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SUPREME COURT
OF THE REPUBLIC OF PALAU

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

KATEY G. NGIRAKED,

Appellant,

v.

KOROR STATE PUBLIC LANDS AUTHORITY,

Appellee.

CIVIL APPEAL NO.: 14-029
(LC/B Nos. 08-0187 & 08-0188)

OPINION

Decided: January 5, 2016

Counsel for Appellant: Raynold B. Oilouch
Counsel for Appellee: Rachel A. Dimitruk, Debra B. Lefing

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 Honorable C. Quay Polloi, Senior Judge, presiding.

PER CURIAM:

This appeal arises from the Land Court's award of two parcels of land known as *Ilengelang* and *Sankak* ("the lands") to Koror State Public Lands Authority ("KSPLA").[1]

[1] *Ilengelang* is identified as lot 036 B 07, corresponding to Tochi Daicho lot 870, and *Sankak* is identified as lot 039 B 17, corresponding to Tochi Daicho lot 871. Both lands are located in Meketi Hamlet, Koror,

Katey G. Ngiraked ("Appellant") now appeals, arguing that the Land Court erred in rejecting her claims. For the reasons outlined below, we affirm.[2]

BACKGROUND

Appellant was born in 1928 and resided with her parents on or around the lands at issue in this appeal until 1935. Appellant's father, Ngiraked Tkel (Ngiraked), owned the lands, and, upon relocating his family in 1935, leased them to some Japanese nationals, one of whom was named Yamauchi. A few years later—sometime between 1938 and 1940—these lands became registered as Tochi Daicho lots 870 and 871, listing Ngiraked as owner for both. And, although Ngiraked died in September 1940, his name remained listed as the lands' owner at the completion of the Tochi Daicho survey in 1941.

At the hearing before the Land Court, Appellant brought both superior title and return of public lands claims for her father's lands, arguing, among other things, that Ngiraked's name appearing on the Tochi Daicho lot numbers entitled her claim, as one brought by Ngiraked's heir, to "a presumption of correctness," such that the burden would be "on the party contesting [the] Tochi Daicho listing to show by clear and convincing evidence that it is wrong." *Taro v. Sungino*, 11 ROP 112, 116 (2004). In assessing both of Appellant's claims, however, the Land Court found, by clear and convincing evidence, that Ngiraked had agreed to sell the lands to Yamauchi, noting the fact that land transfers between Palauans and Japanese nationals that occurred during the

[2]We determine that oral argument is unnecessary to resolve this matter. ROP R. App. P. 34(a).

course of the Tochi Daicho survey were often not recorded in the Tochi Daicho, and were often not approved until after the Tochi Daicho was completed in 1941. That is, because Ngiraked's sale of the land to Yamauchi occurred while the Tochi Daicho survey was still pending, the sale was not approved until 1941 and therefore, this explained why Yamauchi was not listed as the owner of the lands in the Tochi Daicho. Accordingly, for this and other reasons, the Land Court denied Appellant's claim and awarded the lands to KSPLA.

In support of its findings regarding Ngiraked's sale of the land to Yamauchi, the Land Court first noted that, sometime after 1940, Yamauchi erected a two-story building on the lands, in which he resided and operated a store. And, although a number of people began residing on portions of the lands in the 1940's, after Palauans returned to Koror following the end of World War II, Appellant was not one of them.

Second, the Land court found that, during the 1950's, the Trust Territory government conducted two proceedings regarding the land's ownership. Despite public notice of the proceedings, despite her relation to one of the parties who claimed ownership of the lands, and despite being married to counsel for that party, Appellant did not file a claim or otherwise assert her ownership of the lands. Not until December 1988 did Appellant assert ownership rights in the lands, which, she claimed, inhered to her through her father, Ngiraked. Later, in 2005, Appellant filed another claim for the lands,

clarifying that she had inherited the lands through Ngiraked's will. *See* Ngiraked Ex. F at 1.

