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

**NGARAMEKETII/RUBEKUL KLDEU, HIROMI NABEYAMA, OCHOB NGIRACHEDENG, and ROIS CLAN,**
*Appellants*,
**v.**
**KOROR STATE PUBLIC LANDS AUTHORITY,**
*Appellee*.

Cite as: 2017 Palau 13
Civil Appeal No. 15-009
Appeal from LC/B Nos. 14-001 through 14-080

Decided: March 16, 2017

Counsel for Appellants
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BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
DENNIS K. YAMASE, 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 the 80 worksheet lots that make up Ngerchong Island ("Ngerchong"), one of the Rock Islands in Koror State, to Koror State Public Lands Authority ("KSPLA"). Appellants Ngarameketii/Rubekul Kldeu ("NRK") and Hiromi Nabeyama & Ochob Ngirachedeng ("Nabeyama") claim that the Land Court erred in dismissing their superior title claims to some or all of Ngerchong, while Rois Clan claims the Land Court erred in dismissing its Return of Public Lands ("ROPL") claim. For the reasons that follow, we **AFFIRM**.

**Background**

[¶ 2] The Land Court's decision provided a detailed overview of what is known of pre-contact Palau and the relevant events showing ownership of the Rock Islands prior to 1899 when Germany took over Palau. For the purpose of this appeal, the Land Court's relevant findings are that, as a result of Koror's conquests in the pre-contact era, most of the Rock Islands (including Ngerchong) were virtually abandoned by their previous occupants and had become public domain properties of Koror." In particular, the members of the Rois Clan who lived on Ngerchong abandoned the island when they were permitted to resettle on Koror as a reward for assisting Koror in conquering its enemies. As a result the people of Koror as represented by their traditional leaders, the NRK, were the original owners of Ngerchong when it was wrongfully taken by the Germans and the Japanese.

[¶ 3] The Land Court found that Ngerchong became public lands through more than one form of wrongful taking by the Germans and Japanese. These wrongful takings included: (1) A taking by force where Germany claimed ownership of the rock islands through a unilateral declaration; (2) a purported purchase of Ngerchong by a German Phosphate Company for the money bead "Bachel Mechut," which was likely stolen from a local spirit shrine and was not just compensation even if paid, but it is not clear if the payment was made, or if it was paid, that it was paid out to the original owner of Ngerchong at the time; and (3) another forceful declaration by the Japanese that government lands under Germany now belonged to the Japanese Emperor.

[¶ 4] NRK first filed a claim to Ngerchong in 2006 when it submitted claims for all of the rock islands in Koror State. When proceedings commenced before the Land Court, NRK brought its claim under a superior title theory. NRK introduced testimony and exhibits to support its theory that it controlled Ngerchong prior to contact with foreigners and to show that NRK has never conveyed its title to Ngerchong to any government or private entity. In its closing arguments, NRK continued to argue that it had never lost its title to Ngerchong. *See, e.g.*, NRK Closing Arg. at 45 (Dec. 31, 2014) ("[t]he Klobak Era Oreor had proven . . . that the ownership of Ngerchong remained in them throughout the tumultuous period of colonization of Palau

by foreign governments and continued to remain in them up to the present time in spite of attempts by the Trust Territory Government to gain control of the island . . . .”). The NRK did not present a ROPL claim to the Land Court.

[¶ 5] The Land Court stated in its decision that several claimants, including NRK, do not meet the deadline for filing claims to public lands being January 1, 1989 as set by 35 PNC § 1304(b)(2). The Land Court went on to state that “but for the late filing [of NRK’s claim in 2006], this Court would have likely awarded ownership to the NRK because on the merits they have the strongest case.” Land Court Decision at 19. The Land Court held that except for NRK, none of the private claimants were the original owners of Ngerchong at the time it was wrongfully taken. Having held that none of the private claimants prevailed, the Land Court held that Ngerchong remains a public land of Koror administered by Koror State Public Lands Authority.

**Standard of Review**

[¶ 6] “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**

[¶ 7] Appellants argue that the Land Court erred when it rejected their superior title or return of public lands claims for some or all of the lots at issue before the Land Court. NRK attempts to bring substantially the same legal challenge to the application of the January 1, 1989 deadline for filing ROPL claims under the Land Claim Reorganization Act (codified as 35 PNC § 1304(b)(2)) as it attempted to bring in *Ngarameketii/Rubekul Kldeu* v. *Koror State Pub. Lands Auth.*, 2016 Palau 19. We will address this issue first.

[¶ 8] The remaining issues raised by Appellants are attacks on the Land Court’s factual determinations. These determinations are reviewed for clear error, so “an 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 borders on frivolous." *Kebekol*, 22 ROP at 46 (quoting *Koror State Pub. Land Auth. v. Giraked*, 20 ROP 248, 250 (2013)). Such borderline frivolous challenges "provide no meaningful opportunity to develop the law," and we have stated that "an appellate court should not hesitate to conserve its resources by disposing of [these] appeal[s] in a summary fashion." *Ngarameketii/Rubekul Kldeu*, 2016 Palau 19 ¶ 22.

