

Sakuma v. ROP, 9 ROP 183 (2002)
**TADASHI SAKUMA and
TAKATARO NAKAMURA,
Appellants,**

v.

**REPUBLIC OF PALAU,
Appellee.**

CIVIL APPEAL NO. 01-51
LC/E 01-19 & 01-20

Supreme Court, Appellate Division
Republic of Palau

Decided: August 29, 2002¹

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

Factual findings of the Land Court are reviewed under a clearly erroneous standard.

[2] **Return of Public Lands:** Elements of Proof

Before a party can prevail on a return of public lands claim, the claimant must satisfy not just the terms of 35 PNC § 1304(b)(1) concerning the manner in which the property was acquired by the government, but also the terms of § 1304(b)(2), which requires a party to prove that prior to the acquisition of the property by a previous occupying power or its nationals the land was owned by the citizen and that the claimant is the proper heir to the land.

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Counsel for Appellants: Raynold Oilouch

Counsel for Appellee: Dale Trigg

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable J. UDUCH SENGEBAU SENIOR, Associate Judge,
presiding.

PER CURIAM:

Appellant Tadashi Sakuma (“Sakuma”) appeals from a determination of ownership awarding property in Ngaraard State commonly known as Bkul Ngeiu or Emelurung, and

¹Pursuant to ROP Rule of Appellate Procedure 34(a), the Court finds that oral argument is unnecessary in this case. Accordingly, the argument that had been set down for September 6, 2002 is hereby vacated.

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formally demarcated as Cadastral Lot No. 068 E 01, to Appellee Republic of Palau. Sakuma appeared below on behalf of two of his uncles who had each filed claims to the property. Sakuma claimed that the property was taken by the Japanese in the late 1930s, and that under the return of public lands law he and those he represents were entitled to its return. The Land Court found that Sakuma had failed to bear his dual burden of proof under 35 PNC § 1304(b), and consequently awarded the property to Appellee.

[1, 2] We review factual findings of the Land Court under a clearly erroneous standard. *See, e.g., Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). Sakuma asserts that the Land Court erred by failing to consider whether the property was taken without the payment of adequate consideration or just compensation, and also by finding that there was no evidence supporting Sakuma's claim that his predecessor in interest Ngirakebou actually owned the land prior to its taking by the Japanese. Neither of these claims has merit. In the first place, Sakuma failed to raise the issue of consideration or compensation below, and that argument is therefore deemed waived. *See Ngeremlengui State Council of Chiefs v. Ngeremlengui State Gov't*, 8 ROP Intrm. 178, 180 (2000). Moreover, even assuming that Sakuma could prove this point, his failure of proof concerning the prior ownership of the property nevertheless dooms his claim. Before a party can prevail on a return of public lands claim, the party must satisfy not just the terms of 35 PNC § 1304(b)(1) concerning the manner in which the property was acquired by the government, but also the terms of § 1304(b)(2), which requires a party to prove "that prior to th[e] acquisition [of the property by a previous occupying power or its nationals] the land was owned by the citizen or citizens and that the citizen or citizens are the proper heirs to the land." Although Sakuma asserted that his predecessor in interest, Ngirakebou, owned the land, we cannot say that the Land Court's finding that Sakuma failed to bear his burden of proof on this point was clearly erroneous.

We now turn to one additional matter. Appellee asserts that the Land Court committed a technical error in issuing a determination of ownership in favor of the Republic of Palau rather than to the appropriate state public lands authority. We agree.

CONCLUSION

For the foregoing reasons, we affirm the Land Court's rejection of Sakuma's claims, but remand this matter to the Land Court for the limited purpose of issuing an amended determination of ownership in favor of the Ngaraard State Public Lands Authority.