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IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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SUPREME COURT
OF THE REPUBLIC OF PALAU

EKLBAI CLAN, OKELANG CLAN, RAMONA MARBOU, and HARRY R. FRITZ, Appellants, v. KOROR STATE PUBLIC LANDS AUTHORITY and LEONARD TOWAI, Appellees.	CIVIL APPEAL NOS. 14-009, 14-011, 14-014, 14-015 LC/B: 08-0298; 08-090; 09-0166 – 09-0126 **OPINION**

Decided: September 28, 2015

Counsel for Eklbai:	Raynold B. Oilouch & Moses Uludong
Counsel for Okelang & Fritz:	Johnson Toribiong
Counsel for Marbou:	J. Roman Bedor
Counsel for KSPLA:	Ernestine K. Rengiil

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 Senior Judge C. Quay Polloi presiding.

PER CURIAM:

Before the Court are four consolidated appeals[1] of a Land Court Decision involving land known as *Semiich* or *Skenjio* (Semiich) in Ngerchemai Hamlet. Appellants separately appeal the Land Court's denial of each of their return of public lands claims, in

[1] Though filed separately, these appeals arise from same trial court decision and areare consolidated here. *See* ROP R. App. P. 3(b).

which each claimed part, or all, of the land. Because we are unconvinced that the Land Court erred in its application of the law or that it clearly erred in its consideration of the evidence in reaching its factual findings, we will affirm.

BACKGROUND

This case involves the ancestral land of the Chemai people, who settled in Ngerchemai after relocating from the Rock Islands several hundred years ago.[2] That land is now parceled out into numerous lots, including: Lots B06-102; B06-103; B06-104; B06-105; B06-106; B06-107; B06-107A; B06-108; B06-108A; B06-110; B06-112; B06-113; B06-114; and B06-115. This appeal arises from the Land Court's March 31, 2014 Decision denying all but one of the claims to these lots.

At trial, the Land Court considered fourteen separate claims to some or all of these lots. It heard conflicting testimony from twenty-eight witnesses, of whom several testified on behalf of multiple claimants. Following weeks of testimony and closing arguments by all parties, the Land Court issued its Decision, finding only that Leonard Towai's claim to Lot B06-104 had been proven by the preponderance of the evidence, but that all other claimants had failed to demonstrate (1) that they were the prior owners (or proper heirs) of the land, (2) that the land had been wrongfully taken by force or

[2] The fascinating and bloody historical background of this migration does not pertain to the appeal at hand because it is undisputed by the parties and was accepted by the Land Court. Interested readers can find a more detailed telling in the underlying Land Court Decision.

without just compensation or adequate consideration, or (3) both.[3] Accordingly, all lots except B06-104 remained under Koror State Public Lands Authority's control.

Appellants timely appealed.

STANDARDS 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).

DISCUSSION

All of the Appellants' return of public lands claims were denied by the Land Court below. Collectively, they now bring the following assignments of error: (1) the Land Court erred in linking Harry Fritz's claims to those of Okelang Clan when it held that Fritz's claim could not succeed if Okelang's Clan's claim did not succeed; (2) the Land Court erred in separately considering the competing claims of two factions representing Eklbai Clan's claim(s); (3) the Land Court clearly erred in finding that Appellants had

[3] The Land Court also denied Appellant Okelang Clan's claim for failure to file a timely claim, which denial Okelang Clan now argues was made in error. However, timeliness was not the Land Court's exclusive basis for denial. Rather, the Land Court found that Okelang Clan's claim actually concerned a wholly separate plot of land. Thus, by definition, it failed to prove its prior ownership of Semiich or that Semiich had been wrongfully taken.

failed to demonstrate wrongful taking; (4) the Land Court erred in failing to make a finding as to which clan previously owned Semiich; (5) KSPLA's opposition of Appellant's claims is somehow improper or prohibited by the Constitution; and (6) the Land Court committed other reversible error of fact or law.[4]

We review the Land Court's legal treatment of the case first, as a structural legal error in how the Land Court reached its factual findings would call such findings, however otherwise proper, into question.

