IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

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SUPREME COURT

NGARAMEKETII/RUBEKUL KLDEU and IDID CLAN, Appellants, v. KOROR STATE PUBLIC LANDS AUTHORITY, Appellees.	CIVIL APPEAL NO. 15-010 (LC/B No. 09-00068) **OPINION**

Decided: July 26, 2016

Counsel for Appellant Ngarameketii/Rubekul Kldeu: Mariano W. Carlos
Counsel for Appellant Idid Clan: Salvador Remoket
Counsel for Appellee: Natalie Durflinger

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, 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:[1]

This appeal arises from the Land Court's award of Ulong Island[2] in Koror State to Appellee Koror State Public Lands Authority ("KSPLA"). Appellants Ngarameketii/ Rubekul Kldeu ("NRK") and Idid Clan, both claimants in the case below, now appeal,

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

[2] Ulong Island consists of Lots 001 through 008 on BLS Worksheet Map Ulong Island.

arguing that the Land Court erred by rejecting their claims. For the reasons that follow, we affirm.

BACKGROUND

The Land Court's decision provided a detailed account of what is known of pre-contact Ulong, an overview of the historically significant events that occurred on Ulong when the crew of the packet ship *Antelope*, led by Captain Henry Wilson, took refuge there in 1783, and a summary of Ulong's history since 1885 when Spain began its administration of Palau. However, for purposes of this appeal, it is sufficient to set forth briefly the bases of NRK's and Idid Clan's claims to Ulong and the Land Court's reasons for rejecting them. Where necessary, further background regarding the proceedings in the Land Court is provided in the discussion section below.

I. NRK's claim

NRK first filed a claim to Ulong in 2006, when it submitted claims for all of the rock islands in Koror State. When proceedings commenced before the Land Court, NRK "stated that [its] claim is based on a superior title theory." Notice of Hr'g at 2 (May 7, 2014). Later, at trial, NRK's three witnesses testified that, several centuries before the arrival of the *Antelope*, the inhabitants of Ulong allied themselves with the Ibedul of Koror, and, as a result, they relocated to Ngerchemai in Koror, and Ulong came under the

control of the Klobak[3] of Koror and has remained under its control up until the present. They also testified that NRK has been responsible for maintaining and overseeing Ulong during the Trust Territory period and afterward. Similarly, NRK's exhibits were introduced to support its theory that it controlled Ulong prior to contact with the West and to show that the Klobak had never conveyed its title to Ulong to any government or private entity.

In its closing arguments, NRK continued to advance a superior title claim. *See* NRK Closing Arg. at 20 (Mar. 6, 2015) ("The Klobak move[s] the Court to quiet title to Ulong in [its favor] because [it] hold[s] superior title to the island . . . ."). NRK contended that "it acquired the ownership of Ulong before the Western people came to Palau" and that the "evidence supports the conclusion that Ulong was owned by the Klobak[,] and [it] still own[s] it today." *Id.* at 20.[4] In support of its theory, NRK argued that the evidence adduced at trial showed no foreign administration or Palauan governmental agency ever obtained legal title to Ulong[5] and that the only other private claimant, Idid

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[3] In the proceedings below, NRK referred to itself at various times as Ngarameketii, Rubekul Kldeu, and the Klobak of Koror or Oreor. The term "klobak" simply means "council of chiefs." Lewis S. Josephs, *New Palauan-English Dictionary* 125 (1990).

[4] *See also* NRK Closing Arg. at 16 ("[T]he fee simple title of Ulong remained unbroken in the Klobak"); *id.* at 21 ("[T]he ownership of the Klobak . . . of Ulong started long, long ago and continued in [it] through the ages and throughout the various colonial eras and continued in [it] up to the present time . . . .").

[5] *See, e.g.*, NRK Closing Arg. at 9 ("The rock islands were neither purchased nor taken by the Japanese Government nor recorded as government lands . . . ."); *id.* at 11 ("The Japanese never acquired the ownership of Ulong."); *id.* at 13 ("There ha[s] been no proof of valid taking of

Clan, could not account for the oral history of Ulong, which demonstrated that the Klobak came to control Ulong following the island's inhabitants' alliance with the Ibedul and relocation to Ngerchemai.

The Land Court dealt a swift blow to NRK's superior title claim. First, the Land Court found that Ulong came under the ownership of the German administration and remained government-owned land under each successive foreign government:

> the rock islands, including Ulong became public domain properties of Koror gained through ancient conquests. They were then taken by the German Administration through their own forceful conquests. The same practice was adopted by the Japanese Administration and then the Trust Territory Government. Ulong, therefore, became public land owned by foreign occupying powers . . . .

