IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

ESUROI CLAN,
Appellant,
v.
ROMAN TMETUCHEL FAMILY TRUST (RTFT),
Appellee/Cross-Appellant
v.
ANASTACIA RAMARUI,
Appellee
v.
ANTONIO MARIUR,[1] CHILDREN OF NGIRAMENGLOI, and ONGALK RA EBERDONG,
Appellees/Cross-Appellees.

Cite as: 2019 Palau 31
Civil Appeal No. 18-019
Appeal from Land Court Actions LC/N 11-00051 through LC/N 11-00063
and LC/N 11-00072 through LC/N 11-00078

Decided: September 10, 2019

Counsel for Appellant Esuroi Clan	Vameline Singeo
Counsel for Appellee Anastacia Ramarui	Salvador Remoket
Counsel for Appellee/Cross-Appellant RTFT	Johnson Toribiong
Counsel for Appellee/Cross-Appellee	
Antonio Mariur	J. Uduch Sengebau Senior
Children of Ngiramengloi	Raynold B. Oilouch
Ongalk ra Eberdong	Siegfried B. Nakamura

BEFORE: JOHN K. RECHUCHER, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice
KEVIN BENNARDO, Associate Justice

[1] Antonio Mariur also filed a notice of appeal against RTFT on April 30, 2018. However, he did not submit an opening brief, as required by the Rules of Appellate Procedure. Therefore, his appeal is dismissed under ROP R. App. P. 31(c).

Appeal from the Land Court Division, the Honorable Rose Mary Skebong, Acting Senior Judge, presiding.

OPINION[2]

PER CURIAM:

[¶ 1] Both Esuroi Clan and Roman Tmetuchl Family Trust (RTFT) appeal from the Land Court's March 30, 2018, Decision regarding ownership of land in Airai State. Esuroi Clan also appeals the Land Court's August 2, 2018, Order denying its motion for reconsideration.

[¶ 2] For the reasons set forth below, we **AFFIRM** the Land Court's determination.

BACKGROUND

[¶ 3] This appeal arises from competing claims of ownership over twenty lots of land located in Ked/Ordomel Hamlet, Airai State. The Land Court held hearings from November 13 to 17, 2017.

[¶ 4] Pursuing a claim first filed by his father, Antonio Mariur claimed that four of the lots originally belonged to his uncle, Kubesak. Anastacia Ramarui claimed that two lots were deeded to her by Tkoel Sambal in 1967. Children of Ngiramengloi claimed that three lots were transferred to their father by Tkoel as payment for building Tkoel's house. Ongalk ra Eberdong claimed that six of the lots[3] were conveyed to Eberdong by Tuchermel Ksau of Klai Clan, in exchange for two goats.

[¶ 5] RTFT claimed eighteen of the lots, asserting that all of the land at issue in this case originally belonged to Tkoel. Over time, Tkoel conveyed the land to David and Anastacia Ramarui, Ngebesk Mineichi (aka Debbi M. Remengesau), Ngirkelau Lim, and Roman Tmetuchl. Ngebesk Mineichi and Ngirkelau Lim later conveyed the land they purportedly received from Tkoel

[2] Although the parties request oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

[3] Originally, Dirramekar Demei, Matchiau Eberdong, Elchesel Matchiau, and Rosania Masters submitted separate claims to the same land, all claiming under Eberdong. At the hearing, they agreed that Demei would present the claim on behalf of the group.

to Tmetuchl. To support its claim, RTFT relies on a variety of quitclaim deeds and the testimony of Tkoel's son, Christopher Tkoel.

[¶ 6] Esuroi Clan claimed all twenty lots under a return of public lands claim. Esuroi Clan asserted that, many years ago, Osilek Esuroi had purchased part of the land from Klai Clan and later obtained the remainder of the land from Chief Ibedul of Koror after paying to end the war between Koror and Airai. The land was taken without compensation during the Japanese Administration, before later being awarded to Esuroi Clan by the High Court of the Trust Territory in Civil Action No. 6-74 (June 25, 1975).

[¶ 7] Following the submission of written closing arguments, the Land Court awarded two lots to Anastacia Ramarui, two lots to Antonio Mariur, seven lots to RTFT, six lots to Onglak ra Eberdong, and three lots to Children of Ngiramengloi.[4] The Land Court determined that none of the lots at issue belonged to Esuroi Clan.

