Mesebeluu v. Uchelkumer Clan, 10 ROP 68 (2003)

AUGUSTINE MESEBELUU, SUSAN NGIRAUSUI, RONALD RDECHOR, YASHINTO ISECHAL, ETIBEK SHMULL, ICHIRO DINGILIUS, KALISTA NGIRKELAU, HARUO JOSHUA, CALEB KOSHIBA, JOHN SADAO SAMBAL, CHRISTINA S. KODEP, FRANCISCO MASATO KUMANGAI, CHILDREN OF KUMANGAI, DONGESANG SMAU, and CHRISTOPHER K. NGIRANGOL,
Appellants,

v.

UCHELKUMER CLAN,
Appellee.

CIVIL APPEAL NO. 99-10
LC/R 08-98 & 09-98

Supreme Court, Appellate Division
Republic of Palau

Argued: December 2, 2002
Decided: March 3, 2003
⊥69
Counsel for Mesebeluu: William L. Ridpath

Counsel for Ngirausui: Clara Kalscheur

Counsel for Rdechor and Isechal: Oldiais Ngiraikelau

Counsel for Shmull, Dingilius, Ngirkelau, and Joshua: Johnson Toribiong

Counsel for Koshiba, Sambal, Kodep, Kumangai, and Children of Kumangai: Yukiwo P. Dengokl

Counsel for Smau and Ngirangol: J. Roman Bedor, T.C.

Counsel for Appellee: Raynold B. Oilouch

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; J. UDUCH SENIOR, Associate Justice Pro Tem.

Appeal from Land Court, the Honorable FRANCISCO J. KEPTOT, Associate Judge; the Honorable THEODOSIA F. BLAILES, Part-Time Judge; the Honorable GRACE YANO, Part-Time Judge, presiding.

MILLER, Justice:

Mesebeluu v. Uchelkumer Clan, 10 ROP 68 (2003)

This multiparty appeal reveals many of the difficulties inherent in the resolution of large-parcel, multi-claimant land cases. A three-judge panel of the Land Court heard from at least twenty-five witnesses over five days on more than thirty individual lots. As a result this appeal raises numerous issues of law and fact. We affirm in part, reverse in part and remand to the Land Court for further proceedings consistent with this opinion.

BACKGROUND

The land at issue is the Peleliu village of Imelchol, which appellee Uchelkumer Clan claimed from Dort to Medorm. Ngerbuuch Clan also claimed Imelchol and numerous individual claimants argued that they owned lots within the village. Representatives of Uchelkumer Clan and Ngerbuuch Clan each testified that they received Imelchol from Luil Clan. A representative of Luil Clan testified in support of Uchelkumer Clan.

Uchelkumer Clan argued the Tochi Daicho listees came to occupy their individual lots when Ngirchongor Rekiu divided Imelchol among the people of Ngesias hamlet for the growing of coconuts in order to meet the German mandate. Imelchol was used for coconut plantations through the Japanese administration until Peleliu was evacuated during World War II. Most of the individual claimants' families never returned to Imelchol and, for the most part, the land has been unused since that time. Because it found that the individual claimants relied solely on the Tochi Daicho listings of relatives as owners of the disputed parcels and had no personal knowledge of the history of the land, the Land ⊥70 Court majority found in favor of Uchelkumer Clan.

DISCUSSION

All Appellants argue that the Land Court's decision sets forth inadequate, clearly erroneous, and irrelevant findings of fact and conclusions of law, and thus the Court did not make clear the basis for its determination of ownership. Some appellants argue that we revisit the different treatment afforded the Peleliu Tochi Daicho. One appellant, Christopher Ngirangol, argues that he was denied due process. Finally, some Appellants argue that the claim of Uchelkumer Clan is barred by the statute of limitations, laches, or estoppel.

