

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

**TEBELAK CLAN, WILLARD KUMANGAI,
ONGALK RA LLEKONG, ESTATE OF AICHI KUMANGAI,
and ESTATE OF MENGIDAB ONGESII,**

Appellants,

v.

**ESTATE OF DELANGEBIANG ADERKEROI,
ESTATE OF MOSES MOKOLL, the children of Dengir, namely
RIKEL, AGNES, and CHIBORA WASISANG, and
NGARDMAU STATE PUBLIC LANDS AUTHORITY.**

Appellees.

Cite as: 2017 Palau 27
Civil Appeal No. 16-010
Appeal from LC/H 15-00164 to 15-00174

Decided: August 8, 2017

Counsel for Appellants

Tebelak ClanM. Uludong
Willard Kumangai.....M. Uludong
Ongalk ra LlekongM. Uludong
Estate of Aichi Kumangai.....M. Uludong
Estate of Mengidab Ongesii.....Pro se

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Estate of Delangebiang AderkeroiU. Aderkeroi, Pro se
Estate of Moses Mokoll.....Pro se
Rikel, Agnes, and Chibora Wasisang.....J. U. Sengebau-Senior
Ngardmau SPLA.....F. Meriang, Pro se

BEFORE: R. BARRIE MICHELSEN, Associate Justice
DENNIS K. YAMASE, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] This appeal is from a Land Court decision resolving ownership of land in Urdmang Hamlet, Ngardmau State. The hearing involved 13 claimants and 19 lots of both private and public land. Several claimants filed notices of appeal. Tebelak Clan and Willard Kumangai (who testified that he is Arbedul ra Tebelak, the highest male titleholder of Tebelak Clan) jointly filed a notice of appeal and an opening brief. Aichi Kumangai filed a notice of appeal, pro se. Mengidab Ongesii filed a notice of appeal, pro se. Ongalk ra Llekong also filed a notice of appeal. Because Aichi Kumangai, Ongesii, and Ongalk ra Llekong failed to file briefs, their appeals are dismissed. ROP R. App. P. 31(c).

[¶ 2] Tebelak Clan and Willard Kumangai (“Kumangai”) appeal the determinations of ownership for Lots 2, 3, 4, 5, and 6.¹ Regarding some of the five lots, the joint brief contains conflicting statements regarding who is the real party in interest—Kumangai individually or Tebelak Clan, which he purports to represent. The brief states that “Appellant Tebelak appeals the award of [Lots 4 and 5]” and “also appeals the award of [Lots 2 and 3].” The brief also asserts that “Appellant Willard Kumangai appeals the awards of [Lots 4, 5, and 6].” Taken as written, the clan and the clan’s chief are both separately alleging that they own Lots 4 and 5. The brief concludes by asking that “the decision and determination of ownership of [Lots 2, 3, 4, and 5] be reversed and awarded to Tebelak Clan.” It appears that the clan is the real party in interest for at least Lots 2 and 3. It is unclear who the real party in interest is for Lots 4 and 5. Kumangai appears to be the real party in interest for Lot 6, although after initially noting his appeal on Lot 6, the brief’s argument section does not reference that lot at all. Because he offers no arguments for us to consider about Lot 6, his appeal with respect to that lot is denied. *See, e.g., Suzuky v. Gulibert*, 20 ROP 19, 21-24 (2012); *Idid Clan v. Demei*, 17 ROP 221, 229 n.4 (2010); *Dalton v. Borja*, 12 ROP 65, 75 (2005).

¹ Cadastral Lot Nos. 15H01-002 to -006 on BLS Worksheet No. 2015 H 01.

[¶ 3] For the reasons below, we affirm the determinations of the Land Court concerning Lots 2, 3, 4, and 5.

BACKGROUND

[¶ 4] In 1963, an agent of the High Commissioner of the Trust Territory executed a handwritten quitclaim deed to Tebelak Clan for about 80 hectares of land. The area was identified as Lot 15-211 and referred to as the Tebelak Clan homestead. The quitclaim deed included a sketch of the homestead and adjacent properties; the sketch depicted areas outside the homestead including the “Likong Lot” along the shoreline to the west of the Ngerdekus River and a “Pvt” lot to the east on the Irur River, separated from the homestead by “Gov’t Land.” The quitclaim deed also included various coordinates describing the boundary. At least some portions of the homestead appear to have been transferred from the clan to some of its individual members in the years since 1963.