[¶ 8] Following the Land Court's decision, RTFT filed a motion for reconsideration. Citing to a 2005 Land Court decision, RTFT asserted that Mariur was barred from raising his claim by *res judicata* because he is not Kubesak's proper heir. The Land Court denied the motion after concluding that a Land Court decision issued a decade earlier—from a case in which RTFT was a party—did not qualify as newly discovered evidence that was previously unavailable.

[¶ 9] Esuroi Clan also filed a motion for reconsideration. Esuroi Clan asserted that a 1980 Adjudication from the National Land Commission was a final determination prohibiting the Land Court from rehearing the claims to the land at issue. The Land Court denied the motion, holding that the Adjudication was not newly discovered evidence, was not a final determination, and had not awarded the land to Esuroi Clan.

[¶ 10] RTFT now appeals the Land Court's determination with respect to the lots awarded to Appellees Antonio Mariur, Children of Ngiramengloi, and

[4] Specifically, the Land Court awarded Lots BL 434 and 434A to Antonio Mariur; Lots BL 431 and 431A to Anastacia Ramarui; Lots BL 430A, 430B, and 430C to Children of Ngiramengloi; Lots BL 434, 433A, 432A, 432B, 432C, 432D, and 448 to RTFT; and Lots BL 446A, 446B, 446C, 446D, 447, and 448A to Ongalk ra Eberdong.

Ongalk ra Eberdong. It does not appeal the Land Court's denial of its motion for reconsideration. Esuroi Clan appeals both the Land Court's initial determination as to all of the lots awarded to the Appellees[5] and its order denying Esuroi Clan's motion for reconsideration.

STANDARD OF REVIEW

[¶ 11] We review the Land Court's conclusions of law *de novo* and its findings of fact for clear error. *Esel Clan v. Airai State Pub. Lands Auth.*, 2019 Palau 17 ¶ 7.

[¶ 12] The factual determinations of the Land Court are entitled to significant deference from this Court and "will be set aside for clear error only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion." *Id.* (internal quotation marks omitted). "Where admissible evidence supports competing versions of the facts, the trial court's choice between them is not clear error." *Beches v. Sumor*, 17 ROP 266, 272 (2010). "It is not the appellate panel's duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence. Therefore, we must affirm the Land Court's determination as long as the Land Court's findings were plausible." *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007) (internal citations and quotation marks omitted). For this reason, "appeals challenging the factual determinations of the Land Court . . . are extraordinarily unsuccessful." *Id.*

[¶ 13] There are certain circumstances in which the Land Court "has discretion to grant or deny post-judgment motions to vacate." *In the Matter of Land Identified as Lot No. 2006 B 12-002*, 19 ROP 128, 134 (2012). We review such decisions for abuse of discretion. *Id.* An abuse of discretion occurs when the Land Court's decision is "arbitrary, capricious, or manifestly

[5] Although Esuroi Clan's notice of appeal names Tkoel Sambal and Kolual Rivera as Appellees in this case, neither person was awarded any land from the Land Court. Therefore, they are not proper parties to this case and are hereby dismissed from this appeal. Furthermore, Esuroi Clan's notice of appeal fails to name Anastacia Ramarui, Antonio Mariur, and Children of Ngiramengloi as Appellees in contravention of the Rules of Appellate Procedure. *See* ROP R. App. P. 3(c) ("The notice of appeal . . . shall specify the party or parties against whom the appeal is filed."). Despite this, there is evidence that all the parties received proper service of the notice of appeal and subsequent appellate filings. Therefore, we will excuse Esuroi Clan's non-compliance in this instance. We caution counsel to be more diligent in the future.

unreasonable, or because it stemmed from improper motive." *Id.* (internal quotation marks omitted).

DISCUSSION

[¶ 14] This case presents separate appeals by two parties. We discuss each Appellant's claims in turn.

I. Appellant RTFT

[¶ 15] RTFT challenges the Land Court's decision awarding Lots BL 434 and 434A to Antonio Mariur; Lots BL 430A, 430B, and 430C to Children of Ngiramengloi; and Lots BL 446A, 446B, 446C, 446D, 447, and 448A to Ongalk ra Eberdong.