Land Ct. Decision at 10 (Mar. 30, 2015). Next, the Land Court concluded that, "[b]ecause Ulong did become public land under a previous occupying power . . . . the NRK . . . cannot prevail on a superior title theory since that theory presupposes that the land never became public in the first place." *Id.* (citing *Wasisang v. Palau Pub. Lands Auth.*, 16 ROP 83, 84 (2008) ("Claims for superior title proceed on a different theory than claims for return of public land: In asserting superior title, a claimant is claiming the land on the theory that it never became public land in the first place." (brackets and quotation marks

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ownership of Ulong from the Klobak by either the Germans or the Japanese[,] and, therefore, the Trust Territory did not have the legal authority to convey Ulong . . . ."); *id.* at 14 ("The acts of the Japanese and the Americans were ultra vires their authorities and, therefore, void ab initio."); *id.* at 15 ("[T]he Japanese never acquired title or fee simple ownership of the rock islands."); *id.* at 20 ("KSPLA has failed to establish that the Klobak's title and claim of ownership of Ulong was divested during either the German time or the Japanese time and was transferred to the Trust Territory Government after the war and from there to KSPLA by way of Palau Public Lands Authority.").

omitted))). Finally, although it found that a foreign government acquired ownership of Ulong from the Klobak through a wrongful taking, the Land Court concluded that NRK's claim, filed in 2006, was untimely as a return-of-public-lands ("ROPL") claim because the Land Claims Reorganization Act ("LCRA"), 35 PNC § 1301 et seq., requires ROPL claims to be filed by January 1, 1989. *See* 35 PNC § 1304(b)(2). Accordingly, the Land Court rejected NRK's claim to Ulong.

II. Idid Clan's claim

Idid Clan timely filed an ROPL claim for Ulong in December 1988 and, at trial, proceeded solely under an ROPL theory. *See* Idid Clan Closing Arg. at 2 (Mar. 6, 2016) ("Idid Clan is claiming under a theory of return of public land."). Relevant to this appeal, Idid Clan's major obstacle to succeeding on its claim was demonstrating that it was the original owner of Ulong. *See* 35 PNC § 1304(b)(2) (requiring ROPL claimant to prove that, prior to the wrongful taking, the land was owned by the claimant or the claimant is the owner's proper heir). To prove this element of its ROPL claim, Idid Clan focused on the recorded events of 1783, when Captain Wilson and the *Antelope*'s crew took refuge on Ulong. Idid Clan presented evidence that, when the Ibedul—the preeminent title-bearer of Idid Clan—learned of the foreigners' presence on Ulong, he sent his son and two brothers—all title-bearing members of Idid Clan—to meet them, rather than sending any of the Klobak chiefs. It also presented evidence that all the later notable interactions with Captain Wilson were with members of the Ibedul's immediate family, not with the

Klobak chiefs. From these facts, Idid Clan argued, the Land Court should have inferred that the Ibedul and the other title-bearers of Idid Clan viewed interaction with the foreigners as the responsibility of Idid Clan because the foreigners had taken refuge on Ulong, which belonged to Idid Clan.

The Land Court accepted Idid Clan's version of the facts regarding the Ibedul's interaction with Captain Wilson and his crew. However, the Land Court declined to infer from these interactions that Idid Clan, rather than the Klobak, was the original owner of Ulong. Relying on evidence presented by NRK, the Land Court found that the Ibedul, aside from being the preeminent title-bearer of Idid Clan, was also the predominant chief of the Klobak of Koror. It also credited NRK's evidence that the Klobak came to control Ulong during the 16th century around the same time that Ulong's inhabitants abandoned the island. Viewing all the evidence, the Land Court found that the Ibedul's interactions with the foreigners were prompted not by his role as preeminent title-bearer of Idid Clan but as the predominant chief of the Klobak:

> Going back to 1783 when Captain Wilson arrived, Ulong was uninhabited but under the jurisdiction of Koror led by Ibedul. When Ibedul and his large entourage visited Captain Wilson at Ulong, it can be inferred that Ibedul did so not so much as being a member of Idid Clan but more so because he was Koror's traditional head of state. Later, when Ibedul, assisted by Captain Wilson's muskets, waged wars against Melekeok, it is not likely the case that he only sent members of Idid Clan on approximately 300 canoes and over 1,000 men strong—these were likely warriors from various clans and affiliates of Koror. It is then not likely the case that Ulong was owned by Idid Clan simply because Ibedul and two of his brothers were from Idid Clan. In the end, therefore, although it is more probable than not that Ulong was wrongfully taken by a foreign occupying power, it cannot

> be returned to Idid Clan because it was not likely the original owner at the time of the taking.

Land Ct. Decision at 11. Because it found that Idid Clan had failed to prove one of the necessary elements of its ROPL claim—that it was the original owner of Ulong—the Land Court rejected Idid Clan's claim to Ulong.

Ultimately, the Land Court awarded Ulong to KSPLA, the only remaining claimant below, and NRK and Idid Clan appealed.

