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IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

2022 AUG 23 PM 1:00
SUPREME COURT
OF THE
REPUBLIC OF PALAU

NGERUTELCHII CLAN,
Appellant,
v.
NGAREMLENGUI STATE PUBLIC LANDS AUTHORITY,
Appellee.

Cite as: 2022 Palau 19
Civil Appeal No. 21-022
Appeal from LC/K 18-00202, LC/K 18-00203,
LC/K 18-00204, and LC/K 19-00053

Decided: August 23, 2022

Counsel for Appellant C. Quay Polloi
Counsel for Appellees No Appearance Entered

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

Appeal from the Land Court, the Honorable Salvador Ingereklii, Associate Judge, presiding.

OPINION

Bennardo, Associate Justice:

[¶ 1] This appeal arises from a return-of-public-lands claim filed by Ngerutelchii Clan claiming ownership of land located in Ngaremlengui State and currently administered as public land by the Ngaremlengui State Public Lands Authority (“NSPLA”). After a hearing, the Land Court determined that the Clan’s claim failed. The Clan appeals.

[¶ 2] “We review the Land Court’s factual findings for clear error.” *Esuroi Clan v. Palau Pub. Lands Auth.*, 2021 Palau 27 ¶ 7. “The Land Court’s factual findings 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.”

Id. “Where there are several plausible interpretations of the evidence, the Land Court’s choice between them will be affirmed even if this Court might have arrived at a different result.” *Id.* We will not “reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence.” *Id.* When a lower court’s determination is discretionary, however, we review only for abuse of that discretion. *E.g., W. Caroline Trading Co. v. Leonard*, 16 ROP 110, 113 (App. Div. 2009).

[¶ 3] A successful claim under 35 PNC § 1304(b) must be timely filed, establish the claimant’s ownership of the land before it became public, and establish that the land was wrongfully taken. *See, e.g., Masang v. Ngirmang*, 9 ROP 125, 128 (App. Div. 2002). In its determination order, the Land Court found that the Clan had filed a timely claim but had failed to demonstrate the latter two requirements. *Findings of Fact & Determination* 3–5 (Oct. 14, 2021). The bulk of the Land Court’s findings of fact focused on the second requirement and explained that the Clan failed to sufficiently establish ownership of any particular tract of land before it became public. *Id.* at 4–5. As a two-sentence coda at the tail end of its findings of facts, the Land Court added that the Clan had “[f]urther... failed to show how the land was taken from whom” and that “[t]o simply state that the land was wrongfully taken without corroborating evidence to support such statement does not establish wrongful taking.” *Id.* at 5.

[¶ 4] The focus of the Clan’s appellate brief is the opposite of the focus of the Land Court’s opinion. The overwhelming majority of the Clan’s brief challenges the Land Court’s two-sentence wrongful taking analysis. What the Clan’s brief does not address, however, is the Land Court’s much more substantial and thorough analysis of the ownership element in which it found that the Clan failed to establish its ownership of any particular tract of land before the land became public. Thus, even if the Clan’s appellate argument is correct regarding the Land Court’s wrongful taking analysis,¹ it would fail to

¹ While we withhold ruling on the Land Court’s finding regarding wrongful taking, we note that much of the Clan’s wrongful taking argument on appeal focuses on two articles that the Clan introduced as evidence with its motion for reconsideration in the Land Court. This evidence was submitted too late to inform our review of the Land Court’s determination order. A party may not properly introduce evidence for the first time in a motion for reconsideration if

warrant reversal because it does not challenge the Land Court's finding that the Clan also failed to establish ownership.

[¶ 5] Secondly, the Clan challenges the Land Court's denial of its motion for reconsideration. In its determination order, the Land Court stated that "there is a probability that the Clan may have properties within the area before the Court, but failed to show the location of its property and instead claimed ownership of the entire area which the evidence adduced does not establish its ownership of the entire area before the Court." *Findings of Fact & Determination* 5 (Oct. 14, 2021). Further, in proceedings before the Land Court, the Clan's representative stated that he was not in a position to limit the Clan's claim to only a portion of the originally claimed area. *Id.* at 4.

[¶ 6] After the Land Court's order, the Clan moved for reconsideration and requested that the Land Court order a survey of the property to determine which portion of the larger tract was owned by the Clan. The Land Court denied the motion for reconsideration. On appeal, the Clan argues that the Land Court abused its discretion by not ordering a survey of the land. According to the Clan, it was manifestly unjust for the Land Court to find that there was a probability that the Clan may own some smaller portion of the claimed land and then not investigate further by ordering a survey.


[¶ 7] The Clan misapprehends its responsibilities as a claimant. As a claimant in a return-of-public-lands claim, the Clan bore the responsibility to demonstrate that it owned some particular tract of land before it became public. *See, e.g.*, 35 PNC § 1304(b) (requiring the citizen-claimant to prove each of the elements); *Masang*, 9 ROP at 128 (same). The Clan did not do that. Instead, it claimed ownership of a huge tract of land without supporting its claim with sufficient evidence of ownership of either the entirety of the tract or of any particular portion within the tract. It is not manifestly unjust for the Land Court to rule on the claim and the evidence presented to it. The Land Court did not

that evidence could have been presented earlier. *See Shmull v. Ngirirs Clan*, 11 ROP 198, 203 n.3 (App. Div. 2004) ("Nor can a motion to reconsider be used to advance new arguments or supporting facts that were available at the time of the original briefing or argument.").

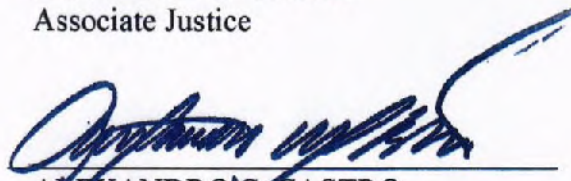
abuse its discretion by denying the Clan's request to order a post-determination survey so that the Clan could have a second opportunity to prove ownership.

[¶ 8] Because the Clan does not challenge the Land Court's finding that the Clan failed to establish ownership of the land and the Land Court did not abuse its discretion by not ordering a survey, we **AFFIRM** the Land Court's decision.

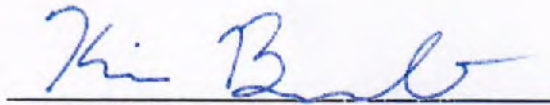
SO ORDERED, this 23rd day of August, 2022.



JOHN K. RECHUCHER
Associate Justice



ALEXANDRO C. CASTRO
Associate Justice



KEVIN BENNARDO
Associate Justice