I. The Land Court's linkage of Fritz and Okelang Clan's claims

Appellant Harry Fritz contends that the Land Court erred in holding that the success of his claim depended on whether Okelang Clan, a separate claimant, had previously owned Lot B06-113 immediately prior to it becoming public land. The Land Court reached this conclusion based on Fritz's own testimony purporting to establish that Remeliik, Fritz's great-grandfather, was Obechad of Okelang Clan and that Remeliik had gifted the land to his daughter, Urrimch, Fritz's grandmother. The Land Court reasoned that, for Obechad Remeliik to have had the right to convey that land, it must have been Okelang Clan land at the time of the conveyance.[5] Thus, the Land Court concluded that a

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[4] A number of assignments of error overlap and generally repeat a disagreement with what weight the Land Court afforded the evidence presented. Several others are unsupported by the record or the law, and are inappropriate for consideration on appeal. This Court will only address the above potentially dispositive questions.

[5] Fritz's testimony before the Land Court, as well as his argument on appeal, suggests that this land was clan land that was gifted to Urrimch by Obechad Remeliik in his official capacity as Obechad—not land that he owned privately and gifted to her in his individual capacity. *See, e.g.*,

successful showing of previous ownership by Okelang Clan was a prerequisite to Fritz's claim being successful. Fritz contests this conclusion, arguing, without any citation to the record, that Remeliik's transfer to Urrimch occurred *before* the Japanese came to Palau; thus, he argues that the original ownership of Okelang Clan is irrelevant and should not have been considered because the land already belonged to Urrimch and the Japanese took it directly from her.

We agree that, if Urrimch owned the land outright prior to the Japanese period, then the analysis of whether Urrimch was the original owner would likely properly begin with her—not with Okelang Clan.[6] The problem with Fritz's argument here is that it directly conflicts with Fritz's own testimony. That is, on cross-examination, Fritz expressly testified that the land transfer occurred *during* the Japanese period—testimony that directly contradicts the factual argument asserted in his brief. *Compare* Tr. 129:9–25 *with* Fritz Brief at 6. In fact, it appears that opposing counsel had implied on cross examination that the land was gifted to Urrimch prior to the Japanese period (during the German period as Fritz's brief asserts) but Fritz corrected counsel and testified that the land was given out *during* the "Japanese time."

Tr. 140:19–27. Fritz does not contest this issue, nor does he argue that the land was privately owned by Remeliik, so, we determine that the Land Court was correct in its understanding of Fritz's testimony.

[6] However, given that Fritz's claim for ownership is asserted solely on the basis of double hearsay that is nearly a century old, the Land Court is entitled to inquire whether there might be some additional evidence that the alleged grantor of the land had the right to grant that land to an alleged grantee.

We acknowledge that the transcript of these proceedings exceeds one thousand pages and that it is entirely possible that Fritz offered other testimony supporting the factual assertion in his appellate brief that the land was given out prior to the Japanese period. But this type of factually imprecise argument is *exactly* why ROP Rule of Appellate Procedure 28(e) requires that "[r]eferences to evidence must be followed by a pinpoint citation to the page, transcript, line, or recording time in the record." The Rule clearly states that "[f]actual arguments or references to the record not supported by such adequately precise pinpoint citation may not be considered by the Appellate Division." *Id.* This factual argument goes far beyond simply not being supported by citation—the Court's independent review of the record reveals that Fritz's own testimony directly contradicts his own appellate argument. Accordingly, having testified that the land was given to his grandmother during the Japanese time, yet now arguing on appeal, with no citation to the record, that the gift supposedly *preceded* the Japanese time, this factual argument is entirely disregarded as lacking consistency and credibility.

Fritz further confounds this issue in his reply brief where he suggests that the Land Court allegedly found that "[t]he land known as *Skenjo* became public land when it was registered in the Tochi Daicho by the Japanese in around 1938–1941." But the Land Court decision contains no such finding—not on page eight, nor on any page—and instead merely states that "from 1938 to 1941, the Japanese government conducted the Tochi Daicho land registration survey in Palau." This is a far cry from having stated, or

accepted, that the taking occurred at that time, and, in fact, it strongly implies that any taking occurred before such time if the survey recorded the land as already being Japanese government land. Accordingly, absent facts to support Fritz's legal challenges, we see no error in the Land Court's linking of Fritz's and Okelang Clan's claims, given that Fritz's argument is factually inconsistent and unsupported by the record

