

Uchelkeyukl Clan v. KSPLA, 7 ROP Intrm. 98 (1998)
**UCHELKEYUKL CLAN, KALISTA NGIRKELAU, NGIRATKEL ETIPSON,
NGIRBOKETERENG MEREK, and ADELBAI REMED,
Appellants,**

v.

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

CIVIL APPEAL NO. 22-97
Civil Action Nos. 328-94 and 346-94

Supreme Court, Appellate Division
Republic of Palau

Argued: August 3, 1998
Decided: August 17, 1998

Counsel for Appellant Uchelkeyukl Clan: Johnson Toribiong

Counsel for Appellants Ngiratkel Etipson and Ngirboketereng Merek: Moses Y. Uludong

Counsel for Appellants Kalista Ngirkelau and Adelbai Remed: David J. Kirschenheiter

Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
and R. BARRIE MICHELSEN, Associate Justice.

MICHELSEN, Justice:

This appeal concerns the ownership of certain public lands in Koror State that 199 comprise several islands and islets now connected to Koror by a causeway from Renrak Channel to the KB Channel.

These lands were listed in the Tochi Daicho as Japanese Government lands. Ngetmeduch was listed in the Tochi Daicho as Lot No. 1865. Ngesaol was designated as Lot No. 1887. Appellants sought their return pursuant to Article XIII, Section 10 of the Palau Constitution ¹ and

¹ Article XIII, Section 10 of the Palau Constitution states:

The national government shall, within five (5) years of the effective date of this Constitution, provide for the return to the original owners or their heirs of any land which became part of the public land as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration.

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35 PNC § 1104(b).² The Trial Division affirmed the Land Claims Hearing Office (LCHO) determination of ownership awarding the land to the Koror State Public Lands Authority (KSPLA). We affirm the Trial Division decision.

BACKGROUND

All of the claimants who appeared before the LCHO, except Idid Clan, have appealed. Each claimant presented an oral history of the ownership of the parcels, sometimes augmented with written documents. All the histories are in factual conflict with each other. A brief summary of the Appellants' positions follows.

Appellant Uchelkeyukl Clan

Appellant Uchelkeyukl Clan is the first ranking clan of Ngermid Hamlet. The Clan's position was that both Ngesaol and Ngetmeduch were within that part of Ngermid Hamlet traditionally "within the jurisdiction of Chief Recheyungel. But it should be noted that Chief Recheyungel did not assert the claim for the lands in dispute on behalf of Ngermid Hamlet. He asserted the claim for Uchelkeyukl Clan." Uchelkeyukl Clan's Opening Brief in the Trial Division (Aug. 21, 1997) at 26. The Clan asserts that members used and occupied L100 both lands. Ngetmeduch was considered where the Clan first landed, and was used for ceremonial purposes.³

With respect to Ngesaol, there is some evidence that in 1908 Chief Recheyungel Hemaurel, the head of Uchelkeyukl Clan during the German Administration, sold, or at least granted a use right, to a German national for thirteen axes, one sack of rice and two blankets. The Clan believes this transaction was a use right only, but if the transaction with the German

² To implement Article XIII, Section 10 of the Constitution, the Olbiil Era Kelulau enacted 35 PNC § 1104 (b), which provides in pertinent part that:

The Land Claims Hearing Office shall award ownership of any public land, or land claimed as public land, to any citizen or citizens of the Republic who prove that such land became part of the public lands, or became claimed as part of the public lands, as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation or adequate consideration, and that prior to such acquisition such land was owned by such citizen or citizens or that such citizen or citizens are the proper heirs to such land.

Section 1104(b) recently has been repealed and reenacted, with changes not relevant here, as § 1304(b).

³ According to the Clan's witnesses, its members used Ngetmeduch for traditional ceremonies and religious practices, including olsarch a tiakl, the practice of recording clan mourning days by tying knots on a string.

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national is deemed a purchase, the Clan argues that the items exchanged do not constitute adequate consideration under Article XIII, Section 10. The Clan's position is that the actual loss of ownership occurred when the Mandate Government took Ngesaol by force without paying compensation for it. Ngetmeduch was also expropriated in the same manner. There is evidence that the Recheyungel of the 1930s objected to this interference with his authority over these lands, and was jailed for it.

Appellants Ngiratkel Etpison and Ngirboketereng Merep

Appellants Ngiratkel Etpison and Ngirboketereng Merep contend that the land should be returned to Ngerbodel Chief Iked, the male title holder of Idong Clan of Ngerbodel. According to their witnesses, after Idong Clan provided assistance to the Ngerbeched warriors and helped them annihilate Ngesau, the Ngerbeched chief gave the property to Iked as a reward.

