IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

ELSAU CLAN,
Appellant,
v.
PELELIU STATE PUBLIC LANDS AUTHORITY,
Appellee.

Cite as: 2019 Palau 7
Civil Appeal No. 18-004
Appeal from Land Court Action LC/R 15-00067

Decided: February 27, 2019

Counsel for Appellant ..... Salvador Remoket
Counsel for Appellee ..... No appearance

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
R. BARRIE MICHELSEN, Associate Justice
JOHN K. RECHUCHER, Associate Justice

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

OPINION

PER CURIAM:

[¶1] This case arises out of a dispute over Lot 050 R 01, located in Ngerdelolk in Peleliu State. The case before the Land Court involved a dispute of superior title between Isao Singeo; Elsau Clan through claims brought by Roman Ridep, Jackson Ngiraingas and Teruo Rengulbai; and Peleliu State Public Lands Authority (PSPLA).[1]

[1] Only Appellant Elsau Clan brought an appeal in this case against PSPLA. Isao Singeo was not included as an appellee and PLSPLA did not file a brief in response to the opening brief of the Appellant. Appellant did not request oral argument in this appeal per ROP R. App. P. 34(a).

FACTS AND PROCEDURAL BACKGROUND

[¶2] The land at issue is at the business center of Peleliu on the east side of the road leading to Wosech, adjacent to the old age center and near the legislative and executive offices for Peleliu State.

[¶3] Isao Singeo filed a claim for individual ownership of the lot on December 12, 2014. His sister, Toyoko Singeo, appeared on his behalf at the July hearing. She testified that prior to 1962 or 1963, the land was submerged marine area. After Typhoon Luis hit in the 1960s, Isao began filling in the property and has since used it for various purposes. Isao, Toyoko testified, has lived on and worked the land since that time.

[¶4] Jackson Ngiraingas, Roman Ridep, and Teruo Rengulbai filed on behalf of Elsau Clan separate superior title claims for the lot. They asserted that the lot is part of a property known as Olisukl, which, he claimed, was determined to be owned by Elsau Clan by the Trust Territory High Court in a 1963 judgment.[2]

[¶5] PSPLA filed a claim for the lot on December 17, 2014, asserting that the lot was previously a mangrove area that was filled in by the early 2000s.

[¶6] After a hearing at the Land Court on July 12, 2017, the court traveled to Peleliu to view the lot on July 28, 2017.

STANDARD OF REVIEW

[¶7] The appellate review standards of Land Court proceedings require a separate standard of review of the three forms of decisions made at the trial level: conclusions of law, findings of fact, and matters of discretion. Conclusions of law are reviewed de novo, factual findings are reviewed for clear error, and exercises of discretion are reviewed for abuse. *Salvador v. Renguul*, 2016 Palau 14 ¶ 7.

[¶8] The Land Court's factual determinations 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. Where there are several plausible interpretations of the evidence, the Land Court's choice

[2] *Ngerdelolk Village et al. v. Ngerchol Village and Elsau Clan*, 2 TTR 398 (1963).

between them shall be affirmed even if this Court might have arrived at a different result." *Eklbai Clan v. KSPLA*, 22 ROP 139, 141 (2015) (internal quotations omitted). A discretionary decision "will not be overturned on appeal unless the decision was arbitrary, capricious, or manifestly unreasonable, or because it stemmed from an improper motive." *Sugiyama v. Yano*, 22 ROP 93, 95 (2015).

ANALYSIS

[¶9] On appeal, Appellant asserts the following: 1) the Land Court erred when it rejected Appellant's objection to Plaintiff Isao's claim of adverse possession; 2) the Land Court erred when it failed to consider the previous determination of ownership issued by the Trust Territory government; and 3) the Land Court erred in determining that the land was filled land rather than dry land.

[¶10] The Court will not fully address the merit of the Land Court's finding in favor of Plaintiff Isao on his claim of adverse possession against Elsau Clan because a reversal on such grounds would not change the outcome of the case. Appellant asserts that Isao's use and occupation of the land took place with the blessings of the chiefs of Ngerdelolk. Therefore, Appellant argues, Isao's claim for adverse possession should have failed because Isao's occupation of the land lacked the requisite element of hostility.

[¶11] The transcript of the Land Court proceedings shows that the adverse possession claim may have lacked the required element that the occupation of the land be hostile. However, for reasons set forth below, such a conclusion would not amount to a reversal of the Land Court's decision.

[¶12] Appellant also asserts that it was awarded the land at issue by the Trust Territory government in a 1963 judgment which confirmed that Elsau Clan retained ownership to a "taro patch known as Olisukl and the dry land immediately surrounding it." *Ngerdelolk Village*, 2 TTR at 401-02. The Land Court, Appellant argues, erred in adjudicating and determining ownership of land that had been previously granted to Elsau Clan by the Trust Territory government.