[¶ 16] Before addressing the specific arguments RTFT raises against each Appellee, we dispose of two overarching issues. First, RTFT asserts that, because it recorded deeds to the lots at issue before any of the Appellees, RTFT is a bona fide purchaser pursuant to 39 PNC § 402 and Palau District Code § 801. We need not address this argument because RTFT failed to raise it in the Land Court. It is well settled that "[a]rguments not raised in the Land Court proceedings are waived on appeal." *Ngiratereked v. Erbai*, 18 ROP 44, 46 (2011). RTFT asserts that this Court's review on this claim is *de novo* and as such, "any law applicable to the facts presented may be invoked and applied on appeal." RTFT Reply Br. 4. This is inaccurate. Regardless of our standard of review, "[t]his Court has consistently refused to consider issues raised for the first time on appeal." *Ngiratereked v. Erbai*, 18 ROP 44, 46 (2011) (internal quotation marks omitted). We do so again today.[6]

[6] In its Reply Brief to Children of Ngiramengloi, RTFT appears to argue that this claim is not waived because RTFT raised the claim in its closing arguments in the Land Court. It cites to statements asserting that Children of Ngiramengloi presented "[n]o deed or registration of oral transfer" and that testimony "firmly established the transfer of the land by [Tkoel] to Ngirkelau Lim." RTFT Reply Br. 4 (quoting RTFT's Written Closing Argument 8). These statements are factual assertions clearly intended to challenge Children of Ngiramengloi's contention that the land was transferred to Ngiramengloi, rather than Ngirkelau. Nowhere in its closing arguments did RTFT cite to the recording statutes nor did RTFT contend that it would own the land *even if* the land had been conveyed to Ngiramengloi, because RTFT recorded its deed first. Instead, RTFT asserted that Ngiramengloi's failure to record a deed proves the land was never conveyed to him. This is a different argument than the bona fide

[¶ 17] Second, Children of Ngiramengloi and Ongalk ra Eberdong challenge this Court's decision granting RTFT's request to take judicial notice of a Deed of Conveyance (and its Palauan version) by Tkoel, dated October 3, 1971 and filed April 27, 1972. We have already reviewed and denied Children of Ngiramengloi's request to reconsider our judicial notice of these documents. *See* Order on Motion to Reconsider (Nov. 26, 2018). We see no reason to address this issue again. However, we note that it is rightfully the province of the Land Court to determine what, if any, relevance a particular document has in determining land ownership. Taking judicial notice of the existence of a document does not necessarily mean that we will also accept its propounder's arguments regarding the legal consequences, if any, that flow from the document. *See Napoleon v. Children of Masang Marsil*, 17 ROP 28, 34 (2009) ("That a fact is judicially noticeable does not necessarily mean that a court should also take judicial notice of the inferences a party hopes will be drawn from that fact. We have taken judicial notice of the *existence* of the Certificate of Title, not the implications of the information contained therein." (internal citations and alterations omitted)).

[¶ 18] We turn now to the specific arguments RTFT asserts against each Appellee.

A. Antonio Mariur

[¶ 19] RTFT raises two arguments against the Land Court's award of Lots BL 434 and 434A to Mariur. First, RTFT claims that Mariur is barred from presenting his claims by *res judicata*. This issue was raised for the first time in a Motion to Set Aside the Land Court's Judgment. In an order denying the motion, the Land Court noted that the argument RTFT relied on was not raised during trial and the evidence it relies upon was neither new nor previously unavailable. Order Denying Motion to Set Aside Adjudication and Determination 3–4 (citing *Basilius v. Basilius*, 12 ROP 106, 109 (2005) (holding that a prior Land Court decision was not newly discovered evidence)). We agree. The Land Court properly deemed this issue waived and we will not entertain it on appeal.

---

purchaser issue RTFT now attempts to raise on appeal. As such, it is insufficient to preserve the claim and the issue is waived.

[¶ 20] RTFT next argues that the Land Court clearly erred in awarding Mariur Lots BL 434 and 434A because "there was no evidence with probative value supporting such a finding." RTFT Opening Br. 26. However, the Land Court relied on testimonial and documentary evidence—including several of the quitclaim deeds RTFT relies upon—in concluding that Kubesak owned land in the area claimed by Mariur. Additionally, the Land Court used the written descriptions of the land, a hand-drawn sketch, and an official Division of Land Management drawing in determining the boundaries of Kubesak's land. We see no basis on which to reverse the Land Court's findings on this issue.

[¶ 21] We affirm the Land Court's award of Lots BL 434 and 434A to Mariur.

