Arbedul v. Rengelekel A Kloulubak, 8 ROP Intrm. 97 (1999)
GABRIEL ARBEDUL AND MARIA BEKETAUT,
Appellants,

v.

RENGELEKEL A KLOULUBAK,
Appellees.

CIVIL APPEAL NO. 98-43
D.O. No. 03-177

Supreme Court, Appellate Division
Republic of Palau

Argued: November 24, 1999
Decided: December 23, 1999

Counsel for Appellants: Yukiwo P. Dengokl

Counsel for Appellees: Lourdes M. Materne

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

MILLER, Justice:

This appeal from Land Court concerns "Ked el Blai," a property located in Ngaraard State and registered as Lot No. 585 in the Tochi Daicho. The Land Court awarded ownership of Ked el Blai to appellees, the children of Kloulubak, based on its determination that the Tochi Daicho lists Kloulubak as the owner of Lot No. 585 and that Ked el Blai was given to appellees at the *eldecheduch* held upon the death of Kloulubak's wife.

Appellants raise two issues: (1) Whether the Land Court erred by failing to apply the doctrine of adverse possession, and ⊥98 (2) Whether appellants' evidence rebutted the presumption of accuracy attached to the Tochi Daicho listing.[1] We affirm the Land Court.

I.

Appellants contend that the Land Court erred by not applying the doctrine of adverse possession to award ownership of Ked el Blai to appellants or Romei Lineage, of which appellants are members. Appellants admit the record may contain insufficient evidence to support a claim of adverse possession, but contend that the fault for this deficiency lies with the

[1] Appellants also contend that the Land Court erred by failing to hold that appellees' claim was barred by the statute of limitations. While there may be situations where a statute of limitations defense is distinct from a claim of adverse possession, here they are the same.

Land Court for not exploring the applicability of the doctrine.

Appellants' argument raises the preliminary issue of whether appellants can prosecute this appeal on behalf of Romei Lineage. At the Land Court hearing appellants opposed the claim of Taro Matsuda, who claimed on behalf of Romei Lineage. Appellant Beketaut also denied that she was claiming on behalf of Romei Lineage. This Court has stated that "[a] party who makes a claim on one basis cannot prosecute her appeal on another." *See Tarkong v. Mesebeluu*, 7 ROP Intrm. 85, 87 n. 7 (1998).

We need not resolve this issue, however, because appellants' adverse possession claim must fail whether asserted on behalf of appellants or Romei Lineage. We agree with appellants that the record contains insufficient evidence to support a claim of adverse possession. [2] One can obtain title to land by adverse possession only if possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for 20 years. *See Rebluud v. Fumio*, 5 ROP Intrm. 55, 56 (1995); *Osarch v. Kual*, 2 ROP Intrm. 90, 91 (1991). Appellants failed to prove that they or other members of Romei Lineage have had exclusive possession of Ked el Blai for 20 years. *See Rebluud*, 5 ROP Intrm. at 56 (holding that party failed to establish adverse possession where it failed to show adverse, exclusive, or uninterrupted possession for 20 years). The record indicates that at least one member of Romei Lineage has lived on Ked el Blai since the 1950s. Yet the record also contains evidence that Kloulubak lived on Ked el Blai in the 1950s. The record contains no evidence indicating when Kloulubak ceased living on Ked el Blai. Consequently, the evidence fails to establish that Kloulubak left appellants or Romei Lineage in exclusive possession of Ked el Blai for the required 20-year time period.

The responsibility for the deficiency in the record lies with appellants, not the Land Court. The litigant bears the responsibility for identifying its claims and presenting evidence; it is not the court's job to develop the record or act as the claimant's advocate. *See Llecholch v. Lawrence*, 8 ROP Intrm. 24, 25 ⊥99 (1999). Appellants failed to assert adverse possession as grounds for relief in Land Court and failed to develop the record sufficiently to prove all the elements of an adverse possession claim. In these circumstances the Land Court correctly refrained from applying the doctrine of adverse possession to award Ked el Blai to appellants or Romei Lineage.

II.

Appellants claim the Land Court erred by not holding that appellants rebutted the presumption of accuracy attached to the Tochi Daicho listing. Appellants claim the evidence proves Kloulubak did not own Ked el Blai and only lived there at the sufferance of Romei Lineage. They also claim the evidence proves their father Arbedul obtained ownership of Ked el Blai in a 1950s court proceeding.

