IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

KOROR STATE PUBLIC LANDS AUTHORITY, Appellant, v. IDID CLAN, Appellee.	CIVIL APPEAL NO. 15-027 Land Case No. LC/B 08-017 **OPINION**

Decided: March 29, 2016

Counsel for Appellant: N. Durflinger
Counsel for Appellee: S. Remoket

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and R. ASHBY PATE, Associate Justice.

Appeal from the Land Court, the Honorable C. QUAY POLLOI, Senior Judge, presiding.

PER CURIAM:

We first addressed this case in a May 2015 Opinion in Civil Appeal No. 14-005. The case returned to the Land Court, where the parties chose to present no new evidence, and the Land Court again awarded the land to Claimant Idid Clan. Koror State Public Lands Authority appeals the decision on remand. For the reasons below, we **VACATE** the determination and **REMAND** for further factual findings.

BACKGROUND

The case stands exactly as it did on the previous appeal, except that instead of reforming Claimant Idid Clan's return-of-public-lands claim into a superior title claim, this time the Land Court seems to have granted the return of public land without a determination of whether the land was acquired through force, coercion, or fraud, or without just compensation, which is essential to a claim for the return of public lands. "On remand the parties chose not to present further evidence." (Decision on Remand at 2.) Idid Clan submitted some additional argument and Koror State Public Lands Authority ("KSPLA") rested on its previous submissions. Because the facts in this appeal stand exactly as they did in the last appeal, this Opinion draws from the previous one, as well as from the original Land Court decision. (*See KSPLA v. Idid Clan*, Civ. App. No. 14-005 (May 26, 2015).)

The relevant facts from the original Land Court decision are these: The early-1940s Tochi Daicho land survey done by the Japanese indicated that Lot 703, now Lot 054 B 08,[1] was owned by Keyukl, a member of Idid Clan. (Land Court Original Decision at 1.) During the Japanese administration, Keyukl leased Lot 703 to a Japanese national, indicating both that Keyukl owned the land, and that the transaction was a lease, not a sale. (*Id.* at 4; Decision on Remand at 3-4.) A list of private lands sold to Japanese nationals with the approval of the Japanese Governor does not include Lot 703. (Decision on Remand at 4.) Based on the evidence, the recorded or remembered history of the lot

[1] Because the Land Court found Tochi Daicho Lot 703 to be the same land as Lot 054 B 08, this Opinion will use both designations.

only made it uninterrupted as far as early during the U.S. administration following World War II, when Idid Clan's claim representative and only witness "Gloria Salii accompanied her grandmother Ngerdokou to farm on Tochi Daicho 703." (Land Court Original Decision at 4.) "[E]ventually houses were built on the lot. . . . Mrs. Salii was unaware if these people resided on the lot through leases from KSPLA." (*Id.* at 3.) There are leases between the Trust Territory and private parties purportedly covering parts of the land at issue dating back to 1956, and continuing over the following decades. (Land Court record, KSPLA Exs. 8, 9, 10, 14, 15, 16.) Then, in 1976, the Trust Territory government listed its ownership of the lot via a Land Acquisition Record. (Land Court Original Decision at 4.)

KSPLA appealed the first award of the lot to Idid Clan, and we noted these background facts in our Opinion:

> KSPLA appeals the Land Court's determination of ownership, awarding [L]ot 054 B 08, located in Idid Hamlet of Koror State, to Idid Clan. In doing so, the Land Court found that this lot, which both the Trust Territory government and KSPLA had been leasing out for many years, corresponded with Tochi Daicho 703, which is listed as owned by Keyukl. In finding for Idid Clan, the Land Court discussed, accurately, the two available types of claims to land held by the government: superior title (private land) claims and return of public lands claims. . . . Importantly, the Land Court noted that Idid Clan filed only a return of public lands claim and that no superior title claim had been presented.

(*KSPLA v. Idid Clan*, Civ. App. No. 14-005, Slip Op. at 2 (May 26, 2015) (internal citation omitted).)

