

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED
[Signature]

In re: Determination of Ownership of real :
Property located in Ngkeklau County of :
Ngaraard State called Materiid, formerly :
Identified as Tochi Daicho Lot 1967 listed :
Under Buikespis now claimed as worksheet :
Lots E12-047 and E12-048. :

CIVIL APPEAL NO. 12-015
LC/E 02-0146 & 02-0147

AKEMI ANDERSON, :
FLORIANO BUIKESPIS, :
URANO DEMEI, :
LAURENTINO ULECHONG, :

Appellants, :

v. :

OPINION

In re: Determination of Ownership of real :
Property located in Ngkeklau County of :
Ngaraard State called Melei, formerly :
Identified as Tochi Daicho Lots 1966 & 1968 :
Listed under Olikong and now claimed as :
Worksheet lots E12-047 and E12-046. :

THE BELLS OLIKONG, :
MARINO THE BELLS, :
ANTONIO THE BELLS, :

Appellants. :

Decided: January 28th, 2013

Counsel for Appellant Bells: Raynold B. Oilouch
Counsel for Appellant Ulechong: David W. Shipper

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; and RICHARD BENSON, Part-Time Associate Justice.

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

PER CURIAM:

This case concerns the Land Court's decisions regarding two parcels of land. For the following reasons, the decisions of the Land Court are affirmed.¹

BACKGROUND

There are two lots of land that make up two unrelated disputes that are both at issue in this appeal. The first dispute involves land at the western border of the property of the named appellants, Bells Olikong, Marino Bells, and Antonio Bells (hereinafter the Bells), lot E12-047, of which both the Bells and another group of named appellants, Laurentino Ulechong, Akemi Anderson, Floriano Buikespsis, and Urano Demei (hereinafter Ulechong), claim to be rightful owners and which was granted to the Bells by the Land Court. The second dispute involves land to the north of the Bells' property, lot E12-046, a portion of which has been designated as public land.

Ulechong and the Bells own bordering land in Ngaraard State. The Land Court commenced land registration for the relevant properties in 1998. The Court set forth a calendar, stating filing deadlines for parties with an interest in lands in the area in

¹ Although Appellant requests oral argument, we determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

question in this dispute. Ulechong met this deadline, including in his registration lot E12-047.

The Bureau of Lands and Surveys announced a monumentation session for the property in accordance with 35 PNC §1307. It is undisputed that Ulechong participated in this monumentation session and included lot E12-047 in its claim. The Bells also claimed ownership of lot E12-047. Ulechong argued that the Bells failed to make its claim to the lot during the designated monumentation session and that as a result, the Bells did not dispute Ulechong's version of the property line encompassing lot E12-047 in favor of Ulechong.

The Land Court heard testimony from Ulechong that the parties agreed that lot E12-047 belonged to Ulechong, and testimony from the Bells that there was no such agreement and that they timely made their claim for lot E12-047 during the monumentation session. The Land Court determined, "[t]his clash of testimony on the same point evens out the playing field particularly since neither testimony is corroborated." The Court determined that Ulechong failed to present sufficient evidence to convince the Court that the Bells did not dispute the boundary on lot E12-047. Specifically, the Court noted that the Bells provided more detailed and competent testimony on the issue than did Ulechong.

The Court considered both parties' claims at monumentation and noted that they each claimed ownership of lot E12-047. Ultimately, the Land Court found the evidence

presented by the Bells to be more credible and thus determined that lot E12-047 belonged to the Bells. Ulechong appeals this ruling, arguing that the Land Court erred in finding that the Bells disputed the property line at monumentation and thus the Court should not have considered its claim at the hearing in the first place.

In a separate dispute, the Bells argue that they should have been granted a greater portion of the land to the north of their property line, constituting part of lot E12-046. Regarding that property, representatives of the Bells and Ulechong participated in a monumentation and initially made claims for property that the government later asserted was public land. The Bells filed their claim to the lot prior to the deadline set by the Land Court and their claim was initially undisputed. However, the government later intervened, arguing that portions of the property the parties claimed were public lands.

