

Temaungil v. Ulechong, 9 ROP 31 (2001)
FRANCIS TEMAUNGIL,
Appellant,

v.

YOULSAU R. ULECHONG and REMIANG T. BAIEI,
Appellees.

CIVIL APPEAL NO. 00-43
LC/E 00-324 & 00-325

Supreme Court, Appellate Division
Republic of Palau

Argued: November 15, 2001
Decided: December 5, 2001

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

The Land Court's findings of fact are reviewed under a clearly erroneous standard and its conclusions of law are reviewed *de novo*.

[2] **Property:** Joint Tenancy

Because joint tenancies are a concept alien to Palauan law, they can only be created where the intention of the owners to do so is clearly established by an instrument.

[3] **Property:** Conveyance

A transfer of property vests ownership immediately upon transfer, irrespective of whether there was any official recognition or confirmation of those transfers.

[4] **Appeal and Error:** Preserving Issues

A claim for an interest in land may not be raised for the first time on appeal.

¶32 [5] **Appeal and Error:** Preserving Issues

Failure to raise an argument below waives right to raise it on appeal, especially when the position taken on appeal is inconsistent with the position taken at trial.

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Counsel for Appellees: Moses Uludong, T.C.

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

SALII, Justice:

Francis Temaungil (“Appellant”) appeals from the Land Court’s Determination of December 15, 2000, awarding Youlsau Ulechong and Remiang Baiei (“Appellees”) title in fee simple to two parcels of land in Ngaraard State known as “Blebad” (Tochi Daicho Lot Nos. 70 and 71; Worksheet Lot No. 00E003-002), and “Ngerengchong” (Tochi Daicho Lot Nos. 461 and 466; Worksheet Lot Nos. 00E003-003 and 00E002-008). For the reasons stated below, we reverse.

BACKGROUND

This appeal arises from a dispute among Appellees, the two surviving children of the late Temaungil, and Appellant, the adopted son of one of Appellees’ non-surviving siblings, over Blebad and Ngerengchong. Until his death during World War II, Temaungil owned Blebad and Ngerengchong.¹ Temaungil was survived by his wife Kebor, and his five children, Orwii, Ngiraitib, April, Remiang and Youlsau.² An *eldecheduch* was conducted upon Temaungil’s death and Blebad was distributed to Temaungil’s children by Temaungil’s maternal niece Waisang. A taro patch and children’s money were also given to Temaungil’s children at that time. Ngerengchong was not disposed of at Temaungil’s *eldecheduch*. After the death of one of her own children in the 1980s, however, Waisang distributed Ngerengchong to Temaungil’s children.

In 1988, Appellee Remiang Baiei filed an Application for Land Registration, claiming Blebad and Ngerengchong as tenants in common with her brothers Ngiraitib and L33 April.³ Appellee Youlsau Ulechong filed an Application for Land Registration of her own in 1992, describing her claim for Blebad and Ngerengchong as one filed on behalf of “Temaungil

¹In point of fact, the T.D. lists lots 461 and 466 as being owned by the Bitalisikl Lineage with Temaungil as trustee. Testimony below, however, revealed that Bitalisikl is simply a title invented by Temaungil rather than an established clan or lineage. The Land Court apparently credited this interpretation, stating in its findings of fact that Temaungil “owned” both Ngerengchong and Blebad at the time of his death. Decision, Findings of Fact and Conclusions of Law at 6. To the extent Appellees now attempt to argue that Ngerengchong is lineage rather than fee land, this Court holds that the Land Court’s finding is not clearly erroneous and Appellees’ contention fails.

²Although she was Temaungil’s natural child, Orwii was adopted by Temaungil’s sister and is now deceased. Uncontroverted testimony at the land court hearing indicated that she is not considered to be part of Temaungil’s family unit, T.R. at 20-21, and is accordingly not relevant to these proceedings. Nor did any party appear before the land court making any claim through Ngiraitib. One of Ngiraitib’s adopted children had initially filed a claim, but withdrew it after a mediation session.

³Curiously, Remiang’s Application made no mention of her sister Youlsau. But, as will be discussed below, the arguments propounded by the parties before the Land Court differed markedly from the theories suggested by their Applications for Land Registration. Therefore, this Court finds that to the extent these Applications were intended to delineate the contours of the proceedings below, they have been amended to conform to the evidence adduced before the Land Court. See ROP R. Civ. Pro. 15(b); *Ngerketiit Lineage v. Seid*, 8 ROP Intrm. 44, 46-47 (1999).

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children.” Appellant filed his Application for Land Registration in 1991, characterizing his interest in the properties as one of “continued land trustee.” Before the Land Court, however, Appellant argued that he personally was the rightful owner of both Blebad and Ngerengchong, on the theory that his father April had come into sole ownership of them and he (Appellant) was April’s sole heir. In the alternative, Appellant argued that he was entitled to inherit whatever interest in the properties April possessed at the time of his death. Appellees based their case at trial on a different theory as well, essentially contending that since the transfers of Blebad and Ngerengchong to Temaungil’s children were never formalized and since they were now Temaungil’s sole surviving children, they were the only ones entitled to the properties.

