IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

NGARAMEKETII/RUBEKUL KLDEU, TEREKIEU CLAN, and JONATHAN NGIRMEKUR SKED, represented by Miriam Kual
Appellants,
v.
KOROR STATE PUBLIC LANDS AUTHORITY,
Appellee.

Cite as: 2016 Palau 27
Civil Appeal No. 15-004
Appeal from LC/B Nos. 10-026, 10-027, 10-028, 10-042

Decided: December 5, 2016

Counsel for Appellants
Ngarameketii/Rubekul Kldeu .....Moses Y. Uludong
Terekieu Clan.....Raynold B. Oilouch
Jonathan Ngirmekur Sked.....Masami Elbelau
Counsel for Appellee .....Natalie Durflinger

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
KATHLEEN M. SALII, Associate Justice
KATHERINE A. MARAMAN, Associate Justice

Appeal from the Land Court, the Honorable C. Quay Polloi, Senior Judge, presiding.

OPINION

PER CURIAM:

[¶ 1] This appeal arises from the Land Court's award of land in the Itechetii area of Iyebukel Hamlet, Koror State ("the lands") to Koror State Public Lands Authority ("KSPLA"). Appellants Ngarameketii/Rubekul Kldeu ("NRK"), Terekieu Clan, and the representatives of Jonathan Ngirmekur Sked ("Sked") dispute the land court's findings, each claiming that the court should have found in favor of their return of public lands claim. For the reasons that follow, we **AFFIRM**.

BACKGROUND

[¶ 2] This appeal concerns ownership of two sets of worksheet lots, all of which are currently public lands. NRK and Terekieu Clan appeal the Land Court's determination with respect to Worksheet Lots Nos. 40482, 40483, 40484, 40485, 40488 and 40490.[1] Sked appeals the Land Court's determination with respect to Lot Nos. 032 B 03A and 032 B 03B. We set forth below the factual findings of the Land Court that are relevant to these appeals.

[¶ 3] The Land Court found that these lots were all part of the area called Itechetii which were owned by Appellant Terekieu Clan before Palau was colonized by foreign occupying powers. Land Court Decision at 3 ("Decision"). At some point on or before 1924, a dispute between the Ibedul (head of the Idid Clan) and the Tucherur (head of the Terekieu Clan) resulted in the Terekieu Clan being divested of its lands by Idid Clan, many members of Terekieu Clan fleeing to Aimeliik, and Ibedul Tem taking over the title of Tucherur for himself. *Id.* at 4, 12. In 1924, now Ibedul-Tucherur Tem gifted a

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[1] Terekieu Clan's brief indicates it is appealing the Land Court's determination for eight of the nine plots at issue before the Land Court (the above listed lots plus Lot Nos. 032 B 03A and 032 B 03B). Terekieu Br. at 5. However, its briefing only addresses alleged errors in the determination of ownership for the six lots listed above. In particular, it does not dispute, or even mention, the Land Court's finding that Terekieu Clan had forfeited any claim it may have to Lot Nos. 032 B 03A and 032 B 03B by failing to file a timely claim as required by 35 PNC § 1309(a). Land Court Decision at 12. Since Terekieu Clan does not dispute the land court's finding for these two lots, we consider its appeal only as to the six lots for which it has alleged error. *See Suzuky v. Gulibert*, 20 ROP 19, 22 (2012) ("[T]he burden of demonstrating error on the part of a lower court is on the appellant.")