At the hearing, the Bells, by reference to a map of the area labeled “Bells Exhibit A,” sought and received stipulations by the government concerning land boundaries. These stipulations included that property south of a line on the map made by markers 1311, 1313, 1315, 1317, and 1319, which included some of lot E12-046, belonged to the Bells. Because of these stipulations, the Bells stated that they had “[n]o issue with [the government].” The Land Court then proceeded to address Ulechong’s dispute with the government. Relying in part on Tochi Daicho listings, the Land Court determined that the land to the north of the 1311, 1313, 1315, 1317, and 1319 line was public land because neither of the parties overcame the presumption that the Tochi Daicho was

correct by presentation of clear and convincing evidence. The Bells assert on appeal that it should have received land north of those markers.

STANDARD OF REVIEW

Ulechong appeals the decision of the Land Court that granted lot E12-047 to the Bells, arguing that the Bells failed to dispute Ulechong's property line calculation during the appropriate time, monumentation. Whether the Bells made its claim during the designated period is a finding of fact, which this Court reviews for correctness, reversing only where the lower court's conclusion is clearly erroneous. *See Koror State Pub. Lands Auth. v. Idong Lineage*, 17 ROP 82, 83–84 (2010).²

ANALYSIS

The first claim we address on appeal is Ulechong's contention that the Land Court erred in granting lot E12-047 to the Bells. Ulechong argues that the Bells failed to dispute Ulechong's characterization of the property line during monumentation and that the Land Court erred in finding otherwise. Ulechong asserts that because the Bells did not dispute the boundary line at monumentation, the Land Court was required to grant lot E12-047 to Ulechong.

² Additionally, the Bells appeal, contending that the Land Court should have automatically granted them lot E12-046 due to the government stipulating to the boundaries. Alternatively, the Bells contend that the government failed to meet registration deadlines and so its claims should have been dismissed even if they did amount to a disagreement with the Bells. We do not state a standard of review for this claim because we decline to address its contentions. They were not preserved, as explained in Part II of this analysis.

The second claim we mention is the contention by the Bells that the Land Court erred in failing to grant it lot E12-046. The Bells assert that the government did not dispute the property line with the Bells and that the Land Court should have granted the lot to them.

I. Lot E12-047

First, regarding whether there was a dispute between Ulechong and the Bells over lot E12-047, we affirm the Land Court's decision to grant the land to the Bells. The contention between the parties on appeal boils down to the Land Court's interpretation of testimony provided by both sides about whether or not the parties agreed on a boundary at monumentation. The Land Court heard testimony from both sides and noted that as neither side presented corroborating evidence for the testimony provided, the opposing testimony from each side merely "even[ed] out the playing field." Ultimately, the Land Court found the testimony provided by the Bells to be more credible. In such challenges on appeal, our job is to identify whether the lower court committed such a clear error in its credibility determination that no reasonable trier of fact could come to the same conclusion. *Ngarameketii v. Koror State Pub. Lands. Auth.*, 18 ROP 59, 63 (2011). An appellate panel has no duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence. *Id.*

The Land Court explained in its decision that it found testimony presented by the Bells to be more credible than that presented by Ulechong for many reasons, including

the disparity in the amount of detail provided in the testimonies and the witnesses' abilities to answer questions competently. Ulechong's complaint on appeal amounts to nothing more than a recitation of the testimony given at the hearing. As the Land Court noted, the testimony was uncorroborated and less detailed than the opposing testimony provided by the Bells. Ulechong has given this Court no reason to conclude that the Land Court's determination that there was a boundary dispute at monumentation was clearly erroneous and that no reasonable trier of fact could have come to the same conclusion. *See Idong Lineage*, 17 ROP at 83–84. Accordingly, we will not disturb the Land Court's decision.

