IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

ESEL CLAN by Spis Valentino Ngirkiklang,
Appellant,
v.
AIRAI STATE PUBLIC LANDS AUTHORITY and IBLONG CLAN[1]**,**
Appellees.

Cite as: 2019 Palau 17
Civil Appeal No. 18-010
Appeal from Land Court Action LC/N 09-00200

Decided: June 6, 2019

Counsel for Appellant	J. Uduch Sengebau Senior
Counsel for Appellee	
ASPLA	Mariano Carlos
Iblong Clan, represented by Robert Ngirblekuu	No appearance

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

[1] Although Appellant names Iblong Clan as an Appellee in this case, it is not seeking a reversal of the Land Court's determination of ownership on any of the land awarded to Iblong Clan. *See* Opening Br. 23 (seeking as relief "the sixteen lots of land awarded to Appellee[] Airai State Public Lands Authority"). Therefore, Iblong Clan is not a proper party and is hereby dismissed from this appeal.

OPINION[2]

PER CURIAM:

[¶ 1] This appeal arises out of a dispute over the Land Court's judgment awarding ownership of certain land in Ngchesechang Hamlet in Airai to Airai State Public Lands Authority ("ASPLA"). Appellant contends the Land Court's determination must be reversed because it failed to abide by the ownership determinations of a previous court judgment.

[¶ 2] For the reasons set forth below, we **AFFIRM**.

BACKGROUND

[¶ 3] The basis for Appellant's claim dates back to 1960 when Spis Sochai, representing Esel Clan, Ngkeklau Clan, Iblong Clan, and Iberrong Clan, filed a claim for approximately 50 chiob, or 495,867.77 square meters, of land in Ngchesechang Hamlet. The claim, identified as Claim 85, ultimately made its way up to the Trial Division of the Trust Territory High Court. On September 25, 1963, presiding Chief Justice E.P. Furber issued a decision ruling in favor of Ebel Clan, Ngkeklau Clan, and Iberrong Clan, but ruling against Iblong Clan ("the 1963 Judgment"). Relying on a sketch of the land at issue, Chief Justice Furber held that Esel Clan owned "[t]he part of said land shown on the sketch . . . covering 10.637 hectares more or less (out of a total of about 50 chiob claimed in the proceedings)." ASPLA Ex. A. The court did not delineate the boundaries of the land it awarded, but stated that, if there was disagreement over the proper boundaries, any party could "request a determination of the boundary lines by the court." *Id.* No such request was ever made.

[¶ 4] On April 7, 1991, Spis Ngeluong filed a claim on behalf of Esel Clan for land in Ngchesechang Hamlet, which he called "Esel Clan's Land."[3]

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[2] Appellant requests oral argument. After reviewing the briefs and record, the Court concludes oral argument is unnecessary, and the matter is submitted on the briefs pursuant to ROP R. App. P. 34(a).

[3] Esel Clan had three claims adjudicated at the Land Court: a 1991 claim filed by Spis Ngeluong, a 1991 claim filed by Ilek Riumd, and a 2008 claim filed by Spis Seklii Ngiralmau. Appellant has only properly appealed the Land Court's adjudication of the 1991 claim by Spis Ngeluong.

Attached to the claim form was a hand-drawn sketch of the land claimed in relation to three other identified lots: lot 161-36, owned by Gabriel Merur; lot 161-29, owned by Otong; and lot 161-37, owned by Tuu. Spis Ngeloung's claim was pursued at the Land Court hearing by his successor, Spis Valentino Ngirkiklang.

[¶ 5] According to the BLS Worksheet, Spis Ngeluong's claim initially included Lot Nos. 09N002-027, 09N002-030, 09N002-033, and 09N002-034. However, at the hearing, Spis Ngirkiklang testified that this claim was actually to Lot No. 09N002-002. *See* Tr. 126:18–127:11.[4] Additionally, Spis Ngirkiklang repeatedly testified that he could not definitively identify where the 10.637 hectares of land awarded to Esel Clan in the 1963 Judgment was on the map before the Land Court. *See* Tr. 64:19–25; 135:4–137:13. He also testified that part of that claim extended beyond the map used by the Land Court. *Id.* at 151:15–25.

