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SUPREME COURT
OF THE
REPUBLIC OF PALAU

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

AIRAI STATE PUBLIC LANDS AUTHORITY,

Appellant,

v.

ESUROI CLAN,

Appellee.

ESUROI CLAN,

Appellant,

v.

AIRAI STATE PUBLIC LANDS AUTHORITY,

Appellee.

CIVIL APPEAL NO. 13-019

Case Nos. LC/N 11-0044 *through* LC/N 11-0050
LC/N 11-0064 *through* LC/N 11-0070
LC/N 11-0041
LC/N 11-0079

OPINION

Decided: October 10th, 2014

Counsel for Airai State Public Lands Authority: Mariano Carlos
Counsel for Esuroi Clan: Raynold B. Oilouch

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

Appeal from the Land Court, the Honorable Rose Mary Skebong, Associate Judge, presiding.

PER CURIAM:

Both Esuroi Clan and Airai State Public Lands Authority (ASPLA) appeal the Land Court's October 25, 2013 Decision regarding parcels of land located in Ked/Ordomel Hamlet, Airai State. For the reasons set forth below, we affirm the decision of the Land Court.[1]

BACKGROUND

This appeal arises out of competing claims of ownership to sixteen parcels of land located in Ked/Ordomel Hamlet, Airai State.[2] Ownership of these lands was originally disputed back in 1974 in *Esuroi Clan v. Trust Territory of the Pacific Islands*, Civil Action No. 6-74. At the conclusion of that case, the High Court awarded ownership of land—which included all sixteen parcels at issue in this case—to the government.[3] Nearly forty years later, the Land Court once again heard arguments from Esuroi Clan and other claimants, seeking ownership of these same sixteen parcels under a return of public lands theory, pursuant to 35 PNC §1304(b).

The Land Court held hearings between June 10, 2013 and June 24, 2013, during which Esuroi Clan, Roman Tmetuchel Family Trust (RTFT), Kolual Rivera and Airai State Public Lands Authority (ASPLA) appeared as claimants. These claimants submitted

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[1] Pursuant to ROP R. App. P. 34(a), we determine that oral argument is unnecessary to resolve this matter.

[2] These lands are identified as Worksheet Lot Nos. BL-429C, BL-442, BL-442A, BL-443, BL-443A, BL-444 and BL-444A, BL-429B, BL-4291, BL-429D, BL-429E, BL-429E1, BL-429E2, BL-442B, BL-146 and 10N001-014.

[3] Affirmed on appeal in *Esuroi Clan v. Trust Territory*, 7 T.T.R. 538 (1977).

written final submissions on July 31, 2013. On October 25, 2013, the Land Court issued its Findings of Fact and Determination of Ownership and awarded three parcels of land to the RTFT, four parcels of land to Esuroi Clan, and the remaining nine parcels to ASPLA. Claimant Kolual Rivera's claims were denied as untimely.

Both Esuroi Clan and ASPLA filed timely appeals. Neither disputes the award of land to RTFT.

STANDARD OF REVIEW

We review the Land Court's factual findings for clear error. *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007). Conclusions of law are reviewed de novo. *Id.*

ANALYSIS

ASPLA raises two arguments. First, it argues that the Land Court's award of Lot Nos. BL-443, BL-443A, BL-444 and BL-444A to Esuroi Clan is unsupported by evidence in the record, and thus clearly erroneous. Second, it contends that Esuroi Clan should be barred from re-litigating ownership of those lots by the doctrine of *res judicata*. Accordingly, APSLA contends that the Land Court lacked subject matter jurisdiction to decide ownership of those four lots.

Esuroi Clan also raises two arguments on appeal. First, Esuroi Clan contends that the Land Court's findings in a previous 2012 land court case, LC/N 11-0042 & 11-0043, should be given preclusive effect and consequently bar ASPLA from contesting Esuroi

Clan's ownership of the lots in question. Second, Esuroi Clan asserts that the Land Court's award of Lot Nos. BL-429B, BL-4291, BL-429D, BL-429E, BL-429E1, BL-429E2, BL-442B, BL-146 and 10N001-014 to ASPLA is unsupported by evidence in the record, and thus clearly erroneous.

I. *Res Judicata*

We reject ASPLA's suggestion that the Land Court should have given *res judicata* effect to the High Court's judgment in Civil Action No. CA 6-74. Section 1304(b)(2) of the Land Claims Reorganization Act of 1996 clearly provides, in relevant part:

> [T]he statute of limitations, laches or stale demand, waiver, ***res judicata***, or collateral estoppels as to matters decided before January 1, 1981, and adverse possession, may not be asserted against and shall not apply to claims for public land by citizens of the Republic.

35 PNC § 1304(b)(2) (emphasis added).

The judgment, which ASPLA asserts should have *res judicata* effect, was entered in 1975, and the claims Esuroi brought before the Land Court here indeed were under a return of public lands theory. Accordingly, *res judicata* may not be asserted against Esuroi Clan and the Land Court did not lack subject matter jurisdiction when deciding the ownership of the lots at issue. *See Palau Pub. Lands Auth. v. Tab Lineage,* 11 ROP 161 (2004) (holding that pre-1981 judgment had no preclusive effect); *see also Kirk v. KSPLA,* 6 ROP Intrm. 346 (1997).

