

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED

SUPREME COURT
OFFICE

-----X
NGERMENGIAU LINEAGE,

Appellant,

v.

ESTATE OF ILONG ISAOL

Appellee.
-----X

CIVIL APPEAL NO. 11-046
(LC/B 08-0089)

OPINION

Decided: January 14, 2013

Counsel for Appellant: John T. Sugiyama
Counsel for Appellees: Raynold Oilouch

BEFORE: KATHLEEN M. SALIH, Associate Justice; LOURDES F. MATERNE,
Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice

Appeal from the Land Court, the Honorable SALVADOR INGEREKLII, Associate
Judge, presiding.

PER CURIAM:

This is an appeal of a Land Court Determination awarding ownership of land
known as *Telbong* to the Estate of Ilong Isaol, Appellee in this matter. For the following
reasons, the decision of the Land Court is **AFFIRMED**.

PROCEDURAL HISTORY

This case involves four competing claims of ownership for the land known as *Telbong*,¹ listed in the Tochi Daicho as Lot 397 and owned by Iterir. Specifically, the claims of: (1) Antonina Sokok (also known as Antonina Olkeriil); (2) the Estate of Ilong Isaol, represented by Sokok as Isaol's adopted daughter; (3) the Ewang Lineage, represented by George Kebekol; and (4) the Ngermengiau Lineage, represented by John Sugiyama. On September 8, 2011, the Land Court held a hearing at which the claimants presented testimony regarding their claims to *Telbong*.

At the hearing, Sokok testified that Iterir purchased *Telbong* with her husband Rubasech. Sokok further testified that her mother Ilong Isaol was adopted by Iterir and Rubasech together and that sometime after the adoption Iterir transferred ownership of *Telbong* to Isaol when she stated "Child, these are your properties." Finally, Sokok testified that she entered the land in 1972 upon the advice of Rubasech, and that she has lived there ever since. Sokok sought Lot 397 based on the purported conveyance from Rubasech to her.

Kebekol testified: (1) in the 1960s Iterir told his mother Rose that all her properties in Koror "a bloungerachel a Rose;" and (2) at a 2005 hearing regarding other land owned previously by Iterir, Ilong told Rose "Ros[e], this will be the only land that we will divide and as for all the other lands, you will remain entrusted with them based on what my

¹ Identified as Worksheet Lot No. 181-100 on BLS Worksheet No. 2005 B 06.

mother said to you, to me and then to you.” Additionally, Kebekol called Wataru Elbelau as a customary expert. Elbelau testified that: (1) a clan cannot take over a lineage’s properties unless the lineage lost all its members; and (2) if a man brings a child into an already conceived marriage, the child is not automatically adopted into the marriage.

Sugiyama testified: (1) he was told that Rubasech brought Isaol into his marriage with Iterir; (2) that Ewang is a lineage within Ngermengiau Lineage; and (3) that Ngermengiua Lineage members do not know whether Isaol was adopted. Ngermengiua Lineage also called Ebil Ngiriou Kadoi as a witness. Kadoi testified that Isaol was brought into the marriage by Rubasech and that she was never adopted formally. [Order, at 4].

On November 16, 2011, the Land Court issued its Summary of Proceedings, Findings of Fact, Conclusions of Law, and Determination (“Judgment”), in which it found that Lot 397 belonged to Ilong’s estate. In reaching this conclusion the Land Court rejected Sokok’s “unsupported testimony regarding an alleged purchase of [Lot 397] by Rubasech and Iterir.” The Land Court also rejected the “self-serving testimony” of Kadoi and Sugiyama that Isaol was not adopted. With regard to Sugiyama’s testimony, the Court noted that Sugiyama testified that he was told by 82-year-old Yamazaki Rengiil and 82-year-old Beouch Ngiraikelau that when Rubasech and Iterir were married, Isaol was 11 or 12 years old, was already with them, and was not adopted. The Land Court found this testimony incredible because Rengiil and Ngiraikelau would have been approximately two

years old when Isaol was 11 or 12 years old and because “[t]he court is not convinced that a 2 year old child has developed the mental capacity to distinguish things around him, and [be] able to tell if a child was adopted or not.”

In contrast, the Land Court noted Sokok’s testimony that Isaol was the only adopted heir of Iterir was supported by a previous Land Court decision² that concluded such and by specific details in Sokok’s testimony regarding the manner in which Isaol was raised by Iterir. Accordingly, the Land Court found that Isaol was an adopted child of Iterir.

Additionally, the Land Court found that Iterir made an inter vivos transfer of *Telbong* to Ilong. Alternatively, the Land Court found that, pursuant to Section 801 of the Palau District Code, ownership of *Telbong* passed to Ilong in 1965 when Iterir died intestate.

