

Ngerukebid Lineage v. KSPLA, 9 ROP 180 (2002)
**NGERUKEBID LINEAGE, JOSEPHINE
ULENGCHONG and SINESIO SANDEI,
Appellants,**

v.

**KOROR STATE PUBLIC LANDS AUTHORITY,
Appellee.**

CIVIL APPEAL NO. 00-04
D.O. Nos. 12-214 & 12-215

Supreme Court, Appellate Division
Republic of Palau

Argued: August 16, 2002
Decided: August 21, 2002

[1] **Appeal and Error:** Clear Error; Standard of Review

Lower court findings of fact are reviewed under a clearly erroneous standard.

[2] **Appeal and Error:** Standard of Review

A lower court's conclusions of law are reviewed *de novo*.

[3] **Appeal and Error:** Clear Error; Standard of Review

The clearly erroneous standard applies to a lower court's findings of fact irrespective of whether they are grounded on oral or documentary evidence.

[4] **Appeal and Error:** Standard of Review

It is not the role of the Appellate Division to reweigh evidence in the record.

[5] **Appeal and Error:** Clear Error

Where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous and reversal is warranted only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.

[6] **Appeal and Error:** Record

A lower court's failure to reiterate every fact alleged at a hearing does not prevent meaningful review since the entire record is available to the appellate court.

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Counsel for Ulengchong: Yukiwo Dengokl

Counsel for Sandei: J. Roman Bedor, T.C.

Counsel for Appellee: Craig Russillo

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
R. BARRIE MICHELSEN, Associate Justice.

Appeal from the Land Court, the Honorable DANIEL N. CADRA, Senior Judge, presiding.

PER CURIAM:

This appeal involves two parcels in Ngermid Hamlet, Koror State, known as Odioul and Ngerchucher, and more formally demarcated as Lot Nos. 40281 and 014 B 09 on Cadastral Lot Index 000 B 01 for Ngermid Hamlet (hereinafter “the disputed properties”). Pursuant to the return of public lands provisions of Article XIII, § 10 of the [L181](#) Palau Constitution and 35 PNC Chapter 11, eight parties filed timely claims to the disputed properties. Only the claims of the three Appellants and Appellee are relevant here. Around 1939, the disputed properties were acquired by a Japanese quasi-governmental entity called the Shinto Shrine Association. After World War II, the disputed properties passed to the Trust Territory government (TT), which consigned them to the Trust Territory Alien Property Custodian. In 1969 or thereabouts, the TT leased the disputed properties to Continental Airlines for a term of 50 years to use as the site of the Continental Hotel. Continental Airlines later transferred the remainder of its leasehold on the site to a Japanese company, which changed the name of the hotel to Hotel Nikko-Palau. In 1974, the TT was directed by the United States Secretary of the Interior to transfer title to all public lands in Palau to a governmental agency designed to hold such title. The Palau Public Lands Authority (PPLA) was created in response to this directive. *See PPLA v. Salvador*, 8 ROP Intrm. 73, 75-76 (1999). As part of the termination of the trusteeship, PPLA transferred many of its holdings to various of the state public lands authorities. Appellee Koror State Public Lands Authority (KSPLA) is presently the lessor of the disputed properties.

Appellant Ngerukebid Lineage asserted that it was the owner of the disputed properties prior to their acquisition by the Shinto Shrine Association and that, as the lineage never received adequate consideration or just compensation for them, it is entitled to have ownership of the disputed properties returned to it as the original owner.¹ Appellant Josephine Ulengchong agreed

¹In relevant part, 35 PNC § 1304(b)(1) provides that a claimant seeking the return of public lands must prove “that the land became part of the public land, or became claimed as part of the public land, as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation or adequate consideration” 35 PNC § 1304(b)(2) provides in relevant part that the claimant must also prove “that prior to the acquisition [by previous occupying powers or their nationals] the land was owned by the [claimant . . .] or that the [claimant . . . is] the proper heir[] to the land.”

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that Ngerukebid Lineage owned the disputed properties at one time, but claimed that the lineage had transferred them to her great-grandfather Melngis at some point prior to 1939, and that she is now the “proper heir” to the land as contemplated by 35 PNC § 1304(b)(2). Appellant Ulengchong further asserted that the disputed properties were taken by force or coercion, that neither adequate consideration nor just compensation was ever paid for them, and that, as the proper heir, she was entitled to the return of the disputed properties. Appellant Sineseo Sandei’s claim is substantially similar to that of Appellant Ulengchong’s, though Sandei claims that the disputed properties had eventually passed from Melngis to his own father, the elder brother of Appellant Ulengchong’s father. Appellee KSPLA, by contrast, asserted that none of the private claimants could satisfy the dual burdens of proof imposed by 35 PNC § 1304(b) and that the disputed properties should therefore remain public lands.