[¶ 5] The Land Court identified several historical claims filed for Tebelak Clan. A clan representative filed a private lands claim to “*Ngetmerchong/Ngerdekus*” and a second return of public lands claim for “*Ngerdekus* Homestead, part of Lot 15-211.” Two other representatives separately filed return of public lands claims for “Tebelak Clan Homestead Lot 15-211.”

[¶ 6] At the hearing, the clan’s claims were initially presented by Marino Thomas. He testified that land known as *Irur* had been given by the chiefs of Ngardmau to Tebelak Clan in 1969 to be used for a school. The Land Court noted that Marino “said that he lived outside Palau for many years,” “supplied no further details about the claim for Tebelak Clan,” and requested that Willard Kumangai be allowed to discuss the claims because “Willard had more knowledge about the property than he did.”

[¶ 7] Kumangai “identified the lands claimed by Tebelak to be Lots [2, 3, and 7].” “He said these lots comprised the property called *Ngetmerchong*, which is a small area inside *Ngerdekus*; and that these three lots are part of Tebelak Clan’s homestead.” He further stated that the area contained a landing dock, burial platform, and taro paddies from the ancient past. He

“went on to withdraw Tebelak’s claim to [various other lots],” saying they “were identified as Tebelak’s claims by mistake.”

[¶ 8] Marino Thomas also later called a witness, Cleophas, who stated that Lots 4 and 5 were also within the 1963 homestead area. Cleophas disputed that these lots had been given to individuals at any point, disputing, as Kumangai claimed, that Lots 4 and 5 had been given to Kumangai as his individual property. Although the clan’s witnesses made contradictory statements, it appears at least one witness for the clan asserted that each of Lots 2, 3, 4, and 5, had been, and still were, clan land. (Lot 6 was claimed by Kumangai and not the clan.)

[¶ 9] The lots on appeal fall into two groups. Lots 2 and 3 were claimed by representatives of the clan as clan land within the homestead. The Land Court determined the lots were owned by the Estate of Delangebiang. Lots 4 and 5 were claimed by some representatives to be clan land within the homestead, but the clan’s purported chief, Kumangai, contended that the lands had been given individually to his relatives by the clan, and that later one of those relatives had given the land to him and his brother. The Land Court determined these lots were owned by the children of Wasisang.

STANDARD OF REVIEW

[¶ 10] “We review the Land Court’s factual findings for clear error.” *ASPLA v. Esuroi Clan*, 22 ROP 4, 5 (2014). “Where evidence is subject to multiple reasonable interpretations, a court’s choice between them cannot be clearly erroneous even if this Court might have arrived at a different result.” *Kebekol v. KSPLA*, 22 ROP 38, 40 (2015). Credibility determinations are generally the province of the trial court. *See, e.g., Eklbai Clan v. KSPLA*, 22 ROP 139, 145 (2015). “A party seeking to set aside a credibility determination must establish extraordinary circumstances for doing so.” *Id.* (citation omitted).

DISCUSSION

I. Lots 2 and 3

[¶ 11] Tebelak Clan witnesses testified that Lots 2 and 3 were part of the clan homestead. Beyond this testimony, little evidence specific to these two

lots was introduced by the clan. The lots were also claimed by Ongalk ra Llekong and the Estate of Delangebiang Aderkeroi.

[¶ 12] Delangebiang’s daughter, Ucherriang, testified that these two lots had been individually owned by a senior Tebelak Clan member named Toched before World War II. The land passed to Toched’s daughter, Ongerool, who was married to Renguul. They lived on the land and raised animals. Ongerool and Renguul eventually passed the land to Delangebiang, their adopted daughter. Ucherriang testified that she knew the property well because she and her family had used it. She testified that she had gone to the land with her father to collect coconuts. At some point her brother monumented the land.

[¶ 13] In addressing these claims, the Land Court first found that these lots were outside the Tebelak Clan homestead. The court noted the historical sketches of the homestead, including in the quitclaim deed, indicated an area of land between the homestead and the shoreline that was not included. This area appears to correspond to Lots 2 and 3. The Land Court found that Ucherriang’s testimony for her mother’s estate was credible, and noted her “very specific knowledge” of the lots. The court determined her mother’s estate owned these lots.

[¶ 14] Tebelak Clan’s arguments on appeal are not well defined in the clan’s brief. The clan appears to make two arguments about Lots 2 and 3. First, it asserts that the Land Court erred in finding that the lots were outside the homestead area. Second, it contends that the award of the lots to the Estate of Delangebiang was error because it required the land to have passed from a clan to a female member at some point, which “is not common.”

