

**IDID CLAN,  
Appellant,**

**v.**

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

CIVIL APPEAL NO. 12-036  
Case Nos. LC/B 08-139 & 08-140

Supreme Court, Appellate Division  
Republic of Palau

Decided: September 4, 2013

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

Return of public lands and superior title claims are fundamentally different, with different burdens of proof and different defenses applicable to each. Unlike a return of public lands case, a claimant asserting superior title claims the land on the theory that it never became public land in the first place. Such a claimant stands on equal footing with the governmental entity claiming the land, but the claimant must confront the availability of affirmative defenses not available to the government in Article XIII claims.

[2] **Appeal and Error: Standard of Review**

The Land Court's factual findings are reviewed for clear error. Under this standard, 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.

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

The Land Court must limit its review to only claims actually before it.

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

The Land Court does not have the authority to amend a claim by trying the claim with consent of the parties.

**[5] Appeal and Error: Harmless Error**

The Appellate Division will not reverse a lower court decision due to an error where that error is harmless.

**[6] Appeal and Error: Briefs**

Rule 28(a) requires a party to support asserted facts, including proper citations to the record below. The rule is clear and unambiguous, and failure to comply permits the Court to disregard any factual arguments unsupported by cites to the record.

Counsel for Appellant: Salvador Remoket  
Counsel for Appellee: J. Uduch Sengebau Senior

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and R. ASHBY PATE, Associate Justice.

Appeal from the Land Court, the Honorable C. QUAY POLLOI, Senior Judge, presiding.

PER CURIAM:

This appeal arises from a Land Court Decision awarding land in Dngeronger Hamlet, Koror State, in the area commonly referred to as *Butilei*, to Koror State Public Lands Authority (KSPLA). For the following reasons, we **AFFIRM** the Land Court’s Decision. As we explain in greater detail below, the Land Court committed error by remodeling Idid Clan’s return of public lands claim into a superior title claim; however, its erroneous attempt to address a claim not properly before it ultimately had no effect on the proper outcome of the Decision or of this Appeal. *See Ngiraiwet v. Telungalek ra Emadaob*, 16 ROP 163, 166 (2009) (explaining that even if the Land Court erred, the Appellate Division will not reverse the Land Court’s determination of ownership where the error had no bearing on why the appellant’s claim was denied).

**BACKGROUND**

The area in Dngeronger Hamlet commonly referred to as *Butilei* is comprised of two lots—Worksheet Lots B06-116 (formerly Tochi Daicho Lot 986) and Worksheet Lot B06-119 (formerly Tochi Daicho Lot 987). Both of the Tochi Daicho lots were registered under the name of Hisakichi Tokunanga.

Prior to 1989, Idid Clan filed a return of public lands claim for *Butilei* and the Land Court convened a hearing on May 8–9, 2012.<sup>1</sup> In pursuing the claim to *Butilei* as a

<sup>1</sup> There is no indication of the precise date Idid Clan filed its claim to the land; however, the record contains a document in which the Land Court expressly recognized that Idid Clan had filed a claim

return of public lands claim, Idid Clan bore the burden under 35 PNC §1304(b)(1) to show that the property became public land “through force, coercion, fraud, or without just compensation or adequate consideration” and under 35 PNC §1304(b)(2) to prove that Idid Clan was a proper heir to the land by establishing control or ownership prior to the wrongful taking. 35 PNC § 1304(b)(1)-(2).

At the hearing and in its written closing arguments, Idid Clan stressed that both of the Tochi Daicho lots at issue had previously been registered under what appeared to be a Japanese name—Hisakichi Tokunanga. The Land Court found that Idid Clan relied on this fact alone to establish that the land became public land through a wrongful taking. Although it acknowledged that Article XIII, § 10 of the Constitution provides that “nationals” of previous occupying powers forfeited land ownership rights to the national government, the Land Court determined that no evidence apart from Tokunanga’s name was submitted to establish his nationality. Accordingly, the Land Court rejected Idid Clan’s argument that Tokunanga’s Japanese-sounding name proved that the land had been wrongfully taken by the Japanese occupying forces.