[¶13] The Land Court appears to have given little weight to the Trust Territory's grant of land to Appellant in 1963. From a review of the evidence,

this Court notes that Appellant failed to make the connection that the land identified in that case as the taro swamp Olisukl and surrounding dry land is the same as Lot 050 R 01.[3]

[¶14] The Land Court's decision not to consider the earlier Trust Territory case was a discretionary one. Generally, the burden of proving error on the part of a lower court is on the appellant. *Salvador v. Renguul*, 2016 Palau 14 ¶ 8. "[W]here there is a lack of 'clarity and precision in the appellant's argument, this Court will not trawl the entire record for unspecified error.'" *Id.* (quoting *Suzuky v. Gulibert*, 20 ROP 19, 22 (2012)).

[¶15] Appellant has not made it clear that the land at issue here is the same as that it was awarded by the Trust Territory government in 1963. This Court will not reweigh evidence or engage in a function that is beyond appellate review to locate an "unspecified error." Because Appellant has not shown that the land correlates to the Trust Territory decision, the Land Court's decision was not arbitrary, capricious, or manifestly unreasonable, nor did it stem from an improper motive. The Land Court exercised proper discretion in declining to accord weight to that decision.

[¶16] In any case, these two bases for appeal are moot. For the following reasons, Appellant's appeal fails, regardless of whether the Land Court erred in its determination of the adverse possession claim or its consideration of the earlier Trust Territory decision.

[¶17] Palauan law states, and the Court has consistently held, that land that is submerged or was previously submerged and subsequently filled is public land. 35 PNC § 102; *see, e.g., Salii v. Koror State Pub. Lands Auth.*, 15 ROP 86 (2008); *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 163 (2002); *PPLA v. Salvador*, 8 ROP Intrm. 73, 75 (1999).

[¶18] The Land Court found, based on testimony, that the lot was previously submerged and had been filled in and used by Isao. PSPLA asserted, and Isao—through his sister, Toyoko Singeo—conceded, that the land was previously under seawater.

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[3] Typically, taro does not grow in saltwater and can be damaged by saline so it does not stand to reason that a taro swamp would exist in the saltwater of submerged, coastal land, which, the Land Court determined, was where Lot 050 R 01 was located.

[¶19] Toyoko Singeo testified that "[t]his is *umetate*" (filled or reclaimed land). Tr. 4:14. She further stated that "this was the sea so there was no road to Bkul a Beluu . . . and this was all salt water." Tr. 4:24–26. When asked for clarification by the Land Court, she confirmed that "this" referred to Lot 050 R 01. Tr. 4:27–5:1–2. Jack Ngirngesang, representative for Peleliu State Public Lands Authority, also testified that Lot 050 R 01 "was a mangrove so we swam in there when we were young. Today it's been filled." Tr. 47:26–28.

[¶20] Elsau Clan objected to this characterization, asserting that the land at issue was not filled land but had, in fact, always been solid land. Tr. 34:6–11; 44:28–45:1. The Land Court, however, apparently found the testimony of Toyoko Singeo and PSPLA to be more credible. The Land Court further made a site visit to view the land in question to help solve the issue of whether it was solid, dry land, or filled land.

[¶21] The Court finds that, regardless of whether the Land Court erred in its judgment in favor of Isao on his claim of adverse possession or in the weight it gave the previous Trust Territory decision, the land remains public land because the Land Court determined it was submerged below the high water mark before it was filled in. Because, as the Land Court correctly noted, "filled-in submerged lands are public lands and . . . cannot be taken through adverse possession," neither Isao nor Elsau Clan can prevail on a claim of individual ownership or superior title.[4] Decision 5.

[¶22] In the end, based on the testimony and the site visit, the Land Court determined that Lot 050 R 01 was filled land. This constitutes a finding of fact that will not be disturbed on review because the Court does not find the Land Court's determination to be clearly erroneous.

CONCLUSION

[¶23] Though Appellant may have prevailed on an appeal of the adverse possession finding, the determination by the Land Court that Lot 050 R 01 is filled land that was previously submerged below the high water mark stands.

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[4] See *Koror State Public Lands Authority v. Idong Lineage*, 17 ROP 82, 86 (2010) (holding that a landowner cannot adversely possess government land).

[¶24] The Court finds no clear error in the Land Court's finding of fact that the land was previously submerged and, according to statute, is thus public land. The Land Court's holding is thereby **AFFIRMED**.

SO ORDERED, this 27 day of February 2019.

ARTHUR NGIRAKLSONG
Chief Justice

JOHN R. RECHUCHER
Associate Justice

R. BARRIE MICHELSEN
Associate Justice