A. Homestead Area

[¶ 15] As stated by Tebelak Clan, the Land Court erred “in not considering the size of [the] homestead—81.36 hectares—in determining which lots are within [it].” This argument does not stand alone. What matters is where those 80+ hectares are located. In arguing that Lots 2 and 3 are within that area, the clan relies on various sketches of the homestead.

[¶ 16] In all the homestead depictions in the record, there is a tract of land between the homestead and the shoreline that is clearly excluded from the

homestead. That tract's boundaries resemble Lots 2 and 3. Attached to the clan's brief is a copy of the 1963 quitclaim deed sketch superimposed over the BLS worksheet.² Even in this depiction, however, the boundary of the homestead still excludes a significant portion of Lots 2 and 3. It is also unclear that the scale of the sketch and the worksheet are the same, that the superimposition is aligned properly, or how accurate the hand-drawn sketch should be considered. At best the clan can argue that it would not have been unreasonable for the court to find a part of those lots was within the homestead. On clear error review, the clan bears the burden to show that the Land Court was unreasonable in finding the lots outside the homestead. *See, e.g., Kebekol*, 22 ROP at 40. Given that all the sketches clearly depict land very similar in shape to Lots 2 and 3 outside of the homestead, the clan has not met this burden.

[¶ 17] Regardless, even establishing that the lots were originally within the quitclaimed area would not mean the clan necessarily prevails. A quitclaim deed may be considered evidence of ownership, but does not conclusively establish it. *See, e.g., Kikuo v. Ucheliou Clan*, 15 ROP 69, 74-75 (2008); *Sechedui Lineage v. Dmiu Clan*, 17 ROP 68, 72 (2010). The fact that the government quitclaimed its interest—if any—does not mean that all other interests were extinguished (or even that the clan's interest was legally most superior at the time). The deed, furthermore, was executed in 1963 and it is conceivable that portions of the homestead were conveyed to other parties in the half-century after the deed. This is in fact Kumangai's argument for ownership of Lots 4 and 5. He claims these were clan homestead land given to an individual, and later to him and his brother, sometime after 1965.

B. Delangebiang's Claim

[¶ 18] The clan also suggests that the Land Court should have denied Delangebiang's claim to Lots 2 and 3 because it is uncommon for clans to give land to female members. The clan cites no authority for this proposition. The argument also starts from the premise that the land originally belonged to the clan; given the Land Court's finding that these lots were never within the

² Attachment F to the clan's brief.

clan homestead, this premise is doubtful. Even assuming that it is correct, the clan offers no specific reason why the Land Court's finding that Delangebiang's great-grandmother came to own the lots is clearly erroneous. The clan's brief just asserts that Ucherriang's testimony for her mother's estate was "far fetched."

[¶ 19] The Land Court found Ucherriang's testimony to be credible and observed that she had "very specific knowledge" of the lots. The clan has not established any "extraordinary circumstance" to disturb the Land Court's credibility determination or shown that the other findings are clearly erroneous. *Cf., e.g., Eklbai Clan*, 22 ROP at 145.

II. Lots 4 and 5

[¶ 20] As noted, it is not entirely clear from the brief whether the clan or Kumangai (or both) are the real parties in interest for Lots 4 and 5. Kumangai testified that the clan was not claiming these lots. Other clan witnesses, however, testified that these lots were also clan lands. The Land Court appeared to consider Kumangai (and his brother) to be the real claimant. The brief states in different places that both the clan and Kumangai are appealing the determinations. The brief concludes by asking the Court to award Lots 4 and 5 to the clan.

[¶ 21] For purposes of this appeal, determining the real party in interest is unnecessary because whether the clan or Kumangai is the claimant, the brief establishes no error on the part of the Land Court. The Land Court explicitly found that Lots 4 and 5 were known as *Omuureng* and at one time were owned by a man named Sked. The brief does not challenge this finding. As to the clan, at least, this is probably a sufficient basis to affirm. The brief contains no argument or explanation for how the lots went from being Sked's land to clan property.

[¶ 22] As for Kumangai, he disputes how Sked's land was passed to his descendants. The relevant claimants agree that the land came to one of Sked's sons, Temengil. Kumangai argued that Temengil gave the land to his first wife, Dirratiou, as *olmesumech* [payment upon divorce] when Temengil left the area to marry another woman. Dirratiou is Kumangai's mother, and he and his brother claimed she gave the land to them. The adverse claimants,

various children of Dengir Wasisang, were represented by Gibbons Masahiro (the “Wasisang claimants”). They claim that Temengil and Dirratiou adopted a son, Ngirabeketei, and that Temengil gave him the land when he left. The Wasisang claimants trace their claim through Ngirabeketei.

