

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

TECHUBEL CLAN,
Appellant,
v.
DEBKAR CLAN and ELIBOSANG EUNGEL,
Appellees.

Cite as: 2017 Palau 15
Civil Appeal No. 16-005
Appeal from LC/N Nos. 14-081, 14-107 through 14-114, 14-119, 14-122,
14-123, 14-125, 14-136

Decided: March 16, 2017

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Counsel for Appellees
 Debkar ClanE. Matsutaro
 Elibosang EungelJ. Uduch Sengebau Senior

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
 JOHN K. RECHUCHER, Associate Justice
 DENNIS K. YAMASE, Associate Justice

Appeal from the Land Court, the Honorable Salvador Ingereklii, Associate Judge, presiding.

OPINION

PER CURIAM:

[¶ 1] This appeal arises out of a dispute over ownership of private land in Airai State. The Land Court determined that Appellees Debkar Clan and Elibosang Eungel had stronger claims to title for certain lots than Appellant Techubel Clan. For the reasons below, we affirm.¹

¹ Appellee Debkar Clan requested oral argument. We determine that oral argument is unnecessary to resolve this matter. *Cf.* ROP R. App. P. 34(a).

BACKGROUND

[¶ 2] In the fall of 2015, the Land Court heard claims to 14 lots of private land located in Ngeruluobel village, Airai State. The lots are centrally located within the village, a few hundred feet north of the main road going to the Palau International Airport. Claims to various lots were made by several individuals and clans of Ngeruluobel village. However, only the claims of three parties are relevant to this appeal: the claims of Techubel Clan, Debkar Clan, and Elibosang Eungel.

[¶ 3] At the hearing, representatives of Techubel Clan claimed that all 14 of the lots had been owned by the clan since time immemorial. The original members of the clan left Ngeruluobel village some two hundred years ago, entrusting their properties to relatives as caretakers. Sometime in the 1970s, a descendent of these caretakers, Iterir, contacted the descendents of the original members of Techubel Clan. Iterir asked the clan descendents to return to the village to re-establish themselves and look after their properties. Members of Techubel Clan returned and established residences and farms within the area of Ngeruluobel village. Some of these uses went unchallenged; others became the subject of disputes with other clans. A relative of Iterir, David Tarimel, testified that Iterir had caused his family to establish their residence on land owned by Techubel Clan and that Iterir had shown his family the clan's other nearby properties, including some of the disputed lots.

[¶ 4] Representatives of Debkar Clan claimed that they had owned 6 of the lots since time immemorial.² The lots corresponded to lands known as *Ikidel*, *Liang*, *Ngelaod*, and *Ur*, which lands shared a common boundary with the Ngerteluang Clan lands of *Orsoulkesol* and *Dub* to the northwest. Several of the lots were farmed by different individuals with the consent of Debkar clan without objection. On one of the lots, Obak ra Debkar Clarence Kitalong built a "hangout place" and later a facility for manufacturing hollow blocks.

² The other 8 of the 14 lots were claimed by and ultimately awarded to Ngerteluang Clan. No claimant appealed those determinations of ownership.

[¶ 5] One of the lots claimed by Debkar Clan and Techubel Clan was also claimed by a representative of the late Elibosang Eungel, Omtai Ringang. Eungel's claim was that this lot had been previously owned by Dibeck Sinaichi. Sinaichi had owned several lots in Ngeruluobel village, some of which were conveyed to the Trust Territory Government in 1969 to build an access road for a rock quarry. In 1982, Sinaichi conveyed his remaining land in the village to Roman Tmetuchl. In turn, in 1987, Tmetuchl conveyed these lands to Eungel in exchange for lands that Eungel owned elsewhere.

[¶ 6] In January 2016, the Land Court issued its decision resolving these competing claims. The court first observed that Airai does not have a Tochi Daicho listing of its lands. Given the absence of such listings, the court explained that the decision necessarily turned principally on the credibility of testimony presented by the claimants themselves. Much of this testimony was hearsay, as the original witnesses to past transactions and events were deceased or unavailable.

[¶ 7] The court first found the evidence supported Eungel's claim to individual ownership of the one lot.³ The record contained documentary evidence, in the form of a registered Warranty Deed, of a transfer of land from Sinaichi to Tmetuchl in 1982. The record also contained a 1987 recorded agreement ("Telbiil") between Tmetuchl and Eungel, by which Tmetuchl transferred his Ngeruluobel property to Eungel in exchange for certain of Eungel's properties located elsewhere. The court concluded that this and other testimony established that Eungel had the strongest claim to title for this lot and accordingly issued a determination in his favor.