Further, the Land Court explained that it was unclear what happened with the land both prior to, and following, Tokunanga’s ownership. Thus, the Land Court determined that the evidence of Idid Clan’s status as a proper heir to the land was less than convincing. As explained in more

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for *Butilei*, accompanied by a note by the Land Court that Idid Clan’s claim is “a public land claim.” There is no indication that any party challenged the timeliness of the claim.

detail below, this should have ended the Land Court’s inquiry.

However, in determining there was insufficient evidence to establish that *Butilei* became public land through force, coercion, fraud, or without just compensation or adequate consideration, the Land Court went one step further and stated that there was insufficient evidence that *Butilei* was ever public land. It did so apparently because KSPLA based its claim that *Butilei* was public land on the same basis of Tokunanga’s Japanese-sounding name. Thus, the Land Court determined, *sua sponte*, that Idid Clan should have filed a claim for superior title. Remodeling the claim into a superior title claim, the Land Court concluded that Idid Clan shared the burden of proof with KSPLA to prove ownership through a preponderance of the evidence. Examining the evidence in this light, the Land Court then found that KSPLA had a “more meritorious claim” to the land because it showed that it has exercised greater dominion and control over it and Idid Clan gave very little evidence of use of the property.

Idid Clan appealed.

### STANDARDS OF REVIEW

We review the Land Court’s legal conclusions *de novo* and its factual findings for clear error. *Kotaro v. Ngotel*, 16 ROP 120, 121–22 (2009). We do not review legal issues that the parties have not developed through proper briefing. *Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 50 (2006).

## DISCUSSION

A Land Court claimant may assert one of two types of claims: (1) a superior title claim, in which the claimant asserts he holds the strongest title to the land claimed; and (2) a return of public lands claim, in which the claimant concedes that a public entity holds superior title to the land, but argues that the title was acquired wrongly from the claimant or his predecessors. *See Koror State Pub. Lands Auth. v. Wong*, Civ. App. 12-006, slip op. at 4–5 (Oct. 31, 2012) (describing two types of claims).

[1] The burdens and elements needed to prove ownership are different for the two types of claims. *See Ngarameketii v. Koror State Pub. Lands Auth.*, 18 ROP 59, 63–64 (2011) (“It is important to bear in mind that the two types of claims are fundamentally different, with different burdens of proof and different defenses applicable to each.” (citation, brackets, and internal quotation marks omitted)).

In a return of public lands case, the claimant must show that a piece of property became public land “through force, coercion, fraud, or without just compensation or adequate consideration” in addition to showing a proper connection to the land. 35 PNC § 1304(b)(1)-(2). “At all times, the burden of proof remains on the claimants, not the governmental land authority, to establish by a preponderance of the evidence, that they satisfy all requirements of the [Land Registration Act].” *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 93 (2006).

In contrast, in superior title claims, the burden is shared. It is in the claimant’s

interest to establish control and use of the property, and “the claimant must confront . . . the availability of affirmative defenses not available to the government in Article XIII claims.” *Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185, 185 (2002) (citation and internal quotation marks omitted). None of these elements exist or are relevant in return of public lands actions. *Id.*

Although return of public lands and superior title claims may be raised in the alternative, *Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185, 185–86 (2002), a claimant desiring to pursue both types of claims must present and must preserve the claims individually. *See Idid Clan v. Koror State Public Lands Auth.*, 9 ROP 12, 14 n.3 (2001) (holding that alternative claims must be “presented and preserved as if they were presented by different persons.”).

Further, if a claim has not been preserved properly, it may not be considered. L.C. Reg. 12 (“Any claim which is not timely filed shall be forfeited.”); *see also Ngarameketii v. Koror State Pub. Lands Auth.*, 16 ROP 229, 231 (2009) (return of public lands claim may not be considered as superior title claim in order to avoid statutory deadline). The Land Court’s Regulations provide explicitly that “[a]ll claims to private lands [read: superior title claims] must be filed with the Land Court no later than 60 days prior to the date set for hearing of the land claimed [and that t]he deadline for claims to public land [read: return of public lands claims] was January 1, 1989.” L.C. Reg. 11.

For both types of claims, under 35 PNC § 1312, “[w]ithin twenty (20) business

days following the conclusion of a hearing, the Land Court shall issue a determination of ownership or shall issue a written statement explaining why the determination cannot be made within such time.” This is in keeping with the Land Court’s overriding purpose, that is, to see that all lands in the Republic are properly registered in an efficient and just manner. *See* 35 PNC § 1302.

