IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

NGARAARD STATE PUBLIC LANDS AUTHORITY,
Appellant,
v.
RECHAD RA ANGAUR,
Appellee.

Cite as: 2023 Palau 1
Civil Appeal No. 22-008
Appeal from LC/E 19-00052

Decided: January 3, 2023

Counsel for Appellant ..... Brengyei R. Katosang
Counsel for Appellee ..... C. Quay Polloi

BEFORE: JOHN K. RECHUCHER, Associate Justice
FRED M. ISAACS, Associate Justice
DANIEL R. FOLEY, Associate Justice

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

OPINION[1]

PER CURIAM:

[¶ 1] This appeal concerns a dispute over the ownership of land located in Ngkeklau County, Ngaraard State. The Land Court awarded the land to the people of Angaur on a superior title claim, after finding that the Ngkeklau Chiefs had ownership of the land and properly conveyed it to the people of Angaur during World War II. NSPLA challenges the determination.

[1] Although Appellant and Appellee request oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

[¶ 2] Because we find sufficient evidence supporting the Land Court's decision, and that the Land Court was entitled to take judicial notice of land records not reasonably subject to dispute, we **AFFIRM**.

BACKGROUND

[¶ 3] This case involves a lot located in Ngkeklau County, Ngaraard State, identified as Lot No. 18E02-001 ("the Land"). Appellant Ngaraard State Public Lands Authority ("NSPLA") claims the Land as part of Ngraard State's public lands. Several private land claimants assert their ownership of the Land including Rubekul Ngeaur represented by Sintaro Kual, Rechad ra Ngeaur represented by Angaur Delegate Mario Gulibert, Ngelechel Lineage represented by Andres Ucherebelau, and Orakiblai represented by Lorenso Edward ("Appellees" or "Angaur Claimants"). The private claimants consolidated their claims to a single claim for the People of Angaur.

[¶ 4] During World War II, the people of Angaur were evicted by the Japanese Administration. Due to the links between Angaur and Ngkeklau, the Ngkeklau Chiefs designated the Land for settlement by the people of Angaur Claimants. Several actions testify to this conveyance: a document signed the Angaur chiefs expressing gratitude and acceptance of the Land, the payment of $10,000 to the Ngkeklau Chiefs, and the joint resolutions by the legislatures of Angaur and Ngaraard States endorsing this transfer on June 18, 2003.

[¶ 5] On March 9, 2022, the Land Court found that in the early 1900s, the Land was village-owned, and had been since before the existence of public land authorities. The Land Court did not find any evidence that the Land was ever public land or ever used by any government entity. The Land Court found that the conveyance to the people of Angaur was proper under customary law. The Land Court further found that NSPLA failed to prove that the subject lot was public land. NSPLA appeals this determination.

STANDARD OF REVIEW

[¶ 6] "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." *Idid Clan v. Koror State Pub. Lands*

Auth., 2019 Palau 22 ¶ 14 (citing *Elsau Clan v. Peleliu State Pub. Lands Auth.*, 2019 Palau 7 ¶ 7).

[¶ 7] "An abuse of discretion occurs when a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper and no improper factors are considered, but the court in weighing those factors commits a clear error of judgment." *W. Caroline Trading Co. v. Kloulechad*, 15 ROP 127, 129 (2008) (quoting *Eller v. Republic of Palau*, 10 ROP 122, 128 (2003)). "There is an abuse of discretion if the trial court grounds its decision upon a mistaken view of the evidence or an erroneous view of the law." *Idid Clan v. Palau Pub. Lands Auth.*, 2016 Palau 7 ¶ 6.

DISCUSSION

[¶ 8] NSPLA argues that the Land Court erred when it 1) held that the Angaur Claimants had established superior ownership of the land; 2) found that the land is not listed in the Tochi Daicho as public lands and failed to consider the Tochi Daicho's presumption of accuracy; and 3) took judicial notice of land records that contradict NSPLA's assertion that the land is listed entirely within or made up of parts of Lots 2129-2132, 2134.

I. Sufficient Evidence Supports the Land Court's Determination of the Superior Title Claim

[¶ 9] We address NSPLA's first two assignments of error jointly, as they both concern the elements of a superior title claim. NSPLA challenges the sufficiency of the evidence regarding both elements of the claim, that is (1) that the Land Court committed clear error in finding that the Land never became public in the first place, and (2) that the Angaur Claimants had the strongest claim.

[¶ 10] In a superior title case, the claimant asserts that he holds the strongest title to the land claimed. *KSPLA v. Idid Clan*, 22 ROP 21, 26 (2015). When a claimant asserts a superior title claim, he contends that the land in question never became public. *Ikluk v. Koror State Pub. Lands Auth.*, 21 ROP 66, 69 (2014). Such a claimant stands on equal footing with the governmental entity claiming the land; as such, the burden of proof is shared: "it is in the

claimant's interest to establish control and use of the property," and "the claimant must confront . . . the availability of affirmative defenses not available to the government in Article XIII claims." *Idid Clan v. Koror State Public Lands Authority*, 20 ROP 270 (2013) (quoting *Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185, 185 (2002)).