[¶ 8] For the remaining 5 lots,⁴ the Land Court weighed the competing testimony of Techubel Clan and Debkar Clan along with the other record evidence. The court first made a number of general findings. The court found that Iterir had contacted the descendants of Techubel Clan to return to the Ngeruluobel area and re-establish a presence there. The court also found that Debkar Clan had for many years "exercised complete authority and

³ The lot is No. 05N001-041 (BLS Worksheet No. 2005 N 001).

⁴ The lots are Nos. 05N001-002, -030, -037, -039, & -040 (BLS Worksheet No. 2005 N 001).

control” over certain lands in the village. In other words, both clans owned lands in the village; the question for the Land Court was which clan had the strongest claim to title for these 5 specific lots.

[¶ 9] The Land Court ultimately found that “Techubel Clan does have properties within Ngeruluobel but the lots before the Court are not among them.” The court found that the 5 lots were part of the named lands controlled by Debkar Clan and that Debkar Clan had “allowed others to use the land without objection from anyone until 2003 after Obakradebkar Clarence Kitalong was served a notice of eviction from members of Techubel Clan.” The parties stipulated dismissal of that suit in 2005, pending an ultimate determination of ownership by the Land Court. The court specifically found that Techubel Clan’s “building of structures and cultivation of” these specific lots all occurred “after 2005.” The court found that this use had not been objected to by Kitalong or Debkar Clan because Kitalong stopped going to the lots after the 2005 dismissal and was not aware that anyone had begun utilizing the lots.

[¶ 10] The Land Court also discounted David Tarimel’s testimony that Iterir had shown him these specific lots and told him that they belonged to Techubel Clan. The court credited other evidence that Iterir had appointed Twelbang to bear the title Uong, and in that capacity had shown Twelbang the extent of Techubel Clan’s lands in Ngeruluobel village. Twelbang was the undisputed Uong for many years until his passing in 1982, and the court found it more probable than not that he was more knowledgeable about the scope of the clan properties than Tarimel. The Land Court noted that outside parties had negotiated with other clans for use of some of the lots Tarimel asserted Iterir had shown him; Uong Twelbang was aware of these negotiations and had made no objections or sought to be involved. The Land Court found that this fact suggested that he did not consider those lands to be Techubel Clan property.

[¶ 11] The court went on to find that members of Debkar Clan or people related to them had performed various activities on these specific lots without objections from anyone outside the clan. Two of the specific lots had been farmed by Kikuo Remeskang and his family. Permission to do so had been given by Ngemelas, a member of Debkar Clan, and there had been no

objections from anyone. The court also found that there was no evidence that anyone else farmed these lots during this time. A third lot had been cultivated by Toyomi Singeo with the consent of Siabal, another member of Debkar Clan, again without outside objection. Additionally, Youlsau Tarimel, a member of Techubel Clan, had cultivated land within certain of these lots, but had done so “with the consent of Debkar Clan and no one raised any objection.” The court found these actions were all indicative of ownership by Debkar Clan.

[¶ 12] The Land Court further found that Obak ra Debkar Clarence Kitalong had been active on another of the specific lots at issue. Kitalong had built a community “hangout” structure on the lot and later used it to manufacture hollow blocks. The court found that the lot at issue had no other structures on it at the time. Kitalong continued to use this lot until the eviction dispute with members of Techubel Clan in 2003-2005. The court found that Kitalong stopped going to the area after 2005 to avoid unnecessary confrontation with Techubel Clan members until the Land Court could formally adjudicate ownership of the lots.

[¶ 13] The Land Court ultimately concluded that as between the claimants before it, Debkar Clan had the stronger claim to title to the specific 5 lots in dispute. The court accordingly issued determinations of ownership in favor of Debkar Clan. Techubel Clan timely appealed these determinations, along with the determination of the one lot awarded to Eungel.

STANDARD OF REVIEW

[¶ 14] We review the Land Court’s factual findings for clear error. *ASPLA v. Esuroi Clan*, 22 ROP 4, 5 (2014). Conclusions of law are reviewed de novo. *Id.*

DISCUSSION

[¶ 15] The claimants below each brought superior title claims for the lots at issue. In a superior title claim, the “the claimant asserts he holds the strongest title to the land claimed.” *KSPLA v. Idid Clan*, 22 ROP 21, 26 (2015). The Land Court will award ownership to the claimant advancing the strongest claim. *Eklbai Clan v. KSPLA*, 22 ROP 139, 146 (2015). Techubel

Clan appeals the Land Court's determination of who had the strongest claim to these lots.

