IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

TMEWANG RENGULBAI, ANASTACIO RENGUUL, and AIRAI STATE PUBLIC LANDS AUTHORITY,
Appellants,
v.
GHANDI BAULES and EMERAECH BAULES, Appellees,
Appellees.

Cite as: 2017 Palau 25
Civil Appeal No. 16-017
Appeal from SP/N 09-024

Decided: July 26, 2017

Counsel for Appellant
Rengulbai.....J. Uduch Sengebau Senior
Renguul.....Tamara Hutzler
Airai State Public Lands Authority.....Mariano W. Carlos
Counsel for Appellees.....Raynold B. Oilouch

BEFORE: DENNIS K. YAMASE, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Land Court, the Honorable Rose Mary Skebong, Associate Judge, presiding.

OPINION

PER CURIAM:

[¶ 1] Three parties appeal the Land Court's determination awarding ownership of Lot 013 N 02 to the Appellees, Ghandi and Emeraech Baules, as successors-in-interest to their father, Baules Sechelong. Appellant Tmewang Rengulbai challenges the Land Court's failure to order a site visit, as well as its factual determinations regarding whether a portion of his land, Metuker, extends into Lot 013 N 02. Because the record does not reflect that he requested a site visit, and because the Land Court's factual determinations regarding Rengulbai's claim of ownership are not clearly erroneous, we **AFFIRM** the Land Court's determination with respect to Rengulbai. Appellant Anastacio Renguul challenges the Land Court's finding that he failed to prove an error in lot numbers 003 N 11 and 013 N 02, and contends

that the Land Court failed to discharge its duty to him as a *pro se* litigant. Because Renguul fails to demonstrate clear error, and fails to identify what additional actions the Land Court should have taken and what difference those actions would have made, we **AFFIRM** the Land Court's determination with respect to Renguul. Appellant Airai State Public Lands Authority ("ASPLA") challenges the Land Court's failure to consider its 1983 document under the proper standard governing conveyances. Because the Land Court failed to expressly rule on the 1983 document's sufficiency to convey the land at issue, we **VACATE AND REMAND** for consideration of whether the 1983 document effectuated a valid conveyance.

BACKGROUND

[¶ 2] The land at issue is immediately adjacent to the Palau International Airport in Airai. In 1975, the Palau District Land Commission designated Airai Municipality for land registration. During the land registration process, on June 22, 1978, Baules Sechelong filed an application for registration of a parcel of land known as Ngerimel. He monumented this claim on September 15, 1978. His claim, as monumented on that day, covers Lots BL-101 and BL-102, as well as the Northern portions of Lots BL-104 and BL-105. Lots BL-101 and BL-102 would later be combined to form Lot 013 N 02, the lot at issue.[1]

[¶ 3] On December 7, 1978, the Land Commission held Formal Hearing 19, during which time it took evidence regarding ownership of various lands in Airai Municipality, including the lot at issue. Baules Sechelong appeared at the hearing and testified that the lot at issue was formerly village land, but that during the Japanese period the Airai chiefs sold it to him. Other witnesses corroborated Sechelong's testimony regarding the sale. No action was taken on Sechelong's claim for nearly eight years following Formal Hearing 19. Finally, on September 25, 1986, the Land Commission issued a determination of ownership in favor of Sechelong.

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[1] The Northern portions of Lots BL-104 and BL-105 were combined to form Lot 003 N 11. Lot 003 N 11, which falls within the airport's boundary, was the subject of condemnation proceedings by the Trust Territory government in Civil Action No. 72-79, and is therefore not at issue in this case.

[¶ 4] A series of appeals followed, with the matter being remanded each time on procedural grounds relating to the intervention of additional parties. During the intervening years, the Land Commission was replaced by the Land Claims Hearing Office, which was then replaced by the Land Court. Following the most recent remand, the Land Court held another hearing, on May 11, 2016, at which all parties were permitted to either present their claims for the first time or to supplement the record with additional evidence for their claims. Appellees, the successors-in-interest of Sechelong, relied on the written record from Formal Hearing 19, which resulted in the original 1986 determination in favor of Sechelong. The Land Court credited the evidence on record from that hearing and found in favor of Appellees. The theories pursued by the various appellants will be discussed separately in addressing their challenges to the Land Court's determination of ownership.

