Palau Cmty. Coll. v. Ibai Lineage, 10 ROP 143 (2003)

**PALAU COMMUNITY COLLEGE,
IDID CLAN, and REPUBLIC OF PALAU
Appellants,**

v.

**IBAI LINEAGE,
Appellee.**

CIVIL APPEAL NO. 02-55
Civil Action No. 00-206

Supreme Court, Appellate Division
Republic of Palau

Argued: July 21, 2003
Decided: September 15, 2003
⊥144
Counsel for Palau Community College: Oldiais Ngiraikelau

Counsel for Idid Clan: William Ridpath

Counsel for the Republic of Palau: Christopher Boeder and Michael Fineman

Counsel for Appellee: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEX R. MUNSON, Part-Time Associate Justice;[1] J. UDUCH SENIOR, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

SENIOR, Justice:

This appeal concerns claims for the return of public lands pursuant to Article XIII, Section 10 of the Palau Constitution. The land, Iengid, consists of approximately 44,500 square feet and is sited at the Palau Community College ("PCC") campus. Its approximate location is between the cafeteria and the administration building forward on to the parking lot. There seems to be no dispute that the land was taken by the Japanese and was used at one time as a site for a hospital. In 1955, Techitong Remerang filed Claim No. 177 in which he claimed that the land was individual property that he had received at the death of his uncle. The Land Title Officer rendered a determination in 1956 and found that although Iengid had been individual property of Techitong taken without compensation, too much time had elapsed between the taking and the

[1]The Honorable ALEX R. MUNSON, Chief Judge, United States District Court for the Northern Mariana Islands, sitting by designation.

claim, and Iengid was instead awarded to the Trust Territory Government ("TT Government"). The ruling was upheld by the Trial Division of the High Court in 1958. *Oiterong v. Trust Territory of the Pacific Islands*, Civil Action No. 71 (Tr. Div. Sept. 25, 1958). In 1970, the Alien Property Custodian deeded the property to the TT Government which intended to use it as a site for educational facilities.

⊥145 In the 1990s, the Land Claims Hearing Office (LCHO) held a hearing on Iengid. Unlike the adjudication in the 1950s there were multiple claimants including Alfonso Oiterong. Oiterong had been a co-claimant with Techitong as his designated heir during the proceedings in the 1950s. Oiterong withdrew his claim before the LCHO, however, and joined the claim of Ibai Lineage. The LCHO found that Iengid had been the individual land of Techitong and awarded ownership to Ibai Lineage on the theory that it was Techitong's rightful heir. The LCHO's determination was overturned based on a lack of jurisdiction and the case was remanded for a trial *de novo*.

Although the history of Iengid is complex due to change in governments, the passage of statutes and enactments of agency directives, and conveyances among and between the TT Government and Palau and Koror State Public Land Authorities, only two facts are pertinent to the arguments of the parties on appeal. First, the site, designated Lot 40947 after a subdivision in 1978, has been used continuously as a school, first for the Micronesian Occupational Center, then for the College of Micronesia (collectively "PCC's predecessors"), and currently PCC. Second and particularly important to one of PCC's subarguments are two Public Laws passed during the Trust Territory period. The first, P.L. 7-29, instructed the High Commissioner to transfer Lot 40947 to PCC's predecessors by July 1, 1978. The second, P.L. 7-130, accelerated the date for transfer to May 1, 1978. No party has produced a deed evidencing this mandated transfer.

II. ANALYSIS

Each appellant presents different challenges on appeal. Each party argues that the Trial Division's fact finding was, in some regard, clearly erroneous, and those arguments are addressed in subsection D below. PCC also contends that the land is not public land subject to return under Article XIII, Section 10 of the Constitution and, alternatively, that pursuant to the common law doctrine of dedication, the land, although still technically part of the public land subject to return under Article XIII, Section 10, has been removed from the "public domain" until such time as the purpose of the dedication is frustrated, that is until it ceases to be actively used by PCC. These two arguments are addressed in subsections B and C, respectively.

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A. Standards of Review

PCC's arguments pertaining to whether Iengid is public land subject to return under Article XIII, Section 10 and to whether the doctrine of dedication has any applicability in this case are questions of law, and thus we will review them *de novo*. *See Roman Tmetuchl Family Trust v. Whipps* , 8 ROP Intrm. 317, 318 (2001). The appellants' arguments that the Trial Division engaged in faulty fact finding are subject to a clearly erroneous standard of review. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998).

B. PCC's Argument that the Land is not Public Land

It is necessary first to separate the threads of PCC's argument that Iengid is not public land subject to return. First, PCC challenges the Trial Division's interpretation of the "intent of the Framers" and argues that the only permissible interpretation of "public lands" is one that would result in Iengid not being considered public land subject to return. PCC's second argument is best presented in the context of the summary judgment proceedings below. In those proceedings, ⊥146 PCC seemed to argue, first, that Iengid was insulated from return because PCC had secured some kind of equitable title to the land and, second, that Iengid could not be returned because its use had been specifically allocated by the TT Government, and later by the Republic, to PCC and its predecessors. This use argument was crystalized in PCC's supplemental filing at summary judgment and reasserted on appeal, that the land had been dedicated for a public purpose by the TT Government and was therefore withdrawn from the "public domain." This argument is addressed in subsection C below. The equitable title argument has been clarified on appeal to have its genesis in Trust Territory Public Law 7-29, § 17 which directed the High Commissioner to transfer to PCC's predecessors "all Trust Territory property presently being used by [PCC's predecessors], whether real or personal, tangible or intangible." Iengid clearly would have fallen within this dictate.