NRK appears to appeal the Land Court's determination for Lot No. 40345 in addition to the six lots listed above. NRK Br. at 4. However, the Land Court found that the three Tochi Daicho lots on which NRK bases its claims correspond to only the six above listed worksheet lots. Decision at 4 n.9, 6. NRK does dispute or mention this finding. Since NRK argues only the Land Court's erred in its determination that it sold Tochi Daicho Lot Nos. 571-573, we consider its appeal only as to the six lots which the land court found were part of Tochi Daicho Lot Nos. 571-573. *See Suzuky*, 20 ROP at 22.

plot of Terekieu Land to his wife Serchelid Idelkei ("Idelkei"), through which Appellant Sked claims lot nos. 032 B 03A and 032 B 03B. *Id.* at 4, 6. At some point between 1924 and 1936, Terekieu Clan "gave" the majority of the land which is the subject of these cases to Koror Village "without payment and under protest." *Id.* at 4. That land was then registered in 1941 in the Tochi Daicho as owned by Koror Village, specifically Tochi Daicho Lots 571, 572, and 573, through which Appellant NRK now claims this land. *Id.*

[¶ 4] While the Tochi Daicho was being compiled, there were ongoing discussions between the Koror chiefs and Japanese interests regarding sale of Koror Village land to a Japanese company called Nanyo Boeki Kabushiki Kaisha ("NBKK"). *Id.* at 5. The Land Court found that the Koror chiefs sold this land for 30,000 yen on or about 1942. *Id.* at 5, 11. The Land Court also found that Idelkei sold the majority of her land to NBKK in 1942 for 4,135 yen, retaining a small portion of land which is not contained in the lots at issue in this matter. *Id.* at 13-14. The Land Court rejected Appellants' return of public land claims for the lots at issue in this appeal since it found that Terekieu Clan had been divested of its interests in these lands by Idid Clan, and that the Koror chiefs (NRK's predecessor in interest) and Idelkei (Sked's predecessor in interest) had both voluntarily sold the lots at issue to NBKK.

STANDARD OF REVIEW

[¶ 5] "We review the Land Court's conclusions of law de novo and its findings of fact for clear error." *Kebekol v. Koror State Pub. Lands Auth.*, 22 ROP 38 ¶ 40 (2015). Under clear error review, "[a] lower court's finding of fact will be deemed clearly erroneous only when it is so lacking in evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion." *Id.*

DISCUSSION

[¶ 6] Appellants argue that the Land Court erred when it rejected their return of public lands claims for some or all of the lots at issue before the

Land Court.[2] The majority of the issues raised are attacks on the Land Court's factual determinations; Appellants argue that the Land Court did not have enough evidence to conclude that title was divested, land was sold, or agreed upon consideration was paid. Terekieu Clan's appeal also raises a question of law as to whether the Land Court erred by making factual findings which it argues are inconsistent with a land case regarding an adjacent parcel that it argues should have been treated as preclusive.

[¶ 7] Factual determinations are reviewed for clear error, the Land Court's findings only need to be "supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made." *Espong Lineage v. Airai State Pub. Lands Auth.*, 12 ROP 1, 4 (2004). An appellant cannot establish clear error by merely explaining what findings it believes the Land Court should have made and drawing the Court's attention to the evidence which supports those proposed findings. In addition, the appellant must set forth all evidence explicitly relied on by the Land Court, as well as any other evidence that supports the disputed Land Court findings, and explain in detail why this evidence does not support the findings the Land Court adopts, or is more consistent with the findings Appellant argues in favor of. To the extent an appellant argues that the Land Court should have disregarded a piece of evidence, the appellant must also show why crediting that evidence was clearly erroneous, since "we defer to the credibility determinations of the Land Court in the absence of clear error." *Rengechel v. Uchelkeiukl Clan*, 16 ROP 155, 162 (2009).