With the above in mind, we address Idid Clan’s two arguments on appeal.

**I. The Land Court did not err in concluding that Idid Clan presented insufficient evidence to establish that *Butilei* became public land through a wrongful taking; however, it erred in addressing a superior title claim that was never filed by the parties.**

Idid Clan’s first argument on appeal is in two parts. It argues that the Land Court erred in holding Idid Clan failed to prove that *Butilei* became public land through a wrongful taking and, as a corollary to that, that the Land Court erred by remodeling Idid Clan’s claim into one for superior title. We address each in turn.

**A. The Land Court’s Finding that *Butilei* is not Public Land**

First, the Land Court found that Idid Clan presented insufficient evidence to prove that *Butilei* was ever public land, or at least, that it ever became public land “through force, coercion, fraud, or without just compensation or adequate consideration,” as required by 35 PNC §1304(b)(1). It explained that the only evidence Idid Clan offered to prove that

*Butilei* became public land through a wrongful taking was a Tochi Daicho record that listed Hisakichi Tokunanga as the pre-World War II owner of the lot. The Land Court also noted that the chain of ownership for the property went from the house of *Butilei* in about 1910 straight to Hisakichi Tokunanga just before World War II. As such, the Land Court expressly found that Idid Clan failed to present convincing evidence that the land ever belonged to the Clan, a necessary requirement for succeeding on a return of public lands claim under 35 PNC §1304(b)(2).

[2] Idid Clan challenges this ruling on appeal, stating that it also presented evidence that the Trust Territory Government, as well as KSPLA, leased *Butilei* to third parties for years and that this fact also helps establish that the lands are public lands. This misses the whole point of 35 PNC §1304(b)(1). Although we have consistently held that “some maintenance of the land by the government will be probative of government ownership,” it is not dispositive of it. *Koror State Pub. Lands Auth. v. Ngermellong Clan*, Civ. App. No. 11-042, slip op. at 7 (2013). More importantly, this does not explain whether the land was acquired through a wrongful taking. On appeal, Idid Clan once again fails to point to a single piece of evidence of a wrongful taking besides the name of Hisakichi Tokunanga. Whether the land became public land through a wrongful taking is a factual determination, and considering that no evidence apart from a name of a past owner and record of some government leasing of the property was submitted to the court, we cannot conclude that the Land Court was unreasonable in its determination. *See Ngirausui v. Koror State*

*Pub. Lands Auth.*, 18 ROP 200, 202 (2011) (“We will not set aside the Land Court’s factual 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.”). Therefore, we will not overturn the Land Court’s decision that Idid Clan failed to prove that the land at issue became public land as outlined in 35 PNC §1304(b)(1).

**B. The Land Court’s Treatment of Idid Clan’s Claim as a Claim for Superior Title**

While we do not find error in the Land Court’s determination that Idid Clan failed to prove that *Butilei* became public land as a result of a wrongful taking, we agree with Idid Clan that the Land Court erred in attempting to remodel Idid Clan’s return of public lands claim into to a claim for superior title. This brings us to the second part of Idid Clan’s first argument on appeal.

[3] Put simply, the Land Court must limit its review of claims to those claims actually before it. *See* 46 Am. Jur. 2d Judgments § 2 (2006) (“A judgment must be supported by pleadings that allege applicable legal theories” and thus “a judgment based on an issue not pleaded is a nullity.” (footnotes omitted)). When a party files a return of public lands claim, the Land Court may not simply treat that claim as one for superior title without the parties having preserved that claim properly, and if a claim has not been preserved properly, it may not be considered. L.C. Reg. 12 (“Any claim which is not timely filed shall be

forfeited.”); *see also Ngarameketii v. Koror State Pub. Lands Auth.*, 16 ROP 229, 231 (2009) (return of public lands claim may not be considered as superior title claim in order to avoid statutory deadline). The Land Court’s Regulations provide explicitly that “[a]ll claims to private lands [read: superior title claims] must be filed with the Land Court no later than 60 days prior to the date set for hearing of the land claimed [and that t]he deadline for claims to public land [read: return of public lands claims] was January 1, 1989.” L.C. Reg. 11.

