

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED



COURT CLERK
OF THE
SUPREME COURT

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 :
 BADUREANG CLAN, represented by Tulik :
 Martin Misyusch Ngchar, :
 :
 Appellant, :
 :
 v. :
 :
 KOROR STATE PUBLIC LANDS :
 AUTHORITY and ALFONSO DIAZ, :
 :
 Appellees; :
 -----X

CIVIL APPEAL NOS. 12-003 &
12-008 (Consolidated)
LC/B Nos. 09-0268, 09-0269,
09-0270, 09-0851 & 09-0852

OPINION

-----X
 :
 KOROR STATE PUBLIC LANDS :
 AUTHORITY, :
 :
 Appellant, :
 :
 v. :
 :
 ALFONSO DIAZ, :
 :
 Appellee. :
 -----X

Decided: January 15, 2013

Counsel for Badureang Clan: Yukiwo P. Dengokl
Counsel for KSPLA: Oldiais Ngirakelau, J. Uduch Sengebau Senior
Counsel for Diaz: Pro Se

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 RONALD RDECHOR, Associate Judge, presiding.

PER CURIAM:

This case concerns two appeals from the same Land Court Findings of Fact, Conclusions of Law, and Determination issued on September 9, 2011. For the following reasons, the decision of the Land Court is **AFFIRMED**.¹

BACKGROUND

The appeals by both Koror State Public Lands Authority and Badureang Clan concern a single parcel of land in Ngermid Hamlet, Koror. The matter from which Appellants now appeal consolidated the claims of many parties to numerous parcels of land adjacent to, and in the vicinity of, the parcel in dispute on appeal.

In resolving the many competing claims before it, the Land Court determined Appellant KSPLA is the owner of all but three of the more than twenty disputed parcels in the underlying matter. One of those three parcels was a 2,266 square meter area awarded to the Children of Yaeko Ngirchorachel, who were represented by Appellee Alfonso Diaz.

Appellants each claim they are the lawful owners of the parcel of land awarded to the Children of Yaeko Ngirchorachel, which is located on the Tochi Daicho index

¹ Although Appellant Koror State Public Lands Authority requests oral argument, we determined pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

4005/85 within lot 178-2 and on Worksheet Map No. 2007 B 01A within lot 014 B 04, and is generally known as *Ngeanges*.² That parcel was designated 014 B04B (the Land). The factual history of the Land's ownership and use is much disputed by the parties.³

At the Land Court, KSPLA asserted its ownership of all of the lands in question. In addition, Diaz asserted superior title to the Land for the Children of Yaeko Ngirchorachel, and Badureang Clan sought ownership of the same Land on the basis of a return-of-public-lands claim.

In resolving the multi-party claim⁴ to the Land, the Land Court held trial from July 11–21, 2011, and issued its Findings of Fact, Conclusions of Law and Determination on September 9, 2011. With respect to the Land, the Land Court heard conflicting testimony by Diaz; members of Badureang Clan, including Martin Ngchar, Remeliik Ngchar, Owens Otei, Sisilianged Moros, Francisca Yalap Soaladaob, and Tutoud Elis Ngiralmu; and by Josephine Ulengchong (representing the claim of Ngerukebid Lineage). The testimony was in substantial conflict as to the ownership, maintenance, and use of the Land.

² *Ngeanges* is adjacent to land known as *Ngeruledong*, which includes, in part, Lots 216-1 (012 B 06) and 216-2 (012 B 08), owned by Appellee's family. The shared boundaries of those two lands form a significant aspect of the dispute on appeal.

³ Although Appellee Alfonso Diaz is a named party in both appeals, he did not file any briefs or pleadings in this matter.

⁴ Lot 178-2, otherwise known as *Ngeanges*, was the subject of numerous claims by individuals representing clan and lineage ownership claims. Several members of Badureang Clan, for example, filed claims representing the clan's claim of ownership.

Ultimately, the Land Court determined that Badureang Clan's claim for return of public land failed because the Clan failed to meet its burden to show its ownership of Lot 178-2 or that it was taken wrongfully by the Japanese. In reaching that conclusion, the Land Court recounted at length the inconsistent, conflicting, and vague testimony concerning the ownership history of *Ngeanges*. Instead the Land Court found compelling the testimony by Diaz and Tutoud that a portion of Lot 178-2 never became public land and was inherited by Diaz's mother. Accordingly, the Land Court concluded Diaz had adequately demonstrated superior title to the Land, a 2,266 square-meter portion of Lot 178-2 (014 B 04B), adjacent to Lots 216-1 (012 B 06) and 216-2 (012 B 08). KSPLA and Badureang Clan appeal that determination.