[¶ 23] The crux of the dispute for the Land Court was thus whether Temengil gave the land to his first wife as *olmesumech* or gave it to his adopted son. The Land Court found the Wasisang claimants’ testimony credible and found it was “more reasonable that Temengil left his property for his son rather than giving it as *olmesumech*.” The court found that Kumangai’s testimony essentially stood alone and “needed corroboration to be credible.” The court noted that the “absence of corroboration about something as significant as *olmesumech* destroyed the reliability of [Kumangai’s] statement.”

[¶ 24] On appeal, Kumangai makes a number of assertions aimed at undermining the theory that the land was given to Ngirabeketei. These assertions are mostly about custom, but contain no citation to any authority. He also suggests that other than the Wasisang claimants’ testimony, there is no evidence about the circumstances of the transfer to Ngirabeketei. But this is the same position he is in. He and his brother testified to one narrative and the Wasisang claimants testified to another. The Land Court must frequently choose between claimants whose claims are supported only by their own and their relatives’ testimony. On appeal, it is Kumangai’s burden to show that it was unreasonable for the Land Court to weigh one side’s testimony over the other side’s testimony. The brief simply asserts that certain testimony should have been credited or that other testimony should have been interpreted differently. Kumangai has not developed any argument other than that the Land Court should have credited his testimony over others.

[¶ 25] Kumangai makes an additional argument about the testimony of Gibbons Masahiro (“Gibbons”) on behalf of the Wasisang claimants. Gibbons is also the Ngardmau Land Registration Officer (“LRO”) and was thus partly responsible for preparing the claims worksheet, transmitting claim forms to the court, and performing other administrative tasks related to the hearing. Kumangai argues the Land Court erred “in allowing Ngardmau LRO to commit conflict of interest by continuing to be working as LRO in

preparing worksheets and keep custody of documents while representing and testifying for certain claimants.”

[¶ 26] Kumangai does not cite to any authority that prevents an individual from participating in the proceedings in multiple capacities. *Cf., e.g., PPLA v. Tmiu Clan*, 8 ROP Intrm. 326, 329-30 (2001) (finding no error in the Land Court’s decision to allow an attorney to testify as a witness for a clan while still representing the clan). It also does not appear that Kumangai ever objected at the hearing to Gibbons presenting a claim, meaning the argument would be deemed waived. *See, e.g., Rudimch v. Rebluud*, 21 ROP 44, 45 (2014) (“It is well-settled that arguments raised for the first time on appeal will not be considered.”)

[¶ 27] Even if the argument has not been waived, Kumangai does not explain how Gibbons abused his position as LRO to affect the hearing. The brief states: “It appears there was an intentional manipulation of the worksheet to cause confusion.” The brief’s support for this allegation is, charitably, flimsy. Kumangai objects that the worksheet lots are not numbered sequentially; Lot 1 is on the east, while Lots 2 and 3 are on the west. He offers no explanation for how the order of numbering in any way affected the claims. Likewise, he points out that for some lots, “straight lines are used to indicate boundaries” but other lots curve and have different style boundary markers. He again offers no explanation for how lot shapes or marker styles affected the claims. The lots are where they are based on claimant monumentation and natural features. If a lot is bounded by a river or the shoreline, for example, it curves.

[¶ 28] Kumangai also includes an argument about an exhibit introduced by Gibbons. Kumangai does not explain what his argument about this exhibit is. The Land Court referred to it in determining the division of land known as *Irur* among Sked’s heirs. However, all of the Tebelak Clan homestead sketches, including those submitted as attachments to Kumangai’s brief, show *Irur* wholly outside the homestead.

[¶ 29] Finally, although not included in this part of the brief’s argument, elsewhere in the brief the clan and Kumangai suggest that the clan either never monumented its lands, or monumented them incorrectly. The brief states, as an “established” fact, that “Leaders of Tebelak clan have not

monumented the boundaries of its homestead to reflect its true and correct boundaries and size.” Later, the brief asserts that “had Tebelak clan monumented its homestead land with correct size, it would have covered [Lots 2, 3, 4, and 5] and proved to the court they are parts of the homestead.” These arguments help neither the clan nor Kumangai. The clan’s failure to monument its claim is not a grounds for reversal in its favor.

[¶ 30] Regardless of whether we consider these claims as Kumangai’s, or the clan’s, neither has met their burden to show error in the Land Court’s determinations as to Lots 4 and 5.

CONCLUSION

[¶ 31] For the reasons above, the Court affirms the determinations of the Land Court.

SO ORDERED, this 8th day of August, 2017.