

FILED

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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SUPREME COURT
OFFICE
REPUBLIC OF PALAU

-----X
UREBAU CLAN,

Appellant,

v.

BUKL CLAN,

Appellee.
-----X

CIVIL APPEAL NO. 13-005
LC/N Nos. 09-0396, 09-0346, &
09-0351

OPINION

Decided: May 1, 2014

Counsel for Appellant: Oldiais Ngiraikelau
Counsel for Appellee: Raynold B. Oilouch

BEFORE: KATHLEEN M. SALII, Associate Justice; R. ASHBY PATE, Associate Justice; and HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

Appeal from the Land Court, the Honorable Salvador Ingereklii, Associate Judge, presiding.

PER CURIAM:

This appeal arises from the Land Court's resolution of competing claims for ownership of three lots in Ngetkib Village, Airai State in favor of Bukl Clan. For the following reasons, we affirm the decision of the Land Court.¹

¹ Appellant has not requested oral argument, and we determine that oral argument is unnecessary to resolve this matter. See ROP R. App. P. 34(a).

BACKGROUND

This case involves a dispute over the ownership of land identified as Lots 05N001-090, 05N001-091, and 05N001-096 (the Lots) in Airai State. Bukl Clan, Urebau Clan, Ucheliou Clan, and Ngermellong Clan each asserted claims to the Lots. Oscar B. Omelau also filed a claim for ownership of the Lots but failed to appear before the Land Court to present his claim.

On February 5, 2013, the Land Court held a hearing, at which David Orrukem appeared on behalf of Bukl Clan, Timothy Ngirdimau appeared on behalf of Urebau Clan, Bilung Gloria Salii appeared on behalf of Ngermellong Clan, and Rosiana Masters appeared on behalf of Ucheliou Clan.

Orrukem testified that he was pursuing the claim filed by the late Tmewang Remengesau on behalf of Bukl Clan. He explained that Omelau had earlier claimed ownership of the Lots on behalf of Bukl Clan because Omelau was, at that time, the eldest member of Bukl Clan. He also explained that real name of the land is *Ked er Ngerbilang*, although some people call it *Itengedii*.

Ngirdimau testified that the Lots are part of a land known as *Sangelliou*, which belongs to the Urebau Clan. He explained that there has been a lot of confusion over the proper names for the lands in this area, but that *Sangelliou* includes the cemetery and the Lots at issue in this case.

Bilung testified that she was also pursuing the late Tmewang's claim, but that she decided to claim the land for Ngermellong Clan (and Techeboet Lineage) because Bukl is a land name, not a clan name.

Finally, Masters testified that she claims a portion of Lot 05N001-090 as part of a land known as *Ikidel*, which is owned by Ucheliou Clan.

On February 27, 2013, the Land Court issued a Determination of Ownership finding that the Lots belong to Bukl Clan. Urebau Clan timely appeals.²

STANDARD OF REVIEW

We review the Land Court's conclusions of law de novo and its findings of fact for clear error. *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009). Where there are several plausible interpretations of the evidence, the Land Court's choice between them shall be affirmed. *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 223 (2009).

ANALYSIS

On appeal, Urebau Clan raises two related, but analytically distinct, arguments. First, it asserts that the Land Court failed to articulate the basis of its ruling clearly, thereby precluding meaningful appellate review, and that the case must therefore be remanded to the Land Court for clarification and additional findings. Second, it argues that insufficient evidence supported the Land Court's determination that the Lots belong to Bukl Clan.

² Ngermellong Clan and Ucheliou Clan have not challenged the Land Court's determination of ownership and are not parties to this appeal.

I. Adequacy of the Land Court's Opinion

We first turn to the question whether the Land Court's opinion is detailed enough to allow for meaningful appellate review. We conclude that it is.

"The Land Court must issue findings of fact and conclusions of law that make clear the basis for its determination of ownership in one party rather than another; if it does not, this Court cannot adequately review the determination and the case must be remanded." *Mesebeluu v. Uchelkumer Clan*, 10 ROP 68, 72 (2003). However, the Land Court "need not reiterate every fact presented at trial because the availability of a transcript allows meaningful review to take place." *Id.*

Here, the Land Court issued a ten-page determination of ownership, which included a summary of the proceedings, findings of fact, and conclusions of law. It described the testimony presented at the hearing, remarked on the difficulty of adjudicating land disputes in the absence of Tochi Daicho listings, explained its reasons for finding some witnesses to be credible and for discrediting other witnesses, and ultimately concluded that the Lots belonged to Bukl Clan. It is true that the Land Court's "Findings of Fact" section is rather sparse, but additional findings of fact are scattered throughout the "Analysis/Discussion" section. Moreover, the Land Court's reasons for rejecting the claims presented by Ngirdimau, Bilung, and Masters are apparent from the opinion. It is clear from the Land Court's opinion that it disbelieved Ngirdimau's testimony because of inconsistencies and because Ngirdimau failed to correct ostensibly

incorrect monumentation records despite having adequate knowledge and time to do so. Similarly, it is clear that the Court rejected Bilung's claim because it concluded that Bukl is indeed a clan and rejected Masters' claim because there was no evidence to support it aside from her own unsubstantiated assertions regarding the boundaries of *Ikidel*.

Because the Land Court's opinion adequately describes the factual and legal bases for its determination of ownership, we conclude that meaningful review is possible and remand is unnecessary.

II. Sufficiency of the Evidence

Urebau Clan next argues that insufficient evidence supported the Land Court's determination that Bukl Clan owned the Lots. In particular, Urebau Clan objects to the Land Court's reliance on the fact that prior claims were filed on behalf of Bukl Clan as evidence that the Lots indeed belonged to Bukl Clan.