II. Issue Preclusion

We likewise reject Esuroi Clan's argument that the findings in a 2012 Land Court adjudication and determination should be given preclusive effect here. Specifically, Esuroi Clan argues that the Land Court's findings of fact in LC/N 11-042 & 11-043 awarding Lot BL-555 to Esuroi Clan should apply more broadly to its claims to the lots involved in this case.[4]

While it is true that the Land Court's findings both in this case and the 2012 adjudication and determination involving Lot No. BL-555 suggest that Esuroi Clan may have owned a larger tract of land encompassing the 16 parcels here before the land became public land, it is also true that, in the 2012 case, the Land Court found that Lot No. BL-555 was taken without compensation.[5] Here, and to the contrary, the Land Court found that the lots at issue were conveyed by Esuroi Clan *before* they were taken by the government.

Such a finding precludes a successful return of public lands claim because the land at issue was not taken in a wrongful manner. 35 PNC § 1304(b); *In re Tabkusik*, 18 ROP 16 (Land Ct. 2010) (an element of a successful return of public lands claim is that the claimed property became public land as a result of a wrongful taking (through force,

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[4] These cases, in which both Esuroi Clan and ASPLA were parties, were decided on July 31, 2012.

[5] Moreover, we disagree with Esuroi Clan's assertion that it is "crystal clear" that the Land Court's earlier adjudication and determination was "in relation to a much bigger area of land," which included the lots at issue in the case at hand. The record does not definitively support such a conclusion.

coercion, fraud, or without just compensation or adequate consideration) by a foreign government). Any allegation that the land in question was not conveyed, but was taken by force, is a challenge to the Land Court's factual findings, which we will discuss below in relation to the parties' final assertions of error.

III. Factual Findings

Both Esuroi Clan and ASPLA assert that the Land Court's award of land to the other was clearly erroneous and unsupported by the evidence presented. At the outset, we note that challenges to the sufficiency of the evidence in Land Court proceedings are "extraordinarily unsuccessful." *Marino v. Andrew*, 18 ROP 67 (2011). Indeed, the appellant must show that no reasonable finder of fact could have reached the same conclusion. *Id.* Here, the Land Court relied, in part, on evidence presented in the 1974 hearing in Civil Action 6-74, on the resulting 1975 judgment, and also on the record from a claim made by Dirrekelau Tebei, referred to in the lower court as "Claim No. 86." *See Ngerungel Clan v. Eriich*, 15 ROP 96 (2008) (noting that the Land Court may accept records of past proceedings as evidence in hearings before it, giving such record as much weight as it deems appropriate).

Specifically, Esuroi Clan argues that the Land Court abused its discretion by resting its denial of Esuroi Clan's claim on the apparent fact that the Clan failed to claim the lands back in the 1950's as noted in the 1975 judgment. But is not clear error for the Land Court to use a party's past failure to assert ownership of lands as evidence. *Roman Tmetuchl*

Fam. Trust v. Airai State Pub. Lands Auth., 12 ROP 76 (2005) (holding no clear error where the trial court used a party's failure to assert ownership of the lands at issue during title claim actions in the 1960s as some evidence that ownership of the lands was not claimed at that time). And, in any event, Esuroi Clan mischaracterizes the Land Court's findings in making the assertion in the first place. That is, the crux of the Land Court's ruling is its finding that the nine parcels of land awarded to ASPLA had been sold to the Japanese before they became public land; thus, those lands were not the subject of a wrongful taking and Esuroi Clan's return of public land claims consequently failed. The Land Court's decision, therefore, was not premised solely on the Esuroi Clan's inaction in the 1950's, and the Land Court did not clearly err in considering Esuroi Clan's prior failures to claim ownership and other salient facts adduced from the prior title claim.

Esuroi Clan's critique of the Land Court's reliance on statements made by witness Matchiau in Claim No. 86 is equally misguided, for the same reason and for an additional one. Esuroi Clan asserts that this witness gave different and arguably conflicting testimony in the 1974 civil case, which actually purportedly supports Esuroi Clan's claim. Esuroi Clan alleges that the Land Court erred by accepting Matchiau's testimony in Claim No. 86 and failing to consider Matchiau's testimony in the 1974 civil case. However, it is not clear error for the Land Court to credit one proffer of evidence over another so long as one view of the evidence supports the fact-finder's decision. *West v. Ongalek ra Iyong*, 15 ROP 4 (2007); *Singeo v. Secharmidal*, 14 ROP 99 (2007). Here, the statements made by

Matchiau and credited by the Land Court support a finding that the land in question was sold to the Japanese and was not wrongfully taken as required by statute. Accordingly, the Land Court did not clearly err. *See Aribuk v. Rebluud,* 11 ROP 224 (2004) (holding that, when reviewing findings for clear error, the Appellate Court usually defers to the lower court's findings regarding the credibility of witnesses).