Appellant Kalista Ngirkelau

Appellant Kalista Ngirkelau is appealing on behalf of Iyebukel Lineage and claims only the portion of Ngesaol known as Ngerultachel. Ngirkelau contends that the lineage owned Ngerultachel and that the Japanese evicted its members from Ngerultachel when a water reservoir and pump station was built there. There was no indication as to whether compensation was paid for the property.

Appellant Adelbai Remed

Appellant Adelbai Remed is appealing on behalf of Ucheliou Clan and claims Ngetmeduch as land owned by that Clan. The Clan traces its ownership back to a period when there was severe famine in Palau. The oral history is that the Clan's ancestors migrated from Ngatpang in search of food, found fruit-bearing trees on Ngetmeduch and established their settlement. The ancestors eventually migrated from Ngetmeduch to Ngerbodel. A woman of that line married a member of Ucheliou Clan and gave Ngetmeduch to the Clan. The ancestors built a shrine there, and they maintained and used it even when they moved to other places. They claim that the Germans prohibited their worship at the shrine, but the Clan resumed worship when the Japanese took control. The Clan planted coconut trees and harvested them, until the Japanese ejected them without paying compensation.

1101 LCHO AND TRIAL DIVISION FINDINGS

The LCHO, after hearing live testimony and reviewing what documentation was submitted, found that with respect to Ngetmeduch, its islands "were at various times used by different clans and people for a variety of purposes, none of which [were] tantamount to ownership of the islands." It concluded that "[such intermittent use of the wild vegetation and small parts of the island for clan rituals are not sufficient to establish ownership of the land." The LCHO concluded that no party carried its burden to prove ownership of Ngetmeduch.

With regard to Ngesaol, the LCHO concluded that it was "traditionally considered part of

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Ngermid Hamlet, as differentiated from Uchelkeiukl Clan.” Recheungel, as chief title holder of Uchelkeyukl Clan, had authority over that part of Ngermid that included Ngesaol, and that is why he had the authority to transfer Ngesaol in German times. However, the LCHO concluded that authority of Recheungel to control use of certain Ngermid Hamlet lands did not create a Clan ownership right to those lands.

One factor considered by the LCHO was that in the early 1950s, the Recheungel made claims on behalf of Uchelkeyukl Clan for lands which had been taken by foreign occupying powers, but did not include Ngesaol as one of the Clan lands. As for the assertion by the Clan that members occupied Ngesaol in earlier times, the LCHO noted that if the land belonged to Ngermid Hamlet, “it was permissible for the village people to simply establish their residence on the vacant land without being opposed.”⁴

The LCHO further noted that the claims of Etpison and Merep to Ngesaol, based upon transfer to Chief Iked, who in turn sold or leased it during German times, was in conflict with not only the understanding of the other claimants, but with what written documentation exists.

After a thorough review of the record, the Trial Division concluded that although there was some evidence to support each appellant’s claim, upon “reviewing the entire record as a whole, . . . [there is] no reason to disturb the LCHO determination.”

ANALYSIS

The Trial Division “has the discretion to adopt the LCHO findings in whole or in part and/or make its own new findings as long as there is evidence in the LCHO record to support its findings.” *Ngiratereked v. Joseph*, 4 ROP Intrm. 80, 83 (1993). This Court reviews the Trial Division’s findings under the clearly erroneous standard. *Diberdii Lineage v. Iyar*, 5 ROP Intrm. 61, 62 (1995). If the factual findings made or adopted by the Trial Division are “supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, those findings will not be set aside unless this Court is left with a definite conviction that a mistake has been committed.” *Elbelau v. Semdiu*, 5 ROP Intrm. 19, 22 (1994).

¶102 All of the appellants devoted most of their effort on appeal to demonstrating that the parcels were taken by force or for inadequate or no consideration. The first hurdle, however, and the more difficult leap for them on this factual record, is to prove that they owned the parcel or parcels they claimed, and the other claimants did not. The LCHO found, after a careful consideration of the evidence, that none of them (including Idid Clan, who did not appeal) satisfactorily proved ownership. The Trial Division agreed. We believe the result reached is not clearly erroneous.

The decision of the Trial Division is AFFIRMED.

⁴ The same observation could also be applied to other claimants who have some evidence of occupation at an earlier time. As the LCHO noted, and we agree, proof of occupation is not, standing alone, proof of ownership.