

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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SUPREME COURT

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SANTOS IKLUK, :
 : CIVIL APPEAL NO. 13-016 LAU
 : (LC/B 04-137 and LC/B 04-138)
 :
 Appellant, :
 :
 v. : OPINION
 :
 KOROR STATE PUBLIC LANDS :
 AUTHORITY :
 Appellee. :
-----X

Decided: June 26, 2014

Counsel for Appellant: Mariano W. Carlos
Counsel for Appellee: Debra B. Lefing

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; 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 Land Court Decision issued on September 9, 2013, following a remand from this Court, in which the Land Court granted ownership of the disputed land to Koror State Public Lands Authority (KSPLA). For the following reasons, the decision of the Land Court is affirmed.

BACKGROUND

This appeal concerns two parcels of land known as *Olang* in Ngerkesoaol Hamlet, Koror. On July 20, 2000, Appellant Santos Ikluk (Ikluk), acting pro se, filed a Claim of Land Ownership for the land in question. KSPLA claimed *Olang* as public lands. The matter was initially before Associate Judge Rdechor. Hearings began on October 10, 2011, and concluded on February 24, 2012.

On May 7, 2012, the Land Court issued its Findings of Fact, Conclusions of Law, and Determination, granting ownership of *Olang* to KSPLA. In reaching this conclusion, the Land Court noted that *Olang* was listed as public land, and that Ikluk had “provided no evidence to show it was wrongfully taken or taken by force.” On May 21, 2012, Ikluk appealed.

On appeal, the Appellate Division determined that the Land Court had failed to perform a necessary superior title analysis. The case was remanded on this issue and assigned to Senior Judge Polloi because Judge Rdechor had resigned in the interim. The Land Court held a hearing on July 18, 2013, and accepted written closing arguments thereafter. On remand, Ikluk argued that the legal analysis governing superior title claims should be modified in two ways: (1) the requirement that a claimant prove that the disputed land in question was never public land should be eliminated; and (2) the requirement that a claimant must prove by clear and convincing evidence that a Tochi Daicho listing is wrong should be reduced to a preponderance of the evidence standard.

On September 9, 2013, the Land Court issued its new decision. In it, the court performed a superior title analysis and granted the land to KSPLA. Ikluk timely appealed.

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).

DISCUSSION

Ikluk presents numerous arguments on appeal. We will address each in turn.

I. Land Court's Finding of Fact as to the Trust Territory Release

The crux of Ikluk's appeal is that the Land Court erred by failing to credit a document that purports to return land that had been wrongfully taken by the Japanese. Ikluk contends that the document is a valid release whereby the Trust Territory transferred *Olang*, and other land, to Ngerketiit lineage. According to Ikluk, *Olang* eventually became the property of Adelbai Ollaol, who then gave Ikluk the land as repayment for a debt. Although he offered no other documentation of these transfers, Ikluk argues that the Land Court committed clear error in ignoring the Trust Territory release.

We conclude that the Land Court did not ignore this document, nor did it commit clear error in giving it less weight. The document in question is problematic on its face. Although it purports to be a determination of ownership and release from the Trust

Territory, its relevancy to the lands at issue here is questionable. That is, although the document releases an “Olang” and other land to “Ngerketiit,” what land was actually released is unclear. The release defines the released land by sketch #162 and Land Office map #k2. However, neither the sketch nor the map was entered in evidence and thus it is impossible to verify that it relates to the disputed land in this case. Given these problems, the Land Court did not err in crediting evidence that contradicted the release document. This contradicting evidence includes: (1) evidence that *Olang* was part of Tochi Daicho Lot 218, thereby creating a presumption that it remains public land; (2) evidence that Roman Remoket had been told by elders in the 1970’s that the land in question is public land; and (3) the fact that KSPLA has used and leased the land for several years now which, under the controlling law, creates an inference that they own the land in question. “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). The Land Court did not clearly err in ascribing less weight to the release, especially given the contradictory evidence on the record.