Further, even if the Land Court had improperly considered Matchiau's statements or Esuroi Clan's failure to claim the land in the 1950's, the Land Court's ultimate ruling with respect to the nine lots awarded to ASPLA is again supported by other evidence, as noted above, and is fundamentally rooted in the finding that these lots were purchased by the Japanese. Aside from Esuroi Clan's insistence that the findings of fact in LC/N 11-042 & 11-043 should have a preclusive effect in this case, Esuroi Clan has not presented any independent evidence to demonstrate that these nine lots were not sold to the Japanese. Therefore, we find no clear error—or abuse of discretion, for that matter—with respect to the nine parcels of land awarded to ASPLA.

With respect to the Land Court's award of Lot Nos. BL-443, BL 443-A, BL-444 and BL-444A to Esuroi Clan, the Land Court—relying on the 1975 judgment—determined that these four parcels corresponded to land claimed by an individual named Eberdong, who at one time was chief of Esuroi Clan. In finding that these four lots were, in fact, the land claimed by Eberdong on behalf of the clan, the Land Court then determined that there existed sufficient proof that Esuroi Clan retained ownership of these

lots before they became public; and also determined that these lots were *not* part of the larger tract of land sold to the Japanese. Rather, the Land Court found that these parcels were taken without compensation and, thus, Esuroi Clan prevailed on its return of public land claims for these four lots. In contesting this determination, ASPLA asserts that there was no evidence presented during the hearings to support the Land Court's conclusion that these four lots correspond to the portion of land claimed by Eberdong.

In the Determination of Ownership, the Land Court states that its conclusion with respect to Lot Nos. BL-443, BL 443-A, BL-444 and BL-444A is based upon an "[e]xamination of the evidence, especially the sketch attached to Claim No. 86[.]" From that evidence, the Land Court concluded "that the 'portion claimed by Eberdong' correspond[ed] to Lots BL-443, BL 443-A, BL-444 and BL-444A." We have had the opportunity to review the sketch attached to Claim No. 86 and cannot say that no reasonable finder of fact could have reached the same conclusion. *Marino*, 18 ROP 67. The Land Court also used this sketch to determine that the land awarded to Dirrekelau in Claim No. 86 corresponded to three lots which are adjacent to Lots BL-443, BL 443-A, BL-444 and BL-444A.[6] And the sketch appears to indicate that the land claimed by Eberdong is adjacent to the land awarded to Dirrekelau. Accordingly, there is evidence in the record to support the Land Court's finding that the land claimed by Eberdong corresponds to Lots BL-443, BL 443-A, BL-444 and BL-444A.

[6] Notably, ASPLA does not dispute the land Court's findings with respect to which lots correspond to lots awarded to Dirrekelau.

ASPLA argues, however, that the sketch attached to Claim No. 86 weighs against such a finding because the sketch shows Eberdong only claimed land south of the compact road, whereas the lots in question are located north of the road. We make no findings with respect to the location of the land illustrated in the sketch attached to Claim No. 86 and instead defer to the Land Court's factual findings. *Kawang Lineage v. Meketii Clan*, 14 ROP 145 (2007) (holding that it is not appellate panel's duty to reweigh the evidence). We note, however, that in their written closing submission to the Land Court, ASPLA conceded that Eberdong "filed or participated in filing a claim to a portion of land north of the road." While ASPLA has consistently argued that the land claimed by Eberdong does not correspond to lots at issue in this case, it appears that its argument regarding the location of the land claimed by Eberdong—north or south of the road—has changed on appeal. It is well settled that arguments should not be raised for the first time on appeal. *Aimeliik State Pub. Lands Auth. v. Rengchol*, 17 ROP 276 (2010).

Additionally, we note that the Land Court's rulings with respect to the other lots at issue here are also based, in part, on the record from Claim No. 86. Namely, the Land Court relied on the record from Claim No. 86 to determine that nine of the sixteen parcels of land at issue in this case had been sold to the Japanese before they became public. In this appeal, ASPLA argues that the four lots at issue were, in fact, part of that larger portion of land sold to the Japanese. Thus, ASPLA essentially asks that we extend certain findings—which were based on the record from Claim No. 86—to the four lots which are

the subject of ASPLA's appeal. In making this request, ASPLA tacitly admits that the record from Claim No. 86 is credible. ASPLA fails to explain, however, why the Land Court's reliance on certain parts of the record from Claim No. 86 is sufficient to support the award of land to ASPLA, but its reliance on other parts is insufficient to support an award to Esuroi Clan. As noted earlier, the Land Court may accept records of past proceedings as evidence in hearings before it, giving such record as much weight as it deems appropriate. *Ngerungel Clan*, 15 ROP 96. Accordingly, we find no clear error in the Land Court's findings with respect to these four parcels of land.

CONCLUSION

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

SO ORDERED, this 10th day of October, 2014.

KATHLEEN M. SALII
Associate Justice

LOURDES F. MATERNE
Associate Justice

R. ASHBY PATE
Associate Justice