IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

KOROR STATE PUBLIC LANDS AUTHORITY, CORDINO SOALABLAI, ISABELLA SUMANG, and UCHELKUMER CLAN,
Appellants,
v.
RUBEKUL A MEYUNS,
Appellee.

Cite as: 2017 Palau 7
Civil Appeal Nos. 14-035, 14-036, 14-037, 14-038
Appeal from LC/B Nos. 08-239, 08-854

Decided: February 22, 2017

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BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

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

OPINION

RECHUCHER, Justice:

[¶ 1] This is a consolidation of four appeals from the Land Court's award of Cadastral Lot Nos. 014 A 02, 014 A 03A, 014 A 03B, and 014 A 03C, collectively known as "Skojio" (also known as "Retention Area No. 5") on Ngerkebesang Island in Meyuns. The Land Court awarded the entire area to Appellee Rubekul a Meyuns as a return of public lands under 35 PNC § 1304 (b), reasoning that Skojio was built by the Japanese on sea bed that was traditionally and customarily under Appellee's administration and control.

[¶ 2] We reverse in part, vacate in part, and remand with instructions to award the *umetate* (fill land) portions of Skojio to Appellant Koror State Public Lands Authority ("KSPLA") and redetermine the return of public lands claims of Appellant Iwaiu Lineage,[1] Appellant Uchelkumer Clan, and Appellee Rubekul a Meyuns regarding those portions of Skojio which are not *umetate*. We affirm the dismissal of Appellant Cordino Soalablai's ("Soalablai") return of public lands claim as untimely.

Background

[¶ 3] In 1939, the Japanese began constructing a seaplane ramp in Meyuns in an area now referred to as Skojio. This involved extensive filling of sea bed that was below the high water mark before construction began, so a substantial portion of the seaplane ramp consists of *umetate* (fill land). When work began, the Japanese told people occupying or using the land near Skojio to move out of that area. In 1940, the Japanese Navy expropriated Ngerkebesang Island and instructed the residents to leave. The people of Meyuns and Ngerkebesang left shortly thereafter, returning after the end of World War II. At that point, the Trust Territory Government regarded itself as the successor owner of all of Ngerkebesang Island, since the Japanese had taken ownership of the entire island during the war.

[¶ 4] The people of Meyuns and Ngerkebesang wanted their land returned to them. Beginning in 1951, the chiefs of Meyuns and Ngerkebesang wrote letters, met with officials, filed claims and brought civil litigation as part of a campaign to regain ownership of Ngerkebesang Island from the Government. Several settlements were proposed by the Trust Territory Government and rejected by the chiefs of Meyuns and Ngerkebesang because they were unhappy with particular provisions included by the Trust Territory Government. Finally, after more than a decade of negotiation and litigation, the Trust Territory Government and the eight clans of Meyuns and Ngerkebesang signed an agreement on September 5, 1962 in which the

[1] The claim Appellant Isabella Sumang originally filed with the Land Court was for individual land, but at the hearing it became clear that she was claiming land on behalf of Iwaiu Lineage. Since Iwaiu Lineage is the real party in interest, we will refer to Appellant Isabella Sumang as "Iwaiu Lineage" throughout this opinion.

Government quitclaimed almost all of the lands on Ngerkebesang Island to these clans (the "1962 Settlement Agreement"). However, the 1962 Settlement Agreement explicitly reserved Government Retention Area No. 5, the area of land now at issue in this litigation.

[¶ 5] Based on the 1962 Settlement Agreement, the Palau District Land Commissioner determined that the Trust Territory Government owned Skojio in 1972. A Determination of Ownership and Certificate of Title issued in 1973, stating that the Trust Territory Government had fee simple title to what was described as "Lot 014 A 01, Tochi Daicho No. Umetate and parts of 1515, 1476, 1475, 1469, 1467, 1455, 1453, and all of 1452, 1454, and 1468 (Retention Area 5)." In 1982 the Trust Territory Government transferred ownership of Skojio to the Palau Public Lands Authority, which ultimately transferred title to KSPLA.

