IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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SUPREME COURT
REPUBLIC OF PALAU

KOROR STATE PUBLIC LANDS AUTHORITY, Appellant, v. IDID CLAN, Appellee	CIVIL APPEAL NO.: 14-005 (LC/B NO.: 08-017) **OPINION**

Decided: May 26, 2015

Counsel for Appellant: Debra B. Lefing
Counsel for Appellee: Salvador Remoket

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

Appeal from the Land Court, the Honorable C. Quay Polloi presiding.

PER CURIAM:

Before the Court is an appeal of a Land Court determination of ownership awarding lands in Koror State to Idid Clan. The issue raised on appeal stems predominately from the Land Court's own request that the Appellate Division either clarify or revise two of our previous appellate decisions, which the Land Court perceives as having reversed a longstanding Land Court practice and having bound its hands unjustly in the underlying decision. Because our precedents in question are required by both the fundamental nature of our adversarial system and by clear statutory language, the Land Court's determination of ownership will be reversed.

BACKGROUND

KSPLA appeals the Land Court's determination of ownership, awarding lot 054 B 08, located in Idid Hamlet of Koror State, to Idid Clan. In doing so, the Land Court found that this lot, which both the Trust Territory government and KSPLA had been leasing out for many years, corresponded with Tochi Daicho 703, which is listed as owned by Keyukl. In finding for Idid Clan, the Land Court discussed, accurately, the two available types of claims to land held by the government: superior title (private land) claims and return of public lands claims. It noted that the primary difference between the two is that a superior title claimant asserts that the land has been his all along, while a return of public lands claimant concedes that the government owns the land but must show that it was taken wrongfully. Indeed, the Land Court has been hearing these claims in parallel and in the alternative for over a decade. *See generally Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185 (2002). Importantly, the Land Court noted that Idid Clan filed only a return of public lands claim and that no superior title claim had been presented.

Nonetheless, after finding that the land at issue is not public land, the Land Court awarded the land to Idid Clan under a superior title theory. It did so only after dismissing our previous opinions in *Klai Clan v. Airai State Public Lands Authority*, 20 ROP 253 (2013), and *Idid Clan v. Koror State Public Lands Authority*, 20 ROP 270 (2013) ("*Idid Clan I*"), as "anomalies that were not intended to undo long-standing precedent," despite the fact that they speak directly to the issue of a claimant who files only one type of land claim and then proceeds under the other theory. The Land Court found that the government had never actually acquired the land because there was no evidence

presented to show *how* it was acquired. Having found the land was not public, it abandoned the return of public lands framework and proceeded to award title to Idid Clan under a superior title theory, despite the fact that Idid Clan never filed such a claim.

Appellant timely appeals.

STANDARD OF REVIEW

We review the Land Court's conclusions of law de novo and its factual findings 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 evidence is subject to multiple reasonable interpretations, a court's choice between them cannot be clearly erroneous. *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 223 (2009).

DISCUSSION

KSPLA asserts two arguments on appeal: (1) that the Land Court erred when it disregarded *Klai Clan* and *Idid Clan I* and reformed Appellee's claim into one for superior title, and (2) that it erred in finding that the land was not public because Appellant had not shown how the land had become public. We agree that the Land Court erred in both areas and will reverse.

I. The Land Court Has No Authority to Reform Idid Clan's Claim

As noted above, in issuing its determination of ownership to Idid clan, the Land Court specifically disregarded and challenged two of our more recent opinions: *Klai Clan v. Airai State Public Lands Authority*, 20 ROP 253 (2013), and *Idid Clan v. Koror*

State Public Lands Authority, 20 ROP 270 (2013). To best understand these recent cases, it is helpful to look back to a pair of cases that preceded them—*Carlos v. Ngarchelong State Public Lands Authority*, 8 ROP Intrm. 270 (2001) and *Kerradel v. Ngaraard State Public Lands Authority*, 9 ROP 185 (2002).

In *Carlos*, a land claimant filed a return of public lands claim after the statutory deadline for such claims and appealed when the LCHO denied his request for late filing. *Carlos*, 8 ROP Intrm. at 271. On appeal, Carlos argued that the statutory limitation on return of public lands claims deprived him of his property interest without due process of law, but we disagreed. *Id.* The *Carlos* Court held that the return of public lands statute does not deprive anyone of any existing property interest—it revives a legal interest previously lost when lands were wrongfully taken. *Id* at 272. The Court highlighted that the common law claim of superior title, available to a land owner, was *not* extinguished and could in fact have been brought separately by claimant Carlos.[1] *Id. Kerradel*, in contrast, involved just such a claimant who brought two separate and parallel claims to the same land—one claim for the return of public lands and one claim for superior title. *Kerradel*, 9 ROP at 185. The Land Court dismissed the case in its entirety because Kerradel's return of public lands claim was untimely, but we reversed in part and remanded for consideration of Kerradel's superior title claim. *Id.* at 185–86.