[¶ 8] "[A]n appeal that merely re-states the facts in the light most favorable to the appellant and contends that the Land Court weighed the evidence incorrectly boarders on frivolous." *Ngiraked v. Koror State Pub. Lands Auth.*, 2016 Palau 1 ¶ 8 (quoting *Koror State Pub. Land Auth. v. Giraked*, 20 ROP 248, 250 (2013)). Because such borderline frivolous challenges "provide no meaningful opportunity to develop the law," we have indicated that "an appellate court should not hesitate to conserve its resources

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[2] NRK advanced both superior title and return of public land theories before the land court, but does not challenge the Land Court's rejection of its superior title claim on appeal.

by disposing of [these] appeal[s] in a summary fashion." *Ngarameketii/Rubekul Kldeu* v. *Koror State Pub. Lands Auth.*, 2016 Palau 19 ¶ 22. Therefore, we will only address legal arguments and factual challenges which have at least the possibility of merit; the remaining factual challenges will be disposed of in a summary fashion.

I. Terekieu Clan's Appeal

[¶ 9] Terekieu Clan asserts that "there is absolutely no evidence anywhere in the record to support the Land Court's finding that Appellant '*gave*' *Itechetii* to Koror Villiage," and therefore Terekieu Clan never lost title and must have been the legal owner at the time NBKK took ownership of the properties at issue in this appeal. Terekieu Clan Br at 9 (emphasis in original). Terekieu Clan argues NBKK or related Japanese entities acquired its property without just compensation or adequate consideration because the purchase price was paid to the Koror chiefs, not to Terekieu Clan:

> There is no evidence that Appellant conveyed or sold *Itechetii* to Koror Village or anybody else for that matter. Instead, the evidence shows that *Itechetii* was forcefully taken from Appellant and that Appellant clan members had to move out of said land. The Koror chiefs then sold it to a Japanese company and received money. But Appellant never received any money. Therefore, pursuant to Art. XIII, Section 10 of the Palau Constitution, *Itechetii* must be returned to Appellant.

Terekieu Clan Opening Br at 14.

A. Issue Preclusion

[¶ 10] Terekieu Clan argues that the doctrine of issue preclusion requires the Land Court to hold that the land at issue here was owned by it and was then taken by the Japanese without compensation. Issue preclusion, also known as collateral estoppel, provides that "when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Restatement (Second) of Judgments § 27 (1982) ("Restatement"). However, issue preclusion is not appropriate when the party asserting

preclusion "has a significantly heavier burden than he had in the first action." Restatement § 28 (4). Furthermore, "if reasonable doubts exist as to what issue was originally adjudicated, issue preclusion should not be applied." *Salii* v. *Terekiu Clan*, 19 ROP 166, 171 (2012).

[¶ 11] Terekieu Clan argues that *In re George B. Harris Elementary School site*, Case No. LC/B 99-01 (April 4, 2001) ("*Harris Elementary*"), which found that land adjacent to the plots at issue in this case was taken from the Terekieu Clan by the Japanese without compensation, requires the Land Court to hold that the land at issue in this case was also taken from Terekieu Clan by the Japanese without compensation because "the parcel of land that was subject of [*Harris Elementary*] is part of *Itechetii* [and] the instant appeal deals with ownership of the remaining portion of *Itechetii*." Terekieu Clan Br. at 13. We note that Harris Elementary did not find that "Itechetii" was taken from Terekieu Clan without compensation, it only concluded that "Terekieu Clan was the owner of the "Iybukl side" of the George B. Harris Elementary School site and that the Japanese government acquired this land without payment of just compensation or adequate consideration to Terekieu Clan." *Harris Elementary* at 29. In essence, Terekieu Clan asks us to hold that when several parcels of land are part of a larger area of land that is collectively known by (and claimed as) a single name, the determination as to the first parcel of land should be preclusive as to all subsequent parcels of land (assuming the parties to each action are the same). We reject this proposed rule, since it requires us to assume that Itechetii can only have a single owner. Larger areas of land can be subdivided, as the Land Court found Itechetii was between 1924 and 1936, and it was not necessary for the *Harris Elementary* court to determine what happened to the entirety of Itechetii in order to determine ownership of a parcel within the Itechetii area. In other words, issue preclusion does not apply because a finding regarding the ownership of all of Itechetii was not "essential to the judgment" in *Harris Elementary*. Restatement § 27.

