

Heirs of Dilbedul v. Ngerucheoch Lineage, 8 ROP Intrm. 305 (2001)

**HEIRS OF DILBEDUL,
Appellants,**

v.

**NGERUCHEOCH LINEAGE,
Appellee.**

CIVIL APPEAL NO. 99-17
Land Court D.O. No. B-06-98

Supreme Court, Appellate Division
Republic of Palau

Decided: April 16, 2001¹

Counsel for Appellants: Johnson Toribiong

Counsel for Appellee: Raynold Oilouch

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

PER CURIAM:

The heirs of Dilbedul appeal from the Land Court's May 12, 1999, determination awarding Ngerucheoch Lineage ownership of Tochi Daicho Lot 565 in Ngerchemai Hamlet, Koror State. We affirm.

BACKGROUND

This appeal arises from a dispute over Tochi Daicho Lot No. 565² located in 1306 Ngerchemai Hamlet, Koror. Neither the name of the owner nor the size of the lot is recorded in the Tochi Daicho listing for Koror. The Japanese Index Map, described as Ngerchemai Hamlet Daicho Map No. 4018/70, shows Lot 565 to consist of 1,549.9 tsubo and the name Rechesengel appears as the purported owner. In 1974, there was a monumentation for Lot 565 and the adjacent lots by the Land Commission, in which Dilbedul and Rechesengel were present and agreed on the boundaries for their lands.

The Land Court determined that Appellee owns Lot 565 because of the long use and

¹ Upon review of the record and submissions of the parties, the panel has determined that this case is suitable for decision without oral argument. ROP R. App. Pro. 34(a).

² Part of the dispute revolves around the name of the lot. Appellee claims it is Ngermeang, while the Appellants argue it is called Oleblechol. The land is part of Tochi Daicho Lot 565, shown as Lots 181-220, 181-20B, 181-226 and 181-226A on BLS Worksheet No. 181.

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occupation by Rechesengel's relatives of the land and lack of objection by Dilbedul's successors.

ANALYSIS

Findings of the Land Court are reviewed under the clearly erroneous standard. If the factual findings made by the Land Court are "supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, those findings will not be set aside unless this court is left with a definite conviction that a mistake has been committed." *Tesei v. Belechal*, 7 ROP Intrm. 89, 90 (1998).

At the hearing, Appellants claimed that the land in question belonged to Dilbedul and Dilbedul leased the land out to Taika, a Japanese national, from 1941 to 1945. Appellants now argue that the Land Court committed clear error by finding the lease agreement was ambiguous, in that the size of the lot in the lease agreement is inconsistent with the size of Lot 565 listed on the Tochi Daicho Index Map. Appellants' argument is that there is no "all-or-nothing" rule for lease agreements, so the lease could have been for less than the entirety of the land and therefore legitimate. Of course, Appellants are correct that there is not an "all-or-nothing" rule. A lessor can rent out less than the total lot. However, here the ambiguity stems not from the fact that less than the total lot was leased, but from the fact that the total amount of land leased is different from the total size of Lot 565 as stated in the Tochi Daicho Index Map.

The Land Court acted within its discretion when it chose to discount the evidence related to the lease. All the witnesses who testified and lived in Ngerchemai Hamlet during the Japanese period said that there was no Japanese national using the land in question. Kedok Meluat, the one witness who claims to have seen Taika, did not move to Ngerchemai until after the war. Because the lease agreement description was not clear, and there was no reliable testimony to reinforce the lease agreement, the Land Court did not commit clear error in choosing not to rely on it.

Appellants also argue that the Land Court erred in relying on the testimony of Rechesengel's relatives instead of Joshua Ngiraklang, one of Dilbedul's heirs. Ngiraklang testified that Rechesengel's mother obtained permission from Dilbedul's mother to maintain a garden on this land. Rechesengel's relatives testified that they used the land without permission. Appellants argue that this was "an arbitrary choice." However, where more than one inference can be drawn from the testimony, and there are two permissible views of the evidence, the Land Court's choice is not clearly erroneous. *Arbedul v. Romei Lineage*, 8 ROP Intrm. 30, 31 (1999). Here, there is more than sufficient evidence to support the Land Court's determination. Ibau Oiterong, Rechesengel's sister, testified that she and her family lived on the land before the Japanese survey and planted citrus trees on the land. This testimony was supported by that of the other witnesses. The appellate court will not substitute its own judgment of the credibility of witnesses based on its reading of a cold L307 record, for the trial court's assessment of the witness' veracity. *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994). Here, evidence was presented in support of the claims of both parties, and the Land Court's findings were not so unreasonable that a reasonable trier of fact could not have made the same conclusion. *Tmol v. Ngirchoimei*, 5 ROP Intrm. 264 (1996). The Land Court's judgment is therefore AFFIRMED.