II. The Land Court's separate treatment of the Eklbai Clan factions

In the underlying case, Eklbai Clan brought two separate claims by two separate factions represented by two separate attorneys. The Land Court treated each faction separately, as it would most any other claimant, despite the fact that each Eklbai Clan faction claimed the land as clan land. Eklbai Clan, now bringing their appeal jointly by the previously competing factions, asserts that the Land Court erred in considering the faction's claims separately, and insists that the Land Court should have weighed the evidence presented by both factions together in determining whether or not Eklbai Clan was the previous owner of Semiich. Had the Land Court considered the evidence together, Eklbai Clan maintains its claim would have been successful. But this is *entirely* Eklbai Clan's fault. That is, Eklbai Clan's two factions presented different witnesses, and portions of the testimony of those witnesses undermined testimony from the witnesses of the other faction. Not only were their claims at times significantly adverse, counsel for each faction cross-examined the witnesses of the other faction as well. *See*, *e.g.*, Tr. 555–564, 770–783. Indeed, before the Land Court, the two factions

largely treated each other as opponents, and to whatever extent the Land Court might have erred in treating them as opponents, that error was invited by the conduct of the separate factions. *See* 5 Am. Jur. 2d *Appellate Review* § 667 ("A party who induces an error cannot be heard to later complain about that error."). Had Eklbai Clan wished to have its evidence considered in harmony, and not adversely, the factions should have presented a singular claim instead of presenting competing claims.[7]

To be fair, Okelang Clan also appeared by two separate factions and, in this instance, the Land Court analyzed the two Okelang Clan factions' claims together. LC Decision at 37. But those factions presented claims that the Land Court found were aligned, and, importantly, they did not dispute the claims presented by the other faction. The same is not true of Eklbai Clan, in which both factions disputed the other's version of how the clan purportedly came to own the land, an inability to agree that the Land Court considered significant in determining that each faction's claim failed. *See, e.g.*, LC Decision 43 (noting that a previous case had found Okelang Clan owned a strip of land in *Ngeribongel*, which abuts Semiich, and which finding undercuts Eklbai Clan's claim that it owned land extending beyond Semiich into that area). That the Land Court chose to consider Okelang Clan's claims together for efficiency purposes does not mean that Eklbai Clan's claims, which were not similarly situated, necessarily warranted the same

[7] We also note that the Land Court did not truly evaluate each claim in a vacuum. For example, in discussing whether the land was wrongfully taken, the Land Court specifically noted and addressed that all witnesses agreed that coercion occurred. LC Decision 49.

treatment, and it was not an abuse of discretion or error of law for the Land Court to do so.

III. The Land Court's factual findings

With the exception of Lot B06-104, which the Land Court returned to Leonard Towai, the Land Court made no findings regarding the prior owner(s) of any lots. Though the Land Court did find that the land *Semiich* was at one point clan land that had been transferred to the Japanese, it did not find sufficient evidence to determine (a) which clan had previously owned the land or (b) that the land had been wrongfully taken by force, coercion, or without just compensation or consideration. Appellants now make two primary contentions. First, they collectively contend that the Land Court erred in failing to find that Semiich had been wrongfully taken because they all consistently maintained that the land had been wrongfully taken. Second, given the Land Court's intermediate findings that *Semiich* was previously owned by a clan *and* that the clans of the hamlet consist exclusively of claimants below, Eklbai Clan itself contends that the Land Court erred in failing to make a finding as to which of the clans previously owned *Semiich*. That is, having narrowed this important question down to a closed universe of possible prior land owners, Eklbai clan contends that it was entitled to a finding as to who the previous owner of Semiich actually was.

Because the return of public lands rubric involves a conjunctive test, we will address first the Land Court's finding that no Appellant had successfully proven that

Semiich was wrongfully taken by force, fraud, or without just compensation or adequate compensation, as required by 35 PNC § 1304. This is because a failure to prove this prong alone is sufficient to bar their claims, regardless of the relative merits of their other arguments.

As stated above, a trial court's findings of fact are given significant deference, and "[t]he 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." *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009). All claimants below, and all Appellants here, assert that the Land Court's failure to find that Semiich was wrongfully taken was contrary to the weight of the evidence and that no reasonable trier of fact could have reached that conclusion on the record below. But it is hard to imagine a trial record more extensive than the one in this case or a Land Court decision that addressed the parties, claims, and evidence in greater detail. All told, the Land Court considered fourteen separate claims. Twenty-eight witnesses testified, seven lawyers and trial counselors argued, and several more claimants presented arguments pro se. The testimony alone, excluding the opening and closing arguments of counsel, spans more than one thousand pages of trial transcript. The vast majority of testimony presented was double hearsay, inherently self serving, and, as the Land Court noted, often lacking in details that one would expect from a knowledgeable witness. Much of the witness testimony was in direct conflict, undercutting the credibility of each witness.

