

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

CIVIL APPEAL NO. 13-072
LC/D NO. 11-0022

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CHILDREN OF LLECHOLCH,

Appellant,

v.

ETUMAI LINEAGE,

Appellee.
-----X

OPINION

Decided: March 18, 2014

Counsel for Appellant: Siegfried B. Nakamura
Counsel for Appellee: Pro Se

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; and R. ASHBY PATE, Associate Justice.

Appeal from the Land Court, the Honorable C. QUAY POLLOI, Senior Judge, presiding.

PER CURIAM:

This appeal arises from a determination of ownership awarding land in Ngiwal State to Etumai Lineage. 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 is the second appeal of the Land Court's determination of ownership of land in Ngersngai Hamlet of Ngiwal State, identified as worksheet Lot No. 018 D 02 (the Lot). In the underlying proceedings, Etumai Lineage argued that the Lot is part of Tochi Daicho Lot 55, which is owned by the Lineage. Although the Children of Llecholch Ingais (Children of Llecholch) did not dispute that Etumai Lineage owns Tochi Daicho Lot 55, they argued that the Lot is simply not part of Tochi Daicho Lot 55 but rather part of land they own, called *Olsarch*, which is part of Tochi Daicho Lot 464.

At the hearing, the Land Court heard extensive testimony from numerous witnesses. Both parties presented evidence that they had used the property for agriculture and had granted permission for others to use the land. Etumai Lineage also presented evidence suggesting that Llecholch Ingais failed to claim the Lot during the Japanese land survey, despite doing so for neighboring plots, and that his daughter, Anastasia, previously identified the boundaries of their land during a 1985 monumentation as excluding the Lot.

Ultimately, the Land Court concluded that the weight of the evidence favored Etumai Lineage. In reaching that conclusion, the Court drew inferences from Llecholch's and Anastasia's prior failures to claim the land. The Court also reasoned that including the disputed Lot in Etumai Lineage's Tochi Daicho Lot 55, rather than in Llecholch's Tochi Daicho Lot 464, would result in an apportionment that more closely approximated

the listed sizes of the relevant Tochi Daicho Lots. Finally, the court noted that Etumai Lineage historically owned much of the land adjacent to the Lot. The Land Court therefore awarded ownership of the Lot to Etumai Lineage, and the Children of Llecholch appealed.

On appeal, this Court determined that the Land Court may have incorrectly applied a presumption of correctness to the Tochi Daicho size listings and that it erred in failing to afford the parties an opportunity to be heard before taking judicial notice of certain facts. Accordingly, this Court remanded the case to require the Land Court to clarify its reasoning and provide the parties with an opportunity to be heard on the issue of judicial notice. On remand, the Land Court heard from the parties regarding judicial notice, conducted a site visit, and clarified that it did not afford a presumption of correctness to the sizes listed in the Tochi Daicho. Again, it determined that Etumai Lineage owns the Lot.

The Children of Llecholch now timely appeal for the second time. Etumai Lineage did not file a response.

STANDARD OF REVIEW

This Court reviews 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). "The factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion."

Id. Where there are several plausible interpretations of the evidence, the Land Court's choice between them shall be affirmed even if this Court might have arrived at a different result. *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 223 (2009).

ANALYSIS

On appeal, the Children of Llecholch challenge the Land Court's factual findings. They argue that the evidence was insufficient to support a finding that Etumai Lineage owns the Lot and that the only reasonable conclusion to be drawn from the evidence is that the Lot belongs to the Children of Llecholch. Specifically, they raise three primary objections: first, to the Land Court's consideration of Llecholch's failure to claim the land during the Japanese survey as a legal waiver, second, to its size approximations relating to the Tochi Daicho Lots; and third, to its inference that Etumai Lineage's historic ownership of lands adjacent to the Lot was probative of its ownership of the disputed Lot. The Children of Llecholch cannot meet the "high standard" required to set aside the Land Court's factual determinations with respect to any of the above objections. *Epsison v. Tmetbab Clan*, 14 ROP 39, 41 (2006).

First, contrary to the Children of Llecholch's assertions, the Land Court did not apply the legal doctrine of waiver to Llecholch's failure to claim the Lot during the Japanese occupation. Instead, the court simply considered Llecholch's failure to be circumstantial evidence suggesting that Llecholch did not believe the Lot to be his

property. This is a reasonable inference, and it is distinct and apart from the legal concept of waiver.

Second, the Land Court did not clearly err in making rough calculations and comparisons with respect to the listed Tochi Daicho sizes. Although the court did not have before it the exact size of the Lot in question, the court reasonably estimated the size by comparing it visually with neighboring lots of known sizes. This is an appropriate application of the court's extensive experience in reviewing Tochi Daicho lots. In any event, the court invited the parties to submit additional documentation if they felt that the court had significantly erred in its estimation, and neither party availed itself of this invitation. Accordingly, the court did not clearly err when it concluded, based on rough estimates, that including the Lot in Tochi Daicho Lot 55 would more closely approximate the sizes listed in the Tochi Daicho. *See Azuma v. Ngirchechol*, 17 ROP 60, 63 (2010) (noting that size comparisons can be probative as to whether disputed land is part of a particular Tochi Daicho Lot).

Finally, the Land Court reasonably considered Etumai Lineage's historic ownership of land adjacent to the Lot on three of its four sides as circumstantial evidence that Etumai Lineage also owns the Lot in question. The court acknowledged that the lot to the east of the disputed Lot is currently owned by Katosang, but noted that, historically, that land was listed in the Tochi Daicho as belonging to Etumai Lineage. Again, this evidence is simply probative—and not dispositive, as the Children of

Llecholch suggest—of Etumai Lineage’s claims of ownership. Indeed, the court’s inference regarding Etumai Lineage’s history of ownership of the neighboring lands was reasonable and lends additional support to its finding that the Lot belongs to Etumai Lineage.

In sum, the Land Court’s determination of ownership was supported by sufficient evidence. The Land Court provided reasons for discounting some of the testimony that favored the Children of Llecholch and crediting testimony favoring Etumai Lineage. In reaching its conclusion, the Land Court drew reasonable inferences from the available evidence, and “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).

CONCLUSION

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

SO ORDERED this 18th day of March 2014.


KATHLEEN M. SALII
Associate Justice


LOURDES R. MATERNE
Associate Justice


R. ASHBY PATE
Associate Justice