The Peleliu Tochi Daicho

Because it is relevant to the determination of the factual issues appealed, we address first the treatment accorded the Peleliu Tochi Daicho. Tochi Daichos of other states are accorded a rebuttable presumption of accuracy and their listings cannot be defeated except by clear and convincing evidence. *Ngiradilubech v. Timulch* , 1 ROP Intrm. 625, 627-29 (1989) (reciting history of presumption in Trust Territory and Palau case law). As to the Peleliu and Anguar Tochi Daichos, however, we have said that no such presumption is appropriate. *In re Estate of Kloulubak*, 1 ROP Intrm. 701, 703 (1989).

In 1955, Chief Justice Furber stated:

> [t]he court takes notice that the official Japanese land survey in the Palau Islands which was completed in 1941 was carried on with considerable care and publicity, and that those engaged in it were given broad powers. The court holds that the presumption determinations made in this survey were correct is strong in that case of issues which were a matter of controversy at the time. To overcome this presumption in the case of such issues, there must be a clear showing that the determination in question is wrong.

Baab v. Klerang, 1 TTR 284, 286 (Tr. Div. 1955).

It was not until 1963 that the Trust Territory Court decided a case that involved the Peleliu Tochi Daicho. In *Ngerdelolek Village v. Ngerchol Village* , 2 TTR 398, 403 (Tr. Div. 1963), Chief Justice Furber stated that the survey process was not complete with regard to Peleliu and that "no consents were obtained or other steps actually taken to . . . clarify the status of the use rights in the land in question." He also stated that Nanya Kohatsu Kaisha (NKK), a private company, prepared the listing currently referred to as the Peleliu Tochi Daicho. *Id.* at 401. In *Ngiraingas v. Isechal* , 1 ROP Intrm. 36, 41 (Tr. Div. 1982), the Trial Division of the Supreme Court recognized the presumption of correctness given to the Tochi Daichos of certain municipalities. It further interpreted *Ngerdelolek Village* to stand for the proposition that "[t]he same status has not been accorded the Peleliu Tochi Daicho . . . because the care, formality, and completeness is not apparent." *Id.* The Appellate Division confirmed the different status accorded the Peleliu and Anguar Tochi Daichos in *Kloulubak*, 1 ROP Intrm. at 702-03. Thus, the Peleliu Tochi Daicho may be given evidentiary weight but it does not carry the presumption of accuracy of the Tochi Daichos ⊥71 of other states.

Several Appellants argue that evidence presented at the hearing on Imelchol is sufficient to reverse course on the issue of denying a presumption of correctness to the Peleliu Tochi Daicho. There were two pieces of evidence that pertained to the Tochi Daicho: the testimony of Appellant Shmull and documents entered into evidence by Appellant Rdechor.

Appellant Shmull testified that although NKK did survey parts of Peleliu, their survey included only those lands that were known to have phosphate deposits. Furthermore, he stated that a survey team from the Japanese government rented a house in Imelchol and conducted a survey of the local land owners. He conceded that the Japanese may have relied in part on the survey work done by NKK and also testified that he believed Imelchol was part of Ngesias hamlet and NKK surveyed Ngesias hamlet because it had phosphate deposits. Furthermore, he did not know whether there was any kind of systematic approach to allow the people to contest the survey as had been afforded to land owners in other parts of Palau.

Appellant Rdechor presented documentary evidence that he argued supported the view that the Peleliu Tochi Daicho was not prepared by a private company and thus was entitled to the same weight accorded the Tochi Daichos of the other states. He argued that these exhibits are original Japanese-era documents that purportedly relate to the Japanese government survey of Peleliu.

It is the opinion of this Court that Shmull's equivocal testimony and Rdechor's exhibits are not sufficient to reverse course on the issue of the evidentiary weight accorded to the Peleliu Tochi Daicho. Although Shmull's testimony raises interesting questions about the extent to which the Peleliu Tochi Daicho was compiled by a private company rather than by the Japanese government, neither Shmull nor any other individual testified that hearings occurred at which individuals or clans could contest the listings. Likewise Rdechor's documents, which were not translated when placed into the record, do not compel this Court to revise the long held view of the Peleliu Tochi Daicho. The nonpresumptive weight accorded to the Peleliu Tochi Daicho will not be disturbed on the basis of these facts. The proper evidentiary treatment of the Peleliu Tochi Daicho will remain as it has been: "In cases involving Peleliu land claims . . . the Tochi Daicho listings may come before the Court to be considered along with, and without necessarily being accorded any greater or lesser weight than, any other evidence presented." *Kloulubak*, 1 ROP Intrm. at 705.