II. Land Court’s Legal Analysis of the Superior Title Claim

A. Evidence that Land was Never Public Land

Ikluk also argues that the Land Court’s legal analysis is flawed. Specifically, Ikluk argues that (1) the court erred in applying *Wasisang v. Palau Pub. Lands Auth*, 16 ROP 83, 84 (2008), and (2) a superior title claim does not, or should not in this case, require

him to prove the land was never public land. Ikluk is incorrect. *Wasisang* states that one of the elements to a superior title claim is evidence that the land “never became public land in the first place.” *Id.* Similarly, when we remanded this case to the Land Court to consider a superior title claim, we cited to *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161 (2004). That case reiterated the long-standing rule that

in asserting superior title, a claimant is claiming the land on the theory that it *never became public land in the first place*. If the Tochi Daicho is in the name of the government, therefore, the claimant must prove, and must do so by the clear and convincing evidence standard to which we have long adhered, that that listing was wrong.

Id. at 167 (emphasis added) (internal citations and quotations omitted); *see also Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185 (2002); *Carlos v. Ngarchelong State Pub. Lands Auth.*, 8 ROP Intrm. 270, 272 n.8 (2001). We see no reason to depart from our past jurisprudence on this issue.

B. Proper Standard of Proof with Respect to the Tochi Daicho

Similarly, Ikluk challenges the standard of proof used by the Land Court in a superior title claim. Ikluk argues that because the land in question allegedly became private land before it was given to him, his burden of proving ownership of the land should be by a preponderance of the evidence. We disagree. As Ikluk acknowledged in his closing brief before the Land Court, the main issue in this case is whether *Olang* is public or private land. We have consistently held that when a claimant asserts a superior title claim, he contends that the land in question never became public land. Where there is an

adverse Tochi Daicho listing the land as public land, the claimant must produce clear and convincing evidence to the contrary to succeed on his claim. *Wasisang*, 16 ROP at 84; *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 168 (2004). The requisite burden of proof for this type of claim is evident and we see no reason to alter it based on the facts of this case.

Ikluk generally cites to *Tebelak v. Rdialul*, 13 ROP 150 (2006), for support of his position that the presumptive correctness of the Tochi Daicho listing is immaterial in this matter. However, *Tebelak* is not controlling. The *Tebelak* court stated that a

Tochi Daicho presumption is not necessary after a certificate of title has been issued based on evidence presented at a hearing before the Land Court, Land Claims Hearing Office, or Land Commission, so long as notice for the hearing was provided and due process was afforded to all interested individuals.

Id. at 154. Ikluk contends that the Trust Territory Determination of Ownership and Release should also negate the Tochi Daicho. But this would be a clear expansion of *Tebelak*'s holding. Here, unlike *Tebelak*, no certificate of title was issued after a hearing before the Land Court, Land Claims Hearing Office, or Land Commission, nor is there any evidence of notice or due process. We decline to extend the holding of *Tebelak* to the facts of this case.

C. Wrongful Taking

Lastly, Ikluk argues that the Land Court erred by construing his superior title claim as a wrongful taking claim. Ikluk is again incorrect. The Land Court began by stating that,

to succeed on a superior title claim, Ikluk must prove that the land in question never became public land. The Land Court then noted that, rather than presenting such evidence, Ikluk introduced evidence that *Olang* was wrongfully taken by the Japanese and became public land. In other words, the Land Court simply highlighted Ikluk's failed trial strategy. Ultimately, the Land Court properly applied the superior title analysis and concluded that Ikluk's claim failed because he did not prove that *Olang* was never public land.

CONCLUSION

For the reasons set forth above, this matter is **AFFIRMED**.

SO ORDERED, this ¹26 day of June, 2014.



ARTHUR NGIRAKLSONG
Chief Justice



KATHLEEN M. SALJI
Associate Justice



R. ASHBY PATE
Associate Justice