Originally, the Land Court reformed Idid Clan's return-of-public-lands claim into a superior title claim; with respect to Lot 054 B 08, Idid Clan had only filed the former, not the latter. Then "[t]he Land Court found that the government had never actually acquired the land because there was no evidence presented to show *how* it was acquired." (*Id.* at 2-3.) The Land Court put the burden on the government to prove lawful acquisition. Given the Land Court's finding that the land had never legally become public, the Land Court naturally found that KSPLA could not prevail under a superior title analysis. On appeal, we held that the Land Court erred in reforming Idid Clan's claim and awarding the land based on an argument that Idid Clan never made and that KSPLA therefore never had a fair opportunity to contest. *Id.* at 3-9. However, we declined to direct the Land Court to issue a certificate of title in favor of KSPLA:

> While it is suggestive that the Land Court opined on the lack of evidence put forth to show how the land became public, it failed to make an actual finding as to whether the land was wrongfully taken. We will not speculate as to whether the Land Court might have held additional hearings, asked additional questions, or sought additional explanation from the claimants had it applied the correct legal framework from the outset. Decisions such as these are within the discretion of the Land Court, and we will remand for the Land Court to make this dispositive determination.

Id. at 10.

On remand, the Land Court found that the return-of-public-lands claim was timely filed, and that Bilung Gloria Salii and Ibedul Yutaka Gibbons, who filed on behalf of Idid Clan, are proper claimants—none of this is challenged.

In the decision on remand, the Land Court laid out the return-of-public-lands standard:

> (b) 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:
>
> > (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
> >
> > (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.
>
> Under the foregoing standard, the government does not have the burden to prove how the land became public land. Instead, the burden is on the private claimant to prove the elements listed above.

(Decision on Remand at 2-3 (citing *Masang v. Ngirmang*, 9 ROP 125, 128 (2002) (overturned on other grounds by *Markub v. KSPLA*, 14 ROP 45, 48-50 (2007))).)

The Land Court found on remand that the land was not taken by force, coercion, or fraud. The Land Court then began to consider whether the land was taken without just compensation. The Land Court, citing the testimony of Bilung Gloria Salii, found that a Japanese national only leased the land, but Keyukl still owned it, pointing out "that the Tochi Daicho ownership for Lot 703 was registered under and remains registered under Keyukl." (Decision on Remand at 4.) The Land Court's findings on remand conclude with the end of the Japanese administration, and do not address the circumstances of the eventual government acquisition of the land or, indeed, the status of the land during the Trust Territory period at all.

STANDARD OF REVIEW

We review the Land Court's legal conclusions de novo, and its findings of fact for clear error. "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." *KSPLA v. Idid Clan*, Civ. App. No. 14-005, Slip Op. at 3 (May 26, 2015) (quoting *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009)). That is, factual determinations will only be overturned on appeal if "we are left with a definite and firm conviction that an error has been made." *Ngirausui v. KSPLA*, 18 ROP 200, 202 (2011). "It is not the appellate panel's duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *Salii v. KSPLA*, 17 ROP 157 (2010) (quotation marks, brackets, citation omitted); *see also, e.g.*, *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 223 (2009).

ANALYSIS

Accepting the Land Court's fact determinations, and applying them to our de novo legal analysis, there are simply too many gaps in the facts to be able to reasonably conclude that Idid Clan has met its burden of showing that Lot 703 was acquired without just compensation.

Noting that Bilung Gloria Salii, Idid Clan's claim representative and only witness, is an interested witness born after the end of Japanese control in Palau, the Land Court nonetheless credited her testimony because it was corroborated by the Tochi Daicho, and because Lot 703 was not included on a list of lots the sale of which the Japanese governor approved. As is proper on appeal, we will not attempt to redetermine the credibility of a

trial witness. Even if we credit the testimony in full, and we have no reason not to, there is still no evidence cited in the Land Court's decision about the land's becoming public, without just compensation or otherwise. The Land Court's award of the land to Idid Clan was therefore in error because the implicit determination that Lot 054 B 08 was claimed as public without just compensation was not supported by adequate citation to evidence.

1. *The fact that ownership was not transferred to the Japanese lessee has no apparent bearing on possible acquisition by the Trust Territory for compensation.*

The evidence, seen through the prism of the Land Court's findings of fact, shows these relevant facts: (1) Keyukl owned the land through the end of Japanese administration. (2) The land became public or claimed as public during the Trust Territory administration. (3) The land achieved this status either with or without just compensation. The last fact is a fact, not because there is evidence to support it, but because it comprises two binary and mutually exclusive alternatives. The Land Court's decision on remand finds (1) and (2), but sheds no light on (3), the fulcrum upon which this case turns.