[¶ 6] In 1972, Kiarii Yaoch (Soalablai's predecessor in interest) was awarded Lot 006 A 01 based on her father's ownership of Tochi Daicho Lot 1515. Lot 006 A 01 is immediately landward of Lot 014 A 03A, which Soalablai argues consists in part of land originally part of Lot 1515 and in part of land which was created using soil taken from Lot 1515. In 1973, Tetsuo Rechuldak was awarded Lot 006 A 09 based on his mother's ownership of Tochi Daicho Lot 1476. Tetsuo Rechuldak passed title to Iwaiu Lineage under the administration of Isabella Sumang and Rafaela Sumang. Lot 006 A 09 is immediately landward of Lot 014 A 03B, which Isabella Sumang claims on behalf of Iwaiu Lineage, arguing that part of it was originally part of Tochi Daicho Lot 1476 and the remainder is land created using soil taken from Lot 1476. Uchelkumer Clan also claims Lot 014 A 03B as well as Lot 014 A 03C, claiming that these lots are part of Tochi Daicho Lots 1454 and 1468 and that these lands were entirely above the high water mark prior to the Japanese construction of Skojio.[2] Soalablai and Iwaiu Lineage have abandoned their claim for the *umetate* portions of Skojio, and Uchelkumer Clan's theory of ownership does not apply to *umetate*, so we will refer to these three Appellants collectively as "the Non-*Umetate* Appellants."

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[2] At oral argument, counsel for Uchelkumer Clan conceded that some portions of Lot 014 A 03B and Lot 014 A 03C are *umetate*, but claims that 90% of these lots are not *umetate*.

[¶ 7] Because of these various claims, Skojio was divided up into four Cadastral Lots: Nos. 014 A 02 (claimed only by Rubekul a Meyuns and KSPLA), 014 A 03A (Claimed by Soalablai, Rubekul a Meyuns and KSPLA), 014 A 03B (Claimed by Iwaiu Lineage, Uchelkumer Clan, Rubekul a Meyuns and KSPLA), and 014 A 03C (claimed by Uchelkumer Clan, Rubekul a Meyuns and KSPLA). The Land Court awarded all of these lots to Appellee Rubekul a Meyuns under 35 PNC § 1304 (b), Palau's return of public lands statute, based on its factual findings that "Skojio was built by the Japanese government over property that was traditionally and customarily owned by the people of Meyuns" and that "the Japanese took [this] property, the sea bed where Skojio lies, forcefully." To award all of Skojio to Appellee based on these findings, the Land Court necessarily found that Skojio is 100% *umetate*, *i.e.*, none of it was above the high water mark prior to the construction of the seaplane ramp by the Japanese. The Land Court also found that the Non-*Umetate* Appellants had failed to show that they owned the claimed Cadastral Lots immediately before the lots were taken by the Japanese because they were not part of the claimed Tochi Daicho Lots, which is consistent with Skojio being 100% *umetate*. Because the Non-*Umetate* Appellants had not shown that they owned the land, the Land Court found that they had also failed to show that the lots in question were wrongfully taken. The Land Court also rejected Soalablai's return of public lands claim on the basis that it was filed in 2005, more than 16 years after the January 1, 1989 statutory deadline.

[¶ 8] The Land Court's opinion made several findings and holdings regarding the legal effect of the 1962 Settlement Agreement, which Appellee argues provide an independent basis on which it should be awarded ownership of Skojio. First, the Land Court found that the persistent struggle for the land is proof of ownership of Meyuns by the people of Meyuns represented by the Rubekul a Meyuns, and that the 1962 Settlement Agreement was an acknowledgement of such ownership. Second, it held that by signing the 1962 Settlement Agreement, the Rubekul a Meyuns agreed to allow the Government to retain Skojio because the people of Meyuns recognized the public interest benefit of the Government's control of the property, but that they did not relinquish their ownership rights. Third, the Land Court quotes a memorandum from the Palau Land Title Officer to the

Trust Territory High Commissioner sent in 1962 prior to the signing of the Settlement Agreement which states that the people of Meyuns and Ngerkebesang want title to the entire island but are willing to grant the Government rent-free use rights for whatever land the Government needs. The Land Court found that this memorandum supports testimony that it was always understood that the lands retained by the Government under the 1962 Settlement Agreement would be returned to the people of Meyuns when the Government's use for the property ceased. Fourth, the Land Court found that despite the certificate of title issued to the Trust Territory Government (and ultimately passed to KSPLA), the Rubekul a Meyuns have maintained control of Skojio since 1964, when the airport in Airai opened and Skojio was no longer being used as a landing place for aircraft. The Land Court found that control was shown by the fact that the people of Meyuns regularly clean and maintain the property, that the chiefs of Meyuns used the Quonset hut at Skojio as their meeting place and later sold that hut, and that consent from the chiefs was sought and obtained for the construction of the Headstart building on Skojio.