The standard for upsetting the Land Court's determination of ownership because of insufficient evidence is a high one. *See Singeo v. Secharmidal*, 14 ROP 99, 100 (2007) (noting that appellants have been "extraordinarily unsuccessful" in raising this type of challenge). "To prevail, an appellant must show that the Land Court's findings were clearly erroneous and that the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion." *Id.* (internal quotation marks and citation omitted). "It is not the appellate panel's duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *Kawang Lineage*

v. Meketii Clan, 14 ROP 145, 146 (2007). “Put simply, Land Court determinations are affirmed so long as the factual findings are plausible.” *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 223 (2009).

Here, the parties presented scant evidence to aid the Land Court in determining ownership of the Lots. The only testimony at the hearing was offered by the claimants themselves, and few of them had any personal knowledge about the origin and history of title to the land. Indeed, the Land Court noted “the inherent difficulty of determining title to lands when claimants must rely on family history and hearsay to present their claims, and where witness[es] with personal knowledge of past transactions or events are deceased or unavailable ... and where the testimony of competing claimants [is] largely self-serving and affected with bias.” Because of the lack of direct evidence or testimony made with personal knowledge by unbiased witnesses, the Land Court was forced to base its ownership decision primarily on credibility determinations and circumstantial evidence.

Neither Ngirdimau nor Orrukem appeared to have substantial personal knowledge about how their respective clans allegedly came to acquire the Lots at issue. Ngirdimau testified that the land was conveyed by Ngermelkii Clan to Urebau Clan. When asked why his uncle, Rengulbai, failed to claim the land during the 1976 monumentation, Ngirdimau explained that his uncle had little knowledge of the area and that the monumentation records were unreliable. Orrukem, in turn, testified that he was simply

pursuing the claim filed on behalf of Bukl Clan in 1976 by Tmewang, who at that time bore the chief title Remengesau of Ngermellong Clan. He also testified that Omelau claimed the land in 2003 because, at the time, Omelau was the eldest representative of Bukl Clan.³

Faced with witnesses/claimants who possessed little salient personal knowledge, the Land Court made credibility determinations and drew inferences from the historical record. The Land Court found that Ngirdimau was not a credible witness because of inconsistencies in his testimony suggesting that “he is only taking his chances in claiming these lots.” The Court also drew reasonable inferences from Urebau Clan’s historical failure to claim the Lots. The Land Court found that Ngirdimau’s uncle, Rengulbai, represented Urebau Clan during the 1976 monumentation of lands in Ngetkib but failed to claim the Lots for Urebau Clan. Moreover, during the decades after that failure, Ngirdimau took no action to correct his uncle’s alleged mistake. The Land Court permissibly construed these facts as evidence that Urebau Clan did not own the Lots. *See Idid Clan v. Olngebang Lineage*, 12 ROP 111, 116 (2005) (holding that a clan’s historical failure to file a claim for a particular land may be considered evidence that it does not own that land).

The Land Court also reasonably took into account that, despite holding the highest male title of a different clan, Tmewang claimed the land on behalf of Bukl Clan in 1976.

³ In its opening brief before this Court, Urebau Clan admits that “[t]here is no dispute that [Tmewang and Omelau] claimed the land on behalf of Bukl Clan.”

Moreover, the Court found that, at the time he made the claim on behalf of Bukl Clan, Tmewang was considered knowledgeable about land in the area. Accordingly, the Land Court concluded that Tmewang's decision to claim the land for Bukl Clan, rather than for his own clan, was "itself a strong indication that the land belongs to Bukl Clan." Given the lack of other evidence in the case, the Land Court afforded significant weight to Tmewang's choice to claim the land for Bukl Clan.

We note that, contrary to Urebau Clan's protestations in its opening brief before this Court, the Land Court did not purport to create a bright line rule that the filing of a claim is sufficient to establish ownership of the land in question. Such a rule would be peculiar at best. Instead, the Land Court simply considered the fact that Bukl Clan had consistently claimed the land over a period of many years as circumstantial evidence of ownership. Because of the lack of other reliable evidence in this case and because of circumstances suggesting Tmewang's trustworthiness, the prior claim evidence took on greater significance.

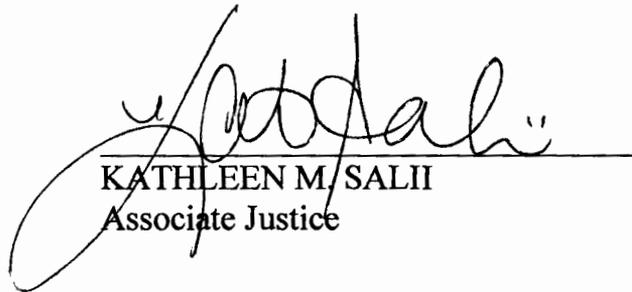
In sum, we conclude that the Land Court did not clearly err in determining that Bukl Clan owns the Lots. In doing so, we do not revisit the Land Court's credibility determinations or reweigh the evidence. *See Edaruchei Clan v. Sechedui Lineage*, 17 ROP 127, 128 (2010). Instead, it is enough that some evidence supports the conclusion that Bukl Clan owns the Lots. *See Palau Pub. Lands Auth., et al. v. Tab Lineage*, 11 ROP 161, 165 (2004) ("[R]eversal under the clearly erroneous standard 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.”). Here, the Land Court provided reasons for crediting some witnesses over others and drew reasonable inferences from the evidence presented. We therefore hold that sufficient evidence supported the Land Court’s determination of ownership.

CONCLUSION

For the foregoing reasons, the decision of the Land Court is **AFFIRMED**.

SO ORDERED, this 1st day of May 2014.


KATHLEEN M. SALII
Associate Justice


R. ASHBY PATE
Associate Justice


HONORA E. BEMENGESAU RUDIMCH
Associate Justice Pro Tem