

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

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<p>ESTATE OF ROSE KEBEKOL, rep. by MARGARET WICKER, <i>Appellant,</i></p> <p style="text-align: center;">v.</p> <p>NGERTURONG LINEAGE, rep. by JOHN SUGIYAMA, <i>Appellee.</i></p>
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SUPREME COURT
OF THE
REPUBLIC OF PALAU

Cite as: 2024 Palau 21
Civil Appeal No. 24-007
Appeal from LC/M 23-00019 and 23-00020

Decided: July 30, 2024

Counsel for Appellant	James Kennedy
Counsel for Appellee	Pro Se

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
KEVIN BENNARDO, Associate Justice

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

OPINION¹

PER CURIAM:

[¶ 1] The Estate of Rose Kebekol (hereinafter “the Estate”) appeals the Land Court’s February 2, 2024 Determination of Ownership over an Aimeliik property. The Estate avers that the Land Court failed to make any determination relating to the Tochi Daicho listing and that there was no basis for finding Rose Kebekol’s sworn statement incredible.

¹ Although Appellant requests oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

[¶ 2] Although we find no merit to the Estate’s arguments, after conducting a *de novo* review of the applicable law, we **VACATE** and **REMAND** for the Land Court to make findings of custom under *Beouch v. Sasao*, 20 ROP 41 (2013).

BACKGROUND

[¶ 3] This case concerns the ownership of land in Ngerkeai Hamlet of Aimeliik. On October 17 and 25, 2023, the Land Court held a hearing over the ownership of Lot 06M001-012 and Lot 028 (hereinafter “the Lots”), known as either *Mengekong* or *Ngebedech*, as well as Lot 06M001-013 and Lot 027. The ownership of the first two Lots is now on appeal.

[¶ 4] The first party to this appeal and claimant to the two Lots is the Estate of Rose Kebekol, represented by her daughter Benedicta. On June 14, 1977, Rose stated in a Land Acquisition and Boundary Monumentation Record (hereinafter the “1977 Monumentation Record”) that she acquired the property from Iterir Rubasech, who was listed in the Tochi Daicho as the registered owner. The Tochi Daicho for Aimeliik state was destroyed during World War II. Rose’s son, George Kebekol, then pursued his mother’s claim by filing a claim for “Ngebedech aka Mengekong” on May 31, 2005, and another for “Mengekong” on May 4, 2006. His sister Benedicta then appeared on behalf of these claims, stating that George had named her as the person to pursue the claims in the event of his incapacity. While Benedicta initially only claimed Lots 06M001-012 and 028 on behalf of the Estate, she claimed individual ownership of all four lots during the hearing.

[¶ 5] Although her claim is not on appeal, we note that Yoko Kebekol Woodcock, another of Rose’s daughters, filed a claim to the land for herself and her children on October 7, 2021, stating that the land belonged to Rose after obtaining it from her aunt Iterir. In support of Yoko’s claim, Margaret Alfonso Wicker testified that she had a very close relationship with her grandmother Rose. She said that Rose used to talk about land in Aimeliik that she acquired from Iterir, and that such land had been registered in the Tochi Daicho. Margaret did not testify as to who was the registered landowner in the Tochi Daicho.

[¶ 6] The second claimant to the two lots is Telungalk ra Ngerturong, on whose behalf Hideo Rdialul filed a claim on July 15, 2005. John Sugiyama, who is the chief *Ngirturong* of Ngerturong Clan, represented the claim. Although the claim states that it was made on behalf of the lineage, John Sugiyama testified that Ngerturong is a clan, not a lineage. He stated that he knew about the land based on information from prior *Ngirturong* chiefs. He testified that Remoket Ngiriou, a member of Ngerturong, asked Yamasaki Rengiil (the *Ngirturong* at the time) to use the land for farming. Yamasaki then asked John to look at the documents and ensure that everything was proper before granting permission. Remoket continued to use the property until his death in 2021 without interference from anyone.

[¶ 7] Sandy Kazuyuki, the niece of Remoket Ngiriou, filed a claim for land called *Tudersii* in Ngebedech, which she identified as Lot 06M001-012, on September 30, 2021. She later clarified that her claim was part of the claim for Telungalk ra Ngerturong and included Lot 028. She testified that Remoket cleared the land, built his house and planted crops on the property in 2015 after obtaining Ngirturong's consent to farm the land, and attaching a document purporting to be Remoket's use right to the land. She claims this land was gifted to Telungalk ra Malk and that it contains an *olbed* stone platform. She asserts that Malk was a woman of Ngerturong lineage who was married and lived on *Tudersii*. Her witness, Ebil Ngiriou Kadoi, testified that this land was given to Malk by her husband's family, and that two of Malk's children are buried on the *olbed/odesongel* stone platform that exist on the land.