The Court rejected Kebekol’s claim that in 1965 Iterir transferred ownership of the lands to Rose Kebekol when Ilong was present. The Land Court noted that such a claim was contradicted by the fact that on July 23, 1993, Ilong filed a claim of ownership of the Land, whereas Rose Kebekol never filed a claim.³ Finally, the Land Court rejected a claim that Iterir was holding the Land in trust for the benefit of Ngermengiau Lineage. In rejecting this contention, the Court noted that in the Tochi Daicho, Iterir was listed as the sole owner of Lot 397, while for other parcels she is listed as a trustee for lands owned by

² *In re Takudel* (Case No. LC/B99-150).

³ This finding has not been challenged on appeal.

the Ewang Lineage. Based on the difference in listings, the Land Court concluded that the Tochi Daicho listing for the Land “was not listed as such because Ngermengiau Lineage did not own it.”

The Ngermengiau Lineage appealed.

STANDARD OF REVIEW

On appeal, Appellant challenges: (1) the Land Court’s decision to credit the testimony of Sokok regarding the adoption of Isaol and the inter vivos transfer of the Land and (2) the Land Court’s application of Section 801.

“We generally defer to the credibility determinations of the trial court, and we will only overturn them in extraordinary cases.” *Palau Cmty. Coll. v. Ibai Lineage*, 10 ROP 143, 149 (2003). We review the Land Court’s factual findings for clear error and “will set aside the lower court’s factual determinations only if no reasonable trier of fact could have reached the same conclusion based on the evidence in the record.” *Azuma v. Ngirchechol*, 17 ROP 60, 63 (2010). We review the Land Court’s conclusions of law de novo. *Id.*

DISCUSSION

As explained above, Appellant contends that the Land Court: (1) abused its discretion when it credited Sokok’s testimony and (2) erred in applying Section 801 to the disputed property. We will address each contention in turn.

I. The Land Court's Credibility Determination

First, Appellant asserts that, on the issue of Ilong's purported adoption, the Land Court erred by rejecting the testimonies of Kadoi and Sugiyama "in favor of equally self-serving and unsupported testimony of . . . Claimant Antonina Sokok."

We have held previously that the "weighing and evaluating [of testimony] is precisely the job of the trial judge, who is best situated to make such credibility determinations." *Kotaro v. Ngotel*, 16 ROP 120, 124–25 (2009) (internal quotation marks and citations omitted). Accordingly, a party seeking to set aside a credibility determination must establish "extraordinary circumstances" for doing so. *Id.* at 123. Extraordinary circumstances do not exist where the record shows 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." *Ngirasechedui v. Whipps*, 9 ROP 45, 47 (2001); *see also Kotaro*, 16 ROP 124–25 (no extraordinary circumstances where "[t]he decision show[ed] that the land court considered the content and credibility of the testimony of all the witnesses and weighed the competing stories . . . before coming to a conclusion.").

In reaching its credibility determination on the issue of adoption, the Land Court rejected Sugiyama's testimony as implausible and self-serving and rejected Kadoi's testimony as self-serving. Turning to Sokok, the Land Court noted that Sokok's testimony regarding adoption was supported by a previous determination on the issue and by the

presence of specific details in her testimony. Thus, it is clear that the trial judge considered the content and credibility of the conflicting testimony on the issue of adoption and found Sokok's testimony more persuasive than the testimonies offered by Sugiyama or Kadoi. This decision does not rise to the level of extraordinary circumstances needed to overturn a credibility determination. *Ngirasechedui*, 9 ROP at 47.

In a similar vein, Appellant contends that it was error for the trial judge to reject some of Sokok's testimony and then credit her testimony on the issue of the inter vivos transfer of the property to Ilong because such testimony was unsupported by extrinsic evidence and was self-serving. However, absent additional indices of incredibility, a trial judge does not commit reversible error when he credits self-serving and unsupported testimony. Compare *Kotaro*, 16 ROP at 123 (declining to reverse credibility determination on grounds that testimony was self-serving and unsupported by extrinsic evidence) with *ROP v. Tmetuchl*, 1 ROP Intrm. 443 (1988) (reversing credibility determination where witness told three different stories to the police; had told at least three different versions of the facts incriminating the defendants; and had failed three separate polygraph tests, twice recanting her statements and admitting she had lied only to re-recant twice more). Accordingly, Appellant has not shown extraordinary circumstances

to set aside the Land Court's credibility determination on the issue of the inter vivos transfer.⁴ *Kotaro*, 16 ROP at 123.

More broadly,

Appellant argues that in an attempt to ameliorate and justify the obvious contradictions [sic] in its findings of fact, the Land Court, after finding Antonina not credible on her claim based on Rubasech's purchase of Telbong, and denying her claim based on that point, Antonina would, in the final analysis, prevail on her claim for Telbong through her late mother Ilong Isaol unless this Court reverses the Determination below. Continuing on the claimed abuse of discretion argument, Appellant . . . further points out that the Land Court did not consider and give significant weight to Antonina's credibility on the other two disputed issues.