II. Lot E12-046

We next turn to the Bells' contention that they should have been awarded the entirety of lot E12-046. The Bells assert that it was improper for the Land Court to only give part of the land at the northern portion of its property to them and state that the government failed to file a timely claim on the land and thus is ineligible to receive the land now. Further, the Bells assert that the Land Court was required to award the land to the Bells because there were no other claimants to the land. Finally, the Bells argue that the government "made clear during the hearing below that [it] was not contesting any boundary with Appellants."

There are several problems with the assertions the Bells make. Most importantly, the issue the Bells appeal now was not even contested when the Land Court made its

decision. Initially both the Bells and Ulechong contended that their property lines to the north extended into what the government called public lands. However, during the hearing, the Bells sought and received stipulations from the government regarding property lines and then stated that they had “[n]o issue with NSPLA.” The Land Court noted this in its decision, stating that “[a]fter NSPLA made a prima facie showing that said area is part of public land, . . . the Bells withdrew any claims into that area.”

The Bells argue in their brief that the reason they withdrew is because the government agreed with the boundaries that the Bells asserted and that the Land Court ignored that stipulation and made a different ruling. However, a careful reading of the record paints a different picture.

At the hearing, the Bells sought stipulations from the government that the government was not contesting ownership of property *south* of the lines connected by markers 1311, 1313, 1315, 1317, and 1319 on a map labeled “Bells Exhibit A.” The government made these stipulations and at that point the Bells stated that they had no issue with the government, meaning it had no property-line dispute. The parties did not, however, make any stipulations about the lands that sit north of that line. The Land Court then, in accordance with those exact markers, refused to award the Bells any property *north* of the 1311, 1313, 1315, 1317, and 1319 line. The Land Court based its decision apparently on this agreement, and, in part, on the Tochi Daicho, which was not contested by the Bells through evidence at the hearing.

It appears now that the Bells contest this decision even though they failed to present evidence at the hearing as to why they should have received property north of the line draw by the Land Court. Further, the Bells argue in their brief as though the Land Court made a ruling contrary to the stipulation between the parties, when in fact, the Land Court only refused to award land to the Bells that the government did *not* agree was private land.

Because the Bells withdrew their claims to property north of the line they marked at the hearing, they failed to preserve this issue for appeal. An appellant who has “failed to raise [an] issue below . . . is barred from raising it [on appeal].” *West v. Ongalek ra Iyong*, 15 ROP 4, 7–8 (2007). This is because “this Court will not entertain arguments that the trial court did not have the opportunity to hear.” *Basilus v. Basilus*, 12 ROP 106, 110 (2005) (brackets, internal quotation marks, and citation omitted). The Land Court had no reason to consider whether the Bells should have been awarded property north of the line agreed upon at the hearing because the Bells did not contest as much.

The Bells not only withdrew their claim against the government regarding the property north of the line they drew at the hearing, but they also never mentioned their contention that the government missed registration deadlines, that the boundaries were not disputed, and that the Land Court should have automatically granted lot E12-046 to them. It is not our duty to take on the role of the Land Court and address this issue for


the first time. *West*, 15 ROP at 7–8. For the Bells to have a court consider these claims, it must have presented them in front of the Land Court.


In any event, even if the claims were preserved, the Bells had a duty to contest the Tochi Daicho listing if it indicated in any way a disagreement with the Bells' claim at the hearing. *Taro v. Sungino*, 11 ROP 112, 116 (2004) (“[T]he burden is on the party contesting a Tochi Daicho listing to show by clear and convincing evidence that it is wrong.”). The Bells, however, did not meet that burden.


CONCLUSION

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

SO ORDERED, this 28th day of January, 2013.


KATHLEEN SALII
Associate Justice


LOURDES F. MATERNE
Associate Justice


RICHARD H. BENSON
Part-Time Associate Justice