

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED

2018 DEC 10 AM 9:36

<p>REMED LINEAGE Represented by Ngirarikel R. Oshiro <i>Appellant,</i></p> <p>v.</p> <p>AIRAI STATE PUBLIC LANDS AUTHORITY and TUNGELEL LINEAGE, <i>Appellees.</i></p>	<p>SUPREME COURT OF THE REPUBLIC OF PALAU</p>
--	--

Cite as: 2018 Palau 26
Civil Appeal No. 18-017
Appeal from Land Court Actions LC/N 11-0151, LC/N 11-0152, LC/N 11-0153, and LC/N 11-0148

Decided: December 10, 2018

Counsel for Appellant	Pro se
Counsel for Appellee Airai State Public Lands Authority	Mariano W. Carlos
Counsel for Appellee Tungelel Lineage	Yukiwo P. Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, 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 four parcels of land, known as Lots 10N001-011, 10N001-012, 10N001-013 and BL-170, located in the Ked area of Ordemel, Airai, near or abutting the Yelch baseball field. The lands claimed were identified using various names, including Ngediull,

Ngerchelong, Madatumatk, and Yelch. The parties agreed to have the claims consolidated for hearing.¹

FACTS AND PROCEDURAL BACKGROUND

[¶2] Several of the original claims were withdrawn. The surviving claims include Ngerchemuul Clan's claim on all four parcels, Tungelel Lineage's claim to Lots 011 and 013, Remed Lineage's claim for the return of public land as to all the lots at issue and Airai State Public Lands Authority's ("ASPLA") claim to Lots BL 170 and 012.

[¶3] After a hearing on August 8, 2016, at which Ngerchemuul Clan presented its claim, the parties presented their remaining claims at a continued hearing on August 8, 2017, which was after the Land Court's authority was revived in April of 2017.

[¶4] After the parties submitted final arguments on August 18, 2017, the court discovered a claim filed by Kerungil Misech Augustine, which had not been presented at the earlier hearings. As noted by the Land Court at the time of its decision, Kerungil had first testified for Ngerchemuul Clan, asserting that her father had filed a claim for one of the lots but the claim could not be found. The Land Court called the parties to a status conference after the discovery of this claim in order for Kerungil to present her claim at a hearing held on December 18, 2017. Another witness, Rosania Masters, was also allowed to testify on behalf of Remed Lineage at this later hearing.

[¶5] Several witnesses testified for Ngerchemuul Clan. Based on a preponderance of the evidence, the Land Court found that Ngerchemuul Clan failed to prove that it owned Lots BL 170 and 012 on the claimant's superior title theory. The Clan's claim, the Land Court held, was based on "sweeping statements and descriptions from descendants who heard stories from their mothers and grandmothers." Decision 15. The people of Ngchesechang and Oikull (also referred to by witnesses as "Despedall," as noted by the Land Court) had settled on the land in dispute and had established residences and continued to live there until the present time. They were invited by the chiefs of Airai to settle there and had obtained leases from ASPLA when the Airai

¹ The parties did not request oral argument in this appeal. ROP R. App. P. 34(a).

State Government began to issue leases to public lands. Furthermore, they were openly occupying the land without any objection from, in particular, Ngerchemuul Clan or Remed Lineage until the Clan's first filing in 1990.

[¶6] The settlement of and residence on the land, the Land Court found, effectively ended any ownership the Clan's ancestors may have had on the land. The statements made at the hearings, the lower court held, were too bare and vague to uphold a claim of present ownership. No actions had been taken by the Clan in recent years to demonstrate an interest in or rights to the land. "Ngerchemuul Clan did nothing but watch for years while ASPLA and its predecessors used, controlled and treated Lots BL 170 and 012 as public land by allowing others to use and occupy the land, and building a public school without need for permission from Ngerchemuul." Decision 16. The Land Court rejected the Clan's claim.

[¶7] Remed Lineage's claim was likewise denied by the Land Court. The claim was filed as a return of public land under Article XIII Section 10 of the Palau Constitution. The Land Court held that Remed Lineage did not satisfy any of the elements of such a claim. It did not show that the lineage was the original owner or the proper heir of the original owner, nor did it attempt to demonstrate the land had been wrongfully taken.

