

Etpison v. Sugiyama, 8 ROP Intrm. 208 (2000)
SHALLUM ETPISON
Appellant,

v.

SIMANE SUGIYAMA,
SECHEDUI CLAN, SOWEI CLAN, TIKEI CLAN,
Appellees.

CIVIL APPEAL NO. 98-12
Civil Action No. 589-93

Supreme Court, Appellate Division
Republic of Palau

Argued: July 31, 2000
Decided: August 4, 2000

Counsel for Appellant: John K. Rechucher

Counsel for Appellee Sugiyama: Johnson Toribiong

Counsel for Appellee Sechedui Clan: Moses Uludong, Trial Counselor¹

Counsel for Appellee Soweï Clan: J. Roman Bedor, Trial Counselor¹

Counsel for Appellee Tikei Clan: Oldiais NgiraiKelau

BEFORE: R. BARRIE MICHELSEN, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice; DANIEL N. CADRA, Senior Land Court Judge.

PER CURIAM:

This appeal of the Trial Division's award of two parcels of land in Peleliu to Appellees, based on their possession of quitclaim deeds they received from the Trust Territory Government (TT) in 1962, is decided today in conjunction with *Basiou v. Ngeskesuk Clan*, Civil Appeal No. 58-97. Appellant Shallum Etpison acquired his interest in the land from the heir of the owner listed in the Tochi Daicho. We affirm the Trial Court's judgment.

This quiet title action was brought by Appellant, who, in 1992, acquired deeds to the two parcels from Dave Ngiraked, who claimed ownership of the parcels as the successor to Ngirabiol, the owner listed in the Tochi Daicho. A trial was held with Appellees Sechedui Clan, Soweï Clan, Tikei Clan, and Simane Sugiyama opposing Etpison, to determine the initial issue of

¹ Roman Bedor and Moses Uludong filed response briefs but did not appear at oral argument.

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the validity of the quitclaim deeds. The three clans based their claims on quitclaim deeds that the TT gave to them in 1962, and Sugiyama based her claim as successor to Tikei Clan and from a judgment she obtained in the Land Claims Hearing Office. The history concerning the post-war transfer of lands to the clans of Peleliu is outlined in *Basiou v. Ngeseksuk* Clan, and need not be repeated here.

In his brief, Appellant raised numerous challenges, falling into three main arguments: 1) the quitclaim deeds to the clans were invalid; 2) the clans failed to return parcels of land to individuals who owned those parcels before the Japanese took them; and 3) the Article XIII, § 10 constitutional provision regarding the return of public lands should be applied in this case. At oral argument, however, Appellant's counsel agreed that quitclaim deeds to the clans were agreed to by the people of Peleliu, and, correctly in our view, abandoned his argument regarding the applicability of Article XIII. As rephrased at oral argument, Appellant argues that the clans received the land as a constructive trust for its members who owned particular parcels individually, and because of Ngirabiol's L209 individual ownership of these parcels before the war, Appellant's title as successor in interest should be considered valid. Accordingly, that is the only issue left to be decided.

The outcome of this case turns on the issue discussed in *Basiou*, and the result is the same: simply, that too much time has lapsed to seek enforcement of any constructive trust that may have existed. Ngirabiol died in 1971, nine years after the quitclaim deeds were issued, never having asserted his right to any parcel as an individual owner. Nor did his successor in interest, Ngiraked, assert his claim through Ngirabiol, from the time he allegedly acquired his interest in 1971 through the time he sold it to Appellant in 1992. Appellant took a quitclaim deed rather than a warranty deed, and then brought this action. If a constructive trust existed, claims under it are now barred by laches.

Like the claimants in *Basiou*, Appellant had the burden of establishing that the constructive trust existed. While there was testimony at trial as to the general scheme of how the people in Peleliu went about claiming their land from the TT, through their clans, there was no testimony at trial that the clan claimed this land on behalf of Ngirabiol or any other individual. Therefore, the Trial Court had no evidence on which it could have based such a finding.

The Trial Court's finding that the quitclaim deed was the best evidence at trial of the ownership of the land is affirmed.