B. Children of Ngiramengloi

[¶ 22] RTFT claims that the Land Court clearly erred in awarding Lots BL 430A, 430B, and 430C to Children of Ngiramengloi. Both parties agreed that the land was originally owned by Tkoel and that Tkoel conveyed that land in exchange for the construction of his house at Olnegellel, but disputed who constructed the house. RTFT asserted that the house was constructed by Ngirkelau Lim and supported its claim with testimony from Christopher Tkoel and a hand-drawn sketch attached to a 1978 deed from Tkoel to Tmetuchl, which labels the land as Ngirkelau. Children of Ngiramengloi asserted that the house was built by their father and supported their claim with testimony from Anastacia Ramarui and Walter Tabelual that Ngiramengloi was given the land by Tkoel as payment and that Ngiramengloi's first and second wives used the land for gardening. They also relied on a 1967 survey from the Division of Land Management, which identified the land as Ngiramengloi's land.

[¶ 23] The Land Court found Anastacia Ramarui and Walter Tabelual to be credible witnesses whose testimony corroborated the conveyance of the land to Ngiramengloi. Contrarily, it found the testimony of Christopher Tkoel was not credible. The Land Court also gave more weight to the survey from the Division of Land Management than to the sketch relied upon by RTFT. This weighing and evaluating of evidence is precisely the job of the Land Court and its choice to credit the evidence supporting Children of

Ngiramengloi's claim over the evidence supporting RTFT's claim is not clearly erroneous. *See Eklbai Clan v. Koror State Pub. Lands Auth.*, 22 ROP 139, 145 (2015).

[¶ 24] Finally, RTFT asserts that the 1971 Deed of Conveyance from Tkoel to Ngirkelau proves that the land was never conveyed to Ngiramengloi. We disagree. The deed proves that Tkoel conveyed to Ngirkelau whatever ownership interest he still possessed in the land in 1971. The Land Court found that Tkoel had conveyed the land to Ngiramengloi in 1967, and cites to the Division of Land Management survey. The existence of the deed potentially raises questions about the credibility of both documents, but evidence weighing on credibility should be presented to the fact finder. It is certainly possible the Land Court would have reached a different decision had it been given the opportunity to review the deed in the first instance. However, "[t]he Land Court does not commit clear error by failing to take evidence into account that was never introduced at trial." *Ngiratereked v. Erbai*, 18 ROP 44, 46 (2011).

[¶ 25] We affirm the Land Court's award of Lots BL 430A, 430B, and 430C to Children of Ngiramengloi.

C. Ongalk ra Eberdong

[¶ 26] RTFT asserts that the Land Court committed reversible error in awarding Lots BL 446A, 446B, 446C, 446D, 447, and 448A to Ongalk ra Eberdong. As part of this argument, RTFT argues that the conflict between Ongalk ra Eberdong and Esuroi Clan "should undermine both claims or have the effect of canceling each other out." RTFT Opening Br. 23.[7] Competing claims between a clan and its members do not bar the parties from seeking a court resolution; it presents a factual question as to the credibility of each party. It is the fact finder's role to evaluate the credibility of each claimant's

[7] In its Reply Brief, RTFT claims, for the first time, that Ongalk ra Eberdong is barred from raising its claim by the doctrine of *res judicata* in light of the judgment in Civil Action No. 6-74. Arguments raised for the first time in an appellant's reply brief are deemed waived. *See Rengulbai v. Azuma*, 2019 Palau 12 ¶ 8 n.3. However, even if we were to consider this issue, there is no indication that Civil Action No. 6-74 is binding on Ongalk ra Eberdong because Eberdong was not a party in that case. A decision in which a clan is a claimant, but an individual person is not, is binding only on the clan.

arguments and it is best suited to determine whether, and to what effect, this type of conflict undermines each claimant's claim. *See Eklbai Clan*, 22 ROP at 143–44 (finding the Land Court did not err in treating the claims of competing factions in one clan as complementary and the claims of competing factions in a different clan as adversarial). Here, the Land Court determined that Ongalk ra Eberdong's claim was more credible than Esuroi Clan's claim and we will not disturb that finding absent clear error.

[¶ 27] RTFT next argues the Land Court clearly erred in determining the boundaries between Eberdong's land and Tkoel's land. RTFT contends that *Ongudel*, the land conveyed by deed from Tkoel to Mineichi in 1973, represents the eastern boundary of Tkoel's property and challenges the Land Court's finding that *Ongudel* did not correspond to Lot BL 447.