[¶8] Kerungil Augustine, on the other hand, was found to be the rightful owner of Lot 011 as successor in interest of her father, Misech Morwai. The Land Court found that credible evidence had shown that Lot 011 was given to Misech by the Ngara-Irrai, the chiefs of Airai, in exchange for his work as a bus driver for Airai Elementary School, for which Airai Municipality was unable to pay him. Kerungil had testified that her father had built a house on the land and his family had lived there and used the land to plant gardens and fruit trees. Kerungil continues to use the land and has allowed others to use the land as well. Her testimony and the evidence was found to be credible by the Land Court, which awarded her the ownership of the land over Tungelel Lineage and Ngerchemuul Clan, neither of which, it found, presented evidence outweighing that of Kerungil. Remed Lineage, meanwhile, had filed a claim for 011 as a claim for the return of public land, but presented evidence as if its claim was a claim of superior title. Therefore, the Land

Court found that none of the elements required for a return of public lands were satisfied with regard to Lot 011.

[¶9] Lot 013 was claimed by Ngerchemuul Clan, Remed Lineage and Tungelel Lineage. The Land Court found that neither Ngerchemuul Clan nor Remed Lineage presented evidence showing ownership. Ngerchemuul Clan's evidence again consisted of stories that the land was settled long ago by their ancestors but showed no use or ownership in more recent years. Remed Lineage, meanwhile, "merely asserted that this land was part of the lineage's larger property," supported by no evidence. Again, the Land Court found that Remed Lineage failed to prove any of the elements required for a claim for the return of public lands.

[¶10] Tungelel Lineage, however, presented evidence of rights to and interest in Lot 013. Fuana Ngiratechekii testified that Iyechad Yaoch lived on the land during the Japanese period, leading the Land Court to award the land to Tungelel Lineage.

[¶11] The Airai State Public Lands Authority claimed that Lots BL 170 and 012 are public lands under its administration. In support of its assertion, ASPLA presented witnesses who testified that Lot BL 170 has always been public land and that Lot 012 is the site of the former Airai Elementary School. ASPLA also submitted a 1997 judgment in Civil Action 337-91 declaring that "the buildings ... of the former Airai Elementary School ... on Yelch and the land underlying the buildings are owned by Airai State Public Lands Authority." Decision 12. The Land Court found the evidence of Airai government's use and occupation of the land to be overwhelming. Neither Ngerchemuul Clan nor Remed Lineage, the Land Court held, presented any evidence to counter this finding.

[¶12] Ngirarikel "Ricky" Olkeriil then brought this appeal on behalf of Remed Lineage against ASPLA and Tungelel Lineage.

[¶13] On appeal, Olkeriil claims that he was not served with notice "to appear before the court at the hearing and present their claims, evidences and testimonies." Appellant's Opening Br. 7. It is unclear from Appellant's Opening Brief whether Appellant asserts that he was not given notice for only the first hearing, held August 8, 2016, or whether he was not served with

notice of any of the hearings, including the subsequent hearings on August 8, 2017 and December 18, 2017. However, a Proof of Service shows that Olkeriil was served via his sister on October 25, 2017. Service was made of an Order from the Land Court stating that “Further hearing on this matter will be held on Monday, December 18, 2017, commencing at 9 a.m.” Land Court Order of September 29, 2017. Further, Olkeriil appeared at the later hearings and testified before the Land Court on December 18, 2017.

[¶14] Based on the evidence he presented at the hearing, the Land Court found that the lineage had not proven the elements required for a showing of wrongful acquisition of land by the Trust Territory. Olkeriil now also asserts that Lots BL 170, 012 and 013 became public lands through the wrongful acquisition of the Trust Territory Government.

STANDARD OF REVIEW

[¶15] The Land Court’s factual findings are reviewed for clear error, and its conclusions of law are reviewed *de novo*. *Kebekol v. KSPLA* 22 ROP 32, 40 (2015). The Land Court’s factual determinations will be set aside for clear error, that is, “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 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).

ANALYSIS

1. *Service of Process*

[¶16] It appears from the record that Appellant Olkeriil representing Remed Lineage was not served with notice of the August 8, 2016 or the August 8, 2017 hearings. The case, however, is fraught with myriad parties and claims, and several of those have at one time or another represented Remed Lineage. For example, Benjamin Adelbai, before he withdrew his claim on behalf of Remed Lineage, was served with Notice of a Status Conference on February 4, 2016. Moses Uludong was served on behalf of Remed Lineage with an Order Setting the Hearing Date on February 19, 2016, as was the attorney for the heirs of Adelbai Remed. Rosania Masters,

representing Remed Lineage, was served with the same Order Re: Further Hearing as Olkeriil on October 25, 2017.