[¶ 16] While it is clear that Techubel Clan disagrees with the result below, its appellate brief does not well define any specific errors in the decision of the Land Court. The brief indicates that there are two issues presented: (1) "Whether the Land Court abused its discretion when it declined to consider relevant factors that should have been given weight at trial which would have resulted in a favorable decision for Appellant" and (2) "Whether the Land Court committed error when it made findings clearly against the logic and effects of the facts and circumstances." On their own, these questions represent generalized challenges to the Land Court's overall factual findings. As this Court has consistently reminded counsel and litigants, "factual challenges that amount to little more than conclusory statements about the Land Court's discretionary task of weighing the evidence border on the frivolous." *Kebekol v. KSPLA*, 22 ROP 38, 45 (2015).

[¶ 17] The substantive argument sections of Techubel Clan's brief contain three separate sections that at least in part present legal challenges. These sections do not line up well with the two "issues presented," arguing instead that: (1) other land in the area has been awarded to Techubel Clan; (2) Appellees' "inaction necessitates a finding in favor of [Techubel Clan]"; and (3) Techubel Clan has acquired ownership through adverse possession. Apart from bearing scant relation to the statement of the "issues presented," some of these arguments lack citation to relevant legal authority and do not sufficiently define the legal errors that the Land Court is asserted to have made. "The burden of demonstrating error on the part of a lower court is on the Appellant." *Rudimch v. Rebluud*, 21 ROP 44, 46 (2014). "It is not the Court's duty to interpret broad, sweeping argument, to conduct legal research for the parties, or to scour the record for any facts to which the argument might apply." *Id.* (citation omitted). We conclude that this appeal could be summarily disposed of for not adequately identifying and briefing the asserted errors in the decision below. However, Techubel Clan's arguments demonstrate certain common and recurring misconceptions in appeals before us that we feel compelled to briefly address them below.

I. Ownership of Nearby Land.

[¶ 18] Techubel Clan first notes that prior court adjudications determined that it owns other lots in the area of Ngeruluobel village. Techubel Clan does not argue that any of the prior adjudications involved these specific lots, only that they involved “lands in the surrounding area.” The clan argues that the “sound reasoning” of those decisions, however, “must logically follow that contiguous lots in one area are owned by one clan as the clan would have established itself in a large area and not in scattered, separate camps.”

[¶ 19] The brief does not cite to any legal authority for the proposition that ownership of an adjacent lot is conclusive evidence of ownership of contiguous lots. We are not aware of any such authority. Even if we were to presume that ownership of adjacent lots is highly probative evidence of ownership of these lots—and, as discussed below, such a presumption is problematic—it is still not clear that Techubel Clan would prevail. The brief’s use of the phrase “surrounding lands” hints at the notion that Techubel Clan’s other lands completely encircle the lots at issue here. This is not the case. The lots here adjoin lands owned by a number of parties. As just one example, the lots on appeal are contiguous with lots owned by Ngerteluang Clan; if Techubel Clan’s argument is correct, it is unclear why the lots should not be awarded to Ngerteluang Clan as part of the “logic” that “contiguous lots in one area are owned by one clan.”

[¶ 20] The problem with a presumption that ownership of one lot is highly probative evidence of ownership of any adjacent lot is illustrated by the facts here. It is indisputable from the record that a number of clans, including at least Techubel, Debkar, and Ngerteluang, all own lands in and around Ngeruluobel village. Other lands are individually owned and there appears to be at least some public government land. A given lot of unregistered land might be adjacent to any number of other lots, each owned by different entities. It is unclear which of those contiguous landowners a court should presume owns the unregistered lot.

[¶ 21] Put another way, Techubel Clan’s argument defies meaningful, impartial application. If the Land Court had awarded some of the lots to it, then presumably Debkar Clan—or any other area clan—could have appealed and argued that it owned other lots in the surrounding areas and that therefore

the Land Court had erred. Under Techubel Clan’s formulation, there is no reasoned way for an adjudicating court to choose which of three, four, or more nearby landowners should reap the benefit of such a rule.

[¶ 22] We do not imply that ownership of adjacent lots cannot be relevant evidence of ownership; indeed, unchallenged ownership of a large and uninterrupted swath of land completely encircling a smaller and inaccessible piece of land might be highly probative evidence of ownership of the encircled piece of land. But that is not the factual situation here and we reject Techubel Clan’s first argument.