[¶ 28] The 1973 deed conveys only the 1,000 square meter land of *Ongudel*, but the boundaries defining *Ongudel* seem to describe the entirety of Tkoel's property. Thus, the Land Court concluded that the 1973 deed conveyed 1,000 square meters of Tkoel's property, but failed to identify the location of that property within the larger boundaries of Tkoel's land. Despite the 1973 deed's failure to adequately identify the location of *Ongudel*, the 1987 deed conveying *Ongudel* from Mineichi to Tmetchul identified the land as Lot BL 447. After reviewing the other maps and surveys in evidence, which showed Lot BL 447 was part of the property identified as "Ngiratmelobch"—much farther east of Tkoel's property—the Land Court concluded the 1987 deed's description was incorrect.

[¶ 29] RTFT also relied on the testimony of Christopher Tkoel to establish the boundaries of his father's land and argues that the purported failure of Eberdong and his relatives to object to construction work and developments by Tmetuchl and his relatives is evidence the land belongs to RTFT. However, as discussed above, the Land Court did not find Christopher Tkoel credible. And while the Land Court may consider a party's past failure to assert ownership of land as evidence, *see, e.g.*, *Airai State Pub. Lands Auth. v. Esuroi Clan*, 22 ROP 4, 7 (2014), it is not required to find such evidence determinative.

[¶ 30] Rosania Masters, Jack Masters, and Robert Demei all testified on behalf of Ongalk ra Eberdong. Rosania Masters testified that she had

personally witnessed Eberdong purchasing the land from Tuchermel Ksau with two goats. Her testimony was corroborated by Jack Masters and Robert Demei, both of whom had spent time on the land. The Land Court found them to be credible witnesses who knew the land well.

[¶ 31] Absent extraordinary circumstances, we will not set aside a credibility determination by the Land Court. *Eklbai Clan*, 22 ROP at 145. Here, the record clearly indicates that the Land Court extensively considered the evidence presented before ultimately determining the testimony given by Ongalk ra Eberdong was more convincing than the evidence presented by RTFT. We see no basis for overturning the Land Court's decision. *See id.* ("Extraordinary circumstances do not exist where the record shows that the trial judge considered the content of one side's testimony and their credibility, did the same to the other side's witnesses, weighed the competing stories, and concluded that one side was unpersuasive." (internal quotation marks and alterations omitted)).

[¶ 32] We affirm the Land Court's award of Lots BL 446A, 446B, 446C, 446D, 447, and 448A to Ongalk ra Eberdong.

II. Appellant Esuroi Clan

[¶ 33] Esuroi Clan has appealed both the Land Court's initial determination and its denial of Esuroi Clan's motion for reconsideration. We address each in turn.

A. Initial Determination

[¶ 34] On appeal, Esuroi Clan claims that the Land Court erred by failing to identify whether its decision was based on a return of public lands claim or a superior title claim. Esuroi Clan claims that it raised a return of public lands claim in the Land Court and asserts it again on appeal. Esuroi Clan Opening Br. 15 (Jan. 7, 2019) ("What is clear on the record is that Appellant made its case under a return of public lands claim."); *id.* at 18 ("Esuroi Clan request[s] the Court to award them ownership of all of the lands at issue during the Land Court hearing . . . based on a return of public lands theory . . . .").[8]

[8] Esuroi Clan also claims that the Land Court committed clear error in concluding that Kubesak and Tkoel were the known and accepted owners of the land at issue. Because Esuroi Clan did

[¶ 35] A return of public lands claim and a superior title claim are distinct claims that must be individually argued and preserved. *Idid Clan v. Children of Nagata*, 2016 Palau 18 ¶ 10. Because a party may only pursue the claim that he actually brings, the Land Court cannot transform a return of public lands claim into a superior title claim, or vice versa. *Id.* "The Land Court's reformation of [a return of public lands] claim into a superior title claim, when the claimant failed to properly present and preserve a superior title claim, is legal error that will result in reversal unless we conclude that it was harmless." *Id.* Assuming arguendo that the Land Court improperly treated Esuroi Clan's return of public lands claim as a superior title claim, we conclude reversal is not warranted because any error was harmless.

[¶ 36] A return of public lands claim requires a claimant to prove that the claimant: (1) is a citizen who filed a timely claim; (2) is the original owner of the land or one of the original owner's heirs; "and (3) *the claimed property is public land* which attained that status by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration." *Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 21, 24 (2015) (emphasis added) (internal quotation marks omitted). As Esuroi Clan's own evidence shows, the land at issue in this case has been private land since at least 1975.