STANDARD OF REVIEW

[¶ 5] A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. *Idid Clan v. PPLA*, 2016 Palau 7 ¶ 6. Matters of law we decide *de novo*. *Id.* Exercises of discretion are reviewed for abuse. *Id.* We review findings of fact for clear error. *Id.* Under this standard, we view the record in the light most favorable to the trial court's judgment, and the factual determinations of the lower court will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless this Court is left with a definite and firm conviction that a mistake has been made. *Whipps v. Idesmang*, 2017 Palau 24 ¶ 5; *Itolochang Lineage v. NSPLA*, 14 ROP 136, 138 (2007).

DISCUSSION

I. Tmewang Rengulbai

[¶ 6] Appellant Rengulbai presented evidence at trial that he inherited land known as Metuker from his father. He further attempted to prove that at least some portion of Metuker falls within Lot 013 N 02. Specifically, he testified at trial that the corners of Metuker were marked by cement monuments placed during the Japanese occupation of Palau. He said that his father had shown him these four markers in 1995 or 1996, and that the

Southwest marker was within Lot 013 N 02. He further testified that the marker in Lot 013 N 02 was later destroyed during construction on the land and is no longer there.

[¶ 7] The Land Court found Rengulbai's ownership of Metuker to be undisputed, but rejected his claim on the basis that he failed to prove that any portion of Metuker falls within Lot 013 N 02. The Land Court noted that Rengulbai's testimony regarding the cement marker within Lot 013 N 02 was the only evidence suggesting that any part of Metuker fell within the lot. It chose not to credit this testimony because the testimony was not only uncorroborated but undermined by the rest of the evidence on record. The Land Court noted that a team from the Land Commission surveyed and monumented the area containing Lot 013 N 02 in 1978, between the Japanese administration and the construction that supposedly destroyed the Japanese monument marking Metuker's Southwest corner. The maps resulting from the survey indicate locations where preexisting Japanese monuments were found, but the maps do not indicate any such monuments within Lot 013 N 02. Based on this, and the fact that Rengulbai's testimony regarding the monument found no other corroboration in the record, the Land Court chose not to credit Rengulbai's testimony that a portion of Metuker falls within Lot 013 N 02.

[¶ 8] Rengulbai argues on appeal that the Land Court should have ordered a site visit to investigate whether there is a Japanese cement marker within Lot 013 N 02, and that its failure to do so constituted an abuse of discretion. However, before turning to whether the Land Court abused its discretion, we must first determine whether this purported failure is subject to review at all.

[¶ 9] We will accept, for purposes of this appeal, Rengulbai's assertion that the denial of a request for a site visit would be reviewable on appeal for abuse of discretion. *Cf. Singeo v. Ngarrard State Pub. Lands Auth.*, 14 ROP 102, 104-05 (2007) (characterizing the Land Court's refusal to re-open the record or to hold further evidentiary hearings as a matter of discretion). But the record does not reflect any request for a site visit by Rengulbai or even a suggestion that a site visit would be appropriate. This makes the present case unlike those where we have reviewed for abuse of discretion lower courts' denials of various requests.

[¶ 10] Recently, a party seeking reversal of a Trial Division judgment

argued that critical evidence was missing from the record because a key witness was sick on the day of trial and therefore unavailable to testify. We rejected this as a basis for appeal, noting that no request was made for a continuance and thus no error could be assigned to the trial court:

> [I]f Appellants were able to show that they requested a continuance or some other vehicle to allow them to present the testimony of Mike Renguul, and that such request was denied by the Trial Division, they could now argue on appeal that such denial was an abuse of discretion. But no such showing has been made and the unavailability of evidence is not a basis for appeal unless it is attributable to some error of the trial court.

Salvador v. Renguul, 2016 Palau 14 ¶ 22 (original emphasis removed). We see no reason to reach a different result here. When a matter is committed to the discretion of the trial court, and a litigant did not request that the trial court exercise that discretion, the litigant cannot properly assign error on appeal to the trial court's inaction. Having failed to request a site visit, Rengulbai cannot now assign error to the Land Court's failure to provide one.