In further support of its findings, the Land Court pointed to the evidence presented in the two Trust Territory government proceedings. In the first proceeding, three disinterested witnesses testified that they had heard from either Ngiraked or Yamauchi that the lands had been sold. The hearing officer credited these three witnesses' testimonies and found that Ngiraked had sold the lands to Yamauchi. The Land Court noted that "[t]hese disinterested witnesses were deemed credible then[,] and [the Land Court] has no reason to discredit them now." Decision at 32. At the second proceeding, before the Trust Territory High Court, several witness again testified that Ngiraked had sold the lands to Yamauchi. The High Court credited all this testimony and noted that the lands were "listed as owned by Yamauchi on a schedule of lands owned by Japanese nationals, given the United States Department of the Navy by the Japanese Government." *Ngirkelau v. Trust Territory*, 1 TTR 543, 545 (1958). The Land Court again found no reason to disagree with the High Court's credibility determinations and adopted the High Court's finding that "'Ngiraked agreed to sell [the lands] to Yamauchi at a price satisfactory to both.'" Decision at 30 (quoting *Ngirkelau*, 1 TTR at 545).

In sum, both before the Land Court and on appeal, Appellant has maintained that Ngiraked never sold the lands, that Yamauchi only ever leased the lands, and that she inherited the lands from Ngiraked. But the Land Court found that (1) Yamauchi's

construction of a two-story building on the lands was consistent with his transitioning from a lessee to an owner, (2) Appellant's belated claim to ownership supported its finding that Ngiraked had sold the lands to Yamauchi, and (3) the cumulative weight of the evidence presented in both Trust Territory government proceedings also supported its finding that Ngiraked had sold the land to Yamauchi. The Land Court found that the combination of these factors constituted clear and convincing evidence that the Tochi Daicho listing of Ngiraked as owner was wrong, and thus Appellant was not entitled to its presumption of correctness. Accordingly, the Land Court found that Ngiraked had sold the lands to Yamauchi and rejected both Appellant's return of public lands claim and her superior title claim. The Land Court determined that the lands were divested from Yamauchi under the 1951 order vesting property owned by the Japanese government and Japanese nationals with the Trust Territory government. Accordingly, the Land Court awarded the lands to KSPLA. Appellant timely appealed.

STANDARD OF REVIEW

"We review the Land Court's conclusions of law de novo and its findings of fact for clear error." *Kebekol v. Koror State Pub. Lands Auth.*, Civ. App. No. 13-020, slip op. at 4 (Mar. 6, 2015). Under clear error review, when the Land Court has found that clear and convincing evidence demonstrates that the Tochi Daicho listing is incorrect, we will not disturb this finding unless we conclude that no reasonable trier of fact could have made the same finding. *See Andres v. Desbedang Lineage*, 8 ROP Intrm. 134, 135

(2000). We do not reweigh the evidence. *Koror State Pub. Land Auth. v. Giraked*, 20 ROP 248, 250 (2013). We do not reassess the credibility of witnesses. *Id.*; *Marino v. Andrew*, 18 ROP 67, 69 (2011). "Where evidence is subject to multiple reasonable interpretations, a court's choice between them *cannot* be clearly erroneous." *Kebekol*, slip op. at 4 (emphasis added). "'Given the standard of review, an appeal that merely re-states the facts in the light most favorable to the appellant and contends that the Land Court weighed the evidence incorrectly borders on frivolous.'" *Id.* at 14 (quoting *Giraked*, 20 ROP at 250). Thus, we have often reminded appellants that "appeals challenging the factual determinations of the Land Court are extraordinarily unsuccessful." *Giraked*, 20 ROP at 250 (ellipsis omitted) (quotation marks omitted).

DISCUSSION

We begin by clarifying the two issues presented in this appeal and reminding the parties of their obligation to clearly identify questions for review.[3] Appellant's brief lists six issues for review; however, a casual read reveals that only two of them merit any meaningful consideration. Reduced to their essentials, the first issue is whether the Land Court's treatment of the Tochi Daicho listing was in accordance with law; the second

[3]Both parties' attempts to define the issues for appeal were patently unhelpful to this Court. The result of the parties' failure to clearly identify limited and precise questions for review is that we are left to sift through the record and the parties' appellate filings to discern for ourselves the issues implicated by the Land Court's decision and the parties' arguments on appeal. This is unacceptable.

issue is whether the Land Court clearly erred in finding that Ngiraked sold the lands to Yamauchi.