The Sufficiency of the Land Court's Opinion

Appellants argue that the Land Court's opinion did not make clear the basis for its determination of ownership because it included inadequate, clearly erroneous, and irrelevant findings of fact and conclusions of law.[1] With two exceptions, we disagree.

⊥72 We review the Land Court's findings of fact for clear error. *Tesei v. Belechal* , 7 ROP Intrm. 89, 89-90 (1998). Conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). The Land Court must issue findings of fact and conclusions of law that make clear the basis for its determination of ownership in one party rather than another; if it does not, this Court cannot adequately review the determination and the case must be remanded. *Temael v. Beketaut* , 8 ROP Intrm. 101, 101 (2000); *Matchiau v. Telungalek ra Klai*, 7 ROP Intrm. 177, 179 (1999). The Land Court, however, need not reiterate every fact presented at trial because the availability of a transcript allows meaningful review to take place. *Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 36 (1999).

Given the amount of testimony presented at the hearing, the Land Court's opinion was relatively brief. The decision did not address the strength of each claimant's case individually nor did it contain any conclusions of law other than the statement that "according to the testimonies and evidence presented at the hearing, we determine that the land known as Imelchol in Peleliu is the property of Uchelkumer clan." As will become apparent, we believe that it was this broad brush approach by the Land Court that has necessitated the remand of two Appellants' claims. We agree that the Land Court's opinion might have benefitted from being more specific

[1]In a related issue, Appellants assert that the Land Court opinion does not set forth an affirmative statement as to the location and dimensions of Imelchol nor does it contain a statement that the individual lot(s) of each claimant are contained within Imelchol from Dort to Medorm. The transcript makes reference to a map that showed the boundaries of Uchelkumer Clan's claim. Even if the evidence set forth at trial as to the extent of Uchelkumer Clan's claim was deficient, no Appellant argued that his or her lot was outside the area being adjudicated. The parties proceeded as if the lands at issue were coextensive and they should not now be heard to argue otherwise. *See Ngaraard State Pub. Lands Auth. v. Rechucher*, 10 ROP 11, 12 (2002).

in its findings of fact and in applying the law to its factual findings. Nevertheless, whatever the deficits of the Land Court's opinion, for the majority of claimants, they do not present grounds for which reversal is appropriate.

The Land Court found as a factual matter that Luil Clan granted Imelchol to Uchelkumer Clan. It supported its inference of Uchelkumer Clan's historical ownership by finding that it was Ngirchongor Rekiu who parceled out Imelchol for the growing of coconuts, that even now it is Ngirchongor who controls the taking of milkfish in Imelchol, that some of the Tochi Daicho listees were related to Uchelkumer Clan, and that Ngerbuuch Clan did not present strong evidence in support of its claim of historical ownership. The Land Court also determined that there was no evidence of consent by the clan to grant ownership of Imelchol to the Tochi Daicho listees. It is axiomatic that a chief may not alienate clan land without the consent of the clan. *Ngerketiit Lineage v. Ngerukebid Clan,* 7 ROP Intrm. 38, 44 (1998) (citations omitted); *Ngiraloi v. Faustino*, 6 ROP Intrm. 259, 260 (1997); *Ngiradilubch v. Nabeyama* , 3 ROP Intrm. 101, 105 (1992) (citing *Gibbons v. Bismark*, 1 TTR 372 (1958)). The Land Court therefore concluded that ownership of Imelchol never passed from Uchelkumer Clan to the Tochi Daicho listees.

