ROP v. Wally, 10 ROP 85 (2003)
REPUBLIC OF PALAU,
Appellant,

v.

WILLIAM O. WALLY, JR., VALENTINE SUKRAD,
and TEREKIEU CLAN,
Appellees.

CIVIL APPEAL NO. 01-22
LC/B 99-01

Supreme Court, Appellate Division
Republic of Palau

Decided: February 17, 2003[1]
Amended: April 1, 2003

Counsel for Appellant: Michael S. Fineman

Counsel for Wally and Sukrad: Yukiwo P. Dengokl

Counsel for Terekieu Clan: Ernestine K. Rengiil

BEFORE: ARTHUR NGIRAKLSONG, ⊥86 Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

Appeal from the Land Court, the Honorable DANIEL N. CADRA, Senior Judge, presiding.

MICHELSEN, Justice:

This appeal involves claims to land within what is generally known as the George B. Harris Elementary School site. The case was before the Land Court pursuant to 35 PNC § 1304(b), which is the current codification of the implementation section for the Return of Public Lands Clause of the Palau Constitution.[2] The property straddles the boundary between Ngerchemai and Iyebukel Hamlets in Koror State.[3]

A number of private claimants submitted claims for this public land. Koror State Public

[1]Upon reviewing the briefs and record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. Pro. 34(a).
[2]"The national government shall, within five (5) years of the effective date of this Constitution, provide for the return to the original owners or their heirs of any land which became part of the public lands as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration." Palau Const. art. XIII, § 10.
[3]The parcels are shown as Lot Nos. 41011, 40852, 40853, 40854, 40855, 40856, 40857, and 40858 on Bureau of Lands and Surveys Drawing No. 4011/84.

Land Authority ("KSPLA") was also a party in the Land Court as the successor in interest to governmental entities who previously held title. The national government ("the Republic") participated in the hearing as well, asserting that pursuant to an agreement with KSPLA, it possessed a use right to utilize the site as an elementary school. The Republic has appealed stating that "[t]his appeal does not seek to challenge the Land Court's award of title to Appellees, but rather seeks a determination that such title is subject to a use of right by Appellant, continuing until the property ceases to be used for the purpose for which it was dedicated." Because Land Court jurisdiction is limited to determinations of land titles, adjudications of possessory use claims such as those asserted by the Republic are not within that Court's statutory responsibility. We therefore affirm the judgment.

DISCUSSION

After a detailed recitation and analysis of the conflicting evidence of the claimants, the Land Court determined that Terekieu Clan should have title returned to it for that portion of the school property within Iyebukel Hamlet, and that William O. Wally, Jr. and Valentina Sukrad were entitled to title to that portion lying within Ngerchemai Hamlet. In reaching that conclusion, the Court considered the argument of the Republic that since there was no evidence that the claimants objected to the construction of the school, or claimed ownership of the property at the time of construction, (i.e., the early 1970s) their claims were newly-surfaced and without historical basis. The Republic's position was rejected by the Court because "laches, stale demand and waiver" are not available as defenses in Return of Public Land cases. *See* 35 PNC § 1304(b)(2).[4]

⊥87 As part of this discussion, the Court added in a footnote on page 34 of its 35 page opinion that "arguably" the facts presented an example of a "common law dedication for public purpose," i.e.,that an owner's long acquiescence to use of property for a public purpose could be held to be an implied dedication. The Court also rejected this approach because "[i]mplied dedication, however, is a form of laches which can not be raised as a defense."

On appeal, the Republic wishes to contest the conclusion of that footnote, and argues that the Land Court should have found an implied common law dedication, and hence a use right, in favor of the Republic.

We decline to reverse on those grounds. First, the Republic never urged the Court to make a finding of dedication, implied or otherwise. The only discussion concerning an implied dedication is found in footnote 31 of the Land Court's opinion where the issue was raised *sua sponte*, and rejected.

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[4]35 PNC § 1304(b)(2) provides, in relevant part:

> [T]he statute of limitations, laches or stale demand, waiver, res judicata, or collateral estoppel as to matters decided before January 1, 1981, and adverse possession, may not be asserted against and shall not apply to claims for public land by citizens of the Republic.

Secondly, if the government had presented a dedication argument below, the Land Court did not have authority to decide it. The legislative grant of jurisdiction to the Land Court is contained in 35 PNC § 1304. Section 1304(a) provides that the Land Court "shall proceed on a systematic basis to hold hearings and make determinations with respect to the *ownership* of all land within the Republic" (emphasis added). Similarly, § 1304(b) authorizes the Land Court to "award ownership" in Return-of-Public-Land cases. A decision concerning whether the Republic has a right to use Appellees' property by way of an implied common law dedication of land is neither a determination of ownership nor an award of ownership.

The Republic asserts that restricting the Land Court's authority to matters of land ownership would be contrary to the interests of justice and judicial economy. We disagree. The Land Court's assignment is already an outsized one: to determine ownership to, and to issue certificates of title for, all land in the Republic. To require the Land Court to also address use or possessory rights in addition to determining ownership to real property will saddle that Court with a task not required by the statute.

CONCLUSION

The language of the statutory grant of jurisdiction in Title 35 is explicit: the legislature has authorized the Land Court to make determinations of ownership and to award ownership of public lands to private citizens in specific circumstances. The Land Court has no further adjudicatory responsibility. We therefore deny the Republic's appeal, and affirm the decision of the Land Court.