STANDARD OF REVIEW

"In reviewing an appeal, the threshold analysis is of the sufficiency of the appeal itself." *Anastacio v. Eriich*, Civ. App. No. 15-012, 23 ROP ___, slip op. at 4 (June 30, 2016) (citing *Idid Clan v. Koror State Pub. Lands Auth.*, 20 ROP 270, 272 (2013)). For instance, "[t]he Court has consistently refused to consider issues raised for the first time on appeal [as] [a]rguments raised for the first time on appeal are deemed waived." *Rudimch v. Rebluud*, 21 ROP 44, 45 (2014) (internal citation omitted) (citing *Ngiratereked v. Erbai*, 18 ROP 44, 46 (2011); *see also Ucherremasech v. Hiroichi*, 17 ROP 182, 192 (2010) (explaining that the Appellate Division "need not reach [an argument's] merits" if appellant "never propounded it before the trial court" because "the trial court must first have an opportunity to . . . consider[] an issue before an appellate court has anything to review"). "If th[e] [initial] threshold is met, we may then reach the merits of the appeal." *Anastacio*, Civ. App. No. 15-012, slip op. at 5.

"'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, 22 ROP ___, slip op. at 4 (Mar. 6, 2015). Under clear error review, "[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." *Id.* (quoting *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009)). So, "[w]here evidence is subject to multiple reasonable interpretations, a court's choice between them *cannot* be clearly erroneous." *Ngiraked v. Koror State Pub. Lands Auth.*, Civ. App. No. 14-029, 23 ROP ___, slip op. at 6 (Jan. 5, 2016) (quoting *Kebekol*, Civ. App. No. 13-020, slip op. at 4). "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.* (quoting *Kebekol*, Civ. App. No. 13-020, slip op. at 14). "Thus, we have often reminded appellants that 'appeals challenging the factual determinations of the Land Court are extraordinarily unsuccessful.'" *Id.* (quoting *Koror State Pub. Land Auth. v. Giraked*, 20 ROP 248, 250 (2013)).

DISCUSSION

NRK seeks to challenge a legal conclusion by the Land Court, and we address this challenge first. We then turn to NRK's and Idid Clan's challenges to the Land Court's factual determinations.

I. NRK's arguments regarding the LCRA's filing deadline are waived.

NRK first argues that the Land Court erred by applying the LCRA's January 1, 1989, deadline for filing ROPL claims to its claim for Ulong. NRK's briefing on the issue is meandering and overly-complicated, but, with some effort, the gist of the argument is discernible. NRK argues that the ROPL claim available under the LCRA does not fulfill the mandate of Article XIII, section 10, of the Constitution, which requires the national government to "provide for the return to the original owners or their heirs of any land which became part of the public lands as a result of the acquisition by previous occupying powers or their nationals through [certain enumerated means]." Palau Const. art. XIII, § 10. NRK contends that the LCRA, in contravention of section 10, provides only for the return of land that was owned by citizens[6] and does not provide for the return of land that was owned by traditional government entities, such as klobaks like itself, or

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[6] In relevant part, the LCRA provides:

> The Land Court shall award ownership of public land, or land claimed as public land, to any citizen or citizens of the Republic who prove:
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> (1) that the land became part of the public land, or became claimed as 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, and
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> (2) that prior to that acquisition the land was owned by the citizen or citizens or that the citizen or citizens are the proper heirs to the land. . . . All claims for public land by citizens of the Republic must have been filed on or before January 1, 1989.

35 PNC § 1304(b).

of land that was not privately owned, such as *chutem buai*.[7] According to NRK, the LCRA does not apply to it, because NRK is not a citizen and is not seeking the return of privately owned land. Thus, it argues, the Land Court should not have applied LCRA's deadline to its claim and, instead, should have "refrained from awarding the ownership of Ulong to KSPLA and should have held [the case] in abeyance to await [the national legislature]'s further action on lands that were wrongfully taken from the traditional governments of Palau by the previous occupying powers." NRK Opening Br. at 11 (Aug. 17, 2015). Furthermore, NRK argues, in passing, that application of the deadline to it would amount to a violation of its due process rights.

We do not entertain NRK's arguments regarding application of the LCRA's deadline because none of the arguments were presented below and, instead, are raised for the first time in this appeal.[8] Unless an exception applies, *see Sugiyama v. Airai State*

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[7] We have previously discussed the significance of land designated as *chutem buai*. *See Gibbons v. Seventh Koror State Legislature*, 13 ROP 156, 160-61 (2006); *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 96-97 n.5 (2006); *Omenged v. UMDA*, 8 ROP Intrm. 232, 242 (2000).

[8] Our review of the record reveals no instance in which NRK cited to Article XIII, section 10, or presented any argument concerning a constitutional right to raise an ROPL claim outside the context of the LCRA. On no occasion did NRK contend that the LCRA applies only to citizens and not traditional government entities, that the LCRA fails to fulfill the mandate of Article XIII, section 10, or that the LCRA's deadline should not be enforced against NRK. Likewise, NRK never advised the Land Court that it should await the enactment of further legislation rather than applying the LCRA's deadline to NRK and never moved to hold the case in abeyance on such grounds.

