

Basiou v. Ngeskesuk Clan, 8 ROP Intrm. 209 (2000)

**RENGUUL BASIOU and
AUGUSTINE MESEBELUU,
Appellants,**

v.

**NGESKESUK CLAN,
Appellee.**

CIVIL APPEAL NO. 97-58

Supreme Court, Appellate Division
Republic of Palau

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

Counsel for Appellant: David Kirschenheiter

Counsel for Appellee: Johnson Toribiong

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

PER CURIAM:

This is an appeal of the Trial Division’s judgment determining title to land in Peleliu, decided today in conjunction with *Etpison v. Sugiyama*, Civil Appeal No. 98-12, which presents parallel facts and issues. Ngeskesuk Clan (“the Clan”) brought this quiet title action based on its possession of a quitclaim deed, received from the Trust Territory Government (“TT”) in 1962, covering a number of parcels. Appellants Renguul Basiou¹ and Augustine Mesebeluu **1210** (“Basiou and Augustine”) argue that the Clan received one of the parcels in trust for their father’s individual claim. We affirm the Trial Court’s judgment.

BACKGROUND

A trial was held to determine ownership of the parcel between claimants the Clan, Basiou and Augustine, and Fumio Rengiil Nguis (“Fumio”).² Basiou and Augustine claimed the land through their father, Mesebeluu.

¹ At oral argument it was revealed that Renguul Basiou is deceased. According to the Palau Rules of Appellate Procedure, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or any party. *See* ROP R. App. Pro. 43.

² Fumio did not appeal the Trial Court’s decision.

Basiou v. Ngeskesuk Clan, 8 ROP Intrm. 209 (2000)

The record reflects the following undisputed facts. The Tochi Daicho³ lists Mesebeluu as the owner of the land at issue. As part of the military buildup preceding the coming of the war to Palau, the Japanese required residents of some parts of Peleliu to move, and expropriated the land. After the war, the TT assumed control of all the land taken by the Japanese, and in the 1950s began the process of sorting out Peleliu land claims. Elbelau Nguis, Fumio's brother, filed a claim on behalf of Ngeskesuk Clan, but the District Land Title Officer denied the claim, finding that the Japanese had compensated the Clan for the land.

The Clan appealed to the Trial Division of the High Court for the Trust Territory, arguing that clan members had been compensated for crops, trees, and houses, but not the land itself. The appeal was dismissed after the TT and the Clan reached a settlement agreement, whereby the TT was to open the land to homesteading, and agreed to issue title to any homesteader remaining on the land for five years. However, after three and a half years, the TT issued the quitclaim deed to the Clan.

The Trial Court held that the quitclaim deed was valid. Although Basiou and Augustine had argued that the constitutional provision requiring the return of public lands to original owners where those lands were taken by force or without adequate compensation was applicable to them, the Trial Court found that the provision did not apply because the land was not owned by the public when that provision was passed. The Trial Court also noted that Appellants had not complied with the implementing statute by filing a claim for the land before the January 1, 1989 deadline.

In their brief, Appellants raised four arguments: 1) that the quitclaim deed was invalid because the TT breached its fiduciary duty to return the land to the original owners; 2) the TT had only a possessory interest in the land, not an ownership interest, and therefore the quitclaim deed transferred only that possessory interest; 3) the Clan failed its obligation to return the land to the individual owners; and 4) the Constitution's mandate regarding the return of public lands applies.

At oral argument, Appellants' position was that the people of Peleliu agreed that the TT should quitclaim the land to the Clan, but only because there was an oral agreement among clan members that once title was conveyed, the Clan would, in turn, reconvey title to the pre-war individual landowners. Although Appellants did not use the term "constructive trust" in the Trial Division, they agreed that it would be correct to recast their argument as a request for a constructive trust to be imposed on the lot at issue, and the relief requested would be an order requiring the Clan to convey the lots to Appellants.

