judge Rdechor stated that a determination of ownership of *Derngas* would be issued to Ngirakesau. When he reached this conclusion, Judge Rdechor was unaware of other claimants to the same worksheet lot numbers, but identified by other Tochi Daicho lots. Judge Rdechor realized that separate cases, LC/E 07-0473 and LC/E 07-0507, made competing claims to two worksheet lots (2005E004-072A and 2005E004-072B) in Ngirakesau's claim. Upon realizing this mistake, Judge Rdechor did not issue the determination and order in LC/E 07-0472 as earlier promised. Subsequently, these matters were transferred to Senior Judge Polloi. Judge Polloi held a status conference for all three cases and consolidated them, setting the hearing for August 19, 2010.

After the hearing, the Land Court addressed the boundaries of Tochi Daicho Lots 226, 227, and 233. First, the court addressed Ngirakesau's claim to Tochi Daicho Lot 227, and rejected his position that Tochi Daicho Lot 227 corresponded to Worksheet Lot Nos. 2005E004-073, 072A, and 072B. The court found that the worksheet lots together added up to about three times the size of Tochi Daicho Lot 227. The court reasoned that it was likely Tochi Daicho Lot 227 was not located within these worksheet lots because (1) those worksheet lots corresponded more closely in size with Tochi Daicho lots

226 and 233, while (2) Tochi Daicho Lot 227 corresponded more closely in size to neighboring Worksheet Lot No. 2005E004-064.

The court then turned to Tochi Daicho Lot 226, which lists Rekewis Imedob as owner. It held that Tochi Daicho Lot 226 corresponded to Worksheet Lot No. 2005E004-072B. The court rejected Ngiraswei and Salvador's position that Tochi Daicho Lot 226 consisted of Worksheet Lot Nos. 2005E004-072A and 072B because the size of Tochi Daicho Lot 226 matched more closely with just Worksheet Lot No. 2005E004-072B.

Finally, as to Tochi Daicho Lot 233, the court noted that one worksheet lot claimed by the Children of Rehuher was also claimed by those claiming Rekewis's Tochi Daicho Lot 226, namely, Worksheet Lot No. 2005E004-072A. However, the court concluded that Worksheet Lot No. 2005E004-072A should be part of Tochi Daicho Lot 233 because Tochi Daicho Lot 233 is comprised of 25,752 square meters, and the worksheet lots, claimed by Maria Rehuher, including Worksheet Lot No. 2005E004-072A, is 25,722 square meters, only a thirty square meter difference from the original size of Tochi Daicho Lot 233. Tochi Daicho Lot 226 is comprised of 4,363 square meters, and Worksheet Lot No. 2005E004-072B is 3,574 square meters, a 789 square meter difference. If the court added 2005E004-072A, the difference would balloon to 1,034 square meters. The court therefore decided to limit Tochi Daicho Lot 226 to Worksheet Lot No. 2005E004-072B.

Having resolved the boundary issues,

the court turned to who is the proper owner of Tochi Daicho Lot 226, and concluded that Riosang Salvador’s claim for Ongelakel Lineage prevailed over Ngiraswei’s claim. Tochi Daicho Lot 226 is listed under Rekewis Imedob. Rekewis Imedob has since died. Ngiraswei claimed Tochi Daicho Lot 226 because Renguul Rekewis, Rekewis Imedob’s son, deeded his interest to Ngiraswei. According to Ngiraswei, Renguul Rekewis properly passed on the property as the rightful heir of Rekewis Imedob. Ngiraswei’s claim ran counter to Riosang Salvador’s claim for Ongelakel Lineage. Salvador countered that the property originally belonged to the lineage and Rekewis acted as trustee for the lineage when his name was recorded during the Tochi Daicho process. Salvador and Tehebui Naito, Rekewis’s cousin, both testified that Rekewis Imedob conveyed the property to Ongelakel Lineage on his deathbed in 1991.

The court held that Ongelakel Lineage’s claim prevailed. It based its conclusion on testimony that Rekewis’s property was not given out at his *eldechuduch* since it had been transferred to the lineage during his lifetime; that Rekewis executed a Power of Attorney in 1989 naming not his son Renguul but his cousins Merraoch, Imekedong, Merii, and Tehebui as his representatives; and the fact that Rekewis filled out a claim form in 1990 stating that he wanted “to release the property to Ongelakel Clan as it was originally owned.”

The court was unpersuaded by testimony that Rekewis gave the property to his son Renguul. If he had intended to do so, why would he file a claim for Ongelakel Lineage? Although Rekewis Imedob could have executed a written deed to transfer

ownership, the court speculated that Rekewis may not have known about this procedure. The court found Rekewis’s actions of naming his cousins, and not his son, in his Power of Attorney, and filing for Tochi Daicho Lot 226 on behalf of Ongelakel Lineage, corroborated by Salvador’s and Naito’s testimony, convincing. Because Rekewis Imedob conveyed the land before his death, the court held that the land should be registered to Ongelakel Lineage.

