

Ucheliou Clan v. Alik, 8 ROP Intrm. 312 (2001)
UCHELIOU CLAN,
Appellant,

v.

MAX ALIK,
Appellee.

CIVIL APPEAL NO. 99-24
Land Court D.O. NOS. 07-175, 07-176, 07-177

Supreme Court, Appellate Division
Republic of Palau

Decided: May 7, 2001¹

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Oldiais Ngiraikelau

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

PER CURIAM:

Ucheliou Clan appeals the Land Court's issuance of a Determination of Ownership awarding land known as *Ibuuk* in Ngetkib Hamlet, Airai, to Max Alik. We affirm.

Background

Ibuuk consists of Lot Nos. 166-11164, 166-11166, and 166-11166A on the Bureau of Lands and Surveys Cadastral Worksheet No. 166. Claims to *Ibuuk* and several other properties were adjudicated at a 12-day hearing which lasted from February 15, 1999, **L313** to April 29, 1999.² Max Alik claimed the entirety of *Ibuuk* as the heir to his father Lik. Adelbai Remed and Ebas Ngiraloi claimed Lot Nos. 166-11164 and 166-11166A for Ucheliou Clan.³

The Land Court issued a Determination of Ownership awarding *Ibuuk* to Max Alik. The

¹ We have reviewed the briefs and record and find this case suitable for resolution without oral argument pursuant to ROP R. App. Pro. 34(a).

² Appeals from the other Determinations of Ownership issued in the case have been consolidated in Civil Appeal No. 99-26.

³ Simon Eberdong claimed a taro paddy called *Iyeb* within Lot No. 166-11166 for Eritem Lineage and Kikuo Remeskang claimed another part of Lot No. 166-11166 for Telmetang Ililau and her children. The Land Court awarded *Iyeb* to Eritem Lineage. Kikuo Remeskang did not appeal the award of *Ibuuk* to Alik and Alik did not appeal the award of *Iyeb* to Eritem Lineage.

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court found that Max's father Lik received permission from Chief Ngiraked of Airai to farm *Ibuuk* during the early years of the Japanese Mandate and that Lik received a deed to the land from a Japanese minister for his success in farming. The court found that Lik and Max continuously farmed *Ibuuk* from that time to the present except for a brief interruption during the war. The court concluded that Max's claim was more persuasive and prevailed over the claim of Ucheliou Clan. The court found that if Ucheliou Clan owned *Ibuuk*, it was at some remote period long before Lik took possession of *Ibuuk*. The court determined that Ucheliou Clan "did not present evidence persuasive enough to overcome the evidence of Lik's ownership shown by his long use and occupation" of the land.

Issues on Appeal

Ucheliou Clan contends that the Land Court erred in ruling that Lik acquired ownership of *Ibuuk* by virtue of his long use and possession of the land. Appellant claims that the evidence was that it owned *Ibuuk* at the time Lik took possession of the land and that Lik only received rights to use the land from Chief Ngiraked and the Japanese administration. He argues that Lik's possession therefore could not have converted to ownership under the doctrine of adverse possession.

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

We think Appellant misconstrues the Land Court's ruling. As we read the decision, the Land Court found that the evidence of Lik's possession of *Ibuuk* indicated that Appellant did not own *Ibuuk* when Lik took possession of the land, not that Lik acquired title to the land by adverse possession. The court said, "If Telmetang's father owned the land as Remeskang contends, it was at some remote period, long before Lik entered *Ibuuk* and assumed its ownership. *The same is true with regards to Ucheliou Clan's claim of ownership.*" (Emphasis added). While there is evidence in the record from which the Land Court could have reached the opposite conclusion,⁴ the Land Court found that the **1314** evidence of Lik's possession was entitled to greater weight. The Land Court's choice between two permissible views of the evidence cannot be clearly erroneous. *See Arbedul v. Romei Lineage*, 8 ROP Intrm. 30, 31 (1999).

⁴ Adelbai Remed, who was 86 at the time of the hearing, testified that Ucheliou Clan acquired *Ibuuk* "in the olden days" as *chelbechiil* when a man named Remesechau from *Ibuuk* was buried by a woman from the clan. Remed said that Remesechau's burial platform is still on the land but that the stones have been scattered. Remed testified that Lik took possession of the land before the Japanese Mandate, when Remed was young, and drove Remed's maternal uncle off the land. Remed said that there was a hearing on *Ibuuk* during the Japanese Mandate and that a Japanese man named Kaisang stated that, while Lik owned the crops on *Ibuuk*, the land belonged to the clan and would revert when Lik grew old and moved away.

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The Land Court found that Lik received ownership of *Ibuuk* through a deed from the Japanese administration. The only evidence on the question was a Japanese document and a Palauan translation of that document submitted by Max Alik. As read by Judge Yano in court, the translation was:

[T]his paper was prepared on March 29, 1922. This paper was issued by the Minister of Palau who was Japanese whose name is Mr. Fuzaki. This Japanese give this land to Alik to work on it and farm vegetables such as beans, cucumbers and (indiscernible), watermelons, green onions, and small and big green onions, eggplant, radish, and cabbage. Nineteen twenty-one before one year, on May 10 the people from government gave him eighty-four yen and told him that this was his award for developing the farm. Mr. Fuzaki said that the one who will receive an award needs to report to Fuzaki every month regarding the sale of vegetables. And said Alik this is your award and continue to work on the vegetable farm. And this was issued from the Office of the Minister of State of Palau in Airai.

The translation relied on by the Land Court could reasonably be interpreted either as a deed or a conveyance of use rights. The Land Court therefore did not clearly err in viewing the document as a deed.

Appellant argues that a correct English translation, now offered for the first time on appeal, indicates that the Japanese document only conveyed use rights. However, the appellate court is bound by the record and cannot consider evidence presented for the first time on appeal. *See Nakatani v. Nishizono*, 2 ROP Intrm. 7, 12 (1990). The representatives of Ucheliou Clan did not object to Alik's translation of the Japanese document in Land Court and Appellant's translation was not made part of the record in Land Court. Thus, under ROP R. App. Pro. 10(a), the translation is not part of the record on appeal and cannot be considered in evaluating the Land Court's findings.

In conclusion, we hold that the Land Court did not err in finding that Appellant did not own *Ibuuk* at the time Lik took possession of the land or that Lik received a deed to the land from the Japanese administration.

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Conclusion

The Land Court's Determination of Ownership awarding *Ibuuk* to Max Alik is affirmed.