This matter came on for hearing before the Land Claims Hearing Office (LCHO) in the fall of 1994, and the hearing process continued before several different LCHO hearing officers until written closing arguments were filed in February of 1996. **¶182** The LCHO, however, did not issue a decision before its mandate was abrogated by the Olbiil Era Kelulau. All parties subsequently consented to have this matter resolved by the Land Court on the basis of the LCHO record.

The Land Court found as a matter of fact that Ngerukebid Lineage had originally owned the disputed properties, but that it had transferred them to Melngis at some point prior to the acquisition by the Shinto Shrine Association. With this finding, the Land Court denied Ngerukebid Lineage’s claim to the disputed properties, on the ground that the lineage had failed to carry its burden of proof of ownership under 35 PNC § 1304(b)(2). The Land Court also rejected the arguments of the Appellants Ulengchong and Sandei, who claimed through Iyechad Ilek,² on the ground that they had failed to carry their burden of proof under 35 PNC § 1304(b) (1) to show that the disputed properties were taken by “force, coercion, fraud, or without just compensation or adequate consideration” This appeal followed.

STANDARD OF REVIEW

[1, 2] Land Court findings of fact are reviewed under a clearly erroneous standard. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). A lower court’s conclusions of law are reviewed *de novo*. See *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

ANALYSIS

[3] As a threshold matter, we address the suggestion advanced by Appellants both in their briefs and at oral argument that this Court should apply a less deferential standard of review than the clearly erroneous standard to the Land Court’s findings of fact. Appellants contend that a lesser degree of deference is warranted because the Land Court’s decision was based on a cold reading of the LCHO record, placing this Court in essentially the same position as the Land Court *vis-a-vis* its ability to make factual findings in this case. Leaving aside the question of

²The Land Court found that Melngis had transferred the disputed properties to Ilek, who subsequently transferred them to his son Iyechad Ilek, the uncle of Appellants Ulengchong and Sandei.

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whether Appellants individually or collectively waived this argument by stipulating to a Land Court decision based on the LCHO record, this argument fails as a matter of law. As this Court made clear in *Rechelulk v. Tmilchol*, 6 ROP Intrm. 1 (1996), the clearly erroneous standard applies to a lower court's findings of fact irrespective of whether they are grounded on oral or documentary evidence. *Id.* at 2-3. The clearly erroneous standard therefore applies in this case.

[4-6] Applying that standard here dooms Appellants' claims. Each Appellant effectively asks this Court to reweigh the evidence in the record and to reach a conclusion different from that of the Land Court. That is manifestly not the role of this Court. It is well established that where "there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous." *Iderrech v. Ringang*, 9 ROP 158, 160 (2002) (quoting *Olngembang Lineage v. ROP*, 8 ROP Intrm. 197, 200 (2000) and collecting cases) (internal quotation and citations omitted). Indeed, reversal under the clearly erroneous standard is warranted "only if the findings so lack evidentiary support in the record that no **L183** reasonable trier of fact could have reached the same conclusion." *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002) (quoting *Ngerusebek Lineage v. Irikl Clan*, 8 ROP Intrm. 183 (2000)). That is simply not the case here. The Land Court did an admirable job recapitulating the testimony of the various parties and witnesses, and explaining the basis for its determinations.³ While the Land Court declined to draw certain inferences that could have benefitted one or more of the Appellants, the record as a whole makes its conclusions plausible ones, which is sufficient to justify affirming the decision. *See Riumd v. Tanaka*, 1 ROP Intrm. 597, 601-03 (1989).

CONCLUSION

For the foregoing reasons, the Land Court's Determinations are AFFIRMED.

³We reject Appellant Ulengchong's suggestion that the Land Court's failure specifically to address in its decision an exhibit adduced below warrants reversal in its own right. It is well established that a lower court's failure to reiterate every fact alleged at a hearing does not prevent meaningful review since the entire record is available to the appellate court. *See Ngiralulk v. Children of Obiliou*, 8 ROP Intrm. 32, 36 (1999).

We also reject Appellant Ngerukebid Lineage's contention that the finding that it was a prior owner of the land relieved it of its burden to prove that it was still owned by the lineage at the time of the acquisition by the Shinto Shrine Association. Section 1304(b)(2) clearly places that burden of proof on the claimant.