

Rurcherudel v. Uchel, 3 ROP Intrm. 140 (1992)
**IN THE MATTER OF THE APPEAL FROM
LAND CLAIMS HEARING OFFICE FILE NO. 07-37-38 RE:
LAND KNOWN AS TUNGELEL, LOT NO. 173 11043**

**IYECHAD RURCHERUDEL,
Appellant,**

v.

**NGIRUCHELBAD UCHEL,
Appellee.**

CIVIL APPEAL NO. 5-90
Civil Action No. 359-89

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: May 26, 1992

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Mariano W. Carlos

BEFORE: MAMORU NAKAMURA, Chief Justice; ROBERT A. HEFNER, Associate Justice;
ALEX R. MUNSON, Associate Justice.¹

PER CURIAM:

The Land Claims Hearing Office (“LCHO”) determined that the land known as Tungelel in Airai (Lot No. 173-11043) is the property of the descendants of Bloid, who drifted to Palau from Yap and became a member of Tungelel Clan. Appellee, one of Bloid’s descendants, was declared Trustee of Tungelel. Appellant appealed the LCHO determination on July 6, 1989, and paid to have the LCHO Summary and Adjudication translated but not the record of the LCHO hearing itself. Consequently, the record on appeal to the Trial **1141** Court as well as this Court is limited to the Summary and Adjudication of the LCHO. *Arbedul v. Olkeriil*, Civ. App. No. 7-91 (App. Div. Aug. 1991).

On the basis of the Summary and Adjudication, the Trial Court affirmed the LCHO decision, stating, “Decisions of lower tribunals may not be set aside upon appeal unless such are clearly erroneous.”

¹ This matter was heard by all three members of the panel, but this Opinion is signed by a majority of two Justices due to the death of Chief Justice Nakamura on April 25, 1992.

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The case the Trial Court relied upon, *Ngiradelubech v. Timulch*, 1 ROP Intrm. 625 (App. Div. 1989), involved appellate review of the trial court's affirmation of a Palau Land Commission decision rather than trial court review of an LCHO decision. The court in *Ngiradelubech* stated that a trial court's choice between two different but equally plausible conclusions, each of which is internally consistent and uncontradicted by extrinsic evidence, can never be clearly erroneous.

Under 14 PNC § 604(b), findings of fact of the trial division in cases tried by it shall not be set aside unless clearly erroneous, however, in all other cases the appellate or reviewing court may review the facts as well as the law. The Trial Court in this case had discretion to review the facts presented to the LCHO outside of the "clearly erroneous" standard, but apparently decided such a review was not warranted. *Klai Clan v. Bedechal Clan*, Civ. App. 7-89 (App. Div. July, 1989).

The Trial Court may have had discretion to review the facts de novo, but this Appellate panel does not. *See*, 14 PNC § 604(b). Although the lower court did not provide an analysis of its ¶142 reasoning that the LCHO determination should not be set aside, we conclude from our review of the record that the Trial Court's judgment was not clearly erroneous.

Appellant argued before the Trial Court and is arguing now that Tungelel is clan (or lineage) land. The LCHO agreed with Appellee that Tungelel belongs to Bloid's family ("ongalek a Bloid"), based on the testimony of Appellant, Appellee and a witness for Appellee. The testimony summarized in the LCHO decision presents two different but equally plausible versions of the facts.

Appellant argues on appeal that the preponderance of the evidence shows that Tungelel was registered as property of the clan during the last Japanese Land Survey. In fact, the Summary and Adjudication found that Appellee testified that the land had been the property of Bloid and her descendants since the beginning (Irechar). Appellant testified that his father placed monuments on the land and registered his name as trustee because he had been given the title *Rurcherudel* by Appellee and his sisters. Thus, the Summary and Adjudication provides no support for the claim that Tungelel was registered as clan (or lineage) land during the last Japanese Land Survey.

The transcript of the Trial Court hearing refutes Appellant's argument.

The Court: A point was made about the Tochi Daicho. Okay, now we know of course that this is Airai and there is no Tochi Daicho [sic], but I don't see anything in the Summary and Adjudication that indicates that anybody ¶143 testified that [sic] to what the Tochi Daicho [sic] supposedly said about this. Do you recall that from the testimonies?

Counsel for Appellee, Mariano Carlos: Yes, from this case, what was said was Edesomel registered the land and Yaoch pointed out the boundaries. But none of that state [sic] whether they registered the land as lineage land or clan land.

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The Court: . . . So there was no testimony as to what the Tochi Daicho [sic] would have shown if it had been found.

Nor are we persuaded by Appellant's claim that no credible evidence was presented to show how Bloid and her family acquired Tungelel initially. According to the Summary and Adjudication, Appellee testified that the titles Rurcherudel and Yaoch, plus a taro patch, were given to Bloid's family by a high ranking house of Airai for services rendered. The LCHO and the Trial Court apparently believed this account, and it is not within the scope of our review to question their findings on the matter.

Finally, Appellant argues that the LCHO and the Trial Court should have rejected Appellee's claim to Tungelel as barred by the 20 years statute of limitations set forth in 14 PNC § 402 (a). The LCHO Summary and Adjudication does not address the statute of limitations question. Appellant's claim that his testimony that Tungelel is clan property, with the Rurcherudel as trustee, went unchallenged and unrebutted at the LCHO hearing overlooks the contradicting testimony of Appellee. Appellant cannot establish his claim simply by arguing that he has lived on Tungelel for more than 70 years, without showing adverse or hostile possession. The actions of the former Rurcherudels appear to be consistent with ¶144 their duties as trustee of Tungelel for Bloid's family. That they were considered to be "trustees" of Tungelel may be attributable to the fact that they drifted into Bloid's family rather than being born into it, and so held the title and were responsible for the land at the sufferance of Bloid's family.

Having carefully reviewed the record, we are not persuaded that the Trial Court decision was clearly erroneous. Accordingly, the decision of the Trial Court is hereby AFFIRMED.