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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

NGIRAUREKED SPIS MIDAR,

Appellant,

v.

NGARCHELONG STATE PUBLIC LANDS AUTHORITY and MARINO CARLOS,

Appellees.

CIVIL APPEAL NO.: 14-034
C/A Nos. 12-018 & 12-041

OPINION

Decided: September 28, 2015

Counsel for Appellant: Pro se
Counsel for NSPLA: William L. Ridpath
Counsel for Carlos: Pro se

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

Appeal from the Trial Division, the Honorable Lourdes F. Materne presiding.

PER CURIAM:

Before the Court is Appellant Ngiraureked Spis Midar's appeal challenging a decision of the Trial Division which denied his claim to quiet title for insufficient proof. Finding no error, we will affirm.

BACKGROUND

Appellant Ngiraureked Spis Midar and Appellee Mariano Carlos[1] both, separately,

[1] We include Carlos in name only, as he was listed as an Appellee in Appellant's filings. Carlos, however, neither prevailed in his claim below nor appealed the decision of the Trial Divisions, and has not made any filings with the Appellate Division despite being named as a party.

filed suit in the Trial Division claiming title to Ngerkeklau Island, located off the coast of Ngarchelong state. The island is listed in the Tochi Daicho as property of the Japanese administration and has been maintained as public land at least since the Japanese period. The island was the subject of hearings by both the LCHO in 1990 and the Land Court in 1999, both of which resulted in the island remaining the possession of Ngarchelong State Public Lands Authority ("NSPLA"). Accordingly, NSPLA holds a certificate of title to the island.

Appellant claims that these adjudications were incorrectly decided, and that the island never became public land and has been property of Urreked Clan since time immemorial. At the trial, he provided several witnesses who alleged facts supporting such a claim, but the Trial Division found such testimony insufficient and determined that he did not demonstrate possession or exclusive use, necessary elements to show ownership of land. Accordingly, the Trial Division entered judgment in favor of NSPLA.

Appellant timely appeals.

STANDARD OF REVIEW

We review factual findings of a trial court for clear error, and will reverse only if such findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *Pamintuan v. ROP*, 16 ROP 32, 36 (2008).

ANALYSIS

Appellant's only assignment of error is that the Trial Division erred in finding that he had not shown "the minimum elements of ownership" necessary to support a quiet title

action. Without citation to specific testimony in the record, he asserts that it is common knowledge that the island belongs to Ngebei Hamlet or Urreked Clan and that there was no evidence presented that the Japanese lived on, occupied, or used the island, so he argues the weight of the evidence was in his favor. In the alternative, he asks that the case be remanded to allow him to "cross-examine and contest the evidence from the public lands case, LC/F-01-97, which is claimed as support for the Tochi Daicho listing presented in this case."

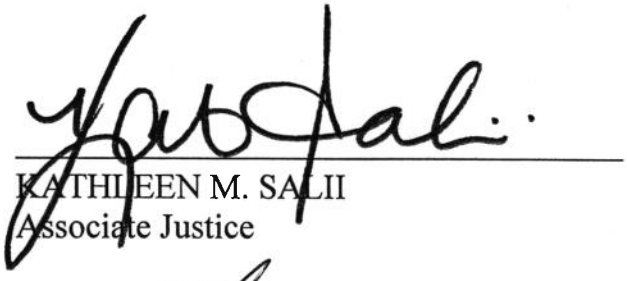
Where Appellant's argument founders, however, is in failing to appreciate that the burden of proof is both (a) on him, as the claimant, and (b) substantial. Appellant's claim directly opposes NSPLA's certificate of title, which constitutes "prima facie evidence of land ownership." *Wong v. Obichang*, 16 ROP 209, 212 (2009). Although such certificates are potentially subject to collateral attack, *see id.*, Appellant has made no effort to do so, and such failure would have been a sufficient basis for denying his claim outright.

Moreover, despite Appellant's having failed to collaterally attack this certificate, the Trial Division nevertheless reached the merits of his claim and ruled against him. It considered the limited evidence, to which it granted very little weight in the face of the adverse Tochi Daicho listing, and found that Appellant had failed to show the elements of ownership of land. Notably, the Trial Division found that Appellant had not put forth any *credible* evidence to support its claim, and evaluating the credibility of testimony is distinctly the province of a fact finder. A reasonable fact finder could certainly have reached the conclusion the Trial Division did given the nature of the testimony presented.

CONCLUSION

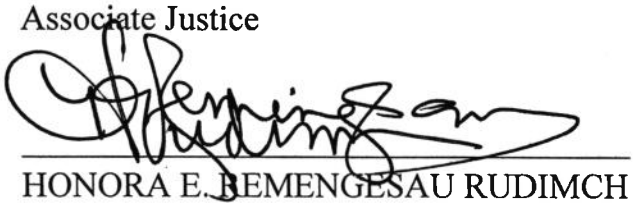
Finding no reversible error in the decision below, the judgment of the Trial Division is AFFIRMED.

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