[¶ 8] In its Adjudication, the Land Court first reasoned that because there is no Tochi Daicho available for Aimeliik State, "there was no evidence that proved the accuracy of [Rose Kebekol's] statement that the property she claimed was registered in the Tochi Daichio as Iterir's land. Said statement is deemed not credible and does not warrant elevating Rose's claim to the level of presumptive correctness that is afforded to Tochi Daichio listings." *See* Adjudication and Determination, *In re Lot 06M001-013 & Lot 027 and Lot 06M001-012 & Lot 028*; Case No. LC/M 23-00019 and LC/M 23-00020, at 7 (L.C. Feb. 2, 2024). The Land Court thus determined that the Estate failed on its claim for the Lots. As to Ngerturong Linage's claim, the Land Court noted that Sandy Kazuyuki's claim was untimely filed, but that "as a claim for Ngerturong Lineage/Clan, her claim merges with the timely-filed claim for

Ngerturong made by Hideo Rdialul.” *Id.* It further found that although John Sugiyama’s testimony “did not provide substantive evidence of Ngerturong Lineage/Clan’s ownership . . . Sandy Kazuyuki and Ebil Kadoi provided very credible testimony that Malk . . . lived on the land with her husband; and that the land originated from Malk’s husband’s clan of Uchelkeiukl.” *Id.* at 8. The Land Court concluded that “Ngerturong Lineage/Clan owns in fee simple Lot 06M001-012 and Lot 028, land known as Tudersii.” The Land Court accordingly issued Determinations of Ownership for the Lots to “Ngerturong Lineage.”

STANDARD OF REVIEW

[¶ 9] We review Land Court proceedings in three separate standards of review: 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 of discretion. *Salvador v. Renguul*, 2016 Palau 14 ¶ 7. We also bear in mind that a lower court’s determinations of customary law are reviewed *de novo*. *Beouch v. Sasao*, 20 ROP 41, 50 (2013).

DISCUSSION

[¶ 10] On appeal, the Estate argues that the Land Court should have made a finding as to the identity of the registered Tochi Daicho owner, and that such finding should have been afforded a presumption of correctness. It further argues that the Land Court had no basis to find incredible Rose Kebekol’s statement that Iterir was the Tochi Daicho owner.

[¶ 11] The Tochi Daicho provides valuable extrinsic evidence of ownership where otherwise the court would be left with only the conflicting testimony of witnesses to establish the identity of landowners in the more and more distant Japanese times. *See Ngiradilubech v. Timulch*, 1 ROP Intrm. 625, 629 (1989). As such, and for both historical and policy reasons, we have consistently upheld that Tochi Daicho listings should be afforded a presumption of accuracy.

[¶ 12] The Estate maintains that even where the Tochi Daicho is unavailable, undisputed testimony on its content should benefit from the same

presumption. However, we have previously made clear that where the Tochi Daicho “has been destroyed or is otherwise unavailable, it loses its value as extrinsic evidence of the results of the carefully conducted land survey performed by the Japanese administration just before World War II.” *Bausoch v. Tebei*, 4 ROP Intrm. 203, 206 (1994). The reason for this “is because, unlike cases where the Tochi Daicho is available for inspection, whatever advantage is gained by the accuracy of the Tochi Daicho listing is offset by the fact that it can never be known to a certainty just how the land at issue was listed therein.” *Id.*; see also *Children of Masang Marsil v. Napoleon*, 18 ROP 74 (2011). Therefore, we cannot credit the Estate’s argument that *Bausoch* is inapplicable to this case, nor do we find any error in the Land Court’s refusal to attach a presumption of correctness to Rose’s statement in the 1977 Monumentation Record.

[¶ 13] In addition, “the trial court is not required to accept uncontradicted testimony as true.” *Ngerungor Clan v. Mochouang Clan*, 8 ROP Intrm. 94, 96 (1999). Although “a finder of fact may not arbitrarily disregard testimony, the finder of fact is not bound to accept even uncontradicted testimony.” *Ongklungel v. Uchau*, 7 ROP Intrm. 192, 194 (1999) (quoting *Elewel v. Oiterong*, 6 ROP Intrm. 229, 232 (1997)). As such, even if Rose’s statement in the 1977 Monumentation Record was undisputed, the Land Court was not required to accept it as true.