## I. NRK's arguments regarding the LCRA's filing deadline are waived.

[¶ 9] NRK first argues that the Land Court erred by applying the LCRA's January 1, 1989, deadline for filing ROPL claims to its claim for Ngerchong. These arguments are substantially the same as the arguments NRK made in *Ngarameketii/Rubekul Kldeu*, 2016 Palau 19 ("*Ulong Case*"). In the *Ulong Case*, we held that NRK had waived these arguments "regarding the LCRA deadline by failing to raise them before the Land Court in the first instance. . . ." 2016 Palau 19 ¶ 16. The procedural posture of this case is identical to the *Ulong Case* in all relevant respects, and we reach the same conclusion here.

[¶ 10] Absent an exception, "[a]rguments not raised in the Land Court proceedings are waived on appeal." *Rechucher v. Lomisang*, 13 ROP 143, 149 (2006). Like in the *Ulong Case*, NRK did not make a ROPL claim before the Land Court, basing its claim solely on a theory of superior title. Like in the *Ulong Case*, "[o]ur review of the record reveals no instance in which NRK . . . presented any argument concerning a constitutional right to raise an ROPL claim outside the context of the LCRA." 2016 Palau 19 ¶ 13 n.8. Like in the *Ulong Case*, NRK "had every opportunity below to make the argument[s] it now asserts on appeal, and it failed to do so" in this case. *Id.* at 12. For the reasons explained in the *Ulong Case*, 2016 Palau 19 ¶¶ 12-16, NRK has waived these arguments by failing to make them to the Land Court, and "has presented no persuasive reason for us to forego application of the waiver rule to the arguments it seeks to raise for the first time in this appeal." 2016 Palau 19 ¶ 16. Since these arguments are waived, we do not review them.

**II. NRK's remaining arguments are meritless.**

[¶ 11] In addition to its arguments regarding the LCRA filing deadline, NRK also argues that the Land Court erred in awarding KSPLA Ngerchong because the fee simple title to the island was never passed from NRK to any of the previous takers, even accepting the Land Court's findings of fact regarding unlawful takings by the Germans and the Japanese. NRK's argument is somewhat difficult to follow, but it appears to be arguing that the evidence regarding the taking of the rock islands by the Germans and the Japanese is vague, and does not explicitly state that either power was taking the land in fee simple, so we should hold that the foreign occupying powers only took possessory interest. NRK also argues, without citation to any legal authority, that "[a] taking by force, if it were true, is an illegal act that does not pass title," making what seems to be a legal argument that the German and Japanese takings were legally ineffective to divest NRK of its fee simple title. NRK Opening Br. at 12.

[¶ 12] Having reviewed the record, we conclude that the Land Court's findings of fact regarding the German and Japanese takings of the rock islands are supported by evidence in the record. To the extent NRK is arguing that the Land Court did not find that the fee simple title to Ngerchong was divested from NRK and transferred to the Japanese or German Governments, it is simply incorrect. To the extent NRK is asking us to re-examine the evidence in the record and overturn a factual finding of the land court, we are prohibited from doing so by the clear error standard of review. *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 227 (2009). "Where evidence is subject to multiple reasonable interpretations, a court's choice between them *cannot* be clearly erroneous." *Kebekol v. KSPLA*, 22 ROP 38, 40 (2015).

[¶ 13] To the extent that NRK is asking us to hold that the Land Court committed a legal error because the German and Japanese wrongful takings could not, as a matter of law, have divested NRK of its fee simple title, we reject this argument as inadequately briefed. "Whether any act was legally wrong should be decided according to the law as it was at the time the act was done." *Wasisang v. Trust Territory*, 1 TTR 14, 15-16 (1951). NRK has failed to provide any citation to applicable German or Japanese law from the

time those powers governed Palau, or explained why taking fee simple title to the rock islands in the manner described by the land court would have been void under those laws. "It is not the Court's duty to interpret this sort of broad, sweeping argument, to conduct legal research for the parties, or to scour the record for any facts to which the argument might apply. As we have previously noted, '[a]ppellate courts generally should not address legal issues that the parties have not developed through proper briefing.'" *Idid Clan v. Demei*, 17 ROP 221, 229 fn. 4 (2010) (quoting *Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 50 (2006)).