Standard of Review

[¶ 9] "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, "The factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion." *Id.* "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." *Id.* However, a lower court's factual findings will not be sustained on appeal if the evidence in the record leaves us with the "definite and firm conviction that an error has been made." *Rengulbai v. Klai Clan*, 22 ROP 56, 59 (2015).

Discussion

[¶ 10] The Appellants in this case fall into two categories. First is KSPLA, which claims that the Land Court erred in granting Appellees' return of public lands claim for *umetate* (fill land). KSPLA argues that Appellee cannot be the original owners of the land Skojio because there *was no land* at

the time of the alleged taking by the Japanese government. KSPLA argues that the Land Court correctly found that 100% of Skojio is *umetate*, and KSPLA does not present any arguments regarding the original ownership or wrongful taking status of non-*umetate* land. Appellee also does not present any arguments to support a claim for return of public lands under 35 PNC § 1304 (b) for non-*umetate* portions of Skojio. Its only claim of ownership of non-*umetate* portions of Skojio is based on the 1962 Settlement Agreement as discussed below.

[¶ 11] The second group is the Non-*Umetate* Appellants, all of whom contend that a significant portion of the lots they claim were above the high water mark prior to being taken by the Japanese and argue that the Land Court clearly erred in finding that all of Skojio is *umetate*. These Appellants contend that the Land Court's findings that they did not carry their burden to show ownership of the lots in question should also be vacated because they are based on this erroneous factual finding. The Non-*Umetate* Appellants also argue that the Land Court erred to the extent it found that their various predecessors in interest had already received the entirety of the Tochi Daicho lots on which they base their claim, whether it based those findings on the listed size of these Tochi Daicho lots, the shape of these lots on the Tochi Daicho map, or the boundary markers agreed to by their predecessors in interest at the various monumentations done in the early 1970s. The Non-*Umetate* Appellants additionally argue that the Land Court erred to the extent it found that they had not carried their burden of proof to show a wrongful taking of the non-*umetate* portions of these lots by the Japanese prior to the construction of the seaplane ramp. Soalablai also appeals the Land Court's determination that his return of public lands claim was untimely.

[¶ 12] KSPLA and Appellee each argue that the 1962 Settlement Agreement determines the outcome of Appellee's claim. KSPLA argues that Appellee cannot claim Skojio at all because the chiefs of Meyuns gave up any claim they had in the 1962 Settlement Agreement. . Appellee appears to argue that the 1962 Settlement Agreement transferred ownership of Skojio from the Trust Territory Government to the people of Meyuns subject to an indefinite use right under which the Government could use Skojio as an airport. Under this theory, once the Government stopped using Skojio as an airport its use right ended, so it had no legal interest in the land to transfer to

KSPLA and the people of Meyuns (represented by Appellee) should now have unencumbered ownership of Skojio. Appellee's theory was argued to the Land Court, and as we noted above the Land Court made several findings and holdings regarding the 1962 Settlement Agreement which seem to support this theory.

[¶ 13] We will address each of these arguments in turn.

I. Return of Public Lands Claims Do Not Apply to *Umetate*

[¶ 14] KSPLA argues that the Land Court erred as a matter of law by finding that the sea bed (*i.e.* land below the high water mark) was owned by Appellee prior to the Japanese construction of the seaplane ramp. KSPLA argues that because Skojio was sea bed (not "land") at the time it was taken, it did not "become part of the public land" as a result of a wrongful taking but rather through the Japanese filling of the sea bed to create new land. In short, KSPLA argues that return of public lands claims under 35 PNC § 1304 (b) can only be brought to claim public land which was *non-public land* prior to being taken by an occupying power, not to claim *umetate* which was *public sea bed* prior to being made into public land by an occupying power.