More fundamentally, NRK did not even pursue an ROPL claim below. It never presented an ROPL claim under the LCRA, and, if it had done so, the claim would have been quickly rejected because, as the Land Court explained, NRK failed to meet the statutory filing deadline. *See See Koror State Pub. Lands Auth. v. Idid Clan*, Civ. App. No. 14-005, 22 ROP ___, slip op. at 5 (May 26, 2015) ("[T]he Land Court lack[s] the authority . . . to hear and adjudicate a . . .

Pub. Lands Auth., 19 ROP 99 (2012) (noting two exceptions), "[i]t is well-settled that arguments raised for the first time on appeal will not be considered." *Rudimch v. Rebluud*, 21 ROP 44, 45 (2014) (citing *Rechucher v. Lomisang*, 13 ROP 143, 149 (2006)). Thus, absent an exception, "[a]rguments not raised in the Land Court proceedings are waived on appeal." *Id.* (citing *Children of Merep v. Youlbeluu Lineage*, 12 ROP 25, 27 (2004)); *see also Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004) ("No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited that issue . . ."). "The waiver rule is important, particularly in land litigation, because in order to bring stability to land titles and finality to disputes, parties to litigation are obligated to make all of their arguments, and raise all of their objections, in one proceeding." *Id.* at 46 (citing *Ngiratereked v. Erbai*, 18 ROP 44 (2011)). Below, NRK raised neither an ROPL claim nor any of the arguments regarding the LCRA that it seeks to raise on appeal. Instead, these arguments are raised before this Court in the first instance. Thus, unless an exception applies or the failure to raise the arguments below is otherwise excused, the arguments are waived and will not be considered.

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claim that was filed after the statutorily imposed deadline."). Moreover, NRK never argued before the Land Court that, under the Constitution, it was entitled to pursue an ROPL claim that is not provided for in the LCRA. Instead, it is clear from the record that NRK pursued its claim only on the basis that it has held unbroken title to Ulong for centuries and continues to holds superior title to this day. Thus, it eschewed the basic premise of any conceivable ROPL claim: that another party presently holds legal title to the land. Without this premise, no *return* of land is necessary—or even possible.

NRK attempts to excuse its failure to raise the arguments below first by claiming that it could not raise its arguments regarding application of the LCRA because the Land Court applied the LCRA deadline *sua sponte* and without notice. Although we have never expressly employed such an exception, we note that many appellate courts do not enforce the waiver rule if the appellant had no opportunity to raise the argument below. *See, e.g.*, *Blue Martini Kendall, LLC v. Miami Dade Cnty.*, 816 F.3d 1343, 1349 (11th Cir. 2016) (explaining that waiver rule is not applied "where the appellant raises an objection to an order which [it] had no opportunity to raise at the [trial] court level"). Although we agree with NRK that the statutory deadline was first brought up in the Land Court's decision, we do not agree that NRK lacked opportunity to raise the arguments it now asserts on appeal. Had it chosen to do so, NRK could have argued that it was entitled to pursue an ROPL claim despite the LCRA's deadline, that application of the deadline to its claim would be erroneous, and that the Land Court should hold the case in abeyance until corrective legislation was enacted. NRK did none of these things and, we emphasize, never even pursued an ROPL claim. In short, NRK had every opportunity below to make the arguments it now asserts on appeal, and it failed to do so. Thus, even under the exception to the waiver rule it advances, NRK's failure to raise its arguments below cannot be excused.[9]

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[9] Our conclusion is bolstered by our previous decisions, in which we have reminded Land Court claimants that it is incumbent on them to raise their own claims in the first instance. *See Idid Clan*, Civ. App. No. 14-005, slip op. at 8 ("[A] party simply cannot be awarded judgment . . . without first filing a claim[.] . . . It is not 'unjust and absurd' that a claimant may lose a claim by

NRK also argues that it should be permitted to raise the new arguments on appeal because they call into question the subject-matter jurisdiction of the Land Court. NRK explains that, under the terms of § 1304(b), the Land Court lacks jurisdiction to adjudicate ROPL claims that are not filed by citizens and that its arguments on appeal are an attempt to assert this jurisdictional limitation. Although NRK correctly points out that the subject-matter jurisdiction of a trial court may be challenged for the first time in an appeal from a decision of that court, *see Idid Clan v. Palau Pub. Lands Auth.*, Civ. App. No. 14-020, 23 ROP ___, slip op. at 5-6 (Mar. 21, 2016), we reject NRK's argument for the simple reason that the Land Court did not adjudicate NRK's ROPL claim because NRK never raised one. As we have explained, NRK only pursued a superior title claim below, which was indisputably within the Land Court's subject-matter jurisdiction. *See PPLA v. Salvador*, 8 ROP Intrm. 73, 76 (1999) ("[T]he general jurisdiction provision for the . . . Land Court statute is 35 PNC § 1304(a)). In [that subsection], the Land Court [is] to proceed on a systematic basis to hold hearings and to make determinations with respect to the ownership of all lands within the Republic. In contrast, . . . subsection 1304(b), [is] not [a] grant[] of general jurisdiction, but [is] the implementation provision for Article XIII, section 10 of the Constitution." (brackets and quotation marks omitted)), *cited with*

