

Ngirchokebai v. Spesungel, 3 ROP Intrm. 200 (1992)
**IN THE MATTER OF THE APPEAL FROM THE
DECISION OF THE LAND CLAIMS HEARING OFFICE,**

**YAOCH DANIEL NGIRCHOKEBAI,
Appellant,**

v.

**ALFONSO SPESUNGEL,
Appellee.**

CIVIL APPEAL NO. 33-90

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: November 12, 1992

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: J. Roman Bedor

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ROBERT A. HEFNER, Part-time Associate Justice; ALEX R. MUNSON, Part-time Associate Justice

PER CURIAM:

BACKGROUND

This appeal is a dispute over land known as Becheselbai, which is in Airai State and designated Lot. No. 173-11062. The Tochi Daicho for Airai State was either lost or destroyed during World War II.

In a hearing before the Land Claims Hearing Office (LCHO), appellant claimed that Becheselbai belongs to the Kewii lineage of Emlokl Clan and that he is the trustee by virtue of the fact that he holds the head lineage title, Yaoch. According to appellant, Melwat Tengatel had surveyed the land during the Japanese land survey and registered it as Kewii lineage property with appellant as trustee.

1201 Baules Sechelong, appellant's witness, told a different story. He claimed that the land was registered by Melwat Tengatel as his personal property. He claims to know this is true because he was a member of the team who surveyed the land and it was he, his father, Ellabed and Meluat Tengatel who went together to register the land. When Meluat died, Sechelong's father allegedly told him that the land would be transferred to Baules as his individual property

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because it was better land than where he lived in Ngerulwobel. Baules refused to live on the land, but agreed to let it be registered in his name. Thereafter, he asked his father to grant Spesungel a use right for the land and that is why Spesungel built his house there. He also testified that appellant was wrong about the title Yaoch being the head of the lineage, as it is a Clan title.

Appellee testified that the land was his father's individual property and that he has lived on the land his entire life without objection from anyone. After his father's death, the land was given to him at the *Cheldecheduch* by those with authority to do so. Appellee claimed no personal knowledge as to how the land became his father's personal property.

Ngiruchelbad Uchel testified on behalf of appellee and claimed that the land had been that of Emlokl Clan, but was registered as the individual property of appellee's father during the second Japanese land survey. He claimed that he knew this to be true because he was the Chairman of the Airai Registration Team and has personal knowledge that the strong members of the Emlokl Clan gave 1202 the land to appellee's father and that it was registered in his name.

A third claimant, Ngeriut Matlab, who disputed only the boundary of the land, testified that the land was given to appellee's father by Metlab, and that it was in turn given to appellee at his father's *cheldecheduch*. Midol Temol, testifying on behalf of Ngeriut Matlab, claimed that the land was given to appellee during his father's *cheldecheduch*.

The LCHO found that the testimony of appellant lacked credibility and was inconsistent with positions he had taken and the testimony of his own witness, Baules Sechelong. It also questioned why Baules did not attend the *Cheldecheduch* if the land was registered in Baules' name with appellee's father having only a use right. Finally, it also could not reconcile why if the land was Metlab's individual property he informed strong Clan members that he was giving the land away. Based upon its analysis of the testimony presented, the LCHO concluded that the land had been given to appellee's father by the strong members of the Emlokl Clan and that it was in turn given to appellee by members with the authority to do so at his father's *Cheldecheduch*.

Ngirchokebai appealed the LCHO determination to the Trial Division without moving for a trial *de novo*. The trial court highlighted the same credibility and inconsistency problems found by the LCHO and affirmed the LCHO determination as being supported by reasonable evidence.

Ngirchokebai has appealed this affirmance to the Appellate 1203 Division asserting that the trial court erred because:

1. There was no reasonable evidence to support the LCHO's finding of fact that the Emlokl Clan owned Becheselbai when it transferred it to Spesungel's father, from whose estate it was transferred to Spesungel; and
2. It did not find that the LCHO denied Ngirchokebai due process of law when

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the LCHO disregarded the preponderance of the evidence relating to the listing of Becheselbai in the Tochi Daicho which was in favor of Ngirchokebai.

ANALYSIS

Ngirchokebai's assignments of error go to the LCHO's weighing of the evidence and the trial court's finding that there was reasonable evidence to support the LCHO's decision. Appellant requests this Court to re-weigh the evidence presented to the LCHO and conclude that the trial court erred in affirming the LCHO decision.

Our standard of review of the trier of fact's decision is "controlled by the 'clearly erroneous' test which does not include review of the facts *de novo*. *Udui v. Temol*, ____ ROP Intrm. ____ (Civ. App. No. 12-89, May 7, 1991) Under this test, findings of the trier of fact are "clearly erroneous when after reviewing the **1204** entirety of the evidence the reviewing court is left with the firm conviction that a mistake has been committed. *Id.*, citing, *Sengebaw v. Balang*, 1 ROP 695, 697 (1989).

We have thoroughly examined the record and are not left with the conviction that a mistake has been committed. The vast weight of the credible evidence presented to the LCHO supported its conclusion and the trial court's affirmance thereof. The decision of the trial court affirming the LCHO's decision is AFFIRMED.