Klai Clan and *Idid Clan I* follow these two cases. In *Klai Clan*, we held that a

[1] Carlos filed and pursued his claims prior to enactment of the Land Claims Reorganization Act of 1996. That act, as discussed below, changed the filing requirement for superior title claims, but the *Carlos* decision was not decided under the Act as it had not been in place at the time.

party that files only a return of public lands claim may not prevail upon a superior title theory at the Land Court hearing if it has not actually filed a superior title claim. *Klai Clan*, 20 ROP at 256–57. We affirmed a ruling of the Land Court that "Klai Clan's refusal to make arguments consistent with its pleadings does not alter the pleadings it made," and further held that the Land Court lacked the authority to transform a party's return of public lands claim into a superior title claim or to hear and adjudicate a superior title claim that was filed after the statutorily imposed deadline. *Id.* at 255–56.[2] We specifically did not hold that Klai Clan had been precluded from filing a superior title claim and from pursuing it, concurrently, in the alternative—indeed, we expressly recognized that it could have done so within the statutorily prescribed claims window. We simply decided the case as it was presented because, much like in *Carlos*, Klai Clan had not filed a superior title claim at all. *Id.*; *see also Ikluk v. Koror State Pub. Lands*

[2] Admittedly, the *Klai Clan* and *Idid Clan I* decisions improperly quote the mandatory deadline from the Land Court Regulations, which state that claims must be filed "no later than 60 days prior to the date set for hearing of the land claimed." The source of that language is the original Land Claims Reorganization Act, RPPL 4-43. The Land Court Regulations, however, do not appear to have been updated to reflect the fact that the Act has been amended repeatedly and the claims window has been changed. 35 PNC § 1309 (as amended by RPPL 6-31 and left unchanged by subsequent amendments) currently requires that "[a]ll claims shall be filed with the Bureau no later than thirty (30) days after the mailing of the notice" of monumentation. Statutory authority being superior to conflicting Land Court Regulations, the statute controls, and to the extent that our previous decisions erroneously quote the Regulation as establishing the relevant time limit, they are overruled in that limited respect. This error, however, does not affect the holding or result of these decisions or of this one, as they involve claimants who *entirely* failed to file a superior title claim, not claimants who filed untimely claims, and because the actual notice posted and served upon Idid Clan included the correct claims deadline as imposed by statute. Furthermore, RPPL 6-31, like all other versions of the statute, specifically provides that "[a]ny claim not timely filed shall be forfeited." We see no inherent grant in any of this language, revised or unrevised, to support the Land Court's so called longstanding practice of revising the claims post-trial.

Auth. 20 ROP 286, 289 (L.C. 2013) (noting that a claim for private lands is filed by using a Land Court "Claim of Land Ownership" form, which is not subject to the return of public lands statutory deadline).

We reiterated this point in *Idid Clan I*, in which Appellee, by the same counsel, was a claimant. 20 ROP at 270. *Idid Clan I*, decided on September 4, 2013, also involved a lot to which Idid Clan had filed a return of public lands claim (but no superior title claim). *Id.* at 272. The Land Court, having found that Idid Clan's return of public lands claim failed, proceeded to find that the land in question was never public land in the first place. "Thus, the Land Court determined, sua sponte, that Idid Clan should have filed a claim for superior title" and remodeled the claim as such. *Id.* While the judgment was affirmed on separate grounds (because the land authority was eventually found to hold superior title), we expressly reversed the Land Court's extraneous inquiry into a claim not before it and its spontaneous reformation of Idid Clan's claim.[3]

Klai Clan and *Idid Clan I* are not anomalies; they were not intended to, and did not, overrule any longstanding precedent on this point.[4] *Klai Clan* and *Idid Clan*,

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[3] The facts in *Idid Clan I* are so similar to those in this case that we are surprised to be faced with this situation again. *Idid Clan I* involved the same claimant, the same counsel for Idid Clan, the same failure to file a superior title claim, the same Land Court reformation of the claim, and—a fact that we generally would not acknowledge were the circumstances not so extreme—the same judge. We reversed then, and do so again now.

[4] We recognize that *Klai Clan* and *Idid Clan I* conflict, at least in some respects, with *Koror State Public Lands Authority v. Wong*, Civ. App. 12-006 (October 31, 2012), and *Koror State Public Lands Authority v. Ngermellong Clan*, Civ. App. 14-042, (October 31, 2012). These cases contain broad statements that suggest that the Land Court could, in some instances, treat certain superior title or return of public land claims as the other if the evidence clearly shows that the other standard applies. But while this language may be applied to the Land Court's current position when read out of context, we clarify now that applying a return of public lands standard

applying the precedent of *Carlos* and *Kerradel*, merely reasserted what has been the case ever since the adversarial system was adopted by the Republic of Palau: that a claim must be filed for a plaintiff to prevail on it. It has been clear since *Kerradel* that a claimant may file and bring both claims in parallel; *Klai Clan* and *Idid Clan* simply emphasized that a claimant who fails to file both types of claims is limited to prevailing only on the claim he actually brings. The decision below suggests, without explaining, that this elevates form over substance. Nothing could be further from the truth, because the form in question—notice of a legal claim—is a fundamental requirement of due process, an absolute constitutional right.[5] Nothing is more substantive in our legal system.