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failing to bring it prior to a required statutory deadline; it is, in fact, entirely standard."). It is not the Land Court's duty to raise claims for the parties before it, and, in fact, we have stated that to do so in certain instances is reversible error. *See id.* at 5. By merely pointing out that, if a party had raised a claim, that claim would be procedurally barred—either because it failed to timely file the claim or because it timely filed one type of claim that could not be considered timely filed as another type of claim—the Land Court does not provide a basis for the party to raise the procedurally barred claim for the first time on appeal.

approval in Idid Clan, Civ. App. No. 14-020, slip op. at 11; *see also Rechucher v. Ngiraked*, 10 ROP 20, 22 n.1 (2002) (distinguishing between Land Court's jurisdiction to adjudicate ROPL claims under § 1304(b) and its broader jurisdiction to determine ownership under § 1304(a)). Thus, regardless of whether the Land Court would have had the requisite subject-matter jurisdiction to adjudicate an ROPL claim raised by NRK, there is no doubt that it had jurisdiction to adjudicate NRK's superior title claim, which, incidentally, is the only claim NRK pursued below.[10] As a result, NRK cannot bypass the waiver rule under the guise of a jurisdictional challenge.

In sum, NRK has presented no persuasive reason for us to forego application of the waiver rule to the arguments it seeks to raise for the first time in this appeal. Further, even though NRK does not assert that the new arguments it raises would fit under the two exceptions to the waiver rule that we have previously sanctioned, we note that the arguments are indistinguishable, for purposes of the waiver rule, from those raised by the appellant in *Kumer Clan/Lineage v. Koror State Public Lands Authority*, 20 ROP 102 (2013), which we deemed insufficient to be excepted from waiver. Accordingly, we conclude that NRK has waived the arguments it raises on appeal regarding the LCRA deadline by failing to raise them before the Land Court in the first instance, and we do not review them.

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[10] Because the facts of the case below do not squarely present the issue, we decline to determine here whether the Land Court has jurisdiction to adjudicate an ROPL claim brought by a traditional government entity that is not a citizen. We also decline to determine here whether traditional government entities, such as NRK, are citizens for purposes of § 1304(b).

II. NRK's and Idid Clan's challenges to the Land Court's factual determinations are meritless.

Aside from its arguments regarding the LCRA filing deadline, NRK also raises a challenge to a factual determination reached by the Land Court. NRK claims that the Land Court erred by finding that occupying powers had obtained title to Ulong because, in NRK's estimation, KSPLA failed to prove that title had passed to any one of them. Idid Clan's sole challenge on appeal is also to a factual determination made by the Land Court. Idid Clan claims the Land Court erred by finding that the Klobak of Koror, and not Idid Clan, was the owner of Ulong when it was wrongfully taken by occupying powers because, it claims, the Land Court failed to correctly interpret the evidence it adduced regarding Captain Wilson's interactions with the Ibedul in 1783.

A. Principles of Clear Error Review

As we explained above, we review the Land Court's findings of fact for clear error, and we will not reverse based on a factual challenge unless we conclude that no reasonable fact-finder could have reached the same finding. *Kebekol v. Koror State Pub. Lands Auth.*, Civ. App. No. 13-020, 22 ROP ___, slip op. at 4 (Mar. 6, 2015). This standard is purposely heavy on appellants, and we have noted that "appeals challenging the factual determinations of the Land Court are extraordinarily unsuccessful." *Ngiraked v. Koror State Pub. Lands Auth.*, Civ. App. No. 14-029, 23 ROP ___, slip op. at 6 (Jan. 5, 2016) (quotation marks omitted). We first stated that appeals challenging the factual determinations by the Land Court are "extraordinarily unsuccessful" in *Singeo v.*

Secharmidal, 14 ROP 99 (2007). We based this assessment on our empirical analysis, in *Children of Rengulbai v. Elilai Clan*, 11 ROP 129 (2004), of appeals from land cases between 1994 and 2003. In *Children of Rengulbai*, we noted that "[a]lthough we have remanded cases with some regularity when the Land Court has failed to provide adequate reasoning for its decision or has made legal errors . . . , this Court has found clear errors in a lower court's factual findings only once in more than 50 appeals." 11 ROP at 131. We also cited 51 appellate decisions in which this Court has concluded that a factual determination by the trial court in a land case was not clearly erroneous. *Id.* at 131 n.1.