[¶ 6] The Land Court denied Esel Clan's claim, citing three reasons:

> First, the claim is clearly for other land, likely lot 11N04-001, which is not before this Court. Second, the shifting location of the land being claimed before and during the hearing creates doubt as to the actual and correct location of the land claimed. Finally, the lots identified by BLS before the hearing and by Spis Valentino Ngirkiklang during the hearing are areas of public land and, ultimately, Spis Valentino Ngirkiklang did not provide sufficient evidence to rebut this presumption.

Decision 22. Lot No. 09N002-002 was ultimately determined to belong to ASPLA.

STANDARD OF REVIEW

[¶ 7] In reviewing decisions of the Land Court, "[c]onclusions of law are reviewed de novo, factual findings are reviewed for clear error, and exercises of discretion are reviewed for abuse." *Elsau Clan v. Peleliu State Public*

[4] Consequently, the only land properly at issue on appeal is Lot No. 09N002-002.

Lands Authority, 2019 Palau 7 ¶ 7 (citing *Salvador v. Renguul*, 2016 Palau 14 ¶ 7).

[¶ 8] "The Land Court's factual determinations will be set aside for clear error only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion." *Id.* (internal quotation marks omitted). "Where there are several plausible interpretations of the evidence, the Land Court's choice between them shall be affirmed even if this Court might have arrived at a different result." *Eklbai Clan v. Koror State Pub. Lands Auth.*, 22 ROP 139, 141 (2015).

DISCUSSION

[¶ 9] Appellant raises two arguments on appeal. Although we resolve this case on the first ground, we address each in turn.

[¶ 10] Appellant first argues that the Land Court erred by "hearing the competing claims of Appellees Iblong Clan and Airai State Public Lands Authority without first determining the boundaries of the lands registered to be the property of Appellant Esel Clan" under the 1963 Judgment. Opening Br. 10. According to Appellant, this resulted in the Land Court erroneously identifying the land as "unregistered" and thus, public land. However, Appellant's argument relies on two inaccurate premises.

[¶ 11] First, a court adjudication of land ownership does not automatically register the land in the name of the prevailing party. Adjudications of land ownership entitle the prevailing party to obtain legally binding registration documents, such as a title. There has been no title issued to Esel Clan regarding property adjudicated in 1963. Therefore, the Land Court was correct to treat the land as unregistered and public. Furthermore, Appellant claimed the land at issue under a superior title theory. "[A] claimant who wished to press a superior title claim must first prove the land is not public." *Koror State Pub. Lands Auth. v. Toribiong*, 2017 Palau 12 ¶ 40. Even if the Land Court had not presumed the land was public, Appellant still bore the initial burden of proving that the land "never became public in the first place." *Id.* (internal quotation marks omitted).

[¶ 12] Second, as discussed in more detail below, it is the responsibility of the claimant—not the Land Court—to define the boundaries of the land at issue. *See Kerkur Clan v. Koror State Pub. Lands Auth.*, 2017 Palau 36 ¶ 29. This case is very similar to the *Kerkur Clan* case. In that case, Kerkur Clan claimed ownership over several Cadastral Lots on a BLS worksheet by relying on a 1956 finding that the clan had previously owned the land, *Ngeritouchel*, which had been taken by the Japanese Government without compensation. *Id.* ¶¶ 15, 18. The Land Court concluded that Kerkur Clan had successfully established ownership over *Ngeritouchel*, but concluded that it was not entitled to any of the land at issue in the hearing because "the clan had not established if *Ngeritouchel* was wholly or partly within the hearing area, and, if so, where within the hearing area its boundaries are." *Id.* ¶ 28. Kerkur appealed the Land Court's decision and this Court concluded that Kerkur had failed to show that the Land Court had committed any reversible error:

> [T]here are two separate problems with the clan's arguments for reversal, one legal and one factual. The legal problem is that the clan is equating the Land Court's finding that the clan owned *Ngeritouchel* with a finding that the clan established ownership of public land being heard by the court. The Land Court was adjudicating ownership of land only within a designated hearing area. The clan's burden was to show that it was the original owner of some demarcated portion of that land. Showing that it owned *Ngeritouchel* is only sufficient if it can establish that *Ngeritouchel* is a particular portion of the land at issue in the hearing. The factual problem is that the clan has not pointed to evidence that would establish that the location of *Ngeritouchel* [corresponds to the area claimed by the clan] . . . .