[¶ 15] The Land Court's basis for awarding Skojio to Appellee under 35 PNC § 1304 (b) is a footnote from *PPLA v. Salvador*. This footnote explains that the Japanese, English, and American rule that all marine areas below the high water mark belong to the government

> was not inconsistent with customary Palauan land tenure law. Traditionally, mangrove swamps, the reef, and the sea were considered public domain, usually under the control of an appropriate village klobak, and members of the village could use the area. Persons not from the village could, with permission of the klobak, also use public domain areas. The private claimants in this case do not make any claim under Palauan custom.

8 ROP Intrm. 73, 75 n. 2 (1999) (citation omitted). The Land Court read this footnote as dicta indicating that non-public ownership of the sea bed was possible under Palauan custom, and found that Appellee owned this particular piece of sea bed under Palauan custom prior to the construction of Skojio

because the area had been fishing grounds for the people of Meyuns, which was traditionally controlled by the village chiefs.

[¶ 16] The Land Court erred by holding that a traditional government entity who exercised *control* over a public domain area also *owned* that area. In our view, the traditional government entity who exercised control over an area is not the owner, but rather a trustee who administers the area for the public's benefit. The Land Court erroneously focused on the last sentence of this footnote in *Salvador* and overlooked the broader point being made by the *Salvador* court: Japanese, English, American, and traditional Palauan land tenure all agree that marine areas are public domain, which are held in trust for the public by the relevant governmental authority.

[¶ 17] Neither Appellee nor anyone else can prevail on a return of public lands claim for the *umetate* portions of Skojio because that area of sea bed has always been held by the public. We have held that a return of public lands claim cannot be brought to seek return of land that was originally *chutem buai* (community-owned public land). *PPLA v. Ngiratrang*, 13 ROP 90, 96 fn. 5 (2006). This is because *chutem buai* was originally public land, and therefore could not "become public land" through a wrongful taking under the meaning of 35 PNC § 1304 (b). *Id.* *Salvador* made this same point with regards to sea bed: it was originally regarded as public domain, and therefore remained public domain (and became public land) when it was filled. 8 ROP Intrm. at 75. The Land Court erred by misconstruing the footnote comment of the *Salvador* court and disregarding its holding. We **REVERSE** the Land Courts award of Skojio to Appellee and direct the Land Court to award the *umetate* portion of Skojio to KSPLA on remand.

II. The Land Court must determine what parts of Skojio are *Umetate*

[¶ 18] The Non-*Umetate* Appellants argue that the Land Court's implicit factual finding that Skojio is 100% *umetate* was incompatible with the evidence presented at trial. These Appellants point to three types of evidence that show Skojio is less than 100% *umetate*. First, the 1973 certificate of title awarded to the Trust Territory Government describes Skojio as "Umetate and parts of [Tochi Daicho Lot Nos] 1515, 1476, 1475, 1469, 1467, 1455, 1453, and all of 1452, 1454, and 1468," and there is no evidence that this description is incorrect. Those parts of Skojio which were part of the listed

Tochi Daicho Lots prior to the construction of Skojio are not *umetate*. Second, several witnesses, including Counsel for Appellee who gave extensive testimony on behalf of Appellee at the hearing, said that Skojio was partially *umetate* and partially existing land. Some of these witnesses indicated on a map of Skojio where markers had been placed by the Japanese to mark the original shoreline, or otherwise indicated where they believed the shoreline was prior to the construction of the seaplane ramp. Third, the Non-*Umetate* Appellants argue that when one compares the size and shape of various Tochi Daicho maps submitted into evidence with the official Cadastral Lot Map of Skojio, one can see that a portion of at least some of the Tochi Daicho Lots listed in the 1973 certificate of title are included in Skojio.

[¶ 19] KSPLA argues that a finding that Skojio is 100% *umetate* is supported by the testimony of Hatsuichi Ngirchomlei and Pasquana Blesam regarding various maps of the area. Having reviewed the testimony given by these individuals and the accompanying maps, we conclude this evidence is not sufficient to support the Land Court's finding. Mr. Ngirchomlei testified that he prepared the 1972 "Daicho Map" of the Skojio area. However, Mr. Ngirchomlei testified that he prepared this map by simply tracing a different map, and the Land Court at least partially discounted the 1972 map because "the sketch may not be totally accurate," as demonstrated by the fact that its depiction of Skojio "did not even touch the shoreline of Tochi Daicho Lot 1515." Ms. Blesam testified to provide foundation for two nearly identical 1948 Maps of Babelthuap and Adjacent Island (one labeled "Soils Maps" and one labeled "Engineered Soils Map") prepared based on data collected by the Military Geology branch of the U.S. Army, the U.S. Geological Survey, and the U.S. Department of Agriculture.[3] Both maps identify a sliver of land on the north-eastern part of Ngerkebesang Island as "Made Land; artificial fill." This area clearly corresponds with Skojio, but these maps cannot establish that all of Skojio is *umetate* because they do not have sufficient detail to show what parts of Skojio and its surrounding area are fill land. The scale of these maps is 1 to 62,500, meaning that one inch is approximately one mile and the