As to Tochi Daicho Lot 233, the court held that a determination of ownership should issue to the Children of Rehuher. The court reasoned that the dispute regarding Tochi Daicho Lots 226 and 233 related only to their proper boundaries, no one else claimed Tochi Daicho Lot 233, and no one disputed the Children of Rehuher’s claim.

Ultimately, the Land Court concluded that Tochi Daicho Lot 226 consists of Worksheet Lot No. 2005E004-072B, and is owned by Ongelakel Lineage; and Tochi Daicho Lot 223 consists of Worksheet Lot Nos. 2005E004-071, 072A, and 073, and is owned by the Children of Rehuher; and Tochi Daicho Lot 227 did not consist of any of the worksheet lots at issue in the litigation. This appeal followed.

STANDARD OF REVIEW

We review the Land Court’s findings of fact under the clearly erroneous standard. *Aribuk v. Rebluud*, 11 ROP 224, 225 (2004). Under this standard, reversal is warranted “only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.” *Palau Pub. Lands Auth. v. Tab*

Lineage, 11 ROP 161, 165 (2004) (citation omitted). It is not clear error for the Land Court to give greater weight to certain evidence so long as one view of the evidence supports the fact finder's decision. *Remeskang v. West*, 10 ROP 27, 29 (2002).

DISCUSSION

Ngirakesau and Ngiraswei present one common argument. We resolve this issue first and then turn to their independent arguments. Both Appellants contend that the Land Court committed clear error in awarding Tochi Daicho Lot 226, consisting of Worksheet Lot No. 2205E004-072B, to Ongelakel Lineage. They contend that Ongelakel Lineage was not a claimant in the proceedings because Rekewis Imedob's claim states the following: "I want to release the property to Ongelakel Clan as it was originally owned and to place it under tenancy in common of Merraoch, Imekedong, Merii and Techebui." According to Ngirakesau and Ngiraswei, because Ongelakel Lineage was not listed as a claimant, the Land Court erred in awarding it the land. Ngiraswei also points out that in Salvador's testimony, he repeatedly stated that he was claiming on behalf of Ongelakel Clan, not Ongelakel Lineage. This distinction between clan and lineage is not reversible error in this case.

[1, 2] The Land Court must choose among claimants that appear before it. *Rusiang Lineage v. Techemang*, 12 ROP 7, 9 (2004). Riosang Salvador represented Rekewis Imedob's claim, described in the claim form as for "Ongelakel Clan," but the Land Court issued the determination of ownership to "Ongelakel Lineage." This difference does not constitute reversible error for two reasons.

The reasoning from *Marsil v. Telungalk re Iterkerkill*, 15 ROP 33 (2008) permits us to consider the testimony from the hearing to determine whether Ongelakel Lineage was actually a claimant. In *Marsil*, a claim was filed on behalf of the children of Otuu, but the Land Court awarded the land to Iterkerkill Lineage. *Id.* at 34. The Appellate Division upheld this decision despite the inconsistency because the testimony supporting the claim indicated that the land belonged to the entire lineage, not just the children. *Id.*

Ngiraswei argues that *Marsil* is distinguishable because in that case the witnesses stated that they claimed for the lineage, not just for the children. He claims that no one made a claim for Ongelakel Lineage during the hearing, citing several references to Ongelakel Clan as the claimant. However, a review of the entirety of the hearing transcript reveals that parties supporting the claim did not consistently refer to Ongelakel Clan, they also referenced Ongelakel Lineage, the family of Ongelakel, or simply Ongelakel. Further, no witness stated that the claimant was not Ongelakel Lineage. We therefore see no reason to distinguish the reasoning in *Marsil* and find no clear error.

[3] Moreover, any error would be harmless. Appellant has not argued or presented evidence that the award to Ongelakel Lineage rather than Ongelakel Clan gave land to the wrong people. Had the owners not been the same, members of Ongelakel Clan would have appealed the decision to correct that mistake. They made no such appeal. Because any error has no practical impact, it is harmless. *See West v. Ongalek ra Iyong*, 15 ROP 4, 8 (2007).

Ngirakesau's second argument is that the Land Court committed clear error in holding another hearing in August 2010 after the October 25, 2007 hearing held by Judge Rdechor. Ngirakesau's position is that the October 25, 2007 hearing resulted in a "judgment or determination of ownership" that the Land Court should not have subsequently changed. This argument fails.

[4] The Land Court has the inherent authority to correct its own mistakes. *Shmull v. Ngirirs Clan*, 11 ROP 198, 202 (2004). That is exactly what happened in the August 31, 2010 order by Senior Judge Polloi. As noted, this matter concerns three different cases where the claims to different Tochi Daicho lots corresponded to overlapping worksheet lot numbers. Understandably, this complicated scenario resulted in confusion. Although Judge Rdechor did state that Ngirakesau would prevail at the end of the hearing for LC/E 07-0472 on October 25, 2007, he was unaware of the overlapping claims at that time. When Judge Rdechor realized this mistake, he did not issue the determination and order as promised. Instead, the Land Court correctly consolidated the three cases involving claims to Tochi Daicho Lots 226, 227, and 233 with the overlapping worksheet lots for a subsequent hearing. It was up to Ngirakesau to prove his claim at that hearing, but he failed.