[¶ 11] In the context of a superior title claim, "[t]he identification of landowners listed in the Tochi Daicho is presumed to be correct, and the burden is on the party contesting a Tochi Daicho listing to show by clear and convincing evidence that it is wrong." *Taro v. Sungino*, 11 ROP 112, 116 (2004); *Ngiradilubech v. Timulch*, 1 ROP Intrm. 625,629 (1989). This presumption exists because the program of recording land information in the Tochi Daicho had been carried out "with considerable care and publicity." *Ngiradilubech v. Timulch*, 1 ROP Intrm. 625, 628 (1989) (citation and internal quotation marks omitted). However, that presumption is limited in application: it only applies to the Tochi Daicho's identification of the landowners. *See Children of Ingais v. Etumai Lineage*, 20 ROP 149 (2013) (finding that the presumption of accuracy concerns only challenges to the identity of Tochi Daicho lot owners, that it has only been extended to that single aspect of the Tochi Daicho, and refusing to extend that presumption to the listed size of the lots.)

[¶ 12] NSPLA contends that the Land Court erred in making these determinations. First, NSPLA states that there is evidence that the Land was public. NSPLA argues that because the land was not listed in the Tochi Daicho, and that the Tochi Daicho listed privately owned land, it logically follows that the unlisted lands are public. Thus, because we presume that the Tochi Daicho is accurate, the Land Court should have concluded that the Land was public.

[¶ 13] While there is a presumption that the Tochi Daicho's identification of landowners is accurate, it does not follow that a land's non-inclusion in the Tochi Daicho necessarily means that land is public. Thus, NSPLA cannot argue that the Land Court erred by ignoring the "presumption of accuracy of the Tochi Daicho," as there is no applicable presumption without a Tochi Daicho listing. This Court has clearly stated that the presumption has a limited application, and we do not see any reason to give credit to the *absence* of a Tochi Daicho listing. Therefore, the Land Court did not err when it ignored the

presumption, and sufficient evidence supports the Land Court's finding that the Land never became public.

[¶ 14] Second, NSPLA maintains that the Land Court committed reversible error where it found that the Angaur Claimants had established a superior title claim: even if the Land never became public in the first place, the claimants must still prove they have a title superior to or stronger than the government's. NSPLA thus states that nothing in the record supports the Land Court's finding that the Angaur Claimants took possession and control over the land during the war, and continued to exercise control over it. On the contrary, NSPLA alleges that the Angaur Claimants returned to Angaur after the war and that while in Ngaraard, they lived in a house not located on the Land.

[¶ 15] However, sufficient evidence supports the Land Court's determination that the Angaur Claimants had the superior title. The Angaur claimants brought forward evidence that they and the Ngkeklau Chiefs controlled and used the Land. The Land Court heard testimony that Ngkeklau Chiefs decided to convey the Land to the People of Angaur, then surveyed it by planting markers around the Land. The people of Angaur lived on the Land during the war, and although some people chose to return to Angaur after the war ended, some people elected to remain in Ngkeklau. On the other hand, NSPLA did not bring forward any evidence that the government controlled and used the Land, aside from evidence that it had been considered public land by NSPLA and that they had discussed and refused to convey the land to the people of Angaur.

[¶ 16] Therefore, nothing in the record to which NSPLA points leaves us with "a definite and firm conviction that an error [of fact] has been made" regarding any of the Land Court's factual findings or its determination that the Angaur Claimants had the superior title. *Rengchol v. Uchelkeiukl Clan*, 19 ROP 17, 21 (2011). The Land Court's findings will not be set aside on appeal unless NSPLA shows that no reasonable trier of fact could have made the same finding. Sufficient evidence supports the Land Court's decision that the Land never became public, and that the Angaur Claimants have the strongest claim to the Land.

II. The Land Records Were Not Reasonably Subject to Dispute

[¶ 17] We now turn to NSPLA's assertion that the Land Court erred in taking judicial notice of land records, arguing that these records were reasonably subject to dispute. Rule 5 of the Land Court Rules of Procedure provides that the Land Court may, on its own initiative, take judicial notice of "facts not reasonably subject to dispute and which are either (1) generally known within the jurisdiction of the Land Court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." LCR Proc. 5.

[¶ 18] During trial, the Land Court took judicial notice of the claims and monumentation records of Bukurrou Recheungel, that were transmitted to the Court by the Bureau of Lands and Survey ("BLS). NSPLA asserted that the Land at issue in this case, Cadastral Lot No. 18E02-001, may have been registered in the Tochi Daicho as Lots 2129-2132. Recheungel's claim is for Tochi Daicho Lots 2129-2132 and indicates that these lots are situated in another area of Ngaraard, and that these Tochi Daicho numbers correspond to Cadastral Lots 06E003-013 and 06E03-040. On May 10, 2022, the Land Court ruled on a motion concerning the appropriateness of taking judicial notice. It determined that while Recheungel's ownership of Lots 2129-2132 may be disputed, their location is not. Therefore, it was appropriate to take judicial notice.

[¶ 19] The Land Court took judicial notice of facts it obtained or deduced by reviewing its own records, BLS's monumentation records, and sketches of the lands in issue. The Land Court resorted to sources whose accuracy cannot reasonably be questioned. Therefore, the Land Court's decision to take judicial notice of the location of Tochi Daicho Lots 2129-2132 cannot reasonably be subject to dispute.

CONCLUSION

[¶ 20] For the foregoing reasons, we **AFFIRM** the Land Court's decision.