

Ngerusebek Lineage v. Irikl Clan, 8 ROP Intrm. 183 (2000)
NGERUSEBEK LINEAGE,
Appellant,

v.

IRIKL CLAN,
Appellee.

CIVIL APPEAL NO. 99-21
D.O. No. 07-147

Supreme Court, Appellate Division
Republic of Palau

Argued: April 5, 2000
Decided: May 1, 2000

Counsel for Appellant: Raynold Oilouch

Counsel for Appellee: Moses Uludong

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

MICHELSEN, Justice:

This appeal arises from a proceeding under the Land Claims Reorganization Act of 1996, 35 PNC § 1301, *et al.*, to determine the ownership of Lot BL-371, an area of 6,670 sq. meters located in Ngerusar Village, Airai. Claims to Lot BL-371 were filed by Irikl Clan and Ngerusebek Lineage. After a hearing, the Land Court awarded Lot BL-371 to Irikl Clan. Ngerusebek Lineage filed a timely appeal and argues that the Land Court erred in its findings of fact, conducted the hearing in a manner unfairly prejudicial to the Lineage, and improperly relied on records of other lots.

We affirm in all respects except to hold that the Land Court clearly erred in not awarding the section of Lot BL-371 between the Ngiruchelchui River and the northwestern boundary of Lot BL-402 to Ngerusebek Lineage. We remand with instructions for the Land Court to adjust the boundaries of Lot BL-371 and Lot BL-402 to reflect the Lineage's ownership of this additional area.

I. The Land Court's Findings of Fact

We review Land Court findings of fact under the clearly erroneous standard of review and will reverse only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *See Tesei v. Belechal*, 7 ROP Intrm. 89, 90

(1998).

The Land Court determined that Irikl Clan owned Lot BL-371 because Irikl Clan had used the land while Ngerusebek Lineage had not and because the Lineage failed to dispute the boundaries of Lot BL-371 at a 1978 monumentation.

These findings were not clearly erroneous as they pertain to the section of Lot BL-371 west of the Ngeruchelchui River and the section between the airport road and the northeastern boundary of Lot BL-402¹ where the house of Pedro Bilimang is located. Evidence was produced that members of Irikl Clan built three houses on these sections of Lot BL-371 in the 1980s and continue to occupy and use the houses. There is no evidence that members of Ngerusebek Lineage used that portion of Lot BL-371 during this time, although they twice protested L184 the construction and occupation of Pedro's house. The Lineage's representative at the hearing, Skebong Ilabsis, claimed that the land where Pedro's house is located used to be a taro patch belonging to the Lineage. But the Lineage's own witness, Adelbairureor Rengulbai Ngirdimau, testified that the land belonged to Irikl Clan and was never a taro patch. While there is evidence that in the past Irikl Clan used Pedro's land for a principal house site (*omsolel a blai*), the record contains no evidence of a principal house site belonging to Ngerusebek Lineage on Lot BL-371 west of the aforementioned river.

However, the Land Court's findings are clearly erroneous as they pertain to a section of Lot BL-371 between the Ngeruchelchui River and the northwestern boundary of Lot BL-402.² The 1978 monumentation record relied on by the Land Court shows that the Lineage claimed this land at the monumentation.³ In addition, all the pertinent testimony indicates that the river is the boundary between Clan and Lineage properties, including the testimony of Clan member Dirrangeang, who stated, "Irikl is on the other side of the river and Ngerusebek on here where the 'ukall' tree is located. It's on the other side of the river where the tree 'ukall' is the property of Ngerusebek." The Clan's representative at the hearing, Moses Bernardino, agreed that the section of Lot BL-371 between the river and the northwestern boundary of Lot BL-402 belongs to Ngerusebek Lineage:

Bernardino: When we look at 371 that will be included or that's our entire claim and they claim it. It seems to me that there is an error here. Based on the map, we can eliminate the, we will use the river as the boundary but I don't believe that the small area which I call Irikl [Pedro's house site] could be given away because that's the least of our household site which was not demolished.

Court: In other words, it is your testimony that you may allow the properties of Imerong or Irikl to use the river as their boundary on that side but you continue to claim the area which Pedro's house is located as part of Irikl.

Bernardino: That's correct.

¹ This boundary is marked as S 07°27'59" W on the Cadastral Worksheet.

² This boundary is marked as N 79°50'55" E on the Cadastral Worksheet.

³ There is no evidence to support the Lineage's assertion that it claimed all of Lot BL-371 at the 1978 monumentation.

Faced with this evidence, the Land Court should have awarded Ngerusebek Lineage the triangular section of Lot BL-371 between the river and the northwestern boundary of Lot BL-402. Accordingly, we remand with instructions for the Land Court to adjust the boundaries of Lot BL-371 and Lot BL-402 to reflect the Lineage's ownership of that parcel. We also instruct the Land Court to conduct any hearing, survey, or monumentation as will be necessary to comply with the mandate.

II. The Land Court's Manner of Conducting the Hearing

¶185 Ngerusebek Lineage claims the Land Court erred by failing to obtain the testimony of two individuals identified as witnesses by the Lineage and by prematurely terminating its questioning of Adelbairureor Rengulbai Ngirdimau. We disagree.

The Land Court is required to exercise reasonable control over the questioning of witnesses and the presentation of evidence so as to avoid needless consumption of time. *See* Land Court R. Proc. 10, 11. Ngerusebek Lineage had the opportunity to call and identify witnesses at the hearing and did not identify the individuals in question as witnesses until a post-hearing inspection of the property. The Land Court's decision not to obtain the testimony of the Lineage's witnesses fell within the Land Court's discretion in conducting the hearing.

Furthermore, we also conclude that the Land Court did not prematurely terminate the questioning of Ngirdimau. Skebong Ilabsis asked the witness numerous questions and the record reflects that the questioning was becoming repetitive. The Land Court did not err by terminating the questioning at that stage of the proceeding.

III. The Records of Other Lots

The Lineage also claims the Land Court erred in relying on the 1978 monumentation and records from Formal Hearing No. 19 because these materials were not part of the record. The rules of procedure permit the Land Court to take judicial notice of evidence outside the record in certain circumstances. *See* Land Court R. Proc. 5. Litigants may obtain an opportunity to be heard on the propriety of judicial notice by making a timely request in Land Court. *See id.*

Ngerusebek Lineage did not object to the use of the 1978 monumentation at the hearing or request an opportunity to be heard on the use of the monumentation or the records of Formal Hearing No. 19. The Lineage thereby waived its objections to these materials. *See Kubarii & Arbedul v. Olkeriil*, 3 ROP Intrm. 39, 40 (1991).

Ngerusebek Lineage v. Irikl Clan, 8 ROP Intrm. 183 (2000)

Conclusion

The Land Court's determination of ownership awarding Lot BL-371 to Irikl Clan is AFFIRMED in all respects except to hold that the Land Court clearly erred in not awarding the section of Lot BL-371 between the Ngiruchelchui River and the northwestern boundary of Lot BL-402 to Ngerusebek Lineage. We reverse that part of the determination and remand with instructions for the Land Court to adjust the boundaries of Lot BL-371 and Lot BL-402 to reflect Ngerusebek Lineage's ownership of that parcel. The Land Court shall also conduct any hearings, surveys, or monumentations as will be necessary to comply with the mandate.