

Llecholch v. Lawrence, 8 ROP Intrm. 24 (1999)
EMILIANO LLECHOLCH,
Appellant,

v.

EBIL LAWRENCE,
Appellee.

CIVIL APPEAL NO. 98-16

Supreme Court, Appellate Division
Republic of Palau

Decided: August 19, 1999¹

Counsel for Appellant: Raynold B. Oilouch

Counsel for Appellee: Johnson Toribiong

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

BEATTIE, Justice:

This Land Court appeal concerns Tochi Daicho Lot 474, traditionally known as Bars, in Ngermechau Hamlet, Ngiwal State.² The Tochi Daicho lists Ngirabad as the individual owner of the lot. Ngirabad bore the title Sikesol of Ngersikesol Clan. It is undisputed that he died in 1953, and that Bars was not given away at his eldecheduch. The Land Court concluded that Bars belongs to Ngirabad's daughter, Appellee Ebil Lawrence, his only child to file a claim. We AFFIRM.

I.

Information concerning the identity of landowners contained in the Tochi Daicho is presumed to be accurate, and a party challenging the correctness of a listing of land as individual property must prove the true ownership of the land by especially clear and convincing evidence. *Blaluk v. Markub*, 7 ROP Intrm. 199 (1999), citing *Ngiraidong v. Ngesechei Clan*, 7 ROP Intrm. 121 (1998) *Elbelau v. Semdiu*, 5 ROP Intrm. 19, 21 (1994); *Espangel v. Tirso*, 2 ROP Intrm. 315, 318 (1991)).

Appellant challenges the Tochi Daicho listing by arguing, for the first time on appeal, that Bars belongs to Ngersikesol Clan because the Clan obtained it sometime prior to the Japanese

¹ Having reviewed the parties submissions, we believe that, pursuant to ROP R. App. Pro. 34(a), the facts and legal positions of the parties are clear and no oral argument is necessary.

² The land is also known as Cadastral Lot No. D09-099A.

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land registration through trade. Appellant claims that this argument is based on Appellee's testimony regarding the trade. However, Appellee only testified that her father--not the Clan--acquired the land through trade. Appellant never offered any contradictory testimony, either himself or through a supporting witness, that the land belonged to the Clan after the trade. Rather, Appellant's sole argument to the Land Court was that Bars was originally registered in the Clan's name (with Ngirabad as trustee), but that Ngirabad and his son changed the listing to Ngirabad's name. Although Appellant raises his trade argument now on appeal, we are not triers of fact. Rather, our task is to determine whether the Land Court was clearly erroneous in making its findings of fact. "Where a party's contention that a finding is erroneous is based upon evidence that was not introduced at trial, we cannot say that the trial judge was clearly erroneous in failing to take **125** such evidence into account." *Estate of Etpison v. Sukrad*, 7 ROP Intrm. 173, 175 (1999).

In the alternative, Appellant argues that even if Ngirabad did own the land, the Land Court erred in giving it away to Appellee because Ngersikesol Clan decided to keep the land for itself during Ngirabad's eldecheduch. We reject Appellant's argument, which was not presented to the Land Court and is unsupported by the record in any event. Appellant did not testify that any such decision was made by the Clan; to the contrary, he urged that Ngirabad was not from Ngersikesol. And even if he were, we have long held that a decedent's clan does not have a reversionary interest in individually owned land. *E.g., Kedung Clan v. Kerradel*, 4 ROP Intrm. 77, 79 (1993).

II.

Appellant has also filed a motion to remand, arguing that the Land Court breached its duty to inquire how Bars was transferred from Ngersikesol Clan to Ngirabad. Appellant erroneously argues that the Land Court is required to question witnesses and assist claimants in presenting their claims. The Land Court Rules of Procedure give the Land Court judges the right, but not the obligation, to question witnesses. Rule 11 states that the Land Court *may* interrogate witnesses, but nowhere compels it to do so. Rule 2 requires the Land Court to "ensure fairness in the conduct of hearings and presentation of claims with or without assistance of legal counsel," but this obligation cannot be stretched, as Appellant urges, to include the duty to assist claimants in presenting their best claim. The Land Court is only required to ensure a fair procedure to all claimants; it is not required to act as each claimant's advocate.

Appellant also argues that he was denied due process because the Land Court continuously interrupted him, lectured him of his heavy burden of proof in overcoming the Tochi Daicho presumption, and otherwise embarrassed or frustrated him. While it is clear from the record that the Land Court did remind Appellant several times of his burden of proof, it cannot be said that he was denied due process. Procedural due process requires that a claimant be given notice and an opportunity to be heard. *Governor of Kayangel v. Wilter*, 1 ROP Intrm. 206, 209 (1985). The Land Court did not deny Appellant an opportunity to present his claim, and he did in fact explain his claim in detail at the hearing. There was no denial of due process.

The Determination of the Land Court awarding Bars to Appellee is accordingly
AFFIRMED.