[¶ 11] In addition to challenging the Land Court's failure to order a site visit, Rengulbai also poses a general challenge to the correctness of the Land Court's factual findings. In summary, Rengulbai contends that the Land Court should have viewed more favorably the evidence he introduced regarding the location of the Southwest corner of Metuker. In reviewing the Land Court's determination, we must respect that the Land Court enjoys "broad discretion in assessing credibility, weighing evidence, resolving ambiguities, making inferences, and employing a number of other practices peculiar to a trier of fact that must resolve factual disputes regarding events in the remote past while using suboptimal evidence." *Ngarameketii/Rubekul Kldeu v. Koror State Pub. Lands Auth.*, 2016 Palau 19 ¶ 21. Rengulbai's argument warrants the same summary response that the appellants in *Ngarameketii* received: "Having reviewed the record, we conclude that the Land Court's findings of fact that the appellant[] challenge[s] in this appeal were not clearly erroneous. That is that." *Id.* at ¶ 24.

II. Anastacio Renguul

[¶ 12] Appellant Renguul testified at trial that the lot at issue is part of the

land historically known as Llakl,[2] which he testified belonged to his mother. In order to corroborate his contention that the present land is part of Llakl, Renguul introduced the following evidence:

- Maps showing that the lot immediately South of Lot 013 N 02 is Lot 003 N 11, and that the lot immediately South of Lot 003 N 11 is Lot 003 N 12. (That is, from North to South: 013 N 02, 003 N 11, 003 N 12.)
- A determination of ownership from 1982 finding Lot 003 N 12 to be the land historically known as Llakl. (The land was awarded to Sechelong as trustee for the Ngebtuch Lineage.)
- Maps showing that Lot 013 N 02 and Lot 003 N 11 have shapes that fit together in such a way as to suggest they compose a single parcel of land.
- Sechelong's Application for Registration of Land Parcel, which mentions not only Ngerimel but also Llakl and land known as Oberaod in various places.
- A document showing that Sechelong received a payment from the Trust Territory government for Lot 003 N 12 when it was condemned as part of the Airai Airport Project.
- Testimony that Renguul was unable to find files for Oberaod or Llakl anywhere in the land records.

[¶ 13] Based on this evidence, Renguul argued that Lots 013 N 02 and 003 N 11 were supposed to be a single lot, numbered 003 N 11, but the Northern half had erroneously been separated and renumbered Lot 013 N 02. As a result, he contended, Sechelong was able to erroneously claim Lot 013 N 02 as his own, even though Sechelong actually owned only a much smaller piece of land adjacent to Lot 013 N 02. The Land Court was ultimately unpersuaded by this line of argument, finding that Renguul failed to prove the purported error. Because this is a question of fact, we review the Land Court's finding only for clear error.

[¶ 14] Under the clear error standard, we see no basis to reverse the Land Court's findings. The inferences Renguul seeks to draw from the evidence are speculative. Given the deferential nature of clear error review, we need not

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[2] "Llakl" is also spelled "Llakel" in some documents. We refer to it as "Llakl" here for consistency.

articulate at length the various ways in which each piece of evidence submitted by Renguul was open to alternative interpretations. It suffices simply to note that the record, taken as a whole, supports the Land Court's conclusion that Renguul does not hold title to Lot 013 N 02. Accordingly, the Land Court's finding to that effect is not clearly erroneous.

[¶ 15] Renguul argues in the alternative that, because he was a *pro se* litigant below,[3] the Land Court should have been more active in eliciting testimony or other evidence from him to support his claim. While we take no issue with the abstract proposition that courts owe a special duty to *pro se* litigants, we will not lightly presume that the Land Court has failed to discharge that duty. Here, the Land Court did in fact question Renguul to determine the basis for various assertions made in the course of his testimony, as did counsel for other parties. Renguul answered these questions and there is nothing in the record to suggest that the Land Court gave his answers inadequate consideration; rather, it simply remained unpersuaded. Renguul does not indicate what additional questions the Land Court should have asked, nor what additional evidence he might have presented in response to those questions. He does little more than assert in general terms that the Land Court could have done more to help him establish his claim. With nothing more than this unparticularized showing, there is simply no basis for concluding that the Land Court failed in the discharge of its duties.