Idid Clan filed a timely return of public lands claim for this land, and, it appears, most assuredly *should* have filed a superior title claim,[6] because the witness it presented asserted that the land never became public in the first place and counsel argued this theory before the Land Court. But the record before the Court contains no such claim,

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to a superior title claimant (or vice-versa) is only applicable in the event that the claimant has actually brought parallel claims, because filing a timely claim is a mandatory element of each cause of action. Even to the extent that these cases can be read to suggest the Land Court may reform a claim and save a claimant from the filing requirement, they were in part overruled by implication because they are inconsistent with our subsequent, clearer *Klai Clan* and *Idid Clan I* decisions. Nevertheless, we do not believe the Land Court was referring to these 2012 cases, slated to be reported in the next-issued volume of the Republic of Palau Reports, when it referred to "long-standing precedent."

[5] To be clear, this due process right belongs only to other private claimants in any given action, but "[t]hough land authorities do not have due process rights per se, reciprocity and an interest in accuracy favor ensuring that interested public parties have their day in court as well as private parties." *Koror State Pub. Lands Auth. v. Wong*, Civ. App. 12-006, slip op. at *9 n.7 (2012).

[6] This is particularly true where, as in this case, the Tochi Daicho listing is favorable to the land claimant, because a Tochi Daicho listing in the name of a superior title claimant is presumed accurate. *See Kerradel v. Ngaraard State Pub. Lands. Auth.*, 9 ROP 185, 185–86 (2002).

and a party simply cannot be awarded judgment—money, real property, declaratory, equitable, or even nominal—without first filing a claim, because a properly filed claim is what vests jurisdiction in a court. *See Idid Clan I*, 20 ROP at 274. Notice of a claim is a fundamental element of due process, because without its requirement adverse parties effectively are required to shoot at a moving target.[7]

As we have said before, "[w]e appreciate that a claim-focused approach may cause miscategorization of public land as private land," or, as the Land Court concluded here, vice-versa. *Koror State Pub. Lands Auth. v. Wong*, Civ. App. 12-006, slip op. at *8 (2012). "However, this can be remedied through the adversarial process." *Id.* This problem was not caused by the legislature, this Court's recent decisions, or even by the Land Court's inappropriate reformation of the claim: it was caused by the failure of the claimant, or its counsel,[8] to file a superior title claim in the first place. It is not "unjust and absurd" that a claimant may lose a claim by failing to bring it prior to a required statutory deadline; it is, in fact, entirely standard. *See, e.g.*, 14 PNC §§ 401–14 (statutes of limitations in civil actions); 17 PNC § 107 (statute of limitations for criminal charges).

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[7] An exception of sorts exists where issues are tried by the consent of the parties despite not having actually been raised in the pleadings. *See* ROP R. Civ. P. 15(b). But several obvious distinctions present, such that this exception is not relevant here. First, the Rules of Civil Procedure do not govern Land Court proceedings. Second, the very language of the rule requires the parties' consent, effectively requiring that they have had notice sufficient to satisfy their right to due process. Third, while we need not decide such today, an express statutory limitation on bringing a claim may very well prohibit trial by consent.

[8] We recognize and appreciate that Idid Clan's current counsel may not have represented the clan at the time that a superior title claim could have and apparently should have been filed, and as such may not be personally responsible for this deficiency in pleading. Nonetheless, current counsel was expressly advised of the infirmity of this legal theory in *Idid Clan I*.

We will not subvert a requirement clearly articulated by the legislature merely because a claimant fails to comply with it.

II. The Land Court Erred in Deciding Whether the Land Was Public

We find further error in the Land Court's basis for disposing of the claim actually presented, Idid Clan's return of public lands claim. KSPLA contests that, as a factual matter, the Land Court clearly erred when it determined that the land never became public in the first place.[9] We express no opinion on the validity of this finding, because the Land Court should never have reached (or even considered) whether the land was public or private. In a return of public lands claim, the claimant necessarily concedes the Government's ownership of the land as a fundamental element of the claim. *See Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 168 (2004). Whether the land is public is not at issue, and evidence suggesting that it is not is irrelevant. *See* LCR Proc. 6 ("All *relevant* evidence which would be helpful to the Land Court in reaching a fair and just determination of claims is admissible." (emphasis added)); ROP R. Evid. 401 ("'Relevant evidence' means evidence having any tendency to make the existence of any fact *that is of consequence to the determination of the action* more probable or less probable than it would be without the evidence." (emphasis added)).