STANDARD OF REVIEW

Appellants raise both legal and factual challenges to the Land Court's Findings of Fact, Conclusions of Law, and Determination.

KSPLA challenges the Land Court's conclusions as to the timeliness of Diaz's claim and as to whether KSPLA is entitled to the Land based on adverse possession. We review the Land Court's conclusions of law de novo. *Rengchol v. Uchelkeiukl Clan*, Civ. App. Nos, 10-018 & 10-024, slip op. at 6 (Oct. 7, 2011) (citing *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007)).

Additionally, KSPLA and Badureang Clan each challenge the Land Court's factual findings. We review the Land Court's factual determinations for clear error and

will reverse its findings of fact “only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.” *Ngirakesau v. Ongelakel Lineage*, Civ. App. Nos. 10-037, slip op. at 5-6 (Nov. 11, 2011) (citing *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 165 (2004)). We will not substitute our view of the evidence for the Land Court’s, nor are we obligated to reweigh the evidence or reassess the credibility of witnesses. See *Rengchol*, slip op. at 9 (citing *Ebilklou Lineage v. Blesoch*, 11 ROP 142, 144 (2004)). See also *Ngarngedchibel v. Koror State Pub. Lands Auth.*, Civ. App. Nos. 10-047 & 11-002, slip op. at 5 (Feb 23, 2012). “Where there are two permissible views of the evidence, the court’s choice between them cannot be clearly erroneous.” *Rengchol*, slip op. at 6 (citing *Ngirmang v. Oderiong*, 14 ROP 152, 153 (2007)).

With respect to appeals that challenge a court’s factual findings, this Court recently held:

Empirically, ‘appeals challenging the factual determinations of the Land Court . . . are extraordinarily unsuccessful.’ *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007). 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.

Koror State Pub. Lands Auth. v. Tmetbab Clan, Civ. App. No. 11-014, slip op. at 6 (July 2, 2012). See also *Estate of Dingilius v. Peleliu State Pub. Lands Auth.*, Civ. App. No. 11-005, slip op. at 5 (June 5, 2012) (citing *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007)).

ANALYSIS

I. KSPLA's Appeal.

KSPLA frames its issue on appeal as a single challenge to the Land Court's determination that Diaz met his "burden of proof in a superior title claim" against KSPLA. A review of its brief, however, reveals KSPLA asserts three separate issues on appeal: (1) the Land Court failed to properly consider the evidence when it concluded Diaz had met his burden to show ownership of the Land, (2) Diaz's claim is untimely, and (3) KSPLA owns the Land by means of adverse possession.

A. Evidence of Ownership

KSPLA urges the Court to reverse the Land Court's determination that Diaz demonstrated his superior title to the 2,266 square-meter parcel of land within Lot 178-2 on the ground that the Land Court clearly erred when it concluded Diaz met his evidentiary burden to show "by clear and convincing evidence that the Tochi Daicho listing is incorrect." *Wasisang v. Peleliu State Pub. Lands Auth.*, 16 ROP 83, 84-85 (2008) (A claimant in a superior title action asserts the claimed land never became public and has the burden to prove any adverse Tochi Daicho listing by clear and convincing evidence.). KSPLA contends that in reaching its conclusion, the Land Court ignored the evidence submitted by KSPLA showing that it owned and leased the Lot 178 for more than twenty years.

The Land Court concluded in relevant part:

Although the superior title claims fail for the most part, the Court agrees with Diaz and Rose [Ngirturong Adelbai, represented by Tutoud Elis Niralmu] as to a portion of Lot 178-2 on Exhibit 1. On September 23, 1986, the Palau Land Commission determined that Ngirturong [brother of Yaeko Ngirchorachel] owned Tochi Daicho Lot No. 178, and it would pass on to Yaeko Ngirchorachel [Diaz's mother]. It determined that the land *Ngeruledong*, Tochi Daicho Lot 178, shown on Exhibit 2 as Lot No. 012 B 06 and Lot No. 012 B 08, was owned by Ngirturong and would pass on to Yaeko. The Tochi Daicho stated that Ngirturong owned 5,746.14 square meters, but Yaeko's Certificate of Title for Lot No. 012 B 06 and Lot No. 012 B 08 included only 3,840 square meters. Therefore, the remaining 2,266 square meters—presently a part of Lot 178-2 on Exhibit 1—should have been awarded to Yaeko. Rose and Diaz dispute the ownership of the 2,266 square meters, so the Court will resolve ownership of that land.

* * *

The persuasive evidence regarding the proper ownership of the 2,266 square meters is the determination of Yaeko's ownership of Ngirturong's land, and her subsequent transfer of that land to Diaz and Kerai [Diaz's sibling]. The Court therefore finds that the Children of Yaeko Ngirchorachel own the 2,266 square meters comprising the remainder of Tochi Daicho Lot 178 that should have been awarded along with what is shown on Exhibit 2 as Lot No. 012 B 06 and Lot No. 012 B 08.