III. Airai State Public Lands Authority

[¶ 16] The Airai State Public Lands Authority ("ASPLA") does not dispute that Sechelong owned Lot 013 N 02 when Formal Hearing 19 was held in 1978. However, it contends that Sechelong conveyed his interest in the lot to Airai State in 1983, and it therefore claims the land as the administrator of all public land in Airai State. It introduced at trial a document entitled "AGREEMENT," dated June 1, 1983, which is signed by Baules Sechelong and contains, *inter alia*, the following language:

> For good and valuable consideration given by Toshitake Suzuki, receipt whereof is hereby acknowledged by Senator Baules Sechelong, Senator Baules Sechelong agrees to and does hereby convey to Airai State in fee simple absolute all of that land located in

[3] He is now represented on appeal.

> and adjacent to the Airai State International Airport, Republic of Palau as shown on the attached map marked Exhibit A which [is] incorporated herein by reference.

[¶ 17] Although the map referenced in the document was subsequently lost, the Land Court found, based on the trial testimony of several witnesses, that Lot 013 N 02 was the land referred to by the document. This finding is not disputed on appeal. Notwithstanding its finding that Lot 013 N 02 was the subject of the 1983 instrument, the Land Court denied ASPLA's claim because "the evidence was simply insufficient to prove that Baules Sechelong transferred his ownership of Lot 013 N 02 to Airai State Government." In its analysis, the Land Court appears to have treated the instrument as mere extrinsic evidence of some separate contemplated future conveyance that did not come to fruition, rather than treating the instrument as a potentially valid conveyance in its own right. This was error.

[¶ 18] The mere styling of the 1983 instrument as an "agreement" does not preclude its operation as a valid conveyance. "Formality and exactness are not required to transfer property. It is not 'essential to the validity of an instrument as a deed . . . that it follow any exact or prescribed form of words.' All that is required is that the grantor sufficiently declare his intention to pass title." *Rengulbai v. Solang* 4 ROP Intrm. 68, 72 (1993) (quoting 23 Am. Jur. 2d *Deeds* § 17 (1983)). The language of the 1983 instrument, specifically the phrase "Senator Baules Sechelong agrees to and does hereby convey to Airai State in fee simple absolute all of that land located in and adjacent to the Airai State International Airport," sufficiently declares an intention to pass title. Accordingly, the 1983 instrument should have been independently evaluated to determine whether it in itself sufficiently conveyed Sechelong's interest in Lot 013 N 02 to Airai State, rather than as mere extrinsic evidence of some separate contemplated conveyance.[4]

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[4] Our case law has recognized formal requirements that an instrument must satisfy to constitute a valid conveyance: language indicating the grantor's present intent to pass title and sufficient identification of the land conveyed. *E.g.*, *Uchelkumer Clan v. Sowei Clan*, 15 ROP 11, 14-15 (2008); *accord* 23 Am. Jur. 2d *Deeds* §§ 12-13 (2013). As our case law has recognized, however, extrinsic evidence may be considered to clarify certain matters, such as identifying the land conveyed by a deed. *See, e.g.*, *Salii v.*

[¶ 19] As a result of its erroneous treatment of the 1983 instrument as mere extrinsic evidence of some unconsummated transfer, the Land Court made no express determination concerning whether the instrument and its execution met the requirements for a valid conveyance. Although some of these determinations can be made directly from the face of the document, other determinations—such as whether valid delivery was executed—require factual findings that the Land Court is best situated to make in the first instance.[5] *See Ueki v. Alik*, 5 ROP Intrm. 74, 76 (1995) ("The controlling factor is the intention of the grantor to make delivery. This is to be inferred from the circumstances preceding, attending and following the execution of the deed."). Accordingly, a remand is warranted for determination of whether the 1983 instrument effectively conveyed the land at issue.

