IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

IDID CLAN, represented by Bilung Gloria G. Salii and Ibedul Y.M. Gibbons; KALISTA NGIRKELAU, represented by Desiiu Ngirkelau; and AUGUSTINE BAIEI, represented by Amador Augustine and Deddie Trolii,
Appellants,
v.
KOROR STATE PUBLIC LANDS AUTHORITY,
Appellee.

Cite as: 2018 Palau 25
Civil Appeal No. 18-009
Appeal from LC/B 15-00118; LC/B 15-00127; & LC/B 15-00128

Decided: November 26, 2018

Counsel for Appellant Idid Clan	Johnson Toribiong
Counsel for Appellant Kalista Ngirkelau.....	Pro Se
Counsel for Appellant Augustine Baiei	Salvador Remoket
Counsel for Appellee……	William A. Appleton, Jr.

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

Appeal from the Land Court, the Honorable C. Quay Polloi, Senior Judge, presiding.

OPINION

PER CURIAM:

INTRODUCTION

[¶ 1] This case involves three appeals pertaining to Land Court decisions in LC/B 15-00118; LC/B 15-00127; and LC/B 15-00128.[1] The properties

[1] The parties did not request oral argument in this appeal.

involved are in Meketii Hamlet, Koror, and were listed on the Tochi Daicho as lots 854, 855, 856, 857, and 859.[2] The Land Court awarded these lots to Koror State Public Lands Authority ("KSPLA"). Kalista Ngirkelau appeals the Land Court's decision with respect to lot 859. Idid Clan appeals the Land Court's decision with respect to Tochi Daicho lots 854 through 857. As Augustine Baiei did not submit an opening brief or otherwise pursue his claim, it is dismissed pursuant to Rule of Appellate Procedure 31(c).[3]

[¶ 2] The remaining appeals are straightforward: Ngirkelau questions the Land Court's factual findings and legal determination,[4] and Idid Clan questions the Land Court's legal determination, presenting arguments nearly identical to those it presented in two appeals recently addressed by the Court—*Koror State Pub. Lands Auth. v. Idid Clan*, 22 ROP 66 (2015) [hereinafter *Idid Clan* III] and *Idid Clan v. Koror State Pub. Lands Auth.*, 20 ROP 270 (2013) [hereinafter *Idid Clan II*]. The Court now **AFFIRMS** the Land Court's decision with respect to both claims.

STANDARD OF REVIEW

[¶ 3] "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). "We will not set aside the Land Court's factual findings so long as they are supported by evidence such that any reasonable trier of fact could have reached the same conclusion, unless we are left with a definite and firm conviction that an error has been made." *Id.* at 274–75

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[2] For purposes of this entry, the Appellate Division refers to the Tochi Daicho lot numbers rather than the KSPLA lease lot numbers because the parties' trial testimony referred to the Tochi Daicho lot numbers more often than to the KSPLA lease lot numbers.

[3] On March 16, 2018, Baiei's counsel submitted to the court a certificate of service regarding a request for transcript services. Baiei's opening brief was due August 24, 2018, 45 days from July 10, 2018, which is the date that the transcript was due. *See* ROP R. App. P. 31(b). No transcript was received from Baiei's transcriber, and Baiei did not submit an opening brief or request an enlargement of time to file either document.

[4] Ngirkelau presents additional errors that do not need to be addressed in the opinion because, even if the errors exist, they do not change the outcome in any way. *See Ngiraiwet v. Telungalek re Emadaob*, 16 ROP 163, 166 (2009) (explaining Appellate Division will not reverse Land Court determination where Land Court error has no bearing on denial of appellant's claim).

(quoting *Ngirausui v. Koror State Pub. Lands Auth.*, 18 ROP 200, 202 (2011)). Deference is accorded to the Land Court's findings on the credibility of witnesses. *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 37 (1999).

FACTUAL BACKGROUND

[¶ 4] The land claims at issue were heard on December 12–13, 2017, with an additional claimant's claim heard on January 18, 2018. Tochi Daicho lot 859 was listed as owned by the Palau Administration, and Tochi Daicho lots 854 through 857 were private lots listed as owned by Ngermesungil Lineage with Ngiraked as trustee. The overall land area is known as Ksiksia, but all or part of it was previously known as Dort and also Illaud/Illaod and "were either owned by Ingeyaol Clan of Meketii Hamlet or Tpang Clan of Iyebukel Hamlet." Decision 2. The Land Court determined that "[a]t some later point, Idid Clan came to exercise greater dominion and perhaps even outright ownership of these lands with one theory being that an *Ibedul* of Idid Clan was speared and died on the land so it became a haunted or horrifying place," leading the *Rubasch* of Ingeyaol Clan to give the land to Idid Clan. *Id.* At some point prior to the Japanese period, "*Ibedul* Tem of Idid Clan gave the land to his son[,] Baiei Ngirdengoll [('Baiei')]." *Id.* Because there are two appeals in this case, each dealing with different lots, they will be addressed separately, in turn, below.