The Land Court found that the land was not transferred during the Japanese period. There is evidence to support that finding, and it is not unreasonable, so we accept it in our analysis. The Land Court also found that "the land did somehow eventually become considered public land, [but that] this became the case *during the Trust Territory period*." (Decision on Remand at 4 (*emphasis* in original).) This, too, is reasonable, given the Land Court's findings of fact. The Land Court's legal analysis on remand ends with the finding that the Japanese national leasing the land did not acquire an ownership interest by making rent payments. While it is incontestable that leasing is not the same as

buying, a finding of facts ending with Japanese use of the land is insufficient in this case. The land was not transferred away from Idid Clan during the Japanese occupation. Instead, at some unknown time and for some unknown reason, the Trust Territory government began to exhibit behavior indicating administration of the land. Based on the Land Court's statements of the evidence and its reasoning, Keyukl's undisputed ownership during Japanese times has no bearing on any later acquisition by the Trust Territory.

The Land Court's findings of fact as to the history of Lot 703 only reach the early U.S. administration following World War II, at which point the history of Lot 703 becomes plagued by gaps. During the early U.S. administration, "Gloria Salii accompanied her grandmother Ngerdokou to farm on Tochi Daicho 703." (Land Court Original Decision at 4.) "[E]ventually houses were built on the lot. . . . Mrs. Salii was unaware if these people resided on the lot through leases from KSPLA." (*Id.* at 3.)

Then, in 1976, the Trust Territory government asserted control over the lot via a Land Acquisition Record. (*Id.* at 4.) This is an interesting piece of information that the Land Court did not discuss in either its original decision or its decision on remand. In its original decision, the Land Court noted that, for the purpose of return of public lands claims, public lands include those acquired by the Trust Territory, and the Trust Territory was required to justly compensate landowners from whom the Trust Territory acquired

land.[2] (*Id.* at 8 ("For the government to acquire private land, there must first be a proper and lawful taking as in the case of eminent domain."); *id.* at 8 n.1 ("The Trust Territory government was required to pay just compensation before taking private property. *See* TTC §3(1) which defines eminent domain . . . .").) In the absence of any suggestion of impropriety, which appears to be the case with Lot 703 (there is no evidence about the means of acquisition, with or without compensation), it appears to us reasonable to take the Trust Territory's assertion of ownership in 1976 as a signal of proper acquisition. This assumption is at least as reasonable as an assumption of improper acquisition. On the other hand, inferences may be drawn based on the discrepancy between the Trust Territory's leases starting in 1956 and the Land Acquisition Record from 1976, but if any such inferences were made by the Land Court, neither the inferences themselves nor the basis for them is apparent from its decision.

Given that Claimant Idid Clan bears the burden of proving an acquisition without just compensation, some evidence is needed in order to make reasonable a finding that the Trust Territory acquired Lot 703 without providing just compensation. *See, e.g.*, *In the Matter of Land Identified as Lot No. 2006 B 12-002*, 19 ROP 128, 135 (2012) ("'At all times, the burden of proof remains on the claimants, not the governmental land authority, to establish, by a preponderance of the evidence, that they satisfy all the requirements of

[2] We recognize the obvious exception of land acquired by the Trust Territory due to prior Japanese ownership, but because the Land Court found that Lot 703 was not transferred to the Japanese, this exception does not appear to apply here. *See, e.g.*, *Rechucher v. Ngiraked*, 10 ROP 20 (2002) ("Under the September 1954 [*sic*] 'vesting order,' title belonging to the Japanese government or its nationals became vested in the TT, but title to private property owned by Palauans did not.").

the statute.'" (quoting *Palau Pub. Land Auth. v. Ngiratrang*, 13 ROP 90, 93-94 (2006))); *see also Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 224 (2009) (in a return-of-public-lands claim, the individual claimant must prove each element; the government need not demonstrate how land became public or that the land was not acquired wrongfully); *Ngirmang v. Filibert*, 9 ROP 226, 228 (Tr. Div. 1998) ("The burden of proof on an issue is generally placed on the party who would lose if no evidence were presented on either side of the issue.") (citing *Bauer v. Clark*, 161 F.2d 397 (7th Cir. 1947)). The Land Court cited to no such evidence.