All Appellants relied to some degree on the Tochi Daicho listing. Under the principle reaffirmed by us today, the Peleliu Tochi Daicho may be considered by a trial court as some evidence of ownership. Our review of the record reveals that Appellants Mesebeluu, Dingilius, Kumangai, Shmull, Smau, Tsuneo, Rdechor, [2] Chin, Sambal and ⊥73 Kodep, Ngirkelau, the Children of Kumangai, and Koshiba relied solely on the Tochi Daicho listing. These claimants had no knowledge of how the lots came into the hands of their predecessors. They also did not know the dimensions of the lots they were claiming and instead relied strictly on the land area as recorded in the Tochi Daicho. It is clear to us that the Land Court weighed the Tochi Daicho listings against the historical and customary evidence and resolved the dispute in favor of Uchelkumer Clan. It was not clear error for it to do so.

For two Appellants, Isechal and Ngirausui, we find that they presented evidence in addition to the Tochi Daicho that was not addressed in the Land Court's decision, and that might have had an impact on the Land Court's weighing of the evidence. Appellant Isechal testified that his father, the Tochi Daicho listee, [3] was given a parcel in Imelchol by Ngirchongor Blolobel, who was Ngirchongor during the Japanese administration. Isechal stated that his father was given the land because he had paid visits to Blolobel's wife who was a relative from Aimeliik. He further testified that because all the shore property had already been parceled out, his father was given an inland plot and that although his father died when he was eight years old, Isechal's

[2]Appellant Rdechor also presented evidence below that public notice as to the parcel he claimed, Tochi Daicho Lot 996, was given during probate proceedings regarding his mother's estate and that Uchelkumer Clan did not claim the lot at that time. Unlike a quiet title action, the notice given in an estate proceeding is not directed at those who claim any interest in a particular piece of land, but only those who claim to have succeeded to the decedent's estate. To that extent, although Uchelkumer Clan may be barred from asserting that it is the successor to Rdechor's mother, it is not barred from contending–as it did–that neither she nor her successors have any interest in the land.

[3]We refer here to Tochi Daicho Lot 1002. Isechal also claimed Lot 1003 adversely to Appellant Mesebeluu as well as the Clan claimants. As to that lot we find that his case was no stronger than those Appellants who relied strictly on the Tochi Daicho.

uncles showed him the land that belonged to his father. Thus, Isechal's recitation of the history of his claimed lot is significantly different from that testified to by Uchelkumer Clan.

Appellant Ngirausui's father bought the lot she claimed from the children of the Tochi Daicho listee. They testified that they received war reparations on the land and that unlike many of the other individual claimants who never returned to Imelchol after the war, they remember their mother farming the land during the 1950s. We do not suggest that the evidence presented by either of these Appellants was conclusive. We cannot determine from the Land Court's opinion, however, whether it weighed the facts specific to these Appellants and found them insufficient to change its general conclusion or failed to consider the evidence at all. *See Roman Tmetuchl Family Trust*, 8 ROP Intrm. at 319 (remanding where record was unclear as to whether "document was admitted for substantive purposes, and, if so, whether the Trial Division considered its impact on [the] case"). As to these two Appellants, therefore, we remand to the Land Court for further consideration of their claims. The Land Court need not take additional evidence and its decision "may, but need not, reach the same result as the first Determination of Ownership." *Matchiau*, 7 ROP Intrm. at 179.

Appellant Ngirangol's Due Process Claim

Appellant Christopher Ngirangol argues that he was denied due process because he was not permitted the opportunity to present evidence of his claim for Tochi ⊥74 Daicho Lot 1005. In support of his contention, he points to a portion of the transcript in which, he asserts, the Land Court instructed him to present his evidence after another claimant had testified about his claim. In fact, the incident to which Ngirangol refers did not concern lot 1005 but rather lot 996, which was claimed by both Appellant Rdechor and Dirrangol Ngiraitib. Ngirangol appeared at the hearing on lot 996 in support of Ngiraitib.

The transcript does not contain any proceedings on lot 1005. Initially Ngirangol submitted an affidavit in which he stated that he did give testimony but that it was not in the record, and there is a gap in the transcript–tape six is entirely blank and the person testifying at the beginning of tape seven is not the same person who was testifying at the end of tape five. Ngirangol later sought to rescind his affidavit and claimed that he presented his claim not to the panel but in an off-the-record conversation with Uchelkumer Clan's representative.

