

Temaël v. Ellechel, 8 ROP Intrm. 324 (2001)
MELII TEMAEL and RIKEL TEMARSEL,
Appellants,

v.

CONRAD TROLII ELLECHEL, SHAH IKED ELLECHEL,
SUGGON ARISEI ELLECHEL, HARRIET TUTOUD
ELLECHEL, and GANDHI KUAL ELLECHEL,
Appellees.

CIVIL APPEAL NO. 99-16
D.O. No. 02-54

Supreme Court, Appellate Division
Republic of Palau

Argued: May 25, 2001
Decided: July 5, 2001

Counsel for Appellant: Raynold B. Oilouch

Counsel for Appellee: Clara Kalscheur

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

MILLER, Justice:

This is an appeal of a Determination of Ownership issued by the Land Court awarding Tochi Daicho Lot 1414, located in Ngermetong Hamlet in Ngarchelong State to Gustav Ellechel.¹ Tochi Daicho Lot No. 1325 1414, now Cadastral Lot No. F007-003, is registered in the Tochi Daicho under the name of Kib, the father of Appellants. The Land Court found that Kib sold the land to Joaquin Flores sometime in the 1940's and Mr. Flores raised cows and goats on the subject land until he sold the property to Ellechel Trolii. Ellechel Trolii quitclaimed the land to Gustav, his son, in 1977. Appellant argues that the Land Court was clearly erroneous in deciding the Kib actually sold the land to Joaquin Flores.

We review the findings of the Land Court under the clearly erroneous standard. 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 the Court is left

¹ Gustav Ellechel passed away during the pendency of the appeal. His children, claiming as his heirs, have moved to be substituted as parties herein. We grant the motion pursuant to ROP R. App. Pro. 43, and have amended the caption accordingly. In so doing, we express no view as to the validity of the claims vis-a-vis any other claims that may be asserted in the pending estate proceeding.

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with a definite and firm conviction that an error has been made. *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000).

The Land Court's determination that Kib sold the land to Mr. Flores was based primarily on the testimony of Sinsak Kib, the son of Kib and the brother of Appellants. Sinsak testified that when he was 16, he went fishing with his father in Ngarchelong. As they came to Lot No. 1414, Kib pointed to the land and told Sinsak that the land had belonged to him, but that he had sold it to Joaquin Flores, a citizen of the Marianas Islands. Sinsak testified that he did not ask his father any more questions about the sale of the land, because at the time, he had no interest in the land.

Appellant argues that there are numerous flaws in Sinsak's testimony, which in total make the Land Court's decision clearly erroneous. For example, Appellant argues that the age Sinsak testified to having gone fishing with his father was not consistent with the time of the Japanese Land Survey. If the sale from Kib to Joaquin happened before Sinsak was 16, then the sale would have happened before 1937. Since the Japanese Land Survey took place from 1938 to 1941, the Tochi Daicho owner should have been listed as Joaquin Flores rather than Kib.

Appellant also points out that Sinsak filed a claim on September 16, 1992, for Lot 1414. On the claim form, Sinsak explains that he is the oldest male child of Kib, and thus claimed ownership of land through a Deed of Transfer dated May 26, 1992. On the same claim form, Sinsak marked a box indicating that he was not aware of any adverse claimants.

We need not catalog all of Appellants' arguments to acknowledge that their brief identifies several areas that might have been fruitful areas for cross-examining Sinsak and casting doubt on his credibility. But the decision whether to believe Sinsak or not was the responsibility of the Land Court judge; while this Court may reverse a lower court's credibility findings, that power is reserved for extraordinary cases. *Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 35 (1999).

Moreover, because Sinsak was not the only witness in this case,² the evidence needs to be examined in its entirety: "[i]f the trial court's account of the evidence is plausible in light of the record reviewed in its entirety, the appellate court may not reverse it." *Arbedul v. Mokoll*, 4 ROP Intrm. 189, 196 (1994). Here, Appellants' arguments demonstrate, at **1326** best, that the Land Court could plausibly have come out either way. But where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous. *Kotaro v. ROP*, 7 ROP Intrm. 57, 61 (1998).

This is an appropriate case to observe that the Land Court hearing is the "main event," where a claimant should marshal the facts in support of his or her claim as best as possible. We sit as an appellate court to ensure principally that the Land Court has properly applied the law,

² Several parties testified that since the 1960's, Ellechel has been using the property to plant crops and built a farmhouse, and nobody ever objected. Albert Mandangesang testified that his property shares a common boundary with Lot 1414, and he knew that Joaquin used to own the land but Ellechel had bought it from him.

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but we will only rarely disturb its findings of fact. To that extent, we would urge that while Land Court procedures are designed to permit informality and allow claimants to proceed on their own, most, if not all, claimants would benefit from the assistance of counsel in presenting their cases. We have no hesitation in saying that claimants would be better served in retaining counsel at the Land Court level, rather than waiting for the appeal – and incurring the additional cost of paying for a transcript – to do so. In this case, the points made by Appellants’ counsel in his appellate brief would have made for a highly effective closing argument and might have persuaded the Land Court to rule in their favor. On appeal, however, Appellants’ arguments can go no further than to show that the Land Court could have done so. But that, as we have said, is not a basis for reversal.

Since a reasonable factfinder could have found that the evidence confirmed that Kib did sell Lot No. 1414 to Joaquin Flores, the Land Court was not clearly erroneous in its determination, and it is therefore AFFIRMED.