1211 DISCUSSION

Because Appellants concede that the TT properly quitclaimed the land to the Clan, any arguments concerning the validity of the TT's title are of no moment. Therefore, we focus on the

³ The Tochi Daicho listings for Peleliu do not have the presumption of correctness as do listings for some states in Palau. *See In re Kloulubak*, 1 ROP Intrm. 701, 703 (1989).

Basiou v. Ngeskesuk Clan, 8 ROP Intrm. 209 (2000)

Appellants' remaining argument,⁴ that subsequent to the Clan's receipt of title, the Clan failed to carry out its equitable duty to reconvey the land to them. They contend that the Clan held the property in a constructive trust for those clan members who, like their father, owned parcels individually before the war, and that the Clan is violating an oral agreement made over forty years ago.

“A constructive trust arises where a person who holds title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it.” *Mitsubishi Int'l v. Cardinal Textile Sales*, 14 F.3d 1507, 1518 (11th Cir. 1994), (citation omitted); *see also Restatement of Restitution* § 160 (1937) (same).

Appellants' problem in this case, however, is that the equitable defense of laches bars their claim. “The right to enforce a constructive trust may be terminated as a result of the plaintiff's laches” *Id.* § 179. In *Delbochel Lineage v. Kloulechad*, 3 ROP Intrm. 145, 147 (1992), this Court defined laches as sleeping on one's right, a stale demand, such that others are misled to their detriment. In *Delbochel*, the descendants of the seller of a parcel of land argued that the purchasers of the land had never paid for the land in full. The descendants brought suit 44 years after the sale, and 11 years after the seller had died. *Id.* at 146. This Court held that their claim was barred by laches, because the failure to assert the claim while the seller was still alive to provide first-hand knowledge of the transaction was detrimental to the purchasers. *Id.* at 147-48.

Here, the quitclaim deed was issued in the Clan's name in 1962, and Appellants' knowledge of that fact has never been disputed. Appellants offer no explanation for why their father did not seek title to the land before he died in 1977. Indeed, it was the Clan who filed this quiet title action in 1993. Had Appellants made their claim when the TT announced that the land was to be returned, or during the nine years following the issuance of the quitclaim deed, Mesebeluu would have been able to provide first-hand testimony of his claim. Over forty years have passed since the TT invited claims for the land, and thirty-eight years have passed since the quitclaim deed was issued. While we cannot set out a bright line by which claims grow stale, we have no difficulty finding that this amount of time is beyond any reasonable period in which claims should be brought, and hold that Appellants' claim is barred by laches.

Moreover, the Trial Court had no evidence before it on which it could have based a finding that the Clan held this parcel of land as a constructive trust. The record contains the testimony of Sammy Ocheraol, who was employed as a surveyor with the Land and Survey Office in Peleliu for twenty years, beginning in the late 1950s. He testified that the people of Peleliu agreed to claim land through their clans rather than individually. However, there was no testimony whatsoever that the Clan claimed this particular parcel of land on behalf of Mesebeluu, or any other individual. Appellants did not produce any evidence at trial to support their argument, and the Trial Court could not have concluded other than it did as there was no evidence to the contrary. *See Ngiraingas v. Isechal*, 1 ROP Intrm. 36, 1212 41-42 (1982) (no evidence that individual objected to clan's claim and therefore parcels at issue in Peleliu

⁴ Appellants also agreed at oral argument with the Trial Division's holding that Art. XIII, § 10 of the Palau Constitution is not applicable to their case.

Basiou v. Ngeskesuk Clan, 8 ROP Intrm. 209 (2000)
belonged to clan rather than individual).

The only evidence presented at trial that the land belonged to Mesebeluu was the Tochi Daicho listing. The Trial Division was entitled to weigh this evidence against the Clan's evidence, *see In re Kloulubak*, 1 ROP Intrm. at 704, and to find that the quitclaim deed supersedes the Tochi Daicho listing.

Because Appellants failed to take action in a timely manner, their claim that the Clan holds their land in a constructive trust is barred by laches.