

Telbadel Lineage v. Ngermechuu Lineage, 8 ROP Intrm. 315 (2001)

**TELBADEL LINEAGE, ROMAN
TMETUHL FAMILY TRUST,
and YUS CLAN,
Appellants,**

v.

**NGERMECHUU LINEAGE,
Appellee.**

CIVIL APPEAL NO. 98-18

D.O. Nos. 07-128, 07-129, 07-130, 07-131, 07-132, 07-133, 07-134

Argued: April 13, 2001

Decided: May 11, 2001

Counsel for Appellant Telbadel Lineage: Moses Uludong

Counsel for Appellant Roman Tmetuchl Family Trust: Richard Brungard

Counsel for Appellant Yus Clan: Oldiais Ngiraikelau

Counsel for Appellee Ngermechuu Lineage: Raynold Oilouch

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

PER CURIAM:

This appeal arises from an adjudication by the Land Court to determine the ownership of land in Airai commonly known as “Iterir,” the main lot being described as Lot N001-04, and satellite boundary-disputed lots including Lots N001-03, 05, 07, 08, 09 and 010 on the Bureau of Lands and Surveys Worksheet No. N001-00. The Land Court held a lengthy hearing and field visit before determining that the land was owned by Ngermechuu Lineage. We vacate and remand.

All parties agreed that the land Iterir was originally owned by the Esuroi Clan of Airai, and that Rdialul, chief of Esuroi, conveyed the property out of the Clan. Yus Clan claimed that Rdialul gave the land to Meruk, a skilled canoe builder and ancestor of Yus Clan. Ngermechuu Lineage claimed that Rdialul gave the land to Sawong, a woman from Ngermechuu who married Meruk. Roman Tmetuchl based his claim upon deeds of purchase from individual members of Yus Clan and Ngermechuu Lineage. Telbadel Lineage, the owners of adjacent land, disputed the boundaries of *Iterir*.

The primary witness for Yus Clan was Kelaolbai Kadoi, the female bearer of the title

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“Dilkseksau” of Yus Clan. The Land Court found that although Kelaolbai Kadoi testified that her mother had placed boundary markers during the Japanese survey, she “later contradicted herself when she indicated that they had not known about Iterir until they were told by a staff for the Land Commission, who assisted them to locate the boundaries of the land.” The Court further found that no member of Yus Clan ever occupied or used the land Iterir. The Land Court thus concluded that Iterir had been given to Sawong, and that the story told by Ngermechuu Lineage “is supported by their long and continuous use and occupancy of the land.” Yus Clan and the Roman Tmetuchl Family Trust claim that these findings were clearly erroneous.

I.

The Land Court’s factual findings are reviewed for clear error. Under this standard, if the Land Court’s findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left **1316** with a definite and firm conviction that an error has been made. *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000). The lower court will be reversed only if the findings so lack evidentiary support in the record, no reasonable trier of fact could have reached the same conclusion. *Ngerusebek Lineage v. Irikl Clan*, 8 ROP Intrm. 183 (2000).

With the benefit of a full review of the voluminous transcript of the testimony, we conclude that the Land Court’s finding that Kadoi had not known about Iterir until a staff member for the Land Commission notified her of the existence of the land, is clearly erroneous. Kadoi testified that, during the Japanese Land Survey from 1938 to 1941, her mother came from Melekeok to place markers on Iterir, and that the land was registered to Ksau Pius. Throughout her testimony, Kadoi stated that she learned of the land Iterir from her mother Tarmau, and that her knowledge of how Yus Lineage acquired the land and of the Japanese Survey was limited to what her mother had told her. She testified that Ngirmekur Ksau was present at the Japanese Land Survey, and Ngirmekur worked for the Japanese Land Survey. Kadoi stated that Ksau Pius urged her to see Ngirmekur and ask him to show her the land. Following Kadoi’s rebuttal testimony, another witness for Yus, Ngirchoimei Lemong, testified that he had first learned about the land of Iterir from Ngirmekur during the 1960’s. Ngirmekur showed Ngirchoimei the boundary lines of Iterir. Therefore, our review of the transcript shows that the Land Court mistakenly believed that Ngirmekur Ksau worked for the Land Commission, rather than the Japanese Land Survey, and that Ngirmekur had shown Kadoi, rather than Ngirchoimei, the land.

Erroneous findings of fact that are not essential or relevant to the lower court’s final determination do not require reversal. *Arbedul v. Romei Lineage*, 8 ROP Intrm. 30, 32 (1999). Here, however, the Land Court’s error was prejudicial because it relied on its mistaken finding in order to reject the substance of Kadoi’s testimony, who was the primary witness for Yus Clan. In these circumstances, we believe the appropriate course is to vacate the Land Court’s determination, and remand so that it may reconsider the matter. We leave to the sound discretion of the Land Court whether to rely on the existing record or to allow the introduction of additional evidence in its reconsideration.

II.

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Yus Clan and Telbadel Lineage claim that they were deprived of a fair trial due to the trial judge's improper bias and lack of impartiality. They argue that this case should be reassigned to a different Land Court Judge upon remand. In support of this argument they point to a portion of the record where the Land Court Judge stated: "I think the court has heard enough testimony to render its opinion on the title to the land in question."

First, we note that the statement quoted by the Appellants is taken completely out of context. Review of the transcript reveals that the judge was discussing a cassette tape of a statement made by a woman named Serchelid in 1977 that was proffered by a claimant for Ngermechuu Lineage. The parties were discussing whether it would be appropriate for the Court to listen to the tape, and the Court suggested that the parties offering the tape have the portions of the tape relevant to the land Iterir transcribed for the review of the Court and all claimants. The proponent of the tape admitted that the information on the tape would be merely cumulative evidence, and thus, in the sentence immediately following the quoted statement, the Court stated, "I do not see the need for you to transcribe the tape."

¶317 Second, at least as to Yus Clan, the statement was made after the two primary witnesses for Yus Clan, Kelaolbai Kadoi and Ngirchoimei Lemong, had testified. Furthermore, the Land Court Judge stated later in the hearing: "The court will definitely issue its decision, but not just now. The court cannot say at this point in time who among these claimants will receive the title to this land's title." This statement, as well as the fact that the Court continued taking testimony (three more volumes of transcript, in fact) and actively questioned witnesses, is a strong indication that the Court did not prematurely decide the outcome of the case. Therefore, Yus Clan and Telbadel Lineage were not denied a fair trial, and appellant's request that this case be reassigned to a different judge upon remand is denied.

CONCLUSION

For the reasons stated in this opinion, the Land Court's decision is vacated and this matter is remanded for further proceedings not inconsistent with this opinion.