## III. Nabeyama's challenges to the Land Court's factual determinations are meritless.

[¶ 14] Hiromi Nabeyama and his mother, Ochob Ngirachedeng, have been living on Ngerchong for over 50 years, and have operated a hotel on Ngerchong since at least 1966. Nabeyama claims that his mother Ochob Ngirachedeng received Lots 008, 024, 031, 044, 047 and 055 as a gift in the 1950s from Rechebei Ngiraikesiil, who bought these lands from the Japanese Administration. The Land Court explicitly rejected all claims based on the theory that Ngerchong was government land that was purchased from the Japanese Administration, finding that this theory was undermined by the fact that no one asserted it in any of the documentation produced by the 1950s controversy regarding the ownership of Ngerkebesang and Ngerchong Islands. Nabeyama's briefs do not mention this finding or explain why it is incorrect, and having reviewed the record, we conclude that it is not clearly erroneous.

[¶ 15] Nabeyama also claims Lots 001 and 002 based on an alleged gift from Ibedul Ngoriakl to his mother Ochob Ngirachedeng in 1968. *Id.* Recognizing that the Ibedul could not have gifted public land, Nabeyama's brief maintains that Ngerchong Island never became public land, and that instead, it belonged to the rubak of Koror, who then dispersed the lots that Nabeyama is claiming, to Ochob Ngirachedeng. However, Nabeyama provides no argument to support this statement, and as we concluded in examining NRK's claim, the Land Court's finding that Ngerchong was

wrongfully taken by the Germans and then the Japanese is not clearly erroneous.[1]

[¶ 16] Nabeyama's brief concludes with an argument that Nabeyama has superior title because no one denies that he and his mother occupied and possessed this lots from the 1950s until today. Viewed as an adverse possession claim, this claim fails because "one cannot obtain title against the government based upon a claim of adverse possession." *PPLA v. Salvador*, 8 ROP Intrm. 73, 76 (1999) (reversing Land Court award of public land to individuals who had occupied public land for 50 years). As a superior title claim this argument fails because, as discussed above, the Land Court found that the individuals who allegedly conveyed title to Nabeyama's mother had no title to convey.[2]

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[1] We also note an inherent inconsistency in Nabeyama's arguments with respect to the two sets of lots: If Ngerchong was taken by foreign occupying powers then Ibedul Ngoriakl's gift would be impossible, as the Ibedul (and the NRK) had no title to convey. However, if there was no taking by foreign occupying powers, then Ngiraikesiil's gift would have been impossible, as Ngiraikesiil would not have been able to purchase title to those lots from the Japanese Administration.

[2] Nabeyama appears to be arguing that the fact he and his mother have been using these lots for over 50 years is, by itself, sufficient to support his superior title claim. In support of this argument, he cites *Elewel v. Oiterong*, 6 ROP Intrm. 229, 233 (1997) and *Mesubed v. Iramek*, 7 ROP Intrm. 137, 138-39 (1999), two cases in which we upheld awards of land to claimants who occupied the land they claimed for decades against the claim of family members who had never occupied the land. In both cases, all claimants agreed who previously owned the land, the only dispute was which family member had inherited the land upon the previous owner's death. *Elewel* at 6 ROP Intrm. at 229, *Mesubed* at 7 ROP Intrm. 138. Extensive occupation of land did not create an ownership right in either case, it was only *evidence* that the land had been bequeathed to the occupier upon the death of the original owner. *Elewel* at 6 ROP Intrm. at 233; *Mesubed* at 7 ROP Intrm. at 139.

## IV. Rois Clan's challenges to the Land Court's factual determinations are meritless.

[¶ 17] Rois Clan challenges the Land Court's factual determinations that Ngerchong was virtually abandoned by the Rois Clan such that when the Germans came in the early 1900's, Ngerchong had long been under the jurisdiction of the NRK. Rois Clan's argument, presented in narrative form without citations to the record, is essentially that there is no evidence that Rois Clan transferred ownership of its "ancestral home" to NRK.[3] Having reviewed the record, we conclude that Rois Clan's version of events is, at best, one possible interpretation of what took place in pre-contact Palau, with the Land Court's findings of fact presenting an alternative reasonable interpretation. As noted above, "[w]here evidence is subject to multiple reasonable interpretations, a court's choice between them *cannot* be clearly erroneous." *Kebekol v. KSPLA*, 22 ROP 38, 40 (2015). Therefore, the Land Court's finding that Ngerchong was owned by NRK by the time of the arrival of the Germans is not clearly erroneous.

## Conclusion

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

**SO ORDERED**, this 16th day of March, 2017.

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[3] Rois Clan also makes the puzzling argument that "[u]nder the terms honored by modern Palau, the Rois Clan has never been compensated in any way for their loss of their island." Rois Clan Opening Br. at 6. However, "the terms [i.e., laws] honored by modern Palau" are not relevant to factual determinations of land ownership in pre-contact Palau. Even if they were, Rois Clan *was* compensated with land on Koror, which was presumably more desirable than Ngerchong Island (as shown by the fact that the Rois Clan chose to migrate there).