Regardless of whether Ngirangol's testimony took place during the missing portion of the tape or he never testified before the panel, his due process claim has no validity. Ngirangol was properly noticed as evidenced by his attendance at the hearing. If his testimony occurred during the gap in the tapes, it is his responsibility to make an offer of proof concerning the missing testimony. *Elewel v. Oiterong* , 6 ROP Intrm. 229, 232 (1997); *KSPLA v. Meriang Clan* , 6 ROP Intrm. 10, 14 (1996).

His contention that he gave evidence of his claim to the representative of the Clan off the record is untenable. As the hearing progressed each claimant was sworn in, was given an opportunity to explain the basis of his or her claim, was questioned by the judges, and was questioned by adverse claimants. It is not logical that a claimant would believe that an informal

conversation would suffice to present his claim to the Court. Before closing arguments the Court stated: "It appears to the Court that we are coming to the end where there is no more testimony coming out and the Court has received everyone's testimony." The Land Court also stated at the end of the hearing that "all claimants have appeared and given their testimony and everything that needed to be said has been said." If Ngirangol had not up to that time presented evidence of his claim, it was incumbent upon him to bring that fact to the Court's attention. We find that there has been no due process violation here.

Statute of Limitations,
Laches, and Estoppel

Title 14, § 402(a)(2) of the Palau National Code states that actions for the recovery of land shall be commenced only within twenty years after the cause of action accrues. This Court has held that the mere existence of a Tochi Daicho listing is not enough to commence the running of the twenty-year statute of limitations. *Andres v. Desbedang Lineage* , 8 ROP Intrm. 134, 135 (2000). Accordingly, for the claimants who relied solely on the basis of the Tochi Daicho listing, the statute of limitations has no applicability here.

Laches has been defined as "sleeping on one's right to the extent of permitting such action to mislead another to his detriment." *Rengiil v. Ngirchokebai*, 1 ROP Intrm. 197, 203 (Tr. Div. 1985); *see also Delbochel Lineage v. Kloulechad*, 3 ROP Intrm. 145, 147 (1992). Thus, for laches to apply, proof of two elements is necessary. First, a party must have unreasonably delayed in its assertion of a known claim and second, ⊥75 prejudice must have resulted to the party asserting laches. The evidence before the Land Court was that the Tochi Daicho listees and their families left Imelchol when Peleliu was evacuated and the great majority of them did not return after the war. Thus, although all of the listees have passed away, there is little basis to find that Uchelkumer Clan acted unreasonably in asserting its claim in the ordinary course of Land Court proceedings, nor have Appellants shown any unique prejudice from this passage of time.

Last, Appellants argue that Uchelkumer Clan should be estopped from asserting its claim because the Clan's representative or his family members have relied on listings within the Peleliu Tochi Daicho in order to make individual claims of land. There is no rule that prevents a party from relying on the Tochi Daicho as to one parcel of land but challenging its accuracy as to another. Thus, this argument amounts to no more than an attack on the credibility of the Clan's representative. It is the role of the trial court to weigh the credibility of witnesses and not for this Court to second guess its determination absent extraordinary circumstances. *Omelau v. ROP* , 3 ROP Intrm. 258, 260 (1993); *see also Omenged v. United Micronesia Dev. Auth.* , 8 ROP Intrm. 232, 233 (2000) (quoting *Remoket v. Omrekongel*, 5 ROP Intrm. 225, 227 (1996)).

CONCLUSION

The decision of the Land Court as to Appellants Mesebeluu, Dingilius, Kumangai, Shmull, Smau, Tsuneo, Rdechor, Chin, Sambal and Kodep, Ngirkelau, the Children of Kumangai, and Koshiba is affirmed. The decision of the Land Court as to Appellants Isechal and Ngirausui is reversed and remanded for further proceedings consistent with this opinion.