We turn first to PCC's challenge to the Trial Division's conclusion that the Framers of the Constitution intended an expansive meaning of public lands. In its attempt to dispute the Trial Division's interpretation, PCC argues that various provisions of the Constitution, statutes of the Trust Territory and the Republic of Palau, and an agency directive by the United States Department of Interior ("DOI") require a finding that Iengid is not public land subject to return. We disagree.

PCC contends that there is no definition of public land in Article XIII, Section 10 or in 35 PNC § 1304 and urges the Court to divine the intent of the Framers by looking to what would effect the most reasonable result in this case. However, "public lands" are defined in 35 PNC § 101: "Public lands are defined as being those lands situated within the Republic which were owned or maintained by the Japanese administration or the Trust Territory Government as government or public lands, and such other lands as the national government has acquired or may hereafter acquire for public purposes." PCC instead relies on a definition of "public lands" contained in Secretarial Order 2969 ("Order 2969") issued by the DOI in 1974, which contained an exception for lands "actively used" by the government. Given that the OEK has defined "public lands" in the title of the Palau National Code that pertains to the return of public lands

without incorporating existing and presumably known language from Order 2969, however, any reliance by PCC on that order is unavailing.

PCC also relies on Article XV, Section 3(b) and asserts that to find that Iengid is public land subject to return would render meaningless the recognition and enforceability of rights and interests guaranteed by Section 3(b). That section, however, specifically recognizes that there may be rights or interests that are subject to other countervailing interests addressed by the Constitution. By directing the return of Iengid, arguably PCC or the Republic will lose certain rights and interests in the land. However, the Framers cannot have intended the general provision contained in Section 3(b) to disrupt their explicit mandate to return public lands where Section 3(b) specifically allows for exception "subject to the provisions of this Constitution."

PCC also contends that the passage of P.L. 7-29 by the TT Government conveyed Iengid to PCC's predecessors and thus it is not public land subject to return. The first obstacle to PCC's argument is that as no party introduced a deed, it appears none was ever prepared. PCC contends that title to Iengid ⊥147 nevertheless passed to its predecessors by operation of law. [2] In our view, however, the question of whether a valid conveyance took place is moot because PCC is an arm of the Republic. *See* 22 PNC § 301(a) (establishing PCC as public, non-profit education corporation). Specifically, 22 PNC § 301(g) states that "Palau Community College . . . shall assume the role of a postsecondary educational agency for the Republic." [3] Thus, on the face of the statute it appears that PCC is at least a national government subagency. It is doubtful in the extreme that the Framers intended the Republic to have the power to circumvent the return of public lands provision simply by conveying land to subagencies within the national government.

Finally, PCC points to the Higher Education Act of 1993, RPPL 4-2 (codified at 22 PNC §§ 301-352), which it contends indicates a continuing commitment by the OEK to PCC's undisturbed use of the land. Although in general that may be true, the section relied upon by PCC, 22 PNC § 316(j),[4] when read in context, rather than indicating any protection of PCC's interest, is a clear limitation on the PCC Board of Trustees' power to alienate certain real property. Finally, 22 PNC § 341(b) also explicitly recognizes that claims might be brought under Article XIII, Section 10 and limits those claims to actions in inverse condemnation.

Thus, we conclude that Iengid is public land subject to return under Article XIII, Section 10.

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[2]Interestingly, 22 PNC § 341(b), as part of the Higher Education Act of 1993, recognized that the United States Government held title to Lot No. 40947, of which Iengid is a part.

[3]PCC also serves "as the designated State Agency for all appropriate vocational education." 22 PNC § 301(g)(14).

[4]Section 316 sets forth the powers of PCC's Board of Trustees and § 316(j) describes the Board's power to

> acquire in any lawful manner any property . . . and to sell, lease, or otherwise dispose of the same . . . provided, that any real property granted to the College without cost by the Republic or any political subdivision thereof, or by any other legal entity capable of receiving and holding public land in the Republic shall revert to said government, political subdivision, or legal entity upon the cessation of active use by the College.

C. PCC's Argument that the Land was Dedicated for a Public Purpose

PCC's dedication doctrine argument fails for much the same reason as its intent-of-the-Framers argument fails. In the context of Palauan land law, dedication is at most a borrowed common law construct that is superseded by the Framers' intent on the issue of the return of public lands. Determination of whether a piece of property falls within the definition of "public lands" cannot be based on the uses to which the land has been put. Thus, regardless of whatever else the doctrine of dedication may be used for in the future, it is not sufficient reason to set aside a firm directive from the Framers to return public lands.