I. Ngirkelau's Claim

[¶ 5] Baiei Ngirdengoll's oldest son was Ilengelang Baiei's father,[5] and Ilengelang Baiei was Kalista Ngirkelau's father. Ngirkelau argues that Tochi Daicho lot 859 was taken by the Japanese Administration between 1920 and 1922 without Baiei's consent, and he was later paid for the land. Ownership of this land was originally disputed over sixty years ago. Land claims involving this property and others at issue in the Land Court case were heard in the 1950's during a Trust Territory land claim process. There was a hearing held in 1955 with respect to the property now claimed by Ngirkelau. It was

[5] Ngirkelau's brief states that "Ngirailengelang Baiei [] is the oldest son of Baiei." Ngirkelau's Opening Br. 5. Ngirailengelang Baiei and Ilengelang Baiei are the same person.

considered claim number 183. That claim was reopened with new evidence introduced in 1957.

[¶ 6] Testimony from Baiei with respect to claim 183 was read into the record at the Land Court by Desiu Ngirkelau ("Desiu"), representative for Ngirkelau's claim. *See* Tr. 78:9–18; 79:15–82:1. Ngirkelau read into the record the following questions asked by the Land Title Officer and Baiei's responses to them:

> The next page, the third page, Your Honor, says, we go to Baiei, it's [Land Title Officer] asking Baiei saying, "[W]hen you're saying that the land was sold, do you mean that the land was sold, that only the, for not only the plants and the plants and trees were sold?" "The land," Baiei [said], "the land, plants, and the house were sold to the Japanese. How much money was given? Three hundred and some cent . . ." [Q:] "Did the Japanese say anything about paying for [the trees]?" [A:] "I don't know if that, if the trees were paid for. Did the Japanese say anything about the tree, the trees? No. They did [sic] explain to me about anything. But it was clear to me that they were buying the land. I just heard. I just heard the land was sold. Later the Japanese gave me, gave money." [Q:] "Who told you the land was sold?" [A:] "Ngiraitungelbai. He stood between the Japanese and us in the sales of the land." [Q:] "Then there is the male, stepfather of Merii?" [A:] "Yes." [Q:] "Did you talk with him about the sale?" [A:] "No, I asked him some questions. I didn't want, I didn't want to sell. I want to rent. I wanted to rent. But he said[,] ['N]o, I am the chief and I sold the land to them.['] It's all I asked him and that's all he answered me."

Tr. 80:17–81:21.

[¶ 7] Ngirkelau suggests that, based on this testimony, Baiei did not know that the land was going to be sold before it was sold. *See* Ngirkelau's Opening Br. 9 ("Because the property was taken before the owner became aware of it being taken or sold and without the consent or knowledge of that owner, this constituted a force taking."). The testimony, however, indicates that Baiei discussed the sale with those who negotiated the sale. It appears that he explained to them that he did not want to sell, but wanted to rent the

land instead, which indicates that he knew that the Japanese Government was interested in using the land. It is not entirely clear whether the sale took place before or after those discussions. The Trust Territory District Land Title Officer hearing claim 183 determined that the Chief of Koror, Kloulubak Fritz, sold the land to the Japanese Government for a school site. For the sale, Baiei received 600 yen. As a result, the government prevailed in that claim.

[¶ 8] At the hearing in the Land Court case at issue here, Ngirkelau's representative testified that, at the time of Baiei's testimony in the Trust Territory case claim 183, Baiei had not filed a claim for the land. Tr. 23:23–24:1. Instead, his testimony was as a witness for the government, *id.*, against claimant "Ngirchomlei who was apparently claiming for Tpang Clan." Decision 8. Based on that testimony and the fact that Baiei did not file a claim in the Trust Territory case or attempt to prove that the compensation was unjust, the Land Court determined that Baiei was compensated for the sale of the land and "understood that it was a full and final purchase." *Id.*