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[2] Given this conclusion, we also do not resolve the question when -- if ever -- a party may raise a legal argument in this Court that is supported by the Land Court record but that was not raised below. *Cf. Tarkong v. Mesebeluu*, 7 ROP Intrm. 85, 86-87 (1998) (addressing the issue in the context of appeals from the LCHO to the Trial Division).

We note at the outset that none of the evidence cited by appellants supports their claim to individual ownership of Ked el Blai. Appellants claim through their father Arbedul, yet their own evidence refutes their claim that Arbedul owned Ked el Blai. Along with Matsuda, appellant Arbedul himself claimed that Romei Lineage owns Ked el Blai. Appellants produced a judgment from Civil Action No. 11, an early-1950s case from the High Court of the Trust Territory, as evidence of the court action through which Arbedul allegedly obtained ownership of Ked el Blai. Yet the judgment awards ownership of the land at issue to Romei Lineage, not Arbedul.

For appellants' claim to succeed, it must be as asserted on behalf of Romei Lineage. This Court reviews factual findings of the Land Court under the clearly erroneous standard. *See Arbedul, et al. v. Romei Lineage* , 8 ROP Intrm. 30 (1999). While we agree with appellants that the record contains some evidence in favor of Romei Lineage, the Land Court did not clearly err in making a contrary determination. There is evidence that Kloulubak gave Ked el Blai to his children at the *eldecheduch* held upon the death of his wife. This evidence is inconsistent with Matsuda's testimony that Kloulubak himself acknowledged Romei Lineage's ownership of Ked el Blai. Furthermore, the Tochi Daicho lists Kloulubak as the owner of Ked el Blai. The Land Court was required to accord the Tochi Daicho listing a presumption of accuracy. *See, e.g., Silmai v. Sadang*, 5 ROP Intrm. 222, 223-24 (1996).

Appellants rely heavily on Civil Action No. 11 as proof of either their or Romei Lineage's ownership of Ked el Blai. Yet none of the documents proffered by appellants prove that Ked el Blai was even at issue in Civil Action No. 11. The judgment from Civil Action No. 11 records a dispute between Arbedul and one Ngirturong over land called Iruang. [3] The judgment does not mention Ked el Blai or Tochi Daicho Lot No. 585 and does not list Kloulubak as a party. Appellants attached a pre-trial order from Civil Action No. 11 to their appellate brief. They claim this document proves that Ked el Blai was part of Iruang. Even if this Court can take judicial notice of this document, [4] which was not made part of the record in ⊥100 Land Court, it does not prove that Ked el Blai was part of Iruang. The order describes the boundaries of Iruang, but nothing in the record indicates that these boundaries correspond to any of the boundaries of Ked el Blai.

The only evidence that Ked el Blai was at issue in Civil Action No. 11 comes from the testimony of Matsuda and appellant Arbedul, who claimed that Ked el Blai was part of Iruang. This testimony was contradicted by Hambret Senior, representative of appellees, who claimed that Iruang did not include Ked el Blai but lay further south. Moreover, the judgment from Civil Action No. 11 strongly suggests that Ked el Blai was not at issue in that case. The judgment states that the Japanese Government surveyors recognized the claim of Ngirturong to Iruang. The Tochi Daicho lists Kloulubak as the owner of Ked el Blai, not Ngirturong.

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[3] The judgment from Civil Action No. 11 is reported as *Arbedul v. Ngirturong*, 1 T.T.R. 66 (1953).

[4] Documents attached to a party's appellate brief are not, *ipso facto*, part of the record on appeal. *See* ROP App. Pro. R. 10(a) ("The original papers and exhibits filed in the [trial court] and the transcript of the proceedings, if any, shall constitute the record on appeal.").

Where conflicting evidence supports two permissible views of the evidence, the fact-finder's choice cannot be clearly erroneous. *See Kotaro v. ROP* , 7 ROP Intrm. 57, 61 (1998). The Land Court found that the judgment from Civil Action No. 11 "does not involve or include tochi daicho lot no. 585." Given the conflicting evidence, we cannot say that this determination or the court's final determination of ownership were clearly erroneous. Accordingly, we hold that the Land Court did not err in failing to conclude that appellants rebutted the Tochi Daicho presumption.

III.

For the foregoing reasons, we AFFIRM the Land Court's Adjudication and Determination awarding ownership of Ked el Blai, Tochi Daicho Lot No. 585, to the children of Kloulubak.