[¶ 12] Furthermore, issue preclusion is also inapplicable because Terekieu Clan's burden of proof is higher for the six lots at issue in this appeal than it was in *Harris Elementary*. In order to prevail on their return of public lands claim, Terekieu Clan must establish that it owned the land at the time it was acquired by the Japanese. *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*,

16 ROP 222, 224-25 (2009). Terekieu Clan argues that it never transferred ownership, so it needs to rebut the presumption that the Tochi Daicho registration listing Koror Village as the owner of these lots was accurate by presenting clear and convincing evidence. *Children of Masang Marsil v. Napoleon*, 18 ROP 74, 78 (2011). Since Terekieu Clan's burden to prove ownership in *Harris Elementary* was only preponderance of the evidence, that decision cannot be preclusive to the ownership determination in this action. *See* Restatement § 28 (4).

B. Factual Challenge

[¶ 13] Having addressed Terekieu Clan's legal argument we turn to their factual challenge to the Land Court's findings. To prevail on its return of public lands claim, Terekieu Clan needs to prove that it owned the lots at issue at the time the land was acquired by the Japanese. 35 PNC § 1304 (b). Since the Tochi Daicho registration for these lots lists the owner as Koror Village, Terekieu Clan's burden on appeal is to establish that the Land Court clearly erred by not holding that Terekieu Clan had presented clear and convincing evidence to overcome the Tochi Daicho presumption.

[¶ 14] The Land Court received conflicting testimony from various witnesses concerning ownership and use of Itechetii prior to the beginning of the Trust Territory administration. Based on this testimony, it found that prior to about 1924, Terekieu Clan owned the lots at issue, but that at some point between 1924 and 1936, ownership was transferred to Koror Village. The Land Court's findings are also supported by a Japanese map produced around 1936 identifying these lots as "Koror Land," and by the fact that the land was listed as owned by Koror Village in the Tochi Daicho. Based on evidence which supported both Terekieu Clan's pre-1924 ownership and Koror Village's post 1936 ownership, the Land Court reasonably concluded that a transfer of some kind took place. It was not necessary for the Land Court to determine the precise details of the transfer to find that the Tochi Daicho correctly listed Koror Village as the owner of these lots. However, the Land Court's finding that Terekieu Clan "gave *Itechetii* without payment and under protest," a euphemism to describe what was likely a forceful taking of Itechetii by Ibedul Tem, is at least one plausible outcome of the 1924 dispute between Idid Clan and Terekieu Clan. Decision at 10. Having reviewed the record, we conclude that the Land Court's finding that the Terekieu Clan did

not own the relevant parcels at the time of the sale of those parcels to the Japanese is not clearly erroneous.

[¶ 15] Terekieu Clan argues that this land was taken from Terekieu Clan without just or adequate compensation because the money from the sale of Tochi Daicho Lot Nos. 571-573 was paid to the Koror chiefs, not Terekieu Clan. Terekieu Clan Br. at 14. We note that the Land Court rejected Terekieu Clan's return of public lands claim not because it found that a wrongful taking did not occur, but because "the earlier taking of Terekieu land by Koror Village, even if by force, was the act of a local entity and not that of a previous occupying power." Decision at 10. To the extent Terekieu Clan is challenging this legal determination, we agree with the Land Court's holding that the wrong suffered by Terekieu Clan is not redressable under Article XIII, § 10 of the Palau Constitution or 35 PNC § 1304 (b) because those provisions only apply to wrongful takings "by previous occupying powers of their nationals."