[3] Ms. Blesam testified that KSPLA first obtained a copy of these maps in 2006 from the Bishop Museum in Hawaii in connection with an unrelated legal matter.

entire Island of Ngerkebesang is contained in a rectangle less than 2 inches long and 1 inch wide. These maps do not show whether the strip of "made land" (which is only about an eighth of an inch long and substantially less than one sixteenth of an inch wide) corresponds to the entirety of Skojio or only a portion of it.

[¶ 20] The Land Court does not cite any evidence in support of its finding that Skojio is 100% *umetate*. Having reviewed the factual record we can find no relevant evidence which supports this finding and are "left with a definite and firm conviction that a mistake has been made." *Idid Clan v. Olngebang Lineage*, 12 ROP 111, 115 (2005). Therefore, we **VACATE** the Land Court's finding that Skojio is 100% *umetate* and remand for the Land Court to make additional factual findings about the location of the high water mark prior to the Japanese construction of the seaplane ramp and to explain what evidence it is relying on to support those factual findings. On remand, the Land Court can rely on the record before it or take any additional evidence it believes would be helpful. We express no opinion as to where the original shoreline was, and the Land Court may even determine that Skojio is 100% *umetate* on remand if that is what the evidence establishes. *See Edaruchei Clan v. Sechedui Lineage*, 17 ROP 127, 133-34 (2010) (vacating the Land Court's Determination of Ownership with instructions to the Land Court to provide a factual basis for its finding).

III. Land Court Factual Findings Regarding Non-*Umetate* Appellees

[¶ 21] The Non-*Umetate* Appellants also argue that the Land Court erred in holding that the Non-*Umetate* Appellants had failed to prove that they owned the lots they claim prior to those lots becoming public land, and in holding that they failed to prove that the lots they claim ownership of were wrongfully taken. These holdings are necessarily based on the Land Court's finding that all of Skojio is *umetate*, because if all of Skojio is *umetate* then prior to the construction of the seaplane ramp there was no land at issue for the Non-*Umetate* Appellants to own, and therefore no land to be wrongfully taken from these Appellants. We therefore also **VACATE** the Land Court's holdings that the Non-*Umetate* Appellants did not bear their burden of proof under 35 PNC § 1304 (b) with respect to whatever areas the Land Court determines are not *umetate* on remand and direct the Land Court to

redetermine the claims of Iwaiu Lineage and Uchelkumer Clan in light of this opinion.

[¶ 22] Uchelkumer Clan additionally argues that the Land Court erred in holding that it did not establish that the portion of Skojio it claims was wrongfully taken, a finding made in part because its witness mentioned that there was a Japanese tuna processing facility in the Skojio area before it was taken by the Japanese. The Land Court explained that the existence of this Japanese facility raises the possibility that at least some of the land had been sold to the Japanese long before 1939. Uchelkumer Clan argues that this finding was error because it disregarded the testimony of Appellee's counsel, who was also its lead witness, and who testified that the Japanese were occupying parts of the area through lease agreements with the local people of Meyuns. It also argued that the Land Court erred by assuming the tuna plant was situated within Lots 014 A 03C and/or 014 A 03B, and that no evidence in the record supports those findings

[¶ 23] To assist the Land Court in redetermining Uchelkumer Clan's claim on remand, we note that whether a particular portion of a lot was wrongfully taken by the Japanese is a finding of fact that should take into account the evidence presented by all parties. We express no opinion on the importance of testimony regarding the Japanese tuna processing facility in determining whether or not a wrongful taking occurred, nor do we express any opinion as to whether there is evidence in the record that can establish its location or adequately explain its existence. We only clarify that on remand, Uchelkumer Clan can rely on evidence introduced by any party in its argument that it has met its burden to establish a wrongful taking.