In the more than 12 years since *Children of Rengulbai* was decided, we have reached the merits of challenges to the Land Court's factual findings in 100 appeals, and, in that time, the batting average of appellants has not appreciably improved. Although in a small number of these appeals we concluded that remand was appropriate because the Land Court failed to provide adequate reasoning for its decision or because the record was not sufficiently developed to support a finding on a disputed matter,[11] in only three of the appeals did we conclude that the Land Court's findings of fact were clearly

[11] *See Koror State Pub. Lands Auth. v. Idid Clan*, Civ. App. No. 15-027, 23 ROP ___ (Mar. 29, 2016); *Idid Clan v. Palau Pub. Lands Auth.*, Civ. App. No. 14-020, 23 ROP ___ (Mar. 21, 2016); *Anson v. Ngirachereang*, 21 ROP 58 (2014); *Children of Masang Marsil v. Napoleon*, 18 ROP 74 (2011); *Edaruchei Clan v. Sechedui Lineage*, 17 ROP 127 (2010); *Napoleon v. Children of Masang Marsil*, 17 ROP 28 (2009); *Markub v. Koror State Pub. Lands Auth.*, 14 ROP 45 (2007); *Estate of Masang v. Marsil*, 13 ROP 171 (2006); *Ngirachemoi v. Ingais*, 12 ROP 127 (2005); *Espong Lineage v. Airai State Pub. Lands Auth.*, 12 ROP 1 (2004); *Ilebrang Lineage v. Omtilou Lineage*, 11 ROP 154 (2004).

erroneous.[12] In the vast majority of the appeals, we determined that the appellants had failed to demonstrate clear error on the part of the Land Court.[13]

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[12] *See Rengulbai v. Klai Clan*, Civ. App. No. 14-006, 22 ROP ___ (Apr. 14, 2015); *Koror State Pub. Lands Auth. v. Idong Lineage*, 17 ROP 82 (2010); *Oiph v. Airai State Pub. Lands Auth.*, 14 ROP 10 (2006).

[13] *See Eungel v. Belibei*, Civ. App. No. 15-005, 23 ROP ___ (June 22, 2016); *Ebechoel Lineage v. Children of Soalablai*, Civ. App. No. 14-039, 23 ROP ___ (May 10, 2016); *Baules v. Toribiong*, Civ. App. No. 14-033, 23 ROP ___ (Jan. 28, 2016); *Ngiraked v. Koror State Pub. Lands Auth.*, Civ. App. No. 14-029, 23 ROP ___ (Jan. 5, 2016); *Eklbai Clan v. Koror State Pub. Lands Auth.*, Civ. App. Nos. 14-009, 14-011, 14-014, 14-015, 22 ROP ___ (Sept. 28, 2015); *Kebekol v. Koror State Pub. Lands Auth.*, Civ. App. No. 13-020 (Mar. 6, 2015); *Koror State Pub. Lands Auth. v. Palau Pub. Lands Auth.*, Civ. App. No. 14-012, 22 ROP ___ (Feb. 17, 2015); *Airai State Pub. Lands Auth. v. Esuroi Clan*, Civ. App. No. 13-019, 22 ROP ___ (Oct. 10, 2014); *Tucherur v. Rudimch*, 21 ROP 84 (2014); *Ikluk v. Koror State Pub. Lands Auth.*, 21 ROP 66 (2014); *Urebau Clan v. Bukl Clan*, 21 ROP 47 (2014); *Children of Llecholch v. Etumai Lineage*, 21 ROP 27 (2014); *Koror State Pub. Lands Auth. v. Ngermellong Clan*, 21 ROP 1 (2012); *Idid Clan v. Koror State Public Lands Authority*, 20 ROP 270 (2013); *Koror State Public Lands Authority v. Giraked*, 20 ROP 248 (2013); *Heirs of Giraked v. Koror State Pub. Lands Auth. v. Tellei*, 20 ROP 241 (2013); *Kual v. Ngarchelong State Public Lands Authority*, 20 ROP 232 (2013); *Koror State Public Lands Authority v. Ngirngebedangel*, 20 ROP 210 (2013); *Ngirametuker v. Oikull Village*, 20 ROP 169 (2013); *Elsau Clan v. Peleliu State Public Lands Authority*, 20 ROP 87 (2013); *Badureang Clan v. Koror State Public Lands Authority*, 20 ROP 80 (2013); *Ucheliou Clan v. Oirei Clan*, 20 ROP 37 (2012); *Koror State Pub. Lands Auth., v. Tmetbab Clan*, 19 ROP 152 (2012); *Estate of Ichiro Dingilius v. Peleliu State Pub. Lands Auth.*, 19 ROP 121 (2012); *Ngarngedchibel v. Koror State Pub. Lands Auth.*, 19 ROP 60 (2012); *Ngirakesau v. Ongelakel Lineage*, 19 ROP 30 (2011); *Rengchol v. Uchelkeiukl Clan*, 19 ROP 17 (2011); *Eklbai Clan v. Bandarii*, 18 ROP 206 (2011); *Ngirausui v. Koror State Pub. Lands Auth.*, 18 ROP 200 (2011); *Tkoel v. Ereong Lineage*, 18 ROP 150 (2011); *Omechelang v. Ngchesar State Pub. Lands Auth.*, 18 ROP 131 (2011); *Moses v. Ngerbuuch Clan*, 18 ROP 90 (2011); *Children of Masang Marsil v. Napoleon*, 18 ROP 74 (2011); *Marino v. Andrew*, 18 ROP 67 (2011); *Ngarameketii v. Koror State Pub. Lands. Auth.*, 18 ROP 59 (2011); *Temael v. Tobiason*, 18 ROP 53 (2011); *Telungalek Ra Itaberang and Erellang v. Rubasch*, 18 ROP 47 (2011); *Idid Clan v. Demei*, 17 ROP 221 (2010); *Uchelkeukl Clan v. Rudimch*, 17 ROP 162 (2010); *Salii v. Koror State Pub. Lands Auth.*, 17 ROP 157 (2010); *Dmiu Clan v. Edaruchei Clan*, 17 ROP 134 (2010); *Edaruchei Clan v. Sechedui Lineage*, 17 ROP 127 (2010); *Adelbai v. Ucheliou Clan*, 17 ROP 98 (2010); *Ngetelkou Lineage v. Orakiblai Clan*, 17 ROP 88 (2010); *Sechedui Lineage v. Dmiu Clan*, 17 ROP 68 (2010); *Azuma v. Ngirchechol*, 17 ROP 60 (2010); *Rudimch v. Sablan*, 16 ROP 232 (2009); *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222 (2009); *Ngetchab Lineage v. Klewei*, 16 ROP 219 (2009); *Rengiil v. Debkar Clan*, 16 ROP 185 (2009); *Rengechel v. Uchelkeiukl Clan*, 16 ROP 155 (2009); *Ueki v. Telungalek Ra Idong*, 16 ROP 140

