

Tmiu Clan v. Ngerchelbucheb Clan, 9 ROP 43 (2001)

**TMIU CLAN,
Appellant,**

v.

**NGERCHELBUCHEB CLAN,
Appellee.**

CIVIL APPEAL NO. 99-15
LC/S 03-98

Supreme Court, Appellate Division
Republic of Palau

Argued: November 14, 2001

Decided: December 5, 2001

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

The Appellate Division reviews the Land Court's factual findings for clear error.

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

The Appellate Court generally defers to the lower court's findings regarding the relative credibility of witnesses and reversal of a lower court's credibility findings is reserved for extraordinary cases.

Counsel for Appellant: Carlos H. Salii

Counsel for Appellee: Raynold B. Oilouch

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

PER CURIAM:

Tmiu Clan ("Tmiu") appeals the Land Court's rejection of Tmiu's claim to part of **L44** Ngerchelbucheb Clan's ("Ngerchelbucheb") land identified as Worksheet Lot No. 302-284, formerly known as Angaur Land Settlement Map Serial No. 355, Lot No. 355, in Ngermasech Hamlet, Angaur. Because Tmiu has not demonstrated that the Land Court's decision that Ngerchelbucheb owned all of Lot No. 355 is clearly erroneous, we affirm.

In 1950, Lot No. 355 was surveyed and Angaur Land Settlement Map Serial No. 355 was prepared. On June 8, 1962, the Palau District Administrator, F.B. Mahoney, approved Map No. 355 and the Trust Territory High Commissioner, M.W. Goding, granted Lot No. 355 by

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quitclaim deed to Ngerchelbuchebe. More than 30 years later, Tmiu claimed a portion of Lot No. 355 which abuts its land, formerly known as Angaur Land Settlement Map Lot No. 357. Ngerchelbuchebe, on the other hand, claimed that it owned all of the property formerly known as Lot No. 355.

The Land Court held a hearing on February 24, 1999, at which Uleingchong Gregorio Henry testified on behalf of Tmiu. Henry testified that at the time of the preparation for the Land Settlement Map, a man named Takamii acted as Tmiu's representative regarding the land and he provided input on where the boundaries were to be placed. According to Henry, Takamii misunderstood the boundaries of Tmiu's property and consequently the Angaur Land Settlement Map for Lot No. 355 was incorrect, as was the quitclaim deed conveying Lot No. 355 to Ngerchelbuchebe. On the other hand, Ucheldikes Francisco Misech of Ngerchelbuchebe also testified at the hearing. He claimed on behalf of Ngerchelbuchebe the entire lot identified as Lot No. 355, explaining that the boundaries of the lot as shown on the Angaur Land Settlement Map are correct. Specifically, he stated that knowledge of the boundaries of the land were passed down from Rengesuul to Ucheldikes Moses and Misech's uncles to him. Misech further testified that his father had farmed the land, as currently demonstrated by the presence of coconut plants and pepper leaves on the property. Finally, Misech offered the quitclaim deed to Ngerchelbuchebe as proof of the Clan's ownership of all of Lot No. 355.

On April 26, 1999, the Land Court issued its decision that Ngerchelbuchebe, with the title Ucheldikes as trustee, owns Cadastral Worksheet Lot No. 302-284, or the land formerly known as Lot No. 355. The Land Court explained that even though the survey of the Angaur Land Settlement Map No. 355 took place over 40 years prior, and the map of Lot No. 355 was approved and the High Commissioner M.W. Goding granted the land to Ngerchelbuchebe via quitclaim deed over 30 years prior, Tmiu had not objected to the boundaries of Lot No. 355 until this litigation. In addition, the Land Court pointed out Henry's testimony that Dib Malkureong, who had been responsible for Tmiu's land, conveyed that responsibility to Takamii. The court concluded that because Dib Malkureong and the other strong members of Tmiu did not object to Takamii's understanding of the boundaries of Tmiu's land, as memorialized in the Angaur Land Settlement Map, Takamii's understanding of those boundaries was authoritative. Last, the Land Court pointed to the quitclaim deed and the presence of coconut plants and pepper leaves on the land, explaining that despite this evidence of Ngerchelbuchebe's ownership of Lot No. 355, Tmiu had not complained about the boundaries of the land until 30 years after the Angaur Land Settlement Map was finalized.

[1, 2] Tmiu now appeals, arguing that the Land Court erred as a matter of law when it disregarded "the credible testimony of Tmiu L45 Clan witnesses . . . that Tmiu Clan never had the opportunity to correct the boundaries as reflected on maps until the monumentation for the hearings in these cases." We disagree because the Land Court's decision evinces that it considered Henry's testimony regarding the alleged mistaken boundaries of Ngerchelbuchebe's land, but found Misech's testimony, as supported by the Angaur Settlement Map and the quitclaim deed for Lot No. 355, to be more credible. And although Tmiu contends that we would review this factual finding *de novo*, this court's case law makes clear that we review the Land Court's factual findings for clear error. *Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 35 (1999);

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Masters v. Paulis, 7 ROP Intrm. 148, 149 (1999); *Tesei v. Belechal*, 7 ROP Intrm. 89, 90 (1998).

With respect to clear error review, this court “generally defer[s] to the lower court’s findings regarding the relative credibility of the witnesses,” and reversal of a lower court’s credibility findings is reserved for “extraordinary” cases. *Ngirakebou*, 8 ROP Intrm. at 35 (citations and internal quotations omitted). Here, Tmiu has not shown that the Land Court’s factual determinations upholding Ngerchelbuchebe’s ownership of all of Lot No. 355 as delineated in the 1962 Angaur Land Settlement Map were clearly erroneous.

For the foregoing reasons, we affirm the Land Court’s decision.