[¶ 20] Appellees also present several alternative arguments not relied upon by the Land Court, urging that we affirm the Land Court's ultimate conclusion on one of these bases. Although we may affirm a trial court's judgment on bases other than those relied upon below, *Minor v. Rechucher*, 22 ROP 102, 105 (2015), it is not the Court's responsibility to transform a party's half-formed legal intuitions into a full-fledged legal analysis providing an alternate basis on which to affirm the judgment. *Cf. Techubel Clan v. Debkar Clan*, 2017 Palau 15 ¶ 17 ("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.").

Omrekongel Clan, 3 ROP Intrm. 212, 214 (1992); *accord Max v. Airai State Pub. Lands Auth.*, 18 ROP 155, 158 (Tr. Div. 2011) ("Parol evidence is admissible to resolve ambiguity and uncertainty in a lease document, or identify the property."). We have also recognized that effective "delivery" of the instrument is necessary to effectuate a conveyance. *Ueki v. Alik*, 5 ROP Intrm. 74, 76 (1995) (explaining the requirements for a valid "delivery").

[5] Appellees argue that the instrument's formal invalidity as a conveyance can be determined without further factual findings, since it is undisputedly neither notarized nor recorded. However, they fail to cite any statutory provisions operative at the time the agreement was executed imposing such requirements. Absent adequate legal citation, we will not consider this argument. *Obak v. Ngirturong*, 2017 Palau 11 ¶ 13 ("[A]ppellate courts generally should not address legal issues that the parties have not developed through proper briefing.").

None of Appellee's alternative bases for affirmance are sufficiently developed to warrant serious consideration.

[¶ 21] First, Appellees argue that ASPLA should not be allowed to pursue a theory of ownership that was not originally presented at the 1978 hearing. The only authority cited in support of this argument is *Aimeliik State Pub. Lands Auth. v. Rengchol*, 17 ROP 276, 281 (2010), where we noted that "[a]rguments should not be raised for the first time on appeal." This proposition is a far cry from the proposition Appellees need to establish for application in the current case. Here, the theory that Sechelong conveyed the land at issue to Airai State was both presented to and ruled on by the Land Court below. Further, the purported conveyance did not occur until after the original 1978 hearing. None of these issues are meaningfully addressed by Appellees' briefing.

[¶ 22] Second, Appellees argue that Airai State Government is the proper party to claim title under the 1983 agreement, rather than its public lands authority, ASPLA. In support of this proposition, Appellees cite a single Trial Division case noting that "[o]nly a party to a contract can be liable for breaching it." *Perrin v. Remengesau*, 11 ROP 266, 268 (Tr. Div. 2004). This, again, is a far cry from the proposition they need to establish for affirmance. Indeed, ASPLA is not seeking any remedy for breach of contract, but rather quite the opposite. Accordingly, we are not persuaded by this alternative basis for affirmance.

CONCLUSION

[¶ 23] Appellant Rengulbai has not identified any request in the record that the Land Court conduct a site visit, so he cannot now assign error to the Land Court's failure to do so. Further, the Land Court's factual findings with respect to Rengulbai were not clearly erroneous. Accordingly, we **AFFIRM** the Land Court's determination that Rengulbai failed to prove his claim.

[¶ 24] Appellant Renguul has not demonstrated clear error in the Land Court's finding that he failed to prove an error in lot numbers 003 N 11 and 013 N 02. Further, Renguul has not identified what additional specific actions the Land Court should have taken in discharging its duty to him as a *pro se* litigant, nor has he demonstrated what difference it would have made if the

Land Court had taken additional actions. Accordingly, we **AFFIRM** the Land Court's determination that Renguul failed to prove his claim.

[¶ 25] Appellant ASPLA is correct that the Land Court failed to consider whether the 1983 document was a legally valid conveyance in its own right, rather than mere evidence of some separate conveyance of property. Accordingly, we **VACATE AND REMAND** for a determination whether the document was effective to convey title to Lot 013 N 02. The Land Court may exercise its discretion in determining whether to permit additional challenges to the sufficiency of the instrument and whether to accept additional evidence.

SO ORDERED, this 26th day of July, 2017.