I. The Land Court's treatment of the Tochi Daicho listing was proper

A claimant before the Land Court may raise both a return of public lands claim and a superior title claim when claiming land held by the government. *Koror State Pub. Lands Auth. v. Idid Clan*, Civ. App. No. 13-010, slip op. at 9-10 (Feb. 17, 2015). "Although these claims may be asserted concurrently and in the alternative, they involve distinct elements, carry different burdens of proof, and are susceptible to different defenses." *Id.* at 10. In the context of a superior title claim, "[t]he identification of landowners listed in the Tochi Daicho is presumed to be correct, and the burden is on the party contesting a Tochi Daicho listing to show by clear and convincing evidence that it is wrong." *Taro v. Sungino*, 11 ROP 112, 116 (2004). This same presumption does not apply to return of public lands claims, because such a claim concedes that the land in fact became public. *Kebekol*, Civ. App. No. 13-020, slip op. at 9-13. Nevertheless, we have recognized that the Tochi Daicho deserves some evidentiary consideration in a return of public lands claim if it lists the claimant or the claimant's predecessor-in-interest as the owner and the wrongful taking is alleged to have occurred after the Tochi Daicho survey. *Id.* at 9-10.

With respect to her superior title claim, Appellant first argues that the Land Court failed to apply the Tochi Daicho presumption in her favor and, instead, erroneously

placed the burden of proving that the sale did *not* occur on her. But the record shows that this simply is incorrect. In addressing Appellant's superior title claim, the Land Court expressly noted that "[t]he Tochi Daicho is presumed to be correct[,] and the presumption can only be overcome by clear and convincing evidence." Decision at 36 n.46. The Land Court went on to state that "[b]ecause the evidence from (1) disinterested witnesses, (2) objective records, and (3) the conduct of relevant persons clearly and convincingly proves a sale, the Tochi Daicho listing in the name of Ngiraked is incorrect in that it was not duly amended to reflect the new ownership." *Id.* The Land Court correctly explained the operation of the Tochi Daicho presumption and applied the presumption to the listing because it named Appellant's predecessor-in-interest as the owner, but it nevertheless found that the presumption of accuracy had been rebutted by clear and convincing evidence. Appellant's claim that the Land Court failed to properly apply the Tochi Daicho presumption is simply without merit.

Appellant next argues that, even assuming the Land Court properly accorded her the benefit of the Tochi Daicho presumption, it incorrectly found that KSPLA had proven that the sale had occurred by clear and convincing evidence. The Land Court's finding will not be set aside on appeal unless Appellant shows that no reasonable trier of fact could have made the same finding. Appellant has not made this showing.

With respect to her return of public lands claim, the Land Court applied no presumption of accuracy to the Tochi Daicho's listing Ngiraked as the lands' owner. To

the extent that Appellant argues that the Land Court erred by failing to accord appropriate weight to the Tochi Daicho listing in this context, such error would be harmless because we perceive no reversible error in the Land Court's finding by clear and convincing evidence that the Tochi Daicho listing was incorrect. *See Ngiraiwet v. Telungalek Ra Emadaob*, 16 ROP 163, 165 (2009) (concluding error was harmless and provided no basis for reversal "because [the error] had no bearing on why Appellant lost below').

II. Appellant's challenges to the Land Court's factual determinations are unavailing

Throughout her brief, Appellant generally attacks the Land Court's decision to accept evidence supporting the finding that Ngiraked sold the lands to Yamauchi. Applying the rules governing the Land Court's evidentiary determinations, as well as the standards governing our review of them, we have little difficulty concluding that the Land Court's factual determinations provide no grounds for reversal.

Appellant first insists that the Land Court improperly considered adverse witness testimony that lacked probative value. We discern no instance, however, in which the Land Court considered evidence that failed to meet the relevancy requirement of Land Court Rule of Procedure 6, and, perhaps more importantly, Appellant has made no effort to actually identify such an instance.

Appellant next contends, for various reasons, that the Land Court erroneously credited adverse testimony and discredited the testimonies of Appellant and witnesses

that supported her position. We repeat: it is not our province to test witness credibility; instead, on credibility, we accord near total deference to the trial court, because evaluating the credibility of a witness simply cannot be done from a transcript. *See, e.g.*, *United States v. Moses*, 540 F.3d 263, 268–69 (4th Cir. 2008) ("We owe particular deference to the [trial] court's credibility findings, as the court is in a much better position to evaluate those matters."); *Greene v. Tucker*, 375 F. Supp 892, 898 (E.D. Va. 1974) ("While the transcript is ambiguous, in such circumstances a judge's understanding of what transpired in his court must be given substantial if not conclusive weight."). A trial court, such as the Land Court in this case, is best situated to assess the credibility of witnesses before it and thus enjoys extraordinarily broad discretion in making credibility determinations. *Oseked v. Ngiraked*, 20 ROP 181, 184 (2013); *Gideon v. Republic of Palau*, 20 ROP 153, 160 (2013).