IV. Soalablai's Return of Public Lands Claim is Untimely

[¶ 24] Soalablai filed his return of public lands claim for Lot 014 A 03A on September 26, 2005, more than 16 years after 35 PNC § 1304 (b)'s January 1, 1989 statutory deadline. Soalablai argues that the 1989 deadline for submission of return of public lands claims violates the Palauan Language version of Article XIII, § 10 of the Palau Constitution, or, in the alternative, that his return of public lands claim was timely because it relates backs to previous claims made by his predecessors in interest. Since neither of these

arguments have merit, we **AFFIRM** the Land Court's dismissal of Soalablai's claim as untimely.

A. The 1989 Deadline in 35 PNC § 1304 (b) Does Not Violate the Constitution

[¶ 25] The Palauan version of Art. XIII, § 10 provides:

> A Amt er a Belau a mo olluut el mor tirkel di mla ouklalo ma lechub e tengelekir er a di chelsel eim (5) el rak er a uriur er a labor ngii a klisichel tial Uchetemel a Llach . . .

[¶ 26] The English version provides:

> The national government shall, within five (5) years of the effective date of this Constitution, provide for the return to the original owners or their heirs . . .

[¶ 27] However, Soalablai argues that the following is a more accurate English translation of the Palauan version:

> The national government shall return to the original owners or their heirs, within (5) years of the effective date of this constitution. . .

[¶ 28] Soalablai argues that the Palauan version of Art. XIII, § 10 "is much more precise, direct, and forceful" than the English version. Soalablai argues that the Palauan version of Art. XIII, § 10 is a command to the national government to ensure that all public lands which were wrongfully taken by foreign occupying powers are returned within 5 years of the effective date of the constitution, *i.e.*, by December 31, 1985. Soalablai takes the position that Art. XIII, § 10 gives every Palauan a "constitutional right to take back their lands which were wrongfully taken from them by previous occupying powers." In Soalablai's view, the January 1, 1989 deadline set by the OEK in 35 PNC § 1304 (b) for filing claims to public lands violates this constitutional right, and is "arbitrary, unfair and runs counter to the very concept behind the constitutional provision that lands which were wrongfully taken should be returned to the 'original owners or their heirs.'"

[¶ 29] We have previously explained that 35 PNC § 1304 (b) does not violate Art. XIII, § 10 because it

> does not deprive anyone of a property interest. Rather, it revives legal interests previously lost. It establishes a reasonable procedure, and a reasonable period, to assert the reinstated claims. . . . Once the law was enacted, any citizens considering invoking this new right would be responsible to search the public records to determine whether any property they were claiming was listed as public land.

Carlos v. Ngarchelong SPLA, 8 ROP Intrm. 270, 271 (2001). Soalablai argues that even if this provision is constitutional under the English version of the constitution, it is unconstitutional under the Palauan version. Art. XIII, § 2 of the Palau Constitution provides that "[t]he Palauan and English version of this Constitution shall be equally authoritative; in case of conflict, the Palauan version shall prevail." Prior to the adoption of the Twenty-Fifth Amendment in 2008, the Palau Constitution provided that "in case of conflict, the English version shall prevail." Therefore, Soalablai's argument requires there to be a conflict between the English and Palauan versions of Art. XIII, § 10, which we had previously resolved in favor of the English Constitution under the pre-amendment version of Art. XIII, § 2, but which we should now resolve in favor of the Palauan Constitution.

[¶ 30] The first step in resolving alleged conflicts between the English and Palauan versions is to determine whether a conflict actually exists. Since both versions of the Constitution are equally authoritative, we "should not lightly conclude that there is a conflict between the two versions of the Constitution but should rather strive, if possible, to find a single interpretation that gives effect to both." *See Otobed v. Palau Election Commission*, 20 ROP 4, 8 (2012) (interpreting the Ngatpang State Constitution) (quotation omitted). This means that the two versions of the constitution should be read together, and that the omission of a word in the Palauan version does not mean the use of that word in the English version should be disregarded. *See Seid v. ROP*, 23 ROP 21, 24 (Tr. Div. 2014) ("There is also no conflict between the word 'natural' in [the English version of Art. VIII, § 14] and the absence of a Palauan version of the word 'natural.' There is no conflict between a constitutional word that exists and a missing Palauan translation.