II. Sked's Appeal

[¶ 16] Sked central assertion is that the Land Court erred by finding that "just compensation" was paid under the contract by which Idelkei (Sked's predecessor in interest) sold the lands at issue to NBKK. In particular, Sked argues that Idelkei and her family did not receive the full 4,135 yen due under the contract by which she sold her land. Sked Br. at 10. Instead, he argues that only 800 yen in cash was actually paid, with an additional 4,000 yen "being evidenced by either a postal savings account book or [one or more certificates] of postal savings deposit which were destroyed during the war." *Id.* at 14. Sked argues that 800 yen in cash does not constitute adequate compensation under 34 § 1304 (b) "as it was substantially less than the agreed upon contract price," and that "the subsequent destruction of the savings account books or certificates made the funds unusable," so the 4,000 yen paid in that manner should not be considered. *Id.*

[¶ 17] Sked argues that "[a]s a conclusion of law[,] the question of whether or not an original owner received just compensation should be reviewed *de novo*," but does not argue that 4,135 or 4,800 yen is inadequate consideration. Sked Br. at 10. What Sked is actually disputing is the Land Court's factual finding that "Idelkei likely received the 4,135 yen contract

price," which we review for clear error. Decision at 14. The Land Court based this finding of fact on court records submitted by Sked showing that this claim was made in the 1950's by Debelbot, brother to Idelkei's adoptive son to whom she had given her interest in the land she had not sold to NBKK. The Land Court noted that "there is no language permitting partial or installment payments" in the contract, and that the contract of sale was stamped as approved, which indicates that payment was made.[3] *Id.* at 13. The Land Court also noted that Idelkei gave a sworn statement in that proceeding and "confirmed that Debelbot gained [the] ownership interest [Idelkei had previously given to Debelbot's brother] but did not corroborate Debelbot's claim that only 800 yen was paid for the land [that Idelkei sold]." *Id.*, Miriam Ex. 5 at R-66. Having reviewed the record, we conclude that the Land Court's finding that there was a voluntary sale of land by Idelkei for the stipulated price of 4,135 yen is not clearly erroneous.

III. NRK's Appeal

[¶ 18] NRK asserts that the [t]here was no witness or other credible evidence to support [the] finding that a sale transaction took place except for three statements made separately over 14 years later," which NRK asserts must be false for various reasons. NRK Br. at 7. NRK places particular weight on the fact that "[no] receipt or contract of sale or any other document was produced in the hearing to corroborate and authenticate the sale . . . ," arguing that it is "hard to accept that the Japanese[,] famous for being detailed and meticulous[,] . . . could be so careless as not to execute and record a [land transfer document] for such a enormously large land for a major project from the top Koror chiefs." *Id.* at 9. Based on these assertions, NRK argues that land court erroneously found that NRK sold its land in 1942 for 30,000 yen, arguing instead that NRK continued to own the land until it was taken "by the TTPI and KSPLA . . . during the American time and later

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[3] This finding is based on a February 21, 1953 memorandum from Land Title Officer D.W. LeGoullon, which states: "I also have the Japanese contract of sale in this case which carries the stamp of approval from the District Administration at that time. It is my understanding that this stamp is placed on such documents only after completion of a transaction, in other words, receipt in full of the contract price." Miriam Ex. 5 at R-24.

for housing lease without knowledge and approval of the [NRK].” *Id.* at 11. NRK acknowledges that there was some evidence presented that Itechetii was “use[d] for housing or farming by the Japanese,” but claims that this evidence was “refuted by [NRK] witnesses.” *Id.* at 10. NRK argues that the lots at issue were never owned by the Japanese, and that its land was wrongful taken when “the Trust Territory Government during the American administration and later KSPLA took over and leased the land . . . without the knowledge and consent of [NRK] and Ibedul and without compensation.”