D. Each Appellant's Assertion of Clear Error

⊥148 As an initial matter, it is important to keep in mind exactly what evidence was before the Trial Division. First, the court considered the testimony taken at trial below. Second, the court considered the entire record before the Land Title Officer. Third, the court, with the agreement of the parties, found that in the absence of an LCHO hearing transcript, the LCHO's summary of an individual witness's testimony would be admissible for evidentiary purposes only where that witness was unavailable. The court did not rely on the factual findings of the LCHO.

The ROP's only challenge on appeal[5] is "[w]hether the Trial Division erred in concluding that Ibai Lineage is the proper heir to the land at issue, as required by 35 PNC § 1304(b)(2)." The ROP's focus on the proper heir standard is unavailing. First, the ROP places too much importance on the Trial Division's statement that it would determine "as between Ibai Lineage and Idid Clan, who has the better claim to the land". The ROP argues that by undertaking such an inquiry the trial court engaged in fact finding contrary to the dictates of § 1304(b)(2), which requires that the court determine the proper heir, and of this Court's decision in *Masang v. Ngirmang*, 9 ROP 125, 128 (2002), which reaffirmed that in returning public lands the court may not simply choose among the claimants before it, but rather it may only award land to proper heirs. Although the trial court made a determination that Ibai's claim was supported by a preponderance of the evidence over Idid's claim, it then went on to determine that Ibai had been the owner of Iengid at the time of the taking and thus fulfilled § 1304(b)(2)'s dictate that a successful claimant be either the same person or entity that owned the land at the time of the taking or a proper heir. Accordingly, any implication by the ROP that Ibai Lineage is not nor cannot be a proper heir of Techitong is a non-issue because the Trial Division did not award the property on that basis.

We now turn to the ROP's contention that the Trial Division's factual finding that Ibai Lineage was the owner of Iengid at the time of the taking was clearly erroneous. [6] We disagree.

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[5]Although its Notice of Appeal stated that it was also appealing the Trial Division's denial of its Motion for Summary Judgment in which it asserted that the court had no subject matter jurisdiction, the ROP made no argument in its brief to that effect and appeal of that issue is therefore waived.

[6]Because all of the appellants argue Ibai's degree of reliance on Techitong's claim, the following discussion will suffice to address the contentions of Idid Clan and PCC as well. Where PCC or Idid Clan raises challenges unique to their arguments they will be addressed below.

The trial court found that Ibai's claim, as presented in 1990 and relitigated here, was premised on the lineage being the historical owner of Iengid. [7] The ROP counters that Hiromi Rdiall's testimony in 1990 was inconsistent with his testimony below. The LCHO testimony, as represented by the LCHO's summary, supports two different views, either that Iengid was individually owned by Techitong or that Techitong was merely using the property at the sufferance of Ibai Lineage. Hiromi testified at the proceedings below very definitively, however, that the claim has always been one for and through the lineage. Ais Rdiall's LCHO testimony, which was deemed admissible below because he is now ⊥149 deceased, recounted Techitong's and his father's residence on the land and its use to plant coconut trees. This testimony is likewise open to two interpretations and does not definitively establish that Ibai claimed as heir to Techitong. Finally, the court also noted, and the ROP does not address, Alfonso Oiterong's withdrawal of his claim as heir to Iengid during the LCHO proceedings. Given the equivocal nature of the evidence presented to the LCHO, the trial court's choice to credit the testimony of Hiromi Rdiall and rule in favor of Ibai Lineage is not clear error.

PCC's argument varies only slightly from the ROP's argument. PCC contends that because Ibai Lineage was basing its claim to a large degree on Techitong's claim, it could not disavow his claim of individual ownership and for the trial court to find otherwise was clear error. We disagree. PCC is asking this Court to substitute its judgment on the matter of the credibility of witness testimony, but this is not the job of an appellate court. *Ngeribongel v. Guilbert*, 8 ROP Intrm. 68, 70 (1999). We generally defer to the credibility determinations of the trial court, and we will only overturn them in extraordinary cases. *Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 35 (1999). While it undoubtedly weakened Ibai's case that a portion of its own evidence contradicted its claim, the Trial Division did not commit clear error by accepting part and rejecting part of Techitong's claim to reach its determination in favor of Ibai Lineage.

In regard to Idid Clan's challenge, only one additional issue need be addressed. The trial court relied in part on the support of Idid Clan leaders for Techitong's claim to reject Idid's claim to Iengid. That leaders of Idid Clan supported Techitong's claim makes it almost unbelievable that Iengid was owned by Idid Clan. Idid contends that Ibai Lineage owned a taro patch in the area, and that it was this claim that Idid leaders supported in the 1950s. The trial court found, however, that the supporting evidence indicated that the parcel claimed by Techitong and later by Ibai was neither the size nor the location of the taro patch asserted by Idid Clan. Thus, the Trial Division's choice of Ibai Lineage over Idid Clan is also not clearly erroneous.

III. CONCLUSION

For the reasons set forth above, the decision of the Trial Division is affirmed.

[7] By comparison, the LCHO awarded ownership on the basis that Ibai Lineage was the heir to Techitong.