That is, "[a] mere statement that a person is unaware of how the claimed land was acquired by the government and that she had not been told that the land was purchased, at least under these circumstances, can barely be construed as supporting the contention that the claimed lands were" acquired without just compensation. *Heirs of Giraked v. KSPLA v. Tellei*, 20 ROP 241, 245 (2013); *see also Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth.*, 12 ROP 148, 150-51 (2005) (finding "there was sufficient evidence to support the Land Court's finding that Rimat did not establish a wrongful taking. Rimat provided the court with no details about who took the land or how the land was taken, other than to state that the land was taken without compensation," which the Land Court contrasted with her detailed testimony about how her father acquired the land). So we could not reweigh the evidence or reexamine the credibility of testimony bearing on the determinative issue even if it were appropriate to do so, because the Land Court's opinions indicate no such evidence for any court to evaluate.

In order to find that Idid Clan has met its burden, the Land Court must find it more likely than not that the Trust Territory acquired the land without making just compensation. Because the Land Court made no such finding, there is a missing factual link, which leads to a gap in the Land Court's reasoning. We are left to speculate to fill in the gap, which we will not do. There are infinite possible events that might fill that gap, and the Land Court is in the best position to determine the relative likelihood of those possibilities. *Cf. Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 94 (2006) (Appellate Division noted that Land Court wrote there was no evidence establishing how Japanese government obtained land, which, "standing alone, suggest[s] that the Land Court misapplied the burden of proof," but Land Court then went on to credit testimony that Japanese government took the land without compensation).

2. *The two presumptions that the Land Court appears to have applied against KSPLA were improperly applied.*

First, the Land Court seems to implicitly presume that KSPLA's unexplained administration of the lot directly indicates acquisition without just compensation. The decision essentially "appear[s] to contend that the mere fact that KSPLA claims . . . the lots at issue is itself, ipso facto, evidence of a wrongful taking from [their predecessor]. That is plainly not the case. As noted, [private claimants] bear the burden to prove the lands they claim were taken by force or fraud or were obtained without just compensation or adequate consideration. . . . The fact that the lands were acquired by a previous

occupying power does not itself prove anything wrongful[3] occurred." *Heirs of Giraked v. KSPLA v. Tellei*, 20 ROP 241, 244 (2013) (citing *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 94 (2006)); *see also Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 168 (2004) ("The question raised by a claim for the return of public lands is not whether the government acquired the land, but whether" it did so wrongfully or without just compensation.). Some evidence must be presented that the land was wrongfully taken or that it was acquired without just compensation; the Land Court must evaluate that evidence. *Cf. Giraked*, 20 ROP at 245 (citing *Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth.*, 12 ROP 148, 150-51 (2005) ("[W]e find that there was sufficient evidence to support the Land Court's finding that Rimat did not establish a wrongful taking. Rimat provided the court with no details about who took the land or how the land was taken, other than to state that the land was taken without compensation.")).

In other words, the Land Court's apparent presumption is that, where there is no evidence that the Trust Territory acquired land for just compensation, the Trust Territory must not have acquired it for just compensation. If there were some factual or legal foundation offered for this presumption, we would be able to evaluate the reasonableness of the presumption. However, this presumption directly contravenes the Land Court's statement in its original decision in this case that Trust Territory law required the government to pay just compensation when it acquired private property. (Land Court

[3] In a situation such as this one, the Court uses the term "wrongful" not necessarily to indicate moral reprobation, but rather to indicate public acquisition of land subject to the return-of-public-lands law, including a taking without just compensation that may have been done without nefarious motive.

Original Decision at 8 n.1 ("The Trust Territory government was required to pay just compensation before taking private property. *See* TTC §3(1) which defines eminent domain . . . .").) Furthermore, the absence of proof of a fact is not the same as proof of its opposite. The absence of proof on a subject will necessarily inure to the detriment of the party who bears the burden of proof on that subject. The Land Court's approach essentially transfers the burden of proof from Idid Clan to KSPLA without requiring Idid Clan to make even a prima facie showing of an acquisition without just compensation.