[¶ 9] Ngirkelau's claim is one for wrongful taking under 35 PNC § 1304(b). "In a return of public lands case, the claimant must show that a piece of property became public land 'through force, coercion, fraud, or without just compensation or adequate consideration' in addition to showing a proper connection to the land." *Idid Clan II*, 20 ROP at 273 (quoting 35 PNC § 1304(b)(1)–(2)). "'At all times, the burden of proof remains on the claimants, not the governmental land authority, to establish by a preponderance of the evidence, that they satisfy all requirements of the [Land Registration Act].'" *Id.* (quoting *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 93 (2006)). Whether land became public land through a wrongful taking is a factual determination. *Id.* at 274; *see also Airai State Pub. Lands Auth. v. Esuroi Clan*, 22 ROP 4, 7 (2014) ("Any allegation that the land in question was not conveyed, but was taken by force, is a challenge to the Land Court's factual findings."). As such, the Appellate Division reviews for clear error the Land Court's determination that the land was not wrongfully taken. Clear error requires reversal only if the finding "so lack[s] evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion." *Midar v. Narchelong State Pub. Lands Auth.*, 22 ROP 151, 152 (2015) (citation omitted).

[¶ 10] Here, the evidentiary support for the Land Court's determination was not so lacking that "no reasonable finder of fact could have reached the same conclusion." *See id.* The Land Court relied, in part, on testimony from Baiei at the Trust Territory hearing and on the judgment in that matter, but also on testimony of Ngirkelau's representative before the Land Court. The Land Court's ruling is supported by evidence that Baiei received compensation for the land and later did not contest the government's ownership, but in fact, testified on its behalf in an ownership determination hearing. The Land Court did not clearly err in its determination that the property was not wrongfully taken. As a result, the Land Court's determination with respect to Tochi Daicho lot 859 and Ngirkelau's claim is AFFIRMED.

II. Idid Clan's Claim

[¶ 11] Idid Clan filed a return of public lands claim on December 30, 1988. It did not file a claim for superior title. Idid Clan originally claimed KSPLA lease lots 40554 – 40558 and 40592, but abandoned its claim to lots 40554 and 40555 when it understood those two lots to be part of the lands listed as held by the Palau Administration in the Tochi Daicho. The remaining lots claimed by Idid Clan fall within Tochi Daicho lots 854 through 857, which were registered to Ngermesungil Lineage with Ngiraked as its trustee.

[¶ 12] The Land Court surmised that Idid Clan and other claimants presented evidence that supported Idid Clan's ownership of Tochi Daicho lots 854 through 857. For example, a claimant adverse to Idid Clan provided testimony that the Land Court categorized as "detailed and very credible in terms of proving that the lands claimed . . . were private lands in the Tochi Daicho." Decision 12. The adverse claimant also provided what the Land Court called "extensive factual information" about the area and the people involved. *Id.* In addition, Idid Clan presented further evidence that the land was privately owned, including that there is an *odesongel* for Ngermesungil Lineage there. Idid Clan also requested that the Land Court compare the Tochi Daicho lot sizes with the actual sizes of the leased lots to determine whether overlap existed between the land registered to the government and that registered in the Tochi Daicho to Ngermesungil Lineage. The

comparison showed that the sizes were similar, and the Land Court stated that, if Idid Clan moved the western boundary of its claim slightly to the east, "[the] claimed lots would soon match the sizes of the Tochi Daicho lots." Decision 11.

[¶ 13] The Land Court determined that Idid Clan did not provide evidence of a wrongful taking, so it could not prevail on that theory. It further acknowledged that Idid Clan did not pursue that theory, instead focusing its case on evidence supporting a superior title claim. The Land Court stated that "there is enough evidence in this case to find that most of the lots claimed by [Idid Clan] correspond to the private Tochi Daicho lots claimed and should be awarded as claimed for Ngermesungil Lineage," but it did not award Idid Clan those lands.[6] Decision 12. Instead, the Land Court determined that, because Idid Clan did not file a separate claim to preserve a superior title cause of action, given recent case law developments, Idid Clan could not prevail on a superior title theory. *Id.* at 13.

[¶ 14] On appeal, Idid Clan seeks to have its claim treated as a superior title claim.[7] It further contends that if it had "filed [its] claim[] as a superior title claim, then [it] may have forfeited [its] right to claim the same land

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[6] Although the Land Court judge in this case did not rule in favor of Idid Clan in this appeal, he is likely to blame for leading Idid Clan to court to make the same arguments it has already made in other cases. He inappropriately presented an outcome on the superior title claim not brought by Idid Clan. On the claim actually brought by Idid Clan, the return of public lands claim, the following holds true:

> Whether the land is public is not at issue, and evidence suggesting that it is not is irrelevant. *See* LCR Proc. 6 ("All *relevant* evidence which would be helpful to the Land Court in reaching a fair and just determination of claims is admissible." (emphasis added)); ROP R. Evid. 401 ("'Relevant evidence' means evidence having any tendency to make the existence of any fact *that is of consequence to the determination of the action* more probable or less probable than it would be without the evidence." (emphasis added)). Idid Clan, in filing a return of public lands claim without filing a parallel superior title claim, conceded that the land is public.