In ruling, the Land Court analyzed the witnesses, evidence, and argument presented by each claimant in an exhaustive fifty-five page decision addressing each claim with substantial particularity. It identified testimony it found credible, testimony it found lacked credibility, and even discussed, despite no obligation to do so, which factual questions it found were closer than others.

Nearly two hundred published Palauan cases discuss the credibility of witnesses and evidence. They are all but universally consistent that "the weighing and evaluating of testimony is precisely the job of the trial judge, who is best situated to make such credibility determinations." *Ngermengiau Lineage v. Estate of Isaol*, 20 ROP 68, 71 (2013) (quotation omitted). "A party seeking to set aside a credibility determination must establish 'extraordinary circumstances' for doing so." *Id.* (quoting *Kotaro v. Ngotel*, 16 ROP 120, 123 (2009)). In *Ngermengiau Lineage*, we specifically reiterated that "[e]xtraordinary circumstances do *not* exist where the record shows that the trial judge 'considered the content of one side's testimony and their credibility, did the same to the other side's witnesses, weighed the competing stories, and concluded that one side was unpersuasive.'" *Id.* (quoting *Ngirasechedui v. Whipps*, 9 ROP 45, 47 (2001) (alteration omitted). The record could not be clearer that the Land Court extensively considered all of the evidence, and indeed struggled with much of it. Absent extraordinary circumstances, we do not, and we will not, substitute our judgment on the matter of witness credibility for the judgment of the trial judge. *Palau Cmty. Coll. v. Ibai Lineage*,

10 ROP 143, 149 (2003).

Appellants attempt to distinguish this case from the *Ngermengiau Lineage* example because, here, all claimants and most witnesses, despite their divergent claims consistently argued that the land was wrongfully taken by force, coercion, or without just compensation. As such, Appellants collectively claim that the Land Court erred when it came to a conclusion that the land was not wrongfully taken because no claimant ever took that position. That is, they argue that there is no way the Land Court could have made this decision by deciding between two competing stories because all claimants maintained the consistent position that the land was wrongfully taken.

Though clever on its face, we reject this argument as being inherently fallacious. Were Appellants' claims private superior title claims, this argument might have some have merit because, in a superior title case, the Land Court has no choice but to choose between the claimants who come forward. *See Ngirumerang v. Tellames*, 8 ROP Intrm. 230, 231 (2001). But we have specifically limited this requirement to superior title/land registration cases, as opposed to those for the return of public land. *See Ngirametuker v. Oikull Village*, 20 ROP 169, 172 (2013) ("Where, as here, parties assert competing claims of superior ownership, the land Court must award ownership to the claimant advancing the strongest claim."). A return of public lands claim is fundamentally different, because instead of having a shared burden between equal entities, return of public lands claimants bear the burden, at all times, of proving each element of their

claim by the preponderance of the evidence. *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 224 (2009). Such a claimant does not succeed, as a superior title claimant would, simply by having the strongest claim presented, even if that claimant successfully shows that the land was wrongfully taken. *Id.* Accordingly, we reject the notion that the Land Court was compelled to make a finding that the land was wrongfully taken just because all claimants argued that it was. Each claimant bore a separate burden to prove, by a preponderance of the evidence, that the land was wrongfully taken. The Land Court did not err as a matter of law in finding that each failed.

This brings us to Eklbai's secondary argument, because the same fallacy rests at the heart of Eklbai Clan's claim as well. Eklbai Clan insists that, having put forth the strongest claim, the Land Court was *required* to award ownership to Eklbai Clan given that the Land Court also found that the land, prior to being transferred to the Japanese, belonged to one of the clans in this case. This argument, while unsuccessful, is not *entirely* without merit or support in the law. That is, in *Markub v. Koror State Pub. Land Auth.*, 14 ROP 45, 49 (2007), we held that "[w]here land was wrongfully taken by a foreign power, the government has the duty to find the 'original owners or their heirs' and give it back." *Markub* overruled prior precedent that incorrectly held that when the "proper heir," as it had been narrowly construed, had not filed a return of public lands

claim, the land should remain public despite the Land Court's finding that it had indeed been wrongfully taken from private owners. *Id.* at 48.