Moreover, the credibility determinations that Appellant attacks fall well within the discretion of the Land Court. Appellant argues that her testimony, as well as the testimony of Ngiraked's relatives, should have prevailed over that of opposing witnesses because those related to Ngiraked, like her, were in a better position to know of his dealings. The Land Court, however, is under no obligation to credit even uncontroverted testimony offered by interested witnesses, such as Appellant and her relatives. *Oseked*, 20 ROP at 187 n.2; *Ngetelkou Lineage v. Orakiblai Clan*, 17 ROP 88, 92 (2010); *Elewel v. Oiterong*, 6 ROP Intrm. 229, 232 (1997). Appellant argues that the Land Court could not

credit testimony of an adverse witness in one proceeding because that witness offered inconsistent testimony at a different proceeding. Our precedent, however, holds that the Land Court may do so as long as the chosen version supports its decision. *See Airai State Pub. Lands Auth. v. Esuroi.*, Civ. App. No. 13-019, slip op. at 7 (Oct. 10, 2014). Appellant also contends that the Land Court should have rejected the testimonies—or portions of the testimonies—of a number of witnesses that, in her assessment, were either internally inconsistent or incompatible with established facts. Even if we agreed with Appellant's assessment of the challenged testimonies, the Land Court has discretion to credit such testimony to the extent it did. *See Iyekar v. Republic of Palau*, 11 ROP 204, 207 (2004) (concluding that trial court may reasonably believe testimony while acknowledging that witness's credibility is subject to attack); *Irikl Clan v. Renguul*, 8 ROP Intrm. 156, 160 n.9 (2000) (explaining that trial court need not credit or discredit entirety of witness's testimony but may instead find portion of it persuasive and another portion unpersuasive). In the end, Appellant's appeal offers nothing more than a bare invitation to replace the Land Court's credibility determinations with our own. We decline. *See Giraked*, 20 ROP at 250 ("We will not substitute our view of the evidence for the Land Court's . . . .").

Appellant next appears to challenge the Land Court's reliance on hearsay evidence, i.e., the testimony presented in the 1950's proceedings, and the evidence of the parties' actions that were consistent with its finding that Ngiraked sold the lands to

Yamauchi. To the extent Appellant challenges the admissibility of evidence of this nature, we conclude that the Land Court committed no error by considering it. *Idid Clan*, slip op. at 4 ("[T]he Land Court may accept records of past proceedings as evidence in hearings before it and give such records as much weight as it deems appropriate."); *Tmetbab Clan*, 16 ROP at 95 (explaining that Land Court may consider evidence tending to show that party's actions with respect to disputed land are consistent or inconsistent with claim of ownership); *Wasisang*, 7 ROP Intrm. at 83-84 (concluding that Land Court may consider hearsay evidence beyond admissibility limitations applicable to other courts).

In addition to attacking the Land Court's decision to accept certain evidence—based on misguided relevancy, credibility, and admissibility arguments—Appellant finally attacks the Land Court's determinations regarding the weight to assign this evidence. As we have reiterated previously, however, the Appellate Division does not undertake to reweigh the evidence that was before the Land Court. *Giraked*, 20 ROP at 250.

In the end, nothing in the record to which Appellant points comes close to leaving us with "a definite and firm conviction that an error [of fact] has been made" as to any of the Land Court's factual findings. *See Rengchol v. Uchelkeiukl Clan*, 19 ROP 17, 21 (2011). The evidence adduced at trial supported either of two factual interpretations: (1)

Ngiraked sold the lands to Yamauchi, or (2) he did not. The Land Court's choice of the former interpretation cannot be, and was not, clear error. *Kebekol*, slip op. at 4.

CONCLUSION

For the reasons set forth above, the Land Court's decision and determinations of ownership are affirmed.

SO ORDERED, this 5th day of January, 2016.

KATHLEEN M. SALII
Associate Justice

R. ASHBY PATE
Associate Justice

HONORA E. REMENGESAU RUDIMCH
Associate Justice Pro Tem