[¶ 14] Nevertheless, we must remand because the Adjudication contains several findings of custom without indicating whether they have met the traditional law requirements. Prior to concluding that a particular practice constitutes a custom, a trial court must consider whether: “(1) the custom is engaged voluntarily; (2) the custom is practiced uniformly; (3) the custom is followed as law; and (4) the custom has been practiced for a sufficient period of time to be deemed binding.” *Beouch v. Sasao*, 20 ROP 41, 48 (2013). In addition, our past judicial recognition of a traditional law as binding will be controlling as a matter of law, absent evidence that the custom has changed. *Beouch v. Sasao*, 20 ROP 41, 48 (2013). A trial court can therefore take judicial notice of a custom either after undergoing the *Beouch* four-element test, or by properly relying on controlling precedent. *Id.*; see also *Otobed v. Etipison*, 10 ROP 119, 21 (2003); *Lakobong v. Tebei*, 8 ROP Intrm. 87, 88 (1999).

[¶ 15] Moreover, where the trial court does conclude that a practice constitutes a custom, and relies on custom in making its factual determinations, it should generally “explain the customary significance of its findings.”. See *Ngetelkou Lineage v. Orakiblai Clan*, 17 ROP 88, 92 (2010); *Iderrech v. Ringrang*, 9 ROP 158, 161 (2002) “[A] court is not obligated to explain the customary significance of its findings where it did not rely on custom in making its factual determinations.”); *Matchiau v. Telungalk ra Klai*, 7 ROP Intrm. 177, 179 (1999) (“When a trial court applies custom, it must include a written description of such custom in the record.”).

[¶ 16] The Land Court’s Adjudication seemingly relies on custom without considering the *Beouch* factors nor relying upon controlling precedent. The Land Court made two findings to support Ngerturong Lineage’s claim of ownership: first, when assessing Ebil’s testimony, the Land Court found that “[i]t is not unusual that property obtained by a female through her marriage becomes an asset of her clan” when determining that Malk could have reasonably inherited the Lots from her husband’s clan. Second, the Land Court concluded that Sandy and Ebil’s testimonies that the Lots contained an *olbed* stone platform were credible “[g]iven the customary importance of deaths and burials for Palauans, a statement about graves is quite significant and credible because it is not a statement that anyone would make lightly.” Based on these findings, the Land Court credited Sandy and Ebil’s testimony as credible, awarded the Lots to Ngerturong Lineage/Clan, and rejected Kebekol’s claim to the Lots. However, the Land Court could not rely on these customary principles without making proper findings under the *Beouch* framework. As a result, we cannot adequately review the Adjudication.

[¶ 17] Finally, we also observe that while the Land Court’s Adjudication awarded the Lots to “Ngerturong Lineage/Clan”, the Determination of Ownership awarded the Lots to “Ngerturong Lineage”, and we caution against this ambiguity. It is widely known that under Palauan custom, “the consent of the strong senior members of Lineage land is necessary to alienate lineage land.” *Ngiradilubech v. Nabeyama*, 3 ROP Intrm. 101, 105 (1992). It is equally accepted that an entity cannot convey an interest in land that it does not possess. *Masters v. Adelbai*, 13 ROP 139 (2006). From these statements ensues the logical conclusion and necessary corollary that “a clan does not control lineage properties, with certain exceptions.” *Remoket v. Olekeriil*, 3 T.T.R. 339 (1967);

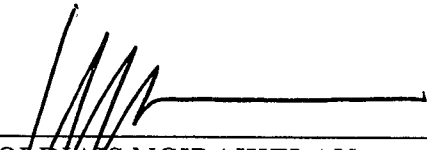
cf. Ngetelkou Lineage v. Orakiblai Clan, 17 ROP 88, 90 (2010) (expert testified that clan properties were separate and distinct from lineage-owned properties). In addition, the Land Court must choose among claimants that appear before it and cannot choose someone who did not, even though his or her claim might be theoretically sounder. *Eterochel v. Children of Rdechor*, 15 ROP 133, 136 (2008); *see also Eklbai Clan v. KSPLA*, 22 ROP 139, 146 (2015) (“[I]n a superior title case, the Land Court has no choice but to choose [the strongest claim] between the claimants who come forward.”). If the Land Court determines on remand to award the Lots to Ngerturong Lineage/Clan, it should ascertain the exact identity of the claimant appearing before it to avoid future uncertainty.²

CONCLUSION


[¶ 18] We **VACATE** and **REMAND** the Land Court’s judgment for further proceedings consistent with this opinion.

² In connection with this point, we note that Ngerturong *Clan* did appear through Sugiyama but it never filed a claim. Additionally, Kazuyuki filed a claim and appeared but her claim was untimely. The only timely filed claim was the claim filed by Hideo Rdialul and that claim was filed on behalf of Ngerturong *Lineage*.


SO ORDERED, this 30th day of July 2024.



OLDIAS NGIRAIKELAU
Chief Justice, presiding



FRED M. ISAACS
Associate Justice



KEVIN BENNARDO
Associate Justice