But there are two issues with *Markub*'s application here. First, we clarified and limited the *Markub* holding in *Koror State Public Lands Authority v. Giraked*, 20 ROP 248 (2013), in which we noted that "the lesson of *Markub* is that the phrase 'proper heir' is defined broadly in light of its constitutional and statutory context and the injustice that return-of-public-lands claims are designed to remedy." *Id.* at 252. That is a far cry from a strict rule that the Land Court, unconvinced that it can identify the correct claimant, must nevertheless award land to a claimant. Indeed, subsequent to *Markub*, we have held that land, even wrongfully taken land, will not be returned to private hands if the trial court is unconvinced of whom the proper claimant is. *Tengadik Clan*, 16 ROP at 225.

Second, and most importantly, the *Markub* holding applies to cases where the Land Court is convinced that land *was* wrongfully taken in the first place, but is less convinced that a proper heir has claimed the land. That is simply not what occurred here. Instead, the Land Court, having considered exhaustive testimony and evidence, including evidence that almost universally supported the claim that the land was wrongfully taken, remained unconvinced by the weight of such evidence, was suspicious of a lack of detail that permeated it, and determined that no wrongful taking had been proven—thus taking the analysis outside of *Markub*. *See* LC Decision 48–49. It noted, with some humor but with telling wisdom, that

> Yes, almost all of the witnesses agreed that there was coercion, but these same interested witnesses were not old enough to have experienced such coercion. They cannot then simply assert that what they say is true, implying as if they were there, and then assume that this Court will accept their uncorroborated statements as true. A line of 99 witnesses can testify that it is their belief that a creature covered with fur, standing on four legs, and showing sharp fangs is a dog. . . . But if the furry, four-legged creature with fangs suddenly meows, 100 people are now wrong . . . . This is why the preponderance of the evidence standard does not turn on the greater number of witnesses but on evidence of considerable weight, such as the conduct of the parties.

Id. 49 (incorporating n. 42). The Land Court found that the claimants' collective, self serving, hearsay testimony lacked credibility, even taken in concert, and that the documented *conduct* of the parties and their ancestors spoke more loudly—which conduct, by the way, the Land Court found suggested that the land had not been wrongfully taken. Some witnesses, the court noted, "were old enough to have at least heard of direct or indirect accounts from their predecessors or persons privy to the Semiich circumstances during the Japanese administration," and the Land Court found it telling that "none of these witnesses testified about being told of such accounts in relation to [the taking of] Semiich." *Id.* Accordingly, we find no error in the land court's weighing of the evidence here.

We acknowledge that, particularly given the occasionally chaotic nature of trial, courts may at times overlook significant evidence that should have been given substantial weight, and that findings of fact can be so outweighed by the evidence in the record that they leave us with "a definite and firm conviction that a mistake has been made." When

such *clear* errors present, appellants are absolutely justified in raising them on appeal and should identify them with particularity and with factual citation to the record. Yet, time and again, appellants ask us to set aside the fact-finding deference due to trial judges, substitute our judgment for that of the trial judge, and hold that a trial judge's findings of fact were unreasonable as matter of law merely because the appellant's claims or defenses were unsuccessful. We have consistently—and unanimously—refused to do so, yet we are forced to repeat ourselves again today by once again finding no clear error in the factual findings of the trial court. The common practice of asserting that this has occurred in nearly *every* case that comes before this Court, regardless of the reality of the record below or the details of the trial judge's decision, evokes the fable of the boy who cried wolf. It discredits the lawyers who continue to bring such assertions baselessly, and such discredit does a disservice to the entire Palauan bar, the Judiciary, and to clients who may actually have legitimate issues for appeal but whose counsel have tarnished their own credibility. It is a practice that must end.

IV. Other Legal Arguments Presented

Finding no clear error in the Land Court's finding that Semiich was not wrongfully taken, we consequently decline to reach the remaining legal issues and assignments of error raised by the Appellants because any error therein would be harmless, and Appellants' claims would still have failed. However, we acknowledge that some of these theories may have merit and, perhaps in a future case where the facts are

different, could warrant further discussion and consideration.

