

*Temael v. Bitlaol*, 7 ROP Intrm. 197 (1999)  
**MELII TEMAEL & RIKEL TEMARSEL,**  
**Appellants,**

v.

**IKREBAI BITLAOL,**  
**Appellee.**

CIVIL APPEAL NO. 98-09

Supreme Court, Appellate Division  
Republic of Palau

Argued: February 26, 1999

Decided: May 11, 1999

Counsel for Appellants: J. Roman Bedor

Counsel for Appellee: Salvador Remoket, Micronesia Legal Services Corporation<sup>1</sup>

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; and LARRY W. MILLER, Associate Justice.

MILLER, Justice:

This appeal concerns the ownership of Tochi Daicho Lot No. 708, commonly known as Oidesong, located in Elab Hamlet, Ngaraard State. <sup>2</sup> It is undisputed that the Tochi Daicho lists Serui as the individual owner of the lot, and that he died in 1942. An eldecheduch was **¶198** held for him, but there was no evidence that Oidesong was discussed. The Land Court awarded the lot to Appellee, Serui's daughter from his third marriage and his only child to claim the land.

Appellants assert two grounds for appeal. First, they claim that the Land Court erred in disregarding affidavits from two of their witnesses, Maria Rehuher and Ngirarois Idip. Second, Appellants argue that the Land Court erred in awarding the lot to Appellee because it was given to Delbochel, Serui's daughter from his second marriage, after his second wife died, and was ultimately given to them.<sup>3</sup>

---

<sup>1</sup> Appearing pursuant to Rule 3(b) of the Rules of Admission for Attorneys and Trial Counselors.

<sup>2</sup> The lot was subdivided into Cadastral Lots No. E002-46 and E002-47.

<sup>3</sup> According to Appellants, when Delbochel died the lot passed to her half-brother, Ngirayobei Rehuher. Rehuher then allegedly conveyed the lot to Sermong, Appellants' mother. When Sermong died, Appellants claim that Rehuher gave the lot to them because they were Sermong's children and they were living in Ngaraard where the lot is located.

*Temael v. Bitlaol*, 7 ROP Intrm. 197 (1999)

We find no merit in these arguments. First, from our review of the record, we do not believe that the Land Court disregarded the affidavits of Appellants' witnesses. The Adjudication and Determination recites that Appellants were instructed to submit the affidavits by December 9, 1997, and that Appellants did so on December 8, 1997. Nothing in the Adjudication suggests that the Land Court failed to consider them; to the contrary, the Land Court commented on both of them. It noted, for example, that it found "conflicting statements" in Idip's affidavit and Appellants' testimony. Although it characterized Rehuher's affidavit as "'hearsay' unsupported by preponderance of evidence," we interpret that comment not as an indication that it had been excluded from evidence, but rather as expressing the Court's view that it contained second-hand information that was outweighed by the other evidence presented.

Appellants' counsel conceded at oral argument that their second argument entails an attack on the Tochi Daicho listing in favor of Serui: if Delbochel had been given the land at the eldecheduch of her mother, it must have been before the Tochi Daicho was prepared, and she, rather than Serui, should have been listed there. But Appellants have a difficult burden to meet in attempting to overcome the Tochi Daicho's presumption of correctness on appeal. They must show not only that they presented sufficient evidence that, if credited by the Land Court, would amount to clear and convincing evidence that the listing was wrong, but also that the Land Court's failure to credit that evidence was clearly erroneous that no reasonable factfinder could have concluded otherwise. They have not met this burden.

The Determination of the Land Court awarding Oidesong to Appellee Ikrebai Bitlaol is accordingly AFFIRMED.