[9] It is far from clear, although perhaps not clearly erroneous, that this finding was correct. We have consistently held that "some maintenance of the land by the government will be probative of government ownership," although we have further held that this evidence is not dispositive. *See Idid Clan I*, 20 ROP at 274 (quoting *Koror State Pub. Lands. Auth v. Ngermellong Clan*, Civ. App. 14-042, slip op at *7 (October 31, 2012). Because this finding is irrelevant and the decision depends on whether the land was wrongfully taken, we do not review it.

Idid Clan, in filing a return of public lands claim without filing a parallel superior title claim, conceded that the land is public. Nevertheless, the Land Court disposed of this claim on the contrary finding that the land was never public at all—an element that is simply not part of a return of public lands claim. In this, the Land Court erred. Having found that claimants were the rightful heirs to the previous owners of the land, the controlling factor was whether or not "the land became part of the public land, as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation or adequate consideration." 35 PNC § 1304(b)(1). The Land Court did not answer this question, and the record before the Court is insufficient to resolve it. While it is suggestive that the Land Court opined on the lack of evidence put forth to show how the land became public, it failed to make an actual finding as to whether the land was wrongfully taken. We will not speculate as to whether the Land Court might have held additional hearings, asked additional questions, or sought additional explanation from the claimants had it applied the correct legal framework from the outset. Decisions such as these are within the discretion of the Land Court, and we will remand for the Land Court to make this dispositive determination.

We recognize, and sympathize with, the Land Court's vexing predicament. Below, the only claim before the court was a return of public lands claim for land, which the court determined as a factual matter at the very outset, was not public. Thus, absent a claim for superior title, the Land Court would be required to issue a determination of ownership in favor of the public lands authority if all claimants' return of public lands

claims fail. *See* 35 PNC § 1312. Here, doing so might actually effect, in the view of the Land Court, a wrongful taking of the land from the rightful owners it found—Idid Clan. But the legislature could not have been clearer on this point; the Land Claims Reorganization Act has been amended a number of times, and each time the legislature has maintained and/or expressly included this limiting language: "Any claim which is not timely filed shall be forfeited." *See, e.g.*, Land Claims Reorganization Act, RPPL 4-43 § 8(a); 2003 Amendments, RPPL 6-31 § 2; 2008 Amendments, RPPL 7-54 § 2.

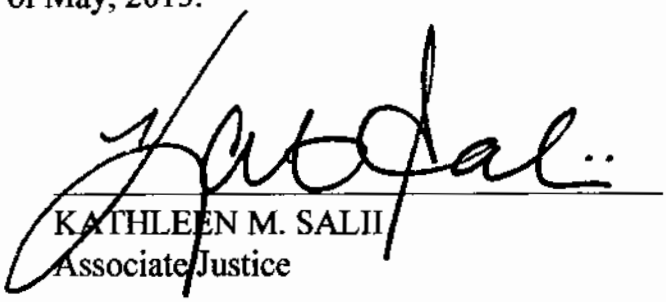
Idid Clan was expressly advised in *Idid Clan I* that prevailing on a superior title theory required filing a superior title claim. This statutory requirement is placed on a claimant and its counsel, and the Court cannot ignore the failure of a party to bring an appropriate claim. The outcome of a failure to follow the statutory requirements and the express instructions of this Court rests on the claimant's shoulders.

CONCLUSION

Because the Land Court erred in disregarding our *Klai Clan* and *Idid Clan I* decisions, and because the Land Court further erred by disposing of a return of public lands case on the conceded issue of whether the land is in fact public, the determination of the Land Court is reversed. The case is remanded to the Land Court for a finding as to whether the land in question "became part of the public land, as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation or adequate consideration." 35 PNC § 1304(b)(1). The Land Court may, in its discretion, make this finding based on a review

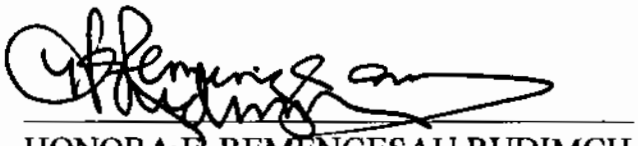
of the record or hold any additional proceedings it deems necessary. A new determination of ownership shall issue.

SO ORDERED this 26th day of May, 2015.



KATHLEEN M. SALII
Associate Justice

R. ASHBY PATE
Associate Justice



HONORA E. REMENGESAU RUDIMCH
Associate Justice Pro Tem

Koror State Pub. Lands Auth. v. Idid Clan, Civ. App. No 14-005.