[¶ 37] Esuroi Clan repeatedly cites to the Judgment in Civil Action No. 6-74 (June 25, 1975) to support its argument. In that case, Esuroi Clan sued the Trust Territory and Airai Municipality arguing that it owned a large portion of land in Airai that it obtained in exchange for two pieces of Palauan money. The court separated its discussion of the land into two sections, one section north of the main road and one section south of the main road. Ultimately, the court held that Esuroi Clan had no right to the property north of the main road, but it owned the land to the south of the main road, "as between the litigants herein."[9] Civil Action No. 6-74 at 9.

---

not raise a superior title claim on appeal, and its return of public lands claim fails, we need not address this argument. *See Idid Clan v. Koror State Pub. Lands Auth.*, 2018 Palau 25 ¶ 2 n.4 (refusing to consider asserted errors that, even if true, would not change the outcome of the case).

[9] In addition to Esuroi Clan and the Trust Territory, Kesol Clan and Johannes Polloi were also parties to the case as intervenors.

[¶ 38] Although Esuroi Clan attempts to use this case to show that the Land Court erred, Civil Action No. 6-74 actually undermines the clan's return of public lands claim. A review of the map referenced in Civil Action No. 6-74 shows that the land at issue in this case corresponds to a section of the land south of the main road. If we were to accept that Civil Action No. 6-74 awarded the land to Esuroi Clan in 1975, the consequence would be that the land has not been "public land" for the entire time that the return of public lands provision of the Constitution has been in force.

[¶ 39] While we have long recognized that land must be "public land" to be returned through a return of public lands claim, we have not yet answered the critical temporal question of *when* the land must be public. *See, e.g.*, *Idid Clan*, 2016 Palau 18 ¶ 12 ("Although language in several of our cases might be read to suggest that a Land Court claimant may not pursue an ROPL claim if the land at issue is not public land at the time the claim is filed, we have never squarely addressed the issue." (internal footnote omitted)); *see also Olsuchel Lineage v. Ueki*, 2019 Palau 3 ¶¶ 30–37 (Bennardo, J., concurring). While we do not have occasion to fully answer that question today, we will at least narrow its scope.

[¶ 40] We hold that land that has continuously been privately owned since before the Constitution took effect in 1981 cannot be successfully claimed through a return of public lands claim. That is all this case requires us to decide. We expressly make no comment as to whether a claimant can successfully pursue a return of public lands claim for land that was publicly owned in 1981 but was privately owned at the time of the claim.

[¶ 41] This holding is supported by the return of public lands provision of our Constitution, which applies to "any land which became part of the public lands as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration." Const. art. XIII, § 10. Private parties who lawfully acquired property years before the Constitution was drafted were on no notice that a future constitutional provision would command the return of public lands that had been wrongfully acquired by occupying powers. We do not read Article XIII, Section 10 as evidencing an intent to divest private landowners from their then-owned property. Divesting property that was

privately owned at the time of the Constitution would not set things right; it would only compound the original wrong.

[¶ 42] It is true that the relevant statutory definition of "public lands" does not expressly require public ownership of the land at any particular time. Rather, the statutory definition only requires past ownership or maintenance of the land by the Japanese administration or the Trust Territory government. *See* 35 PNC § 101. However, the scope of "public lands" cannot be broadened by a statute to include private land that is not contemplated by Article XIII, Section 10 of the Constitution. Divesting private landowners of their property through the return of public lands process causes Article XIII, Section 10 to rub directly against the fundamental right of all landowners to be secure in their property. *See* Const. art. IV, § 6 ("The government shall take no action to deprive any person of life, liberty, or property without due process of law nor shall private property be taken except for a recognized public use and for just compensation in money or in kind."). A constitutional right cannot be diminished by statute. Thus, the amount that the return of public lands process encroaches into the Constitution's anti-takings clause of Article IV, Section 6 cannot be expanded through 35 PNC § 101.