II. Inaction by Other Claimants.

[¶ 23] Techubel Clan’s second argument is that “in all the time since the return” of Techubel Clan to the village, neither Debkar Clan nor Eungel “assert[ed] their supposed ownership of these lands.” This argument hints at theories of waiver, estoppel, or laches, although the clan’s brief lacks meaningful legal development of these theories. The gist of the argument is that because Debkar Clan, for example, has not acted as if they owned the lots at issue here, they should not now be allowed to claim them.

[¶ 24] Even assuming this argument might otherwise be valid, it fails here because its premise—inaction by Debkar Clan and Eungel—is simply not supported by the record. Techubel Clan’s premise is also directly contrary to explicit factual findings made by the Land Court. For example, the court found that “Debkar clan have for many years exercised complete authority and control over lands *Liang, Ur, Iki del, and Ngelaod*, comprising [the specific lots in dispute].” Any legal argument that relies on Debkar Clan not asserting ownership rights must at a minimum establish that the Land Court erred when it found that Debkar Clan had in fact done exactly that “for many years.” But Techubel Clan does not directly challenge this factual finding at all and we see no reason to disturb it.⁵ The clan’s “inaction” argument cannot succeed here given the established facts.

⁵ Techubel Clan’s one direct factual challenge is to the Land Court’s decision to credit Uong Twelbang’s knowledge of the scope of Techubel Clan’s holding over the knowledge of David Tarimel’s. “Nearly two hundred published Palauan cases discuss the credibility of witnesses and evidence.

III. Adverse Possession.

[¶ 25] Techubel Clan’s final argument is that they should prevail under a theory of adverse possession. This argument has two significant problems. The first is that it does not appear that the clan ever raised this issue before the Land Court. We generally will not consider arguments raised for the first time on appeal. *See, e.g., Rudimch*, 21 ROP at 45-46 (“The Court has consistently refused to consider issues raised for the first time on appeal. Arguments raised for the first time on appeal are deemed waived.”).

[¶ 26] Regardless, even assuming the argument is not waived, the second problem is that Techubel Clan has not shown it meets the standard to own the lots at issue through adverse possession. To prevail on such a theory, the proponent must establish a twenty-year period of adverse possession. *See, e.g., Minor v. Rechucher*, 22 ROP 102, 110 (2015). Techubel Clan asserts that “it is an undisputed fact that Techubel Clan has physically occupied the lands at issue for at least the last thirty (30) years.”

[¶ 27] The assertion that its possession of the lots at issue for thirty years is “undisputed” is not supportable. Without belaboring the point, Debkar Clan certainly disputed that Techubel Clan had physically occupied the lots continuously over that period of time. Further, the Land Court made an explicit finding that Techubel Clan had not begun using these lots until after 2005, which forecloses any claim based on adverse possession. The lower court found that with respect to Techubel Clan’s use of these lots, the evidence “showed that the building of structures and cultivation of land occurred after 2005.”

They are all but universally consistent that the weighing and evaluating of testimony is precisely the job of the trial judge, who is best situated to make such credibility determinations. A party seeking to set aside a credibility determination must establish extraordinary circumstances for doing so.” *Eklbai Clan v. KSPLA*, 22 ROP 139, 145 (2015) (citations omitted). Even if Techubel Clan could establish “extraordinary circumstances” here—and we are skeptical—the clan does not explain how prevailing on this challenge would in any meaningful way undermine the Land Court’s main factual findings.

[¶ 28] Techubel Clan does not address this factual finding at all and we see no reason to disturb it. Under the facts found by the lower court, at best Techubel Clan’s adverse possession clock runs from sometime in 2005, well short of the twenty-year period. In addition, there are numerous specific elements to an adverse possession claim. “The claimant must show that the possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right” for the twenty-year period. *Petrus v. Suzuky*, 19 ROP 37, 39 (2011) (citations omitted). “A party claiming title by adverse possession bears the burden to prove affirmatively each element of adverse possession.” *Id.* at 39-40. Techubel Clan’s brief does not explain how the record establishes that it has met any—let alone all—of these elements. The clan’s adverse possession argument necessarily fails.

CONCLUSION

[¶ 29] As explained above, Techubel Clan has not met its burden to establish error on the part of the Land Court. Accordingly, we **AFFIRM** that court’s decision and determinations.

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