Although KSPLA maintains it presented overwhelming evidence to show the lands at issue were owned by KSPLA, including a dozen leases, it does not point to a single specific Exhibit or piece of evidence that contradicts the Land Court's specific determination as to the Land. The Court performed its own review of those leases—KSPLA Exhibits 6–16 and 19—which revealed only a single lease relevant to Lot 178-2. That lease, Exhibit 11, reflects KSPLA leased only a “part” (only 1,500 square meters) of the sizable Lot 178-2 / 014 B 04 (which is in excess of 60,000 square meters). KSPLA

did not include the map that is referenced in the lease to aid the Court's assessment of its argument, nor does KSPLA identify any other evidence to suggest the 1,500 square meter area it leased is part of the 2,266 square meters of Land awarded to Diaz by the Land Court.

In addition, KSPLA maintains Diaz did not meet his burden to prove the Tochi Daicho incorrectly listed Lot 178-2 as public land. The Court notes that KSPLA's Exhibit 2, which is a portion of the Compilation of the Japanese Tochi Daicho for Koror, lists Lot 178 as owned by Ngirturong and shows the land area to be 5,746.14 square meters, in accordance with the Land Court's findings. Furthermore, as the Land Court pointed out, the Palau Land Commission's decision issued on September 23, 1986, which concerned Lot 179 (commonly known as *Ngeruledong*), found that the adjacent Lot 178 "was clearly Ngirturong's." KSPLA does not address or challenge that determination. The Land Court found this evidence to be a clear and convincing basis to determine that a portion of Lot 178-2 was never publicly owned and that any adverse Tochi Daicho listing was in error insofar as it related to the 2,266 square meters adjacent to 012 B 06 and 012 B08 that the Palau Land Commission awarded to Yaeko Ngirchorachel in 1986.

We acknowledge that this history of the lands known as *Ngeanges* and *Ngeruledong*, which appear at least to encompass parts of Lots 178, 179, and 216, is somewhat unclear and overlapping. Such is the difficulty faced by the Land Court with nearly every dispute before it. Nonetheless, KSPLA has not provided any basis for this

Court to conclude that the Land Court clearly erred in concluding the Land awarded to Diaz was never publicly owned, and the Court is unwilling to disturb that finding on this record because the Land Court's findings are rational and are supported by substantial evidence in the record.

B. Timeliness of Diaz's Claim

KSPLA also contends Diaz's claim is untimely. In its written closing argument, the entirety of KSPLA's argument with respect to the statute of limitations is as follows: "Moreover, the claim is clearly barred by the statute of limitations." This argument borders on being so poorly developed in the underlying proceeding as to fail to preserve the issue, but the Court will address the merits of KSPLA's argument.

On appeal, KSPLA contends Diaz's claim is barred by the twenty-year statute of limitations set out in 14 PNC § 402(a)(1), because Diaz must file any challenge to the November 27, 1987, judgment by the Palau Land Commission awarding lands to Yaeko Ngirchorachel as discussed above. As the Land Court stated, however, Diaz filed his claim on March 6, 2006. Thus, even if Diaz's action were determined to be a challenge to that decision by the Palau Land Commission, Diaz's claim was filed within the twenty-year limitations period. Without further explanation or development, this argument fails.

KSPLA also contends Diaz failed to meet the twenty-year statute of limitations set out in 14 PNC § 402(a) because "[a]ll public lands at issue here were subsequently transferred to the Koror Municipal Land Authority in 1982. Appellee . . . should have

filed his claim by 2002 for the recovery of any portion [of] Tochi Daicho Lot 178 that was included in the public lands.” This argument presumes what the Court has already determined is incorrect. The Land Court properly concluded that the portion of Lot 178 at issue was never publicly owned. Thus, the alleged transfer of lands to Koror Municipal Land Authority in 1982 does not bear on the superior-title claim by Diaz.

Neither argument advanced by KSPLA is a basis for finding that the Land Court erred in determining Diaz filed a timely superior-title claim, and KSPLA did not otherwise explain the accrual of Diaz’s superior-title claim or why it would be considered untimely.