A. Tochi Daicho Presumption

[¶ 19] NRK argues that “[n]o clear and convincing evidence was ever produced in the hearing to disprove or overcome the [Tochi Daicho] listing through the alleged sale and conveyance to a Japanese company.” NRK Br. at 11. However, the Tochi Daicho presumption is inapplicable in this return of public lands case because by bringing such a claim, “the claimant acknowledges that an occupying power acquired the land but attempts to prove that the acquisition was wrongful.” *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 168 (2004). And even if NRK was bringing a superior title claim, the Tochi Daicho presumption does not require proof of a subsequent sale by clear and convincing evidence:

> The Tochi Daicho presumption is typically applied to create a firm starting point from which private claimants can establish a chain of title. But, because the Tochi Daicho does not—and logically cannot—speak to what occurred after its compilation, a Tochi Daicho listing has no relevance when the parties agree who owned the land at the time the Tochi Daicho was compiled and the dispute relates only to subsequent events.

Koror State Pub. Lands Auth. v. Idid Clan, 2016 Palau 9 ¶ 21 (internal citations omitted). In short, the Tochi Daicho presumption is irrelevant because neither NRK nor KSPLA dispute the accuracy of the Tochi Daicho at the time it was made.[4]

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[4] NRK also argues that if the land was sold in 1942, then the Tochi Daicho would have been updated to reflect this fact. However, for this argument to have even the possibility of merit NRK would need to have provided

B. Factual Challenge

[¶ 20] Having addressed NRK's legal misunderstanding, we turn to NRK's factual claim, which we review for clear error. NRK argues that we should hold that the land court clearly erred in finding that a sale occurred because no official record of sale was introduced into evidence, and that the documentary evidence which supports the sale gives dates of "about 1938 to 1940," which does not support the Land Court's finding that a sale occurs in 1942. NRK Br. 7-9. However, these documents are not actually inconsistent with a 1942 sale, because the dates they give are either *approximate* dates or are dates when Japanese interests were *negotiating to buy the land*, not when the sale occurred. Also, while an official record of sale would be excellent evidence that a sale occurred, the absence of such a record is not proof that a sale did not occur. In addition, there was testimony that Itechetii was used by the Japanese, which supports the finding that it was the Japanese, not the Trust Territory Government, which first exercised ownership of the property. Having reviewed the record, we conclude that the Land Court's finding that Koror Village, through its chiefs, sold this land to a Japanese company for 30,000 yen is not clearly erroneous.

[¶ 21] NRK concludes its brief with a frivolous attack on KSPLA for "engage[ing] in self interest by claiming land that should serve the benefit of the beneficiary." NRK Br. at 12-13. According to NRK, KSLPA is violating its fiduciary duty to the people of Koror by appearing in this case: "[t]he action of KSPLA in claiming the land against [NRK which is the] owner[] listed in the Tochi Daicho, is in a direct opposition [to] and a violation of its duty and obligation as a trustee." *Id.* at 13. This accusation is both meritless and irrelevant. NRK's attack is meritless because it misstates KSPLA's obligations as trustee, as KSPLA explains:

> There is no duty owed to [NRK] beyond the duty owed to all people of Koror. KSPLA has a fiduciary duty . . . to preserve and hold public

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evidence that other Tochi Daicho listings were updated when sales took place during the same time period. *See In re lots in Iyebukel Hamlet*, 21 ROP 129, 142-43, n.14 (Land Ct. 2014) (finding that the Tochi Daicho was not amended to reflect a change of ownership, and identifying an additional incident where this happened).

> lands for the benefit of all people of Koror . . . . [A]ll income arising from the management of public lands is deposited into the [Koror] State treasury . . . . In appearing as a claimant in this case, KSPLA represent[s] the interests of the people of Koror as public land is held in trust for their benefit.

KSPLA Br. at 16. In sum, KSPLA is acting in conformity with its fiduciary duty by opposing NRK's attempt to take private ownership of lands which are currently owned by the people of Koror. NRK's attack is also irrelevant because, even if it was true, it would have no bearing on whether NRK has met its burden to show that it meets the elements of a return of public lands claim, nor would it demonstrate error on the part of the Land Court.

CONCLUSION

[¶ 22] For the foregoing reasons, the decision of the Land Court is **AFFIRMED**.

SO ORDERED, this 5th day of December, 2016.