In its Decision, Findings of Fact and Conclusions of Law (“Decision”), the Land Court found that both Blebad and Ngerengchong had been distributed to the children of Temaungil after his death, and that no discussion of these lands had taken place after the deaths of Ngiraitib, April, or April’s wife Ebil. Decision at 5-6. The Land Court rejected Appellant’s claim that April had at any time come into sole ownership of the properties and instead concluded that Blebad and Ngerengchong “remained properties of Temaungil’s children.” Decision at 7-8. The Land Court, however, did not address Appellant’s alternate theory that he was entitled to take whatever fractional interest April might have acquired in the properties. Instead, it awarded Blebad and Ngerengchong to Appellees in fee simple. Decision at 8-9. This appeal followed.

DISCUSSION

[1] The Land Court’s 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). In this appeal, Appellant does not challenge the Land Court’s factual findings, only the legal conclusions drawn therefrom. Specifically, Appellant contends that the Land Court erred by awarding the properties only to Appellees instead of granting a share of them to Appellant as well. To this end, Appellant has abandoned his claim that April alone owned the properties. Rather, Appellant’s theory on appeal is essentially that since Blebad and Ngerengchong were transferred to “the children of Temaungil,” each of those children obtained an individual interest in those lands. As the uncontroverted findings of the Land Court indicated that April’s interest in the properties was not discussed after his death, Appellant contends that he is the rightful successor to April’s interest. We agree.

The Land Court’s decision to award the properties to Appellees alone is necessarily predicated on one of two implicit **L34** assumptions. It is possible that the Land Court believed that the transfers of Blebad and Ngerengchong created a form of joint tenancy with right of survivorship among Temaungil’s children, such that upon the death of each joint tenant, the surviving children acquired the decedent’s interests in the properties. Alternately, the Land Court could have based its conclusion on the belief that the transfers to “the children of Temaungil” only vested cognizable property rights in any of those children when title was formally transferred out of Temaungil’s name.⁴ As Appellees were the only ones of Temaungil’s children still alive when the Land Court entered its determination, this theory would suggest that they

⁴This is the theory Appellees relied on at trial and continue to embrace on appeal.

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alone are entitled to take individual interests in the properties. But neither of these possible bases for the Land Court's decision are supported by the law.⁵

[2] Joint tenancies are a concept alien to Palauan law. This Court has held that joint tenancies can only be created where "the intention of the owners to [do so] is clearly established by an instrument." *Children of Ngeskesuk v. Espangel*, 1 ROP Intrm. 682, 692 (1989); *see also Wally v. Sukrad*, 6 ROP Intrm. 38, 41-42 (1996). But no instrument even suggesting such an intent, let alone clearly establishing one, has been adduced in this case. It would therefore be a mistake of law for the Land Court to have relied on a joint tenancy theory in reaching its decision.

[3] To the extent that the Land Court's decision flows from the assumption that Waisang's transfers of Blebad and Ngerengchong to the children of Temaungil created no vested property rights in any of those children prior to the Land Court's decision, it is no less erroneous. The dead cannot own property. Consequently, the transfers of Temaungil's property to his children vested rights in those children immediately upon the transfers, irrespective of whether there was any official recognition or confirmation of those transfers. *See Estate of Olkeriil v. Ulechong*, 4 ROP Intrm. 43, 50 n.1 (1993). On the facts found by the Land Court and unchallenged on appeal, therefore, the transfers of Blebad and Ngerengchong necessarily gave each of Temaungil's four children an individual interest in the two properties.

[4] It now becomes necessary to ask what happens to April's interest.⁶ The short answer is that it should go to Appellant because he is the only party claiming that interest in this proceeding. Before the Land Court, Appellees specifically denied that they were claiming any interest that belonged to April individually. *See* T.R. at 75, 108. They cannot assert a claim for April's interest for **L35** the first time on appeal. *See Badureang Clan v. Ngirchorachel*, 6 ROP Intrm. 225, 226 (1997).

[5] To the extent that Appellees now seek to rely on 39 PNC § 102(d) for the principle that, as the strong senior members of April's lineage, they are the ones entitled to dispose of his interest, that argument must also be deemed waived by Appellees' failure to propound it below. *See Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 43 (1998). This conclusion is particularly appropriate given that this contention is inconsistent with the representations Appellees made before the Land Court to the effect that April had no interest in the properties at all, an argument that the Land Court obviously accepted. *See In re Estate of Kemaitelong*, 7 ROP Intrm. 94, 98 (1998). Nor can Appellees now contend that they cut off Appellant after his adopted father's death by returning him to his natural parents, thereby extinguishing whatever

⁵It is also possible that the Land Court simply overlooked Appellant's alternate claim and saw its job as one of choosing between the claims of Appellees and Appellant's theory that his father had obtained sole ownership of the properties. But Appellant's alternate theory was properly before the Land Court. *See* T.R. at 95, 104-07. Moreover, the Land Court's undisputed findings of fact necessarily compel the conclusion that April acquired an interest in the property. The Land Court's failure to recognize the existence of this interest in its Decision is therefore error.

⁶This Court construes the failure of Ngiraitib's heirs to press claims to Ngiraitib's interest in Blebad and Ngerengchong before the Land Court as a waiver of Ngiraitib's interest in those properties. *See Ngirchokebai v. Reklai*, 8 ROP Intrm. 151, 152 (2000).

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claim he might have had to April's interest. That argument is similarly waived.

CONCLUSION

For the foregoing reasons, the determination of the Land Court awarding the properties known as Blebad and Ngerengchong to Appellees in fee simple is REVERSED. This case is remanded to the Land Court with instructions to enter new determinations awarding the properties in fee simple to Appellant and Appellees.