Absence does not speak."). When there is a potential difference in meaning between the Palauan and English versions, the English version can be consulted to provide clarification to the Palauan version. *Cf. Ngerul v. ROP*, 8 ROP Intrm. 295, 299 n.7 (2001) (noting that "the Palauan version of the Constitution may help clarify the intended meaning of an ambiguous English word" under the pre-amendment version of Art. XIII, § 2, in which the English version of the Constitution prevailed in case of conflict). The English version should be disregarded only when there is an irreconcilable conflict between the English and Palauan versions. *See* 16 Am. Jr. 2d Constitutional Law § 67 (2009) ("A conflict between constitutional amendments exists if one provision authorizes what the other forbids or forbids what the other authorizes.").

[¶ 31] We see no such irreconcilable conflict between the English and Palauan versions of this constitutional provision. Any ambiguity as to whether Art. XIII, § 10 required the National Government to adopt a reasonable procedure for return of public lands by December 31, 1985 (as we have previously held), or to actually complete the return of public land by December 31, 1985 (as Soalablai argues) should be resolved by reading the Palauan version and the English version together, not by reading the Palauan version as if the English version did not exist.[4] At oral argument Soalablai, acknowledged that the English and the Palauan versions of Art. XIII, § 10 of the Constitution are not "directly in conflict," but argued that we should disregard the English version of the Constitution because "the Palauan version is more authoritative." But Art. XIII, § 2 requires the Palauan and English versions of the Constitution to be treated as *equally* authoritative

[4] We note that even if we were to completely ignore the official English version of the Constitution and assume that Soalablai's construction is correct, the presence of a five year deadline for return of public lands undercuts Soalablai's argument that "there should be no deadline for the filing of claims for public lands." The procedure to return a particular piece of public land requires claimants to file their claims. As such, if the Constitution did require all wrongfully taken public land to be returned by December 31, 1985, then the OEK would need to adopt a procedure by which all claims to public land were required to be made prior December 31, 1985 in order to meet this requirement.

except in case of conflict. Since there is no conflict, our pre-Twenty-Fifth-Amendment case law on the legal effect of Art. XIII, § 10 remains valid.

[¶ 32] Even if we were to read the Palauan version in isolation, the relevant point is the same. The Constitution does not provide instructions to the National Government as to how public land is to be returned. Yet the Government must adopt some form of procedure to make factual determinations as to *whether* the lands were wrongfully taken and *who* the original owners are in order to implement Art. XIII § 10. As such, the fact that there is no deadline set by the Constitution for the filing of claims for public lands does not mean that no deadline can be set for the filing of claims for public lands. After all, any procedure to return a particular piece of public land would require all potential claimants to be identified so that the land can be returned to the correct party. The absence of a deadline for filing claims means that the OEK may choose what deadline to set, as long as it is reasonable.

B. Soalablai's Other Arguments That His Claim is Timely are Without Merit

[¶ 33] Kiarii Yaoch, the mother of Soalablai's predecessor in interest, is listed as the owner of Tochi Daicho Lot 1515. Based on this listing, in 1971 she filed a claim for, and in 1972 was awarded, Lot 006 A 01, which is immediately inland of Lot 014 A 03A. In early 2001, Father Felix Yaoch (Kiarii's son, and Soalablai's predecessor in interest) sent various letters regarding Lot 014 A 03A, including a letter to KSPLA asking that it return this lot to him and a letter to Soalablai asking for his assistance in filing a claim for this lot. While no return of public lands claim was filed between 1981 and 1989, Soalablai argues that from these actions, the Land Court somehow should have found that his return of public lands claim was constructively filed prior to the 1989 deadline.

[¶ 34] It is true that the Land Court can look at a variety of relevant factors beyond the filing on a claim form "to gauge whether a claim was filed," but this does not "make the claim filing requirements so flexible that they are meaningless; instead, it gives the Land Court the flexibility to evaluate the validity of a claim on a case-by-case basis." *Etpison v. Skilang*, 16 ROP 191, 195 (2009). The Land Court's determination of whether a claim

was filed is a factual determination, which we review for clear error. Here, the Land Court rejected Soalablai's attempt to link his claim to Kiarii Yaoch's 1971 claim, and found that Fr. Felix Yaoch's 2001 letters actually provide evidence that no claim for Lot 014 A 03A was filed prior to 2001, more than 12 years after the 1989 statutory deadline. Having reviewed the record, we hold that these factual findings were not clearly erroneous.