C. Adverse Possession

Finally, KSPLA contends that even if Diaz has demonstrated ownership of the Land, KSPLA has maintained control of that land for more than 20 years and should therefore be awarded ownership of the Land on the basis of adverse possession. KSPLA does not point to any portion of the trial record showing that it made this argument to the Land Court. The Court has gone beyond its duty and has reviewed the extensive record to see if this argument was raised below. *See Ngetchab Lineage v. Klewei*, 16 ROP 219, 221 (2009) (“[I]t is the job of Appellant, not the Court, to search the record for errors.”). Neither KSPLA’s written or oral closing arguments set out the basis for their adverse possession argument that would have given the Land Court the opportunity to rule on this issue. Having found no record of KSPLA’s preservation of this issue, the Court deems it

waived. *See Tulop v. Palau Election Comm'n*, 12 ROP 100, 106 (2005) (citing *Badureang Clan v. Ngirchorachel*, 6 ROP Intrm. 225, 226 n.1 (1997)) (Mere mention of a claim without additional development and argument is insufficient to preserve an issue, and the failure to mention an issue at all waives that position on appeal).

II. Badureang Clan's Appeal.

Badureang Clan raises two issues on appeal, challenging the Land Court's factual findings as to whether Badureang Clan's evidence was sufficient to satisfy its burden to prove that: (1) Badureang Clan was the prior owner of lot 178-2, otherwise known as *Ngeanges*; and (2) *Ngeanges* was wrongfully taken from Badureang Clan by the Japanese. As noted, we rarely disturb the Land Court's factual determinations and only if the Court is convinced that "no reasonable trier of fact could have reached the same conclusion." *See Ngirakesau*, slip op. at 5-6.

As the Land Court noted, and Badureang Clan concedes, the Clan had the burden to prove the elements of its return-of-public-land claim under 35 PNC § 1304(b). Among those elements, Badureang Clan had the burden to prove that it owned the claimed land prior to its acquisition "through force, coercion, fraud, or without just compensation or adequate consideration." 35 PNC §§ 1304(b)(1), (2). Badureang Clan contends the Land Court erred when it concluded the Clan failed to prove these elements of its claim.

The Land Court summarized the conflicting testimony taken at trial as to the ownership of *Ngeanges*, noting that even the members of Badureang Clan testified

inconsistently as to the area of land that the Clan allegedly owned and as to the nature of the alleged taking by the Japanese. For example, there was conflicting testimony about the boundary lines for the portion of Lot 178-2 belonging to Badureang Clan suggesting both that Lot 178 was divided into East and West and, alternatively, North and South parcels with various parcels belonging to Badureang Clan. Tr. Vol. I, at 47, 73–75, 131. In addition, Clan members testified inconsistently as to whether the Japanese took the land by force or whether they paid for the land. Tr. Vol. I, at 86–89, 105–112, 114–15, 120, 159–60. The Land Court concluded the testimony by Badureang Clan members was “inconsistent, lacking in detail, and ultimately insufficient.”

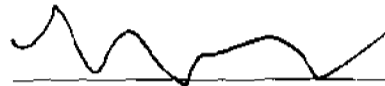
Badureang Clan acknowledges in its briefs that there was conflicting testimony as to the ownership of *Ngeanges* and as to whether the Japanese acquired the lands wrongfully. Badureang Clan, however, merely recasts the testimony in the record in a light that favors its claim, emphasizing, despite the contrary testimony, the statements that support their position that the Clan owned a specific portion of *Ngeanges* that was taken wrongfully by the Japanese. In essence, Badureang Clan counts the witnesses that testified in its favor and likens the total to a “preponderance of the evidence.” The Land Court, however, weighs not only the amount of evidence, but assesses its quality based on, among other things, its consistency, detail, and the credibility of each witness. This Court will not reweigh the evidence nor reassess the credibility of witnesses on appeal. *See Rengchol*, slip op. at 9. Instead, the Court has reviewed the relevant portions of the

record and concludes that there is sufficient evidence on which a reasonable trier of fact could reach the same conclusion as the Land Court. Accordingly, finding no clear error, the Court cannot undermine the Land Court's factual findings on appeal.

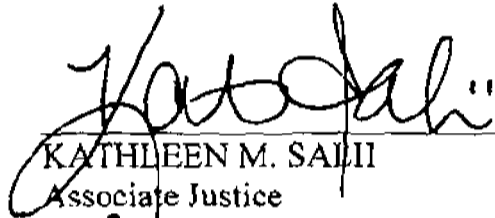
CONCLUSION

For the foregoing reasons, the decision of the Land Court is **AFFIRMED**.

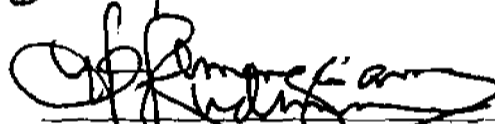
SO ORDERED, this 1st day of January, 2013.



ARTHUR NGIRAKLSONG
Chief Justice



KATHLEEN M. SALII
Associate Justice



HONORA E. REMENGESAU RUDIMCH
Associate Justice Pro Tem