Kerkur Clan, 2017 Palau 36 ¶ 29.

[¶ 13] Appellant faces the same problem here. Even if Appellant can successfully show that it owns 10.637 hectares (106,370 square meters) of land within Ngchesechang Hamlet, Appellant does not challenge the critical finding of the Land Court: Lot No. 09N002-002 is not the same land that was adjudicated in the 1963 Judgment. Consequently, Appellant's claim fails as a matter of law. Even if Appellant had successfully raised this issue on appeal,

whether the 10.637 hectares adjudicated in the 1963 Judgment and Lot No. 09N002-002 are the same land is a question that we review for clear error. *See Olsuchel Lineage v. Ueki*, 2019 Palau 3 ¶ 24. The Land Court relied on two key pieces of evidence to determine that the land claimed by Appellant was not the same land at issue in the hearing. First, the Land Court compared the sketch attached to Spis Ngeluong's claim with the BLS worksheet lot and concluded "the claim is clearly for other land, likely lot 11N04-001, which is not before this Court." Decision 22. Second, the Land Court concluded that Spis Valentino Ngirkiklang's testimony was not credible because of "the shifting location of the land being claimed before and during the hearing." *Id.* This is further supported by Spis Valentino Ngirkiklang's admissions that he did not know the boundaries of the 10.637 hectares awarded to Appellant in 1963 and that part of Appellant's claim went off the map. *See* Tr. 64:19–25; 151:15–25. Based on this evidence, the Land Court's finding was not clearly erroneous.

[¶ 14] Appellant next contends that, under the doctrine of *res judicata*, it is entitled to the 10.637 hectares of land awarded to it in the 1963 Judgment, and ASPLA's claims must be limited to the former Iblong Clan land that was awarded to the Trust Territory Government. Appellant's argument is premised on the contention that the 1963 Judgment has preclusive effect on all the land at issue in this case. But the 1963 Judgment adjudicated approximately 500,000 square meters of land and the underlying case here dealt with nearly 2,500,000 square meters. Therefore, even if we were to assume that all of the 500,000 square meters of land adjudicated in the 1963 Judgment falls within the land adjudicated by the Land Court in this case—a premise we have already rejected—Appellant's argument would still fail. Giving preclusive effect to the 1963 Judgment would result in the absurd conclusion that the court adjudicated, not just the 500,000 square meters of land at issue in that case, but also an additional 2,000,000 square meters that was never discussed or identified.

[¶ 15] The 1963 Judgment clearly serves as a preclusive adjudication of some—but not all—of the land in Ngchesechang Hamlet. As Appellee ASPLA notes, the 1963 Judgment "established that out of the lands of Ngchesechang Hamlet that were claimed by the Trust Territory Government as public lands, 50 chiob of those lands belonged to the [Esel, Iblong,

Ngkeklau, and Iberrong Clans]" and of that 50 chiob, "Esel [C]lan owns 10.637 hectares." ASPLA Response Br. 10. Under a *res judicata* theory, ASPLA would only be bound by the 1963 Judgment in regard to the 500,000 square meters adjudicated. *Res judicata*, however, is only relevant when an appellant has successfully identified the claims that must be given preclusive effect. Because Appellant here has not shown that the 1963 Judgment adjudicated ownership of the lands at issue in this case, *res judicata* does not apply.

[¶ 16] It is unclear to the Court whether Appellant also contends that, even if the 1963 Judgment only adjudicated a portion of Ngchesechang Hamlet, Appellee ASPLA can never claim the unadjudicated portion of Ngchesechang Hamlet because it was required to bring any claim to land in Ngchesechang Hamlet in the earlier case. To the extent that Appellant makes such an argument, it must fail. "Unregistered land is presumed to be public, held in trust by the government until a private claimant either prevails on a return of public lands claim or proves that the land never became public in the first place such that [the claimant] can prevail on a superior title claim." *Toribiong*, 2017 Palau 12 ¶ 41. Appellee ASPLA acts as trustee to all public lands in Airai, regardless of whether they have claimed the land. *See id.* ¶ 42. ("Land is not automatically legally converted from public to private simply because a land authority official decides not to press a claim to that land in litigation.").

CONCLUSION

[¶ 17] For the reasons stated above, we **AFFIRM** the Land Court's judgment.