[¶ 43] This holding is also supported by our precedents. While this Court has never previously held that the public ownership requirement of a successful return of public lands claim contains a temporal limitation, we have consistently implied it. *See Idid Clan*, 2016 Palau 18 ¶ 12 n.4 (quoting language from various cases); *see also Markub v. Koror State Pub. Lands Auth.*, 14 ROP 45, 47 (2007) (listing the third element of a return of public lands claim as a present tense requirement that "the claimed property is public land"); *Etpison v. Sugiyama*, 8 ROP Intrm. 208, 208 (2000) (noting that the appellant had "correctly" abandoned the argument that land conveyed by the Trust Territory government in 1962 did not fall within the scope of Article XIII, Section 10); *Basiou v. Ngeskesuk Clan*, 8 ROP Intrm. 209, 211 n.4 (2000) (noting, in a companion case to *Etpison*, that appellants' counsel had agreed to a similar concession at oral argument). Today, we simply confirm these prior implications. At a minimum, a return of public lands claim cannot successfully be pursued for land that has been privately owned since before the effective date of the Constitution.

[¶ 44] With the rule so defined, its application to this case is straightforward. Esuroi Clan claims that the land has been privately owned since Civil Action No. 6-74 was resolved in June 1975, if not earlier. If that is true, then Esuroi Clan cannot succeed under a return of public lands theory.

[¶ 45] We affirm the Land Court's denial of Esuroi Clan's return of public lands claim.

B. Denial of Motion for Reconsideration

[¶ 46] Esuroi Clan separately appeals the Land Court's denial of its motion for reconsideration. This Court has previously summarized the Land Court's authority to deny or grant post-decision motions as follows:

> [T]he Land Court has inherent discretion to correct its own decisions in certain extraordinary circumstances. Specifically, the Land Court may correct a decision when there is an intervening change in the law, a discovery of new evidence that was previously unavailable, or a need to correct clear error or prevent manifest injustice due to the court's misapprehension of a fact, a party's position, or the controlling law. Requests for post-determination relief based on new arguments or supporting facts that were available at the time of the original briefing and argument cannot be granted. As such, the threshold of proof demonstrating error required to obtain post-determination relief before the Land Court is exceedingly high.

In re Lot No. 2006 B 12-002, 19 ROP at 134 (internal citations and quotation marks omitted). As a discretionary decision by the Land Court, we review the Land Court's denial of a motion for post-judgment relief for abuse of that discretion. *Id.*

[¶ 47] Esuroi Clan's motion for reconsideration regards a three-page document from National Land Commission. Exhibit 1, titled "Adjudication by Land Registration Team," is the first page of the document and is dated August 15, 1980. Exhibit 2, titled "Summary and Adjudication," is the accompanying two-page report and is undated. In its motion, Esuroi Clan asserted that it was not aware of the existence of the document until it held a meeting of its members following the Land Court's Determination. Esuroi Clan claims that, at the meeting, it was discovered that the document was in

the possession of a clan member who was unaware of the Land Court proceedings and who assumed that Rdialul Azuma, the chief title holder of the clan, also had a copy of the document. The Land Court denied Esuroi Clan's motion.

[¶ 48] On appeal, Esuroi Clan characterizes its motion as a one based on "justifiable mistake, inadvertence, surprise or excusable neglect under Rule 60(b)(1)." Esuroi Clan Opening Br. 12 (Oct. 19, 2018). The Rules of Civil Procedure do not apply in Land Court proceedings. *In re Lot No. 2006 B 12-002*, 19 ROP at 133. Instead, the Land Court's post-determination authority is limited to situations where there is "an intervening change in the law, a discovery of new evidence that was previously unavailable, or a need to correct clear error or prevent manifest injustice due to the court's misapprehension of a fact, a party's position, or the controlling law." *Id.* at 134 (quoting *Shmull v. Ngirirs Clan*, 11 ROP 198, 202 (2004)). We therefore interpret Esuroi Clan's argument as one based on newly discovered evidence.

[¶ 49] Because the Land Court's inherent authority to grant post-judgment relief does not spring from any rule, it is at most no more expansive than the Trial Division's authority to grant reconsideration under Rule 60(b) of the Rules of Civil Procedure. *See id.* at 133 n.2 ("The Land Court's inherent authority to correct its own mistakes—and thus to entertain motions for post-judgment relief in certain, limited circumstances—is likely less expansive than the Trial Division's authority to reconsider a decision under Rule of Civil Procedure 60(b)."). In the context of a Rule 60(b) motion based on newly discovered evidence, the moving party must demonstrate that the allegedly new evidence: "(1) could not have been discovered before trial through the exercise of reasonable diligence; (2) is material and not merely cumulative; and (3) would probably have changed the outcome of the trial." *Idid Clan v. Olngebang Lineage*, 12 ROP 111, 120 (2005).