[¶17] Furthermore, the Land Court appears to have been extremely accommodating of parties that were not prepared to present their claims at the earlier hearings. Ngerchemuul Clan was the only claimant prepared to present its claim at the August 8, 2016 hearing, prompting the Land Court to allow other claimants time to prepare their evidence and witnesses for presentation at a later hearing. An even later hearing was added when the Land Court discovered Kerungil Augustine's claim, which had been timely filed but misplaced, in order for Kerungil to present her claim. At this latest hearing on December 28, 2017, Rosania Masters appeared and requested that she be able to present her claim on behalf of Remed Lineage. Though, as the court noted, her claim should have been presented at the earlier hearing in August 2017, the court accommodated Masters and allowed her to present at the December hearing.

[¶18] It appears that while Olkeriil was not served with enough notice to be prepared for the first hearing, he did present his claim at the second hearing and had notice of the third hearing. Remed Lineage was well represented by many different claimants throughout the case, and there was ample opportunity for Olkeriil to properly prepare and present his claim.

2. *Validity of Claim*

[¶19] The original 1988 claim filed by Ebas Ngiraloi on behalf of Remed Lineage was a claim for the return of public lands.

[¶20] Article XIII, Section 10 of the Constitution provides for the return of public land to the original owners when the land was acquired "by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration." Palau Const. Art. XIII, § 10. A claimant bringing a claim for the return of wrongfully acquired public lands must show that "(1) the claimant is a citizen who has filed a timely claim; (2) the claimant is either the original owner of the claimed property, or one of 'the proper heirs'; and (3) the claimed property is public land which became public land by a government taking that involved force or fraud, or was not supported by either just compensation or adequate

consideration.” *Omechelang v. Ngchesar State Pub. Lands. Auth.*, 18 ROP 131, 134 (2011); *Markub v. Koror State Pub. Lands Auth.*, 14 ROP 45, 47 (2007).

[¶21] The Land Court found that Remed Lineage did not show that the lineage was the original owner or proper heir of the original owner and was “completely mute on the element of wrongful taking.” Decision 17. Furthermore, the lineage did not “acknowledge or address the status of Lot 011, i.e., whether it was public or non-public land, but presented evidence as if its claim was a claim of superior title.” *Id.* Remed Lineage did not file any superior title claim for any of the lots.

[¶22] As noted by the Land Court, it has been held that “a party that files only a return of public lands claim may not prevail upon a superior title theory at the Land Court hearing if it has not actually filed a superior title claim.” *KSPLA v. Idid Clan*, 22 ROP 66, 69 (2015). In addition to Lots 170 and 012, Remed Lineage likewise failed to provide any evidence to support the claim that Lot 013 is part of the lineage’s larger property. The lineage cannot prevail on a superior title theory when no superior title claim was filed for any of the lots.

[¶23] On appeal, Appellant provided no additional evidence that would prove that the Land Court erred in its adjudication. No evidence showing any of the lots in question were wrongfully acquired by the government has been presented on behalf of Remed Lineage, and no superior title claims were filed on its behalf. Moreover, Olkeriil was provided the opportunity to be heard at the Land Court. Any error in failing to provide him with some notice during the Land Court process is immaterial, as it does not change the outcome of Remed Lineage’s claim in any way. *See Ngiraiwet v. Telungalek re Emadaob*, 16 ROP 163, 166 (2009) (explaining Appellate Division will not reverse Land Court determination where Land Court error has no bearing on denial of appellant’s claim).

CONCLUSION

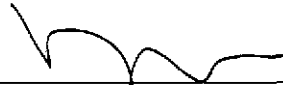
[¶24] Appellant Olkeriil appeared at the Land Court hearings on behalf of Remed Lineage and Ebas Ngiraloi’s 1988 claim. Though records show that Olkeriil was not served with notice of the August 8, 2016 hearing, he was

given ample opportunity to be heard at later hearings on Remed Lineage's claim. His appeal on grounds of insufficient notice fails.

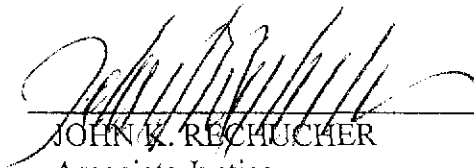
[¶25] Olkeriil did not file a separate claim for superior title. He purported to represent Ebas Ngiraloi's 1988 claim, which was a claim for the return of public lands. Because the lineage did not prove the elements required for a return of public lands, the claim fails.

[¶26] The Land Court's holding is **AFFIRMED**.

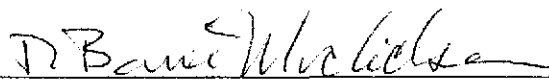
SO ORDERED, this 10th day of December 2018.



ARTHUR NGIRAKLSONG
Chief Justice



JOHN K. RECHUCHER
Associate Justice



R. BARRIE MICHELSEN
Associate Justice