[4] Although there appears to be some confusion concerning what type of claim Idid Clan was attempting to argue at various points of the case, the Land Court clearly accepted that Idid Clan made a timely claim for a return of public lands. Moreover, at the hearing, both parties proceeded as though Idid Clan’s claim was a return of public lands claim, and Idid Clan also relied largely on a return of public lands approach in its written closing argument. There is no indication on the record that Idid Clan preserved a superior title claim or filed anything that could be construed as a superior title claim earlier than 60 days prior to the hearing date. Further, even if Idid Clan began arguing a superior title claim after filing a claim for return of public lands, the Land Court does not have the authority to amend a claim by trying the claim with consent of the parties. *See Klai Clan v. Airai State Pub. Lands Auth.*, Civ. App. No. 12-051, slip op. at 5 (Aug. 22, 2013) (holding that the Land Court does not possess the inherent authority to amend a pleading by trying an issue by consent). Accordingly, it was error for the Land Court to address Idid Clan’s claim as one for superior title.

[5] Despite this error, the Appellate Division will not reverse the Land Court’s determination of ownership where the error had no bearing on why the appellant’s claim was denied. *See Ngiraiwet v. Telungalek ra Emadaob*, 16 ROP 163, 166 (2009). Although the Land Court ultimately resolved the dispute using a superior title analysis, it did so only after making a merits determination that Idid Clan failed to carry its return of public lands burden under both 35 PNC §1304(b)(1) and (2). That is, first, the Land Court held that Idid Clan failed to show that the property became public land “through force, coercion, fraud, or without just compensation or adequate consideration” by basing its claim solely on the appearance of a Japanese-sounding name.<sup>2</sup> And second, it held that Idid Clan failed to show it was proper heir to the land.

Under the statutory mandate for return of public lands claims, Idid Clan’s failure to carry its burden under 35 PNC § 1304(b)(1)-(2) should have ended the inquiry and the Land Court should have issued a Determination of Ownership to KSPLA. *See Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 93 (2006) (“At all times, the burden of proof remains on the claimants, not the governmental land authority, to establish by a preponderance of the evidence, that they satisfy all requirements of the [Land Registration Act.]”); *see also Masang v. Ngirmang*, 9 ROP 125, 129 (2002) (“If no claimant proves the[] necessary elements [of a return of public lands claim], title cannot be

transferred pursuant to section 1304(b), and the property remains public land.”). To the extent the Land Court held that KSPLA, as a public entity in a return of public lands claim, was required to prove anything at all, such holding was a misinterpretation of the burden articulated in *Ngiratrang*. However, the Land Court’s continued analysis under a superior title rubric does not constitute grounds for reversal because (a) the Land Court had already made a merits determination of Idid Clan’s return of public lands claim and (b) it ultimately issued (albeit for different reasons) a Determination of Ownership to the public lands entity.

**II. We decline to address Idid Clan’s next contention on appeal as it is inadequately briefed.**

[6] Based on a comparison of the land illustrated in the Worksheet Lots and the land in the Tochi Daicho Lots, the Land Court determined that the marine areas near the shoreline contained in Tochi Daicho Lot 987 had been filled and expanded in size over the years. Idid Clan appeals this finding, but the extent of its argument spans less than one-third of a page and cites no legal authority whatsoever. It amounts to little more than a conclusory statement that there was “no evidence” to support the finding. We will not address this claim here as it is inadequately briefed. *See Idid Clan v. Demei*, 17 ROP 221, 229 fn. 4 (2010) (“It is not the Court’s duty to interpret this sort of broad, sweeping argument, to conduct legal research for the parties, or to scour the record for any facts to which the argument might apply. As we have previously noted, ‘[a]ppellate courts generally should not address legal issues that the parties have not developed through proper briefing.’

<sup>2</sup> The court’s statement to this effect was that “[i]n light of the foregoing, this Court is not convinced enough to find that the lands here belonged to a Japanese national and thus became part of public lands after World War II.”

*Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 50 (2006) (quotations omitted).”). In any event, because Idid Clan failed to carry its burden under 35 PNC § 1304(b)(1)-(2), the Land Court’s determination here is of no moment, as such was made as part of its superior title analysis.

### CONCLUSION

We **AFFIRM** the Land Court’s conclusion that *Butilei* did not become public land through a wrongful taking and that Idid Clan failed to establish its return of public lands claim. We hold that any discussion concerning a superior title claim, which was not before the Land Court, was outside of the Land Court’s authority and therefore is of no effect.