[¶ 50] The Land Court's reasons for denying Esuroi Clan's motion relate to the first and third elements of the test stated above. The Land Court concluded that the document could have been discovered before trial through the exercise of reasonable diligence. It separately found that the document would likely not have changed the outcome of the trial.

[¶ 51] First, the Land Court found that the document was not previously unavailable because Esuroi Clan knew about the document or could have easily discovered it. To support this conclusion, the Land Court cited to Esuroi Clan's protracted litigation relating to land called "Ngerullak" and the fact that Exhibit 1 was in a separate Land Court case file in a case in which Esuroi Clan was a party.[10] The Land Court held that due diligence could have uncovered the clan member's possession of the document.

[¶ 52] Esuroi Clan argues that neither its litigation history nor the existence of Exhibit 1 in prior Land Court filings should bar its motion because it has never produced the full document in prior cases and Exhibit 1 is a separate document, exclusive of Exhibit 2. However, a review of the face of the document exposes the flaws in this argument. Exhibit 1 specifically states that its ownership determination is "based upon the 'Summary Record of Formal Hearing Testimony and Findings of Fact' shown on the back of this paper." Both exhibits are signed by the same four individuals. In other words, Exhibit 1 references Exhibit 2. Esuroi Clan undeniably had access to Exhibit 1, and, based on the contents of Exhibit 1, Esuroi Clan should have been on notice that Exhibit 2 existed. Exhibit 2 was not unavailable merely because Esuroi Clan was unaware that a clan member possessed it. Reasonable diligence on Esuroi Clan's part would include asking its own members whether they knew or possessed the summary document referenced in Exhibit 1. On these facts, the Land Court did not abuse its discretion in concluding that Exhibits 1 and 2 were not newly discovered evidence that was previously unavailable.

[¶ 53] Second, the Land Court properly noted that Exhibit 1 lists the land as lineage land owned by "Tmelobch Lineage of Esuroi Clan," rather than as clan land owned by Esuroi Clan itself. In the "Type of Ownership" section of Exhibit 1, the line next to "LINEAGE (Telungalk)" is marked with four exes ("xxxx"). The line next to "CLAN (Kebliil)" is not marked in any way, nor are the lines corresponding with the other two options ("INDIVIDUAL(s) (Tal Chad)" and "OTHER (Kukngodch)."

[10] The first page of the adjudication was also in Land Court filings for this case. *See* case file for LC/N 11-00073 at 83.

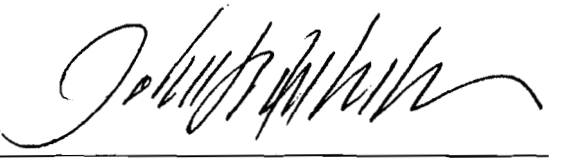
[¶ 54] The Land Court found that the document did not support Esuroi Clan's claim to the land because the clan failed to demonstrate that it and Tmelobch Lineage are one and the same. *See* Land Court Order at 6 (Aug. 2, 2018) ("It is common knowledge that a lineage of a clan does not equate [to] the clan itself, and lineage property does not necessarily mean that it is owned by the clan. Thus, even if the 1980 adjudication was a final determination, the property could not be awarded to Esuroi Clan without proof that Tmelobch Lineage was the same as Esuroi Clan. Esuroi Clan presented no such evidence."). Again, we do not find that the Land Court abused its discretion in making this determination.

[¶ 55] We affirm the Land Court's denial of Esuroi Clan's motion for reconsideration.

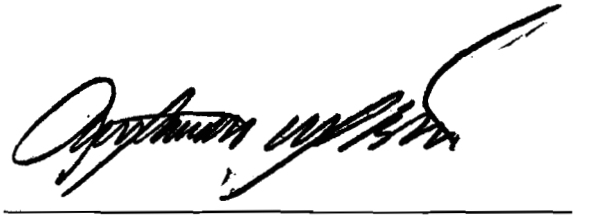
CONCLUSION

[¶ 56] We **AFFIRM** the determination of the Land Court.

SO ORDERED, this 10th day of September, 2019.



JOHN K. RECHUCHER
Associate Justice



ALEXANDRO C. CASTRO
Associate Justice

KEVIN BENNARDO
Associate Justice