Idid Clan III, 22 ROP at 72.

[7] In its reply brief, however, it states that the claim "is a hybrid between the land being public land wrongfully taken or superior title land." Idid Clan's Reply Br. 2. It does not further develop this theory, so the Court does not consider it.

against KSPLA's claim that it is public land." Idid Clan's Reply Br. 2. In addition, it argues that the Land Court misapplied case law to the facts in this case. These arguments fail. Moreover, Idid Clan should have known that its arguments would fail, as it has been before this Court repeatedly on the same issues.

[¶ 15] A Land Court claimant may assert two types of claims:

> (1) a superior title claim, in which the claimant asserts he holds the strongest title to the land claimed; and (2) a return of public lands claim, in which the claimant concedes that a public entity holds superior title to the land, but argues that the title was acquired wrongly from the claimant or his predecessors.

Idid Clan II, 20 ROP at 273. Return of public lands claims needed to have been filed by January 1, 1989, and any superior title claim must be filed "no later than thirty (30) days after the mailing of the notice" of monumentation. 35 PNC § 1309; *see also Idid Clan III*, 22 ROP at 69 n.2 (explaining the deadline for filing various types of claims). "[A] claimant desiring to pursue both types of claims [return of public lands and superior title] must present and preserve the claims individually." *Idid Clan II*, 20 ROP at 273 (citing *Idid Clan v. Koror State Pub. Lands Auth.*, 9 ROP 12, 14 n. 3 (2001) (holding that alternative claims must be "presented and preserved as if they were presented by different persons")). "[I]f a claim has not been preserved properly, it may not be considered." *Idid Clan II*, 20 ROP at 273 (citing L.C. Reg. 12 ("Any claim which is not timely filed shall be forfeited.") and *Ngarameketii v. Koror State Pub. Lands Auth.*, 16 ROP 229, 231 (2009) (return of public lands claim may not be considered as superior title claim in order to avoid statutory deadline)).

[¶ 16] In this case, Idid Clan did not file a superior title claim at all. Given that Idid Clan has been in this situation before, *see Idid Clan II*, 20 ROP at 273 and *Idid Clan III*, 22 ROP at 70, it had more reason than other litigants to have understood that it needed to have filed a superior title claim to preserve that cause of action. Based on this prior experience, it should have also known to focus its case on presenting sufficient evidence to support a claim for wrongful taking.

[¶ 17] As we have previously told Idid Clan:

> We recognize, and sympathize with, the Land Court's vexing predicament. Below, the only claim before the court was a return of public lands claim for land, which the court determined as a factual matter at the very outset, was not public. Thus, absent a claim for superior title, the Land Court would be required to issue a determination of ownership in favor of the public lands authority if all claimants' return of public lands claims fail. *See* 35 PNC § 1312. Here, doing so might actually effect, in the view of the Land Court, a wrongful taking of the land from the rightful owners it found—Idid Clan. But the legislature could not have been clearer on this point; the Land Claims Reorganization Act has been amended a number of times, and each time the legislature has maintained and/or expressly included this limiting language: "Any claim which is not timely filed shall be forfeited." *See, e.g.*, Land Claims Reorganization Act, RPPL 4-43 § 8(a); 2003 Amendments, RPPL 6-31 § 2; 2008 Amendments, RPPL 7-54 § 2.
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> Idid Clan was expressly advised in *Idid Clan* [*II* and now again in *Idid Clan III*] that prevailing on a superior title theory required filing a superior title claim. This statutory requirement is placed on a claimant and its counsel, and the Court cannot ignore the failure of a party to bring an appropriate claim. The outcome of a failure to follow the statutory requirements and the express instructions of this Court rests on the claimant's shoulders.

Idid Clan III, 22 ROP at 73.

[¶ 18] The Land Court found that Idid Clan failed to present sufficient evidence to support a claim for wrongful taking for its return of public lands claim. As such, it failed to carry its burden under 35 PNC § 1304(b)(1)–(2). In addition, the Land Court correctly determined that Idid Clan did not preserve a possible superior title claim because it never filed such a claim, and it could not prevail as a result. Based on the reasoning set forth above, we AFFIRM the Land Court's determination with respect to Idid Clan's claim.

CONCLUSION

[¶ 19] For the foregoing reasons, we **AFFIRM** the Land Court's decisions regarding Tochi Daicho lots 854, 855, 856, 857, and 859 in LC/B 15-00118; LC/B 15-00127; and LC/B 15-00128 and **DISMISS** Augustine Baiei's appeal pursuant to Rule of Appellate Procedure 31(c).