The Land Court's decision noted this issue, and considered the claims to all the Tochi Daicho lot numbers corresponding to all of the worksheet lots at the same time. The hearing provided a complete review of the claims to the land, and is an excellent example of the Land Court's exercise of its inherent authority to correct its mistakes. Thus, the

August 2010 hearing did not cause reversible error, and Ngirakesau's argument fails.

Ngiraswei appeals on three additional grounds: (1) the Land Court erred in awarding Ongelakel Lineage land when the evidence did not show that Rekewis transferred the land to the lineage; (2) the Land Court erred in failing to award ownership to him as the purchaser of land from Rekewis' son, Renguul; and (3) the Land Court erred in not awarding a portion of Worksheet Lot No. 2005E004-072A to Ngiraswei pursuant to his stipulation with the Children of Rehuher.

First, Ngiraswei contends that the Land Court erred in concluding that Rekewis transferred the land to Ongelakel Lineage. His position is that Rekewis's behavior exhibited only an intent to convey, not an actual conveyance. And even if he did convey the land, the oral conveyance violated the statute of frauds. We disagree and affirm the Land Court's conclusion that the conveyance occurred.

The Land Court's decision that Rekewis actually conveyed the property was not clearly erroneous. The court was persuaded that a conveyance took place based on the designations in Rekewis's Power of Attorney, his 1990 claim on behalf of Ongelakel Clan – not for himself or his son – and the corroborating testimony of witnesses. It concluded that the evidence that Rekewis transferred the land to Ongelakel Lineage was more convincing than the testimony that Rekewis transferred the property to his son. If Rekewis intended the property to pass to his son, it would not make sense for him to file a claim on behalf of Ongelakel Clan. The court had discretion to give greater weight to some

testimony than others, and thus the decision will not be overturned as clearly erroneous. See *Remeskang*, 10 ROP at 29.

Turning to the statute of frauds argument, Ngiraswei argues that the transfer is not valid because Rekeewis did not reduce it to writing. 39 PNC § 501 provides the following:

(a) Except for a lease for a term not exceeding one year, no estate or interest in real property, and no trust or power over or concerning real property, or in any manner relating thereto, can be created, granted, assigned, transferred, or declared, otherwise than:

(1) By operation of law; or

(2) By a deed of conveyance or other instrument in writing signed by the person creating, granting, assigning, transferring, surrendering, or declaring the same, or by his lawful agent under written authority, and executed with such formalities as are required by law.

[5, 6] If the statute of frauds defense is not asserted at the trial court level, it is waived. *Estate of Remeskang v. Eberdong*, 14 ROP 106, 109 (2007). Although Ngiraswei argues that he presented the statute of frauds defense during his closing argument, he provides no reference to the record and the Land Court's decision did not note the statute of frauds

argument. The appellant, not the court, must search the record for errors. *Ngetchab Lineage v. Klewei*, 16 ROP 219, 220-21 (2009). As Ngiraswei failed to provide citations or support to bolster his argument, we are unconvinced that he raised the issue at the hearing, and consider it waived.

[7] Second, Ngiraswei contends that because there was no actual transfer, he should receive the property because he purchased it from Rekeewis's son. Since the Land Court did not err in finding that the transfer occurred, this argument is not viable because "a purchaser cannot buy what a seller does not own." *Aguon v. Aguon*, 5 ROP Intrm. 122, 126 (1995); see *Estate of Rudimch v. Kayangel State Gov't*, 9 ROP 275, 278 (Tr. Div. 2001) ("[O]ne cannot convey what one does not own.").

[8] Finally, Ngiraswei argues that the Land Court erred in not awarding a portion of Worksheet Lot No. 2005E002-072A to him pursuant to the stipulation he entered into with the Children of Rehuher. The Land Court noted this stipulation but chose not to enforce it:

Maria Rehuher, who claims Rehuher's Tochi Daicho lot 233, stipulated with Moses Ngiraswei that they would split worksheet lot 2005E004-072A in half. Those claiming for Ongelakel Lineage were not part of that stipulation. Although this Court could have enforced the stipulation, it is not bound by it.

Courts have broad discretion in determining

whether to enforce stipulations. “[A] stipulation may be binding on the parties, but it is not binding on the court.” *Western Caroline Trading Co. v. Kloulechad*, 15 ROP 127, 129 (2007). The Land Court acknowledged the stipulation but exercised its discretion in deciding not to enforce it. We see no abuse of discretion there.

CONCLUSION

Neither Appellant has shown that the Land Court’s Decision and Order erred. For the foregoing reasons, the Land Court’s Decision is **AFFIRMED**.