

Sandei v. Tungelel Lineage, 8 ROP Intrm. 228 (2000)
SINESIO SANDEI and KESIMONG LINEAGE,
represented by ILONG ISAOL,
Appellants,

v.

TUNGELEL LINEAGE, represented by
ROMAN TMETUHL, Trustee,
Appellee.

CIVIL APPEAL NO. 99-18
Land Court D.O. No. 07-144

Supreme Court, Appellate Division
Republic of Palau

Decided: October 20, 2000¹

Counsel for Appellant Ilong Isaol: Carlos H. Salii

Counsel for Appellant Sinesio Sandei: Pro se
Counsel for Appellee: Johnson Toribiong

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

PER CURIAM:

This is an appeal from the Land Court's determination of ownership of Lot No. BL-142 in Airai State, part of the land known as Kesimong. The Land Court heard the testimony of the witnesses and found that one claim was more credible than the others, and we affirm the determination. One appellant now challenges the impartiality of the lower court because of the relationship between the judge and a party, but here this argument has no merit.

BACKGROUND

The parties do not dispute that the land known as Kesimong was divided into two parts, lots nos. BL-142 and BL-143, when the government was acquiring land for building the air strip at the airport in Airai. The Land Commission held a hearing in 1978 on Lot No. BL-143, and Tungelel Lineage and Sandei were claimants then. The Land Commission found that Tungelel Lineage owned BL-143.

¹ Because the panel has determined that oral argument would not materially assist the Court in resolving this appeal, we are considering this appeal on the briefs. ROP R. App. Pro. 34(a).

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The Land Court held a hearing regarding the ownership of Lot No. BL-142, and heard testimony from four claimants: Roman Tmetuchl on behalf of Tungelel Lineage; Francis Toribiong, who initially claimed it as individual property, but at the hearing merged his claim with Tungelel's claim; Ilong Isaol as trustee of Kesimong Lineage; and Sinesio Sandei on behalf of his father Sandei's children.

Several witnesses testified that Tungelel Lineage owned the land, and that the title of "Tmewang" belonged to the Lineage. Toribiong testified that he currently held the title, and that he was part of the Tungelel Lineage. Other witnesses testified that Kesimong Lineage owned the land, but even Ilong, who stated that the title Tmewang belonged to Kesimong Lineage, did not know of any relatives who had held the title. Sinesio testified that his father owned the land individually.

The Land Court considered the testimony, and found that the testimony of Tungelel Lineage's witnesses was the most credible. The Land Court noted that the testimony was consistent with the Land Commission's findings in 1978, and that Tochi Daicho records were not available for **1229** the property. Sinesio and Ilong have appealed.

ANALYSIS

This Court reviews the Land Court's findings of fact for clear error and will only reverse if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *Tangadik v. Bitlaol*, 8 ROP Intrm. 204, 205 (2000). We generally defer to the lower court's findings regarding the relative credibility of witnesses, and although reversal is possible, it is reserved for extraordinary cases. *Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 35 (1999).

Appellant Sinesio alleges that there are inconsistencies in witnesses' testimony that are evidence of their untruthfulness, but those inconsistencies are not found in the transcript and, in any case, concern peripheral rather than material facts. We see no reason to overturn the Land Court's credibility determination. Sinesio also argues that the Land Court's decision was based on the 1978 determination which was based on erroneous evidence, but this is factually incorrect. No objection was made to the accuracy of the Land Commission records, and it was not improper for the Land Court to consider them. Even had the Land Court's consideration of the records been erroneous, there was testimony in the recent hearing that provides a sufficient basis for the determination.

Appellant Ilong requests a new trial to determine whether under Palauan custom, one lineage may hold or own property of another lineage. This argument presupposes and depends on the factual conclusion that Tungelel owns property belonging to Kesimong Lineage, but the Land Court concluded otherwise, and it was not clearly erroneous in doing so. Ilong also contends, for the first time, that the Land Court judge was unduly influenced by a party who was a former supervisor over the judge, merely because of the existence of the previous working relationship. We reject this argument. Ilong does not suggest that Palau's disqualification statute

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has been violated,² and “only in the most extreme of cases” does bias or prejudice amount to a constitutional violation that requires disqualification. *Aetna Life Ins. Co. v. Lavoie*, 106 S. Ct. 1580, 1584-85 (1986) (“[M]atters of kinship, personal bias, state policy, remoteness of interest, would seem generally to be matters merely of legislative discretion.”)³ The attenuated relationship at issue here, without further facts to support an allegation of undue influence, is insufficient to require disqualification.

CONCLUSION

We find that there is no reason to disturb the Land Court’s credibility determination, and no proof of undue influence was offered. We AFFIRM the Land Court’s determination of ownership to Tungelel Lineage.

² That statute forbids a judge to hear a case where “he has a substantial interest . . . or is so related to, or connected with, any party or his attorney as to render it improper, in his opinion, for him to participate in hearing and determination of the case.” 4 PNC § 304.

³ See also *Del Vecchio v. Illinois Dept. of Corrections*, 31 F.3d 1363, 1371-73 (7th Cir. 1994) (analyzing Supreme Court cases on disqualification of judges, and concluding that the constitutional violation must involve a direct, personal, and substantial influence on the judge, and has been found only in cases of financial interest, where the litigant’s direct personal insults to the judge were extreme, or where the judge acted in a dual role of prosecutor and judge).