These challenges to the Land Court's fact-finding from the appellants' bar have become so familiar to us and, in truth, so underwhelming that from time to time we have warned appellants and their counselors that "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." *Ngiraked*, Civ. App. No. 14-029, slip op. at 6 (quoting *Kebekol*, Civ. App. No. 13-020, slip op. at 14); *accord Koror State Pub. Land Auth. v. Giraked*, 20 ROP 248, 250 (2013). As a frivolous appeal may result in the appellant's paying damages and fees, *see* ROP R. App. P. 38, and as a charge of frivolousness is otherwise suffused with ethical implications, *see* Rule 3.1, American Bar Association, Model Rules of Professional Conduct, we do not throw the term "frivolous" about lightly. Despite our warnings, appellants have continued to file appeals that

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(2009); *Kotaro v. Ngotel*, 16 ROP 120 (2009); *Ngoriakl v. Gulibert*, 16 ROP 105 (2008); *Tmetbab Clan v. KSPLA*, 16 ROP 91 (2008); *Wasisang v. Palau Pub. Lands Auth.*, 16 ROP 83 (2008); *Ngerungel Clan v. Eriich*, 15 ROP 96 (2008); *Kikuo v. Ucheliou Clan*, 15 ROP 69 (2008); *West v. Ongalek ra Iyong*, 15 ROP 4 (2007); *Ruluked v. Delbirt*, 14 ROP 179 (2007); *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169 (2007); *Worswick v. Kedidai Clan*, 14 ROP 160 (2007); *Ngirmang v. Oderiong*, 14 ROP 152 (2007); *Sked v. Ramarui*, 14 ROP 149 (2007); *Kawang Lineage v. Meketii Clan*, 14 ROP 145 (2007); *Seroech v. Telungalek Ra Alkemim*, 14 ROP 141 (2007); *Estate of Remeskang v. Eberdong, et al.*, 14 ROP 106 (2007); *Singeo v. Secharmidal*, 14 ROP 99 (2007); *Etpison v. Tmetbab Clan*, 14 ROP 39 (2006); *Koror State Pub. Lands Auth. v. Ngirmang*, 14 ROP 29 (2006); *Kerradel v. Ngaraard State Pub. Lands Auth.*, 14 ROP 12 (2006); *Rechirikl v. Descendants of Telbadel*, 13 ROP 167 (2006); *Rechucher v. Lomisang*, 13 ROP 143 (2006); *Sungino v. Blaluk*, 13 ROP 134 (2006); *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90 (2006); *Delbirt v. Ruluked*, 13 ROP 10 (2005); *Ramarui v. Eteet Clan*, 13 ROP 7 (2005); *Ibelau Clan v. Ngiraked*, 13 ROP 3 (2005); *Pierantozzi v. Ueki*, 12 ROP 169 (2005); *Tmiu Clan v. Hesus*, 12 ROP 156 (2005); *Tmiu Clan v. Ngerchelbucheb Clan*, 12 ROP 152 (2005); *Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth.*, 12 ROP 148 (2005); *Ongesii v. Children of Silmai*, 12 ROP 131 (2005); *Basilius v. Basilius*, 12 ROP 106 (2005); *Aribuk v. Rebluud*, 11 ROP 224 (2004); *Uchelkumer Clan v. Isechal*, 11 ROP 215 (2004); *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161 (2004); *Ebilklou Lineage v. Blesoch*, 11 ROP 142 (2004).

primarily attack the Land Court's findings by arguing that the evidence they adduced at trial should have been viewed more favorably than the evidence introduced by appellees.