Second, the Tochi Daicho presumption[4] is irrelevant to the ultimate resolution of this matter, but the Land Court nonetheless appears to rely heavily on the early-1940s listing of Keyukl as the owner of Lot 703. The Tochi Daicho presumption is typically applied to create a firm starting point from which private claimants can establish a chain of title. *Cf., e.g.*, *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 224 (2009). But, because the Tochi Daicho does not—and logically cannot—speak to what occurred after its compilation, a Tochi Daicho listing has no relevance when the parties agree who owned the land at the time the Tochi Daicho was compiled and the dispute relates only to subsequent events. *See Children of Ingais v. Etumai Lineage*, 20 ROP 149, 149-50 (2013) ("Ultimately the court determined that because neither party disputed the ownership of a Tochi Daicho lot, neither party had the benefit or the burden of the

[4] "[A] Tochi Daicho listing in the name of a superior title claimant is presumed accurate." *KSPLA v. Idid Clan*, Civ. App. No. 14-005, Slip Op. at 7 n.6 (May 26, 2015) (citing *Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185, 185-86 (2002)).

presumption of accuracy typically afforded to the Tochi Daicho's listing of the identity of the owner.").

The Land Court cites to the Tochi Daicho, writing that the land "remains registered under Keyukl," and that "earlier during the Japanese period, the land remained registered under Keyukl *and has so remained*." (Decision on Remand at 1, 4 (*emphasis* added).) There is, however, no evidence to suggest that the Trust Territory government took over responsibility for updating the Tochi Daicho records, or that it customarily updated Tochi Daicho records when purchasing land from the owners listed in the Tochi Daicho. Accordingly, the fact that the Tochi Daicho records were never updated to reflect new ownership of lot 703 is not probative of whether the Trust Territory government acquired the lot for compensation.

The Land Court's language instead suggests both that the Land Court continues to view the case from a superior title vantage point and, relatedly, that the Land Court improperly applied the Tochi Daicho presumption. The Tochi Daicho records establish that Keyukl owned the land in the early 1940s when the Tochi Daicho survey was completed. But as we noted in the first appeal of this case, the relevant question is whether Keyukl or his successor in interest was justly compensated for the land when Lot 703 changed hands sometime in the 1950s or later. The Tochi Daicho indicates nothing about that.

3. *Even in the face of evidence that leaves a court less than absolutely certain of the proper awardee of land, the court must apply the statutory framework.*

The Land Court's original decision describes as "unjust and absurd" the outcome that KSPLA might be awarded Lot 054 B 08 due to Idid Clan's use of the wrong claim form, and despite the lack of an affirmative showing how—or even that—the land became public. But unfortunately, in the face of imperfect and incomplete information, an award of the land to either KSPLA or Idid Clan could be incorrect, and the courts must use the statutory structure established by the legislature. The party that bears the burden of proof will fail in the absence of proof. Based on the Land Court's limited findings of fact thus far, it is just as likely here that Keyukl or an heir transferred the land to the Trust Territory in exchange for just compensation as it is that the government acquired the land without just compensation. Idid Clan bears the burden of proof, and in the absence of factual findings establishing acquisition without just compensation, Idid Clan's claim cannot succeed.

CONCLUSION

For the foregoing reasons, the Land Court's decision on remand and determination of ownership of Lot 054 B 08 is **VACATED**. The matter is **REMANDED** to the Land Court for further proceedings consistent with this Opinion. These proceedings shall include a finding, if such a finding is possible given the available evidence, as to whether Lot 054 B 08 "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." 35 PNC § 1304(b)(1). That is the determinative finding in this case. In keeping with this Opinion, the Land Court is instructed that, in the absence of evidence establishing it is more likely than not that Lot 054 B 08 was wrongfully taken or otherwise acquired without just compensation, Idid Clan will have failed to meet its burden of proof on its return-of-public-lands claim, and Idid Clan's claim must fail.

SO ORDERED, this 29th day of March, 2016.

ARTHUR NGIRAKLSONG
Chief Justice

KATHLEEN M. SALII
Associate Justice

R. ASHBY PATE
Associate Justice