Specifically, Eklbai Clan's argument above poses a question: if the Land Court is convinced that the proper claimant to *wrongfully* taken public land has presented a timely claim before the court but remains *unconvinced* as to which claimant is in fact that proper claimant, can the Land Court treat such claims as a superior title claim between those competing claimants and award the land to the most deserving among them? It is possible that this falls within the policy aims of the constitutional requirement that the government act decisively to undo past injustice and give back wrongfully taken land wherever possible. *See Markub*, 14 ROP at 48–49. Were Appellants simply disputing current title to existing land amongst themselves, the Land Court would have been required to make a finding as to who had the best claim and should own the land. That is not, however, what our precedent allows for or requires in a return of public lands case, and the facts of this case, in which the Land Court was not convinced a wrongful taken was shown, make further consideration of this legal question unnecessary and inappropriate here.

We also recognize the potential validity of certain concerns espoused by Appellant Marbou,[8] who argues that the repeated restructuring of the land claims process

[8] Separately, Marbou argues that, as a trustee for the proper owners, KSPLA has violated several legal duties simply by even opposing these claims. We find little merit in this line of argument. Even assuming such duties, which are far from clear, KSPLA at the very least is a trustee not for the original owner—because, prior to adjudication, a court cannot know who the correct owner is—but instead would act as a trustee for the people, collectively, of Koror State. Because of this, and because our adversarial system largely expects that a representative, be it the party itself or court appointed amicus counsel, will assert and defend the interests of a potentially averse party, we reject this argument without substantial discussion.

throughout Palau's history has seriously delayed and consequently prejudiced her claim, which was first filed in 1974. Given the passing of time and of critical witnesses—perhaps most significantly her father, claimant Martin Itpik, her ability to prove her claim at trial has been essentially bureaucratically prejudiced. Such concerns are legitimate, and we sympathize with the situation of claimants who have awaited the return of their land for decades. This Court, however, stands alongside the political branches of government in the Constitution, and must give deference and respect to policy decisions made by the President and the Olbiil Era Kelulau, including, among others, the decision to eliminate the LCHO and create the Land Court in the first place. While such delays may not have been the result of any specific choices or failures on the part of Marbou or Iptik, they are largely caused by the decisions of the elected representatives of the citizens of Palau, constitutionally empowered and obligated to act on behalf of the rights of those citizens, and we do not often opine on the wisdom of such political decisions.

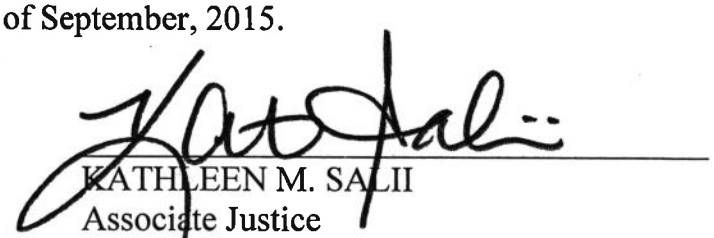
The law, however, widely recognizes that the extended passage of time may result in significant prejudice to claimants or defendants in litigation, and such is embodied in legal rules including the statute of limitations, the doctrine of laches, and the constitutional right to speedy trial. Even the return of public lands structure itself contains an often critical timing requirement—the requirement that claims have been filed prior to January 1, 1989. We acknowledge the possibility that such extensive passage of time, with more than forty years having passed since Iptik filed his claim in 1974, may warrant

further consideration by courts or the legislature in the future. Marbou, however, has not proposed any sort of meaningful legal remedy within the authority of this Court to grant, be it reconsideration of a generally applicable legal standard, some form of evidentiary presumption, or even a change in the burden of proof. No such remedy having been proposed, and no such argument having been presented to the Land Court for consideration in the first instance, such an issue is inappropriate for consideration at this time.

CONCLUSION

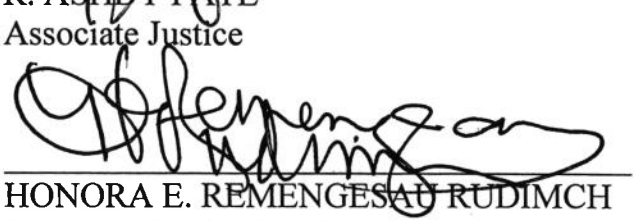
Having found no reversible error of law or fact in the underlying decision, the record, or the arguments of the parties, the Decision of the Land Court is **AFFIRMED**.

SO ORDERED this 28th day of September, 2015.



KATHLEEN M. SALII
Associate Justice

R. ASHBY PATE
Associate Justice



HONORA E. REMENGESAU RUDIMCH
Associate Justice Pro Tem