V. Legal Effect of the 1962 Settlement Agreement

[¶ 35] KSPLA argues that the Land Court erred in not concluding that the 1962 Settlement Agreement prevents Appellees from claiming Skojio. Appellee argues otherwise, and further contends that the 1962 Settlement Agreement provides an independent basis on which we can affirm the Land Court's decision. We hold that the only legal effect of the 1962 Settlement Agreement on this litigation is that it precludes Appellees from bringing a superior title claim under 35 PNC § 1304 (a). The 1962 Settlement Agreement does not preclude Appellee from bringing a return of public lands claim under 35 PNC § 1304 (b), but it also does not create a legal basis for its claim.

[¶ 36] The 1962 Settlement Agreement is a contract, and Appellee's argument that the 1962 Settlement Agreement somehow returned ownership of Retention Area 5 to the people of Meyuns in exchange for an indefinite use right is wrong as a matter of contract interpretation. The 1962 Settlement Agreement states that it conveys ownership of "all of [Ngerkebesang Island] reserving and excepting therefrom, however, Government Retention Areas Number Five (5) and Seven (7)." This language is unambiguous; Skojio (Retention Area 5) is explicitly not transferred to the people of Meyuns. The 1962 Settlement Agreement resolved Appellee's lawsuit claiming the entirety of Ngerkebesang Island, including Skojio, so it also extinguished any ownership rights the chiefs of Meyuns may have had to Skojio in 1962.

[¶ 37] The internal Trust Territory memorandum quoted in the Land Court's decision shows only that the Palau Land Title Officer thought that the Trust Territory Government should consider returning the entire island subject to an indefinite use right for certain areas in order to resolve this dispute. It does not establish that the Trust Territory Government was willing to enter into such an Agreement, and those are not the terms of the settlement

agreement that was actually entered into. Even if parties to the 1962 Settlement Agreement had an informal "understanding" that the lands retained by the Government would eventually be returned to the people of Meyuns, that "understanding" has no legal effect, since under the parole evidence rule "all previous oral agreements merge in the [written contract] and a contract as written cannot be modified or changed by parole evidence . . ." *Owens v. House of Delegates*, 1 ROP Intrm. 320, 325 n.1 (Tr. Div. 1986). As such, we hold that the 1962 Settlement Agreement does not created an independent basis for Appellee to claim any portion of Skojio, nor does it grant Appellee any ownership rights in Skojio. To the contrary, the 1962 Settlement Agreement extinguished any rights Appellee may have had in Skojio as of 1962, which means that Appellee cannot prevail on a superior title claim under 35 PNC § 1304 (a) without proof that it acquired title to Skojio at some later point in time.

[¶ 38] However, the 1962 Settlement Agreement does not bar Appellee from claiming Skojio under 35 PNC § 1304 (b). Any right Appellee may have to claim Skojio under the return of public lands statute had not yet come into existence in 1962, and therefore could not be resolved by the 1962 Settlement Agreement. If the Land Court finds on remand that Appellee has carried its burden to show that it was the owner or the proper heir of the original owner for the portion of Skojio which were not *umetate* and from whom the land was wrongfully taken by an occupying power, then the Land Court should award Appellee that portion of Skojio under 35 PNC § 1304 (b). We merely hold that the 1962 Settlement Agreement neither requires nor prevents this outcome.

Conclusion

[¶ 39] For the foregoing reasons, the Land Court's decision is **REVERSED**, except for its holding that Soalablai's claims are time barred, which is **AFFIRMED**. The Land Court's factual findings and Determination of Ownership are **VACATED** and this case is **REMANDED** for further proceedings in accordance with this opinion. On remand, the Land Court shall make explicit factual findings regarding what parts of Skojio, if any, were above the high water mark prior to the construction of the seaplane ramp by the Japanese. Those parts of Skojio that were below the high water

mark at that time should be awarded to KSPLA. If the Land Court determines that any portions of the Lots at issue were above the high water mark, the Land Court shall redetermine the return of public lands claims of Rubekul a Meyuns, Isabella Iwaiu Lineage, and Uchelkumer Clan. The Land Court may, but is not required to, hear any additional evidence it deems appropriate.

SO ORDERED, this 22nd day of February, 2017.