In essence, Appellant contends that an adverse credibility determination as to a witness on one issue precludes a positive credibility determination on related issues. We already have held this argument is without merit. *See Palau Cmty. College*, 10 ROP at 149 ("the Trial Division did not commit clear error by accepting part and rejecting part of Techitong's claim to reach its determination in favor of Ibai Lineage.").

In light of the foregoing, we conclude Appellant has failed to show the extraordinary circumstances required to set aside any of the trial court's credibility determinations and that, therefore, its first enumeration of error is without merit.

⁴ Even if the Land Court erred in finding an inter vivos transfer, such error would be harmless given our conclusion, set forth below, that Isaol would have inherited Lot 397 upon the death of Iterir.

II. The Land Court's Application of Section 801

Finally, Appellant submits that the Land Court erred in finding that even if there had been no inter vivos transfer of the Land, Ilong would have received *Telkong* under the intestacy statute in effect at the time of Iterir's death.

"In determining who shall inherit a decedent's property, we apply the statute[s] in effect at the time of the decedent's death." *Ngiraswei v. Malsol*, 12 ROP 61, 63 (2005) (internal punctuation omitted). Here, it is undisputed that Iterir died intestate in 1965 and that the 1959 version⁵ of Section 801 of the Palau District Code was the intestacy statute in effect at the time of Iterir's death.

At the time of Iterir's death Section 801(c) provided:

In the absence of instruments and statements . . . lands held in fee simple by an individual shall, upon the death of the owner, be inherited by the owner's oldest living male child of sound mind, either natural or adopted, or, if male heirs are lacking, by the oldest living female child of sound mind, natural or adopted, or in the absence of any issue, by the spouse of the deceased

In applying the foregoing in its decision, the Land Court wrote:

Iterir was survive[d] by her spouse Rubasech but Rubasech did not file a claim for the ownership of Lot 397. Thus, he is not an eligible spouse because he did not file a claim. Evidence established that no disposition of Iterir's properties was held during the *cheldecheduch* after her death. Therefore, ownership of Lot 397 must go to Iterir's child. Ilong was the only child or "issue" under the statute. On July 23, 1993, Ilong filed her claim for individual ownership of Lot 397. Therefore, pursuant to the statute, the land *Telbong*, Lot 397, became owned by Ilong Isaol in fee simple after Iterir's death.

⁵ Section 801 went into effect in 1959 and was amended in 1975. See PL 5-3S-2 (Effective July 24, 1975).

Seizing on the Land Court's discussion, Appellant now argues:

The Land Court . . . pointed out that Iterir was survived by her spouse Rubasech who was eligible to inherit the land but concluded that since he did not file a claim for the ownership of Lot 397, he is not eligible. Ilong did not file a claim for ownership of Lot 397 either until July 23, 1993 or some 28 years after Iterir had died and over 18 years after Section 801 had been repealed by the Palau District Legislature.

Put differently, Appellant contends the Land Court erred in finding Ilong inherited the land pursuant to Section 801 based upon a claim for ownership filed after Section 801 had been repealed. While it is axiomatic that a person may not inherit land pursuant to a repealed intestacy statute,⁶ we conclude Ilong inherited the land pursuant to Section 801 in 1965—when her mother died—not in 1993. Although both the Land Court and Appellant focused on claims of ownership, eligibility for inheritance under Section 801 was not dependent upon the filing of a claim for the land. Rather, the statute provided that, in the absence of eligible male heirs, fee simples in an intestate estate would pass to the oldest living female issue (either natural or adopted) of sound mind.

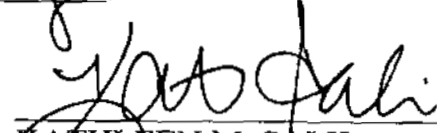
Here, with the exception of its already-rejected argument regarding credibility, Appellant does not challenge the Land Court's determination that Ilong was an adopted daughter of Iterir. At the time of Iterir's death, Ilong was her only child. Accordingly, we agree that Lot 397 passed to Ilong pursuant to then-existing Section 801 and that Appellant's contention to the contrary is without merit.

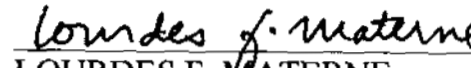
⁶ *Ngiraswei*, 12 ROP at 63,

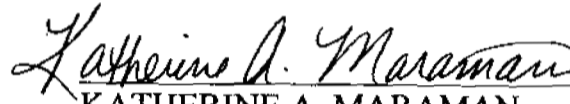
CONCLUSION

For the foregoing reasons, the order of the Land Court is **AFFIRMED**.

SO ORDERED, this 14th day of January, 201~~8~~³.


KATHLEEN M. SALII
Associate Justice


LOURDES F. MATERNE
Associate Justice


KATHERINE A. MARAMAN,
Part-Time Associate Justice