The opinions in which we have found no clear error tend to follow the same formula. We describe the evidence on which the appellant relies, and we note that the appellant presents a one-sided view of the evidence and insists that the Land Court erred by failing to make findings of fact in the appellant's favor. We next recount the evidence which the appellant ignores or discounts and explain that the Land Court was within its discretion to consider this evidence and accord such weight to all the evidence as it saw fit. Lastly, we explain that because there was sufficient evidence for a reasonable trier of fact to find against the appellant—even though, viewing the same evidence, another reasonable trier of fact could have found for the appellant—we cannot conclude that the Land Court's finding was clearly erroneous. Most of the heavy lifting in this analytical structure is done by reciting or summarizing, sometimes in painstaking detail, all the evidence introduced in the Land Court, a task that frequently duplicates the Land Court's own synopsis of the evidence before it. Not only is this task entirely redundant, it also lacks the concomitant benefit that usually attends a full written opinion—a significant development of the law—because the law in this area is already fully developed. The clear error standard that we apply in these cases has been long-settled and oft-expressed. Moreover, these cases constantly re-affirm the Land Court's extremely broad discretion in assessing credibility, weighing evidence, resolving ambiguities, making inferences,

and employing a number of other practices peculiar to a trier of fact that must resolve factual disputes regarding events in the remote past while using suboptimal evidence. Recitations of the legal principles that guide our review of a challenge to the Land Court's findings of fact are so commonplace in our opinions that reference to examples of them here is unnecessary.

Thus, aside from flirting with frivolousness, appeals in this vein also unnecessarily exhaust judicial resources while, at the same time, providing no meaningful opportunity to develop the law. When such circumstances are presented by an appeal, an appellate court should not hesitate to conserve its resources by disposing of the appeal in a summary fashion. *See In re Brady-Zell*, 756 F.3d 69, 71 (1st Cir. 2014) ("[W]hen lower courts have supportably found the facts, applied the appropriate legal standards, articulated their reasoning clearly, and reached a correct result, a reviewing court ought not to write at length merely to hear its own words resonate."); *Moses v. Mele*, 711 F.3d 213, 215-16 (1st Cir. 2013) ("In the adjudication of appeals, starting from scratch and building a rationale from the ground up is sometimes an extravagant waste of judicial resources. To minimize such idle exercises, we have noted that when a trial court accurately takes the measure of a case, persuasively explains its reasoning, and reaches a correct result, it serves no useful purpose for a reviewing court to write at length in placing its seal of approval on the decision below."); *In re Curry*, 509 F.3d 735, 735 (6th Cir. 2007) (foregoing "issuance of a full written opinion" because it "would be

duplicative [of the lower court's decision] and would serve no useful purpose"); *Nichols v. Reno*, 124 F.3d 1376, 1378 (10th Cir. 1997) (declining to expand on lower court's decision because "further elucidation . . . would be redundant and simply would not add to the jurisprudence of th[e] circuit"); *United States v. Glover*, 731 F.2d 41, 45 (D.C. Cir. 1984) (explaining that appeal's presenting "uncomplicated legal issue to be decided in an area where the case law is well developed" is a factor that weighs in favor of summary disposition). In fact, in a prior case, we have done exactly that in an appeal attacking the Land Court's fact-finding. *See Ueki v. Telungalek Ra Idong*, 16 ROP 140 (2009).

In sum, our empirical assessment of nearly a quarter-century's worth of appeals challenging the Land Court's factual findings demonstrates that they have been, and continue to be, extraordinarily unsuccessful; yet, despite our admonitions that such appeals edge toward frivolousness, they continue to pour in unabated. These appeals follow a tired formula, resulting in a superfluous account of the evidence before the Land Court to which we apply legal principles that have been expressed and re-expressed *ad infinitim* and that have remained in force since before the Land Court was even created. As a result, our opinions often contain a full account of the parties' arguments and of the record below even though the challenge is very likely futile to begin with and provides no opportunity to significantly develop Palauan law. To us, this seems an extravagant waste of judicial resources. Thus, in appropriate cases such as this one, we will not hesitate to dispose of challenges to the Land Court's factual findings in a summary fashion.

B. Application to the Present Appeal

Here, NRK claims the Land Court clearly erred by finding that the occupying powers obtained title to Ulong, and Idid Clan claims the Land Court clearly erred by finding that the Klobak of Koror and not Idid Clan was the owner of Ulong prior to the arrival of the occupying powers. Having reviewed the record, we conclude that the Land Court's findings of fact that the appellants challenge in this appeal were not clearly erroneous. That is that.

CONCLUSION

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

SO ORDERED, this 26th day of July, 2016.

ARTHUR NGIRAKLSONG
Chief Justice

KATHLEEN M. SALII
Associate Justice

HONORA E. REMENGESAU RUDIMCH
Associate Justice Pro Tem