Palau Pub. Lands Auth. v. Tab Lineage, 11 ROP 161 (2004)

PALAU PUBLIC LANDS AUTHORITY and NGCHESAR STATE PUBLIC LANDS AUTHORITY,
Appellants,

v.

TAB LINEAGE,[1]
Appellee.

CIVIL APPEAL NO. 02-055
LC/P 02-142

Supreme Court, Appellate Division
Republic of Palau

Argued: February 20, 2004
Decided: June 10, 2004
⊥162
Counsel for Appellants: Matthew Johnson

Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice.

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

MILLER, Justice:

The Palau Public Lands Authority in concert with the Ngchesar State Public Lands Authority (hereinafter collectively referred to as "Lands Authorities") filed this appeal challenging the determination of ownership of the Land Court awarding Cadastral Lot No. 019 P 01 to Tab Lineage of Kebou Clan. For ⊥163 the reasons set forth below, we affirm the determination of the Land Court.

BACKGROUND

This appeal involves a claim for the return of public lands case under Article XIII, Section 10 of the Palau Constitution and under the Land Claims Reorganization Act of 1996, codified as 35 PNC § 1301 *et seq*. The contested property is located in Ngchesar State and is known as Rois, Otkoll, or Meltaltureomel. It is part of Ngchesar Tochi Daicho Lot No. 107 where it was listed as the property of the Japanese government. As a result of a 1975 survey, it was re-classified as Lot No. 103-9013. The Bureau of Lands and Surveys currently designates

[1]The notice of appeal in this matter designated Skang Mekreos as appellee. The caption has been changed to reflect that Tab Lineage of Kebou Clan is the real party in interest.

the property as Cadastral Lot No. 019 P 01.

On August 20, 1975, Skang Mekreos ("Skang"), an ochell member and Chief Ngirakebou of Kebou Clan, monumented the contested property. On February 28, 1979, Skang submitted a formal application to register the property. On March 1, 1979, the Ngchesar Land Registration Team held a hearing to determine the ownership of the land. Present at the hearing were claimant Skang as well as Tadashi Sakuma, who appeared on behalf of the Palau Public Lands Authority ("PPLA"). On May 29, 1979, the Land Registration Team issued its findings of fact and adjudication of ownership, awarding the contested property to PPLA. The Land Commission subsequently approved the adjudication. Twenty-three months later, on April 23, 1981, a determination of ownership issued in favor of PPLA.

On September 20, 1988, Balbina Mekreos ("Balbina"), Skang's sister, filed a claim for the land on behalf of Tab Lineage of Kebou Clan. Her claim referred to the contested property solely as Tochi Daicho Lot 107. On October 18, 2001, the Land Court Registrar issued a memo to the court's file confirming that the land in dispute was the same land that was contested in the March 1, 1979, hearing and that a determination of ownership had been issued on April 23, 1981. The Registrar also noted that a final Cadastral plat had been approved which showed that the property boundaries corresponded to Cadastral Lot 019 P 01. A certificate of title was reissued in the name of PPLA to conform to the amended classification.

For an unknown reason, Balbina's claim originally proceeded before the Land Court as a hearing on Lot 018 P 01 rather than 019 P 01. As the hearing progressed, it became clear that Balbina was pursuing the same claim as Skang–a claim to the property formerly classified as Tochi Daicho Lot 107 and currently classified as Lot 019 P 01. After resolving the issue of the land's location, the Land Court reset the hearing date. A two-day hearing followed beginning on November 6, 2002, after which the Land Court determined that Tab Lineage of Kebou Clan was the rightful owner of the contested property.

The Lands Authorities appeal the determination of the Land Court and advance the following arguments: (1) the Land Court erred in allowing claimant Balbina Mekreos to pursue a claim to Cadastral Lot 019 P 01; (2) the Land Court erred in finding that the land in question was the property of Tab Lineage prior to the alleged taking; (3) the Land Court erred in finding that the testimony of PPLA witness Rechesengel Anastacio Ngiraiuelenguul was not credible; (4) the Land Court erred in ruling that the 1981 Determination of Ownership did not have preclusive effect; (5) the Land Court erred in ruling that the 1981 Determination of Ownership could not be construed as evidence ⊥164 against the claimant; (6) the Land Court erred in ruling that the claimant did not have to rebut the evidence of the Tochi Daicho with clear and convincing evidence; and (7) the Land Court erred in ruling that the land was taken "without just compensation or adequate consideration."

ANALYSIS

1. Did Balbina Mekreos untimely introduce a new claim before the Land Court?

The Lands Authorities argue that, at the initial hearing before the Land Court, Tab Lineage withdrew its original claim to Cadastral Lot 018 P 01 and substituted a new claim for Lot 019 P 01, thus violating the statutory deadline for the filing of return-of-public-lands claims. See 35 PNC § 1304(b)(2). We disagree.[2] There is no question that Balbina filed a claim in September 1988, before that deadline had expired. That claim, like the claim filed by Skang before her, referred to the property as Tochi Daicho Lot 107. Neither of the claim forms referenced a corresponding Cadastral lot number. Nor is there any question that, as she testified at the hearing below, Balbina intended to claim the same land that Skang had claimed earlier. As noted above, however, the Land Court Registrar concluded that the portion of Tochi Daicho Lot 107 claimed by Skang, which had been designated Lot 103-9013, corresponded to Lot 019 P 01.[3]

The record does disclose that a map of Lot 018 P 01, signed by Balbina, was attached to her claim. This appears to be the crux of the Lands Authorities' contention that somehow Tab Lineage substituted a claim for 019 P 01 instead of 018 P 01. However, the Cadastral plat for Lot 018 P 01 was not approved until April 4, 1995. Moreover, while the record does not reveal how the map came to be attached to Balbina's claim form, the Land Court's file stamp indicates that it was not appended to the file until January 11, 2002, three months after the Land Court Registrar had determined that Skang's claim (and therefore Balbina's) was for Lot 019 P 01. At worst, therefore, thirteen years after having filed a timely claim to the land at issue, Balbina–whether on her own or at the behest of Land Court personnel[4]–mistakenly ⊥165 identified it as corresponding to Lot 018 P 01. The correction of that mistake at the hearing on Lot 018 P 01 that was held shortly thereafter was therefore not the filing of a new claim, but merely the reaffirmation of her original claim.

2. Was the land in question the property of Tab Lineage prior to the taking?

The Lands Authorities contend that the Land Court erred in finding that Cadastral Lot 019 P 01 was the property of Tab Lineage of Kebou Clan prior to the taking. The Land Court was presented with evidence that justified that conclusion. A witness on behalf of Tab Lineage specifically testified that the land belonged to the Lineage. Tab Lineage also introduced into

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[2]As Appellee points out, although counsel for the Lands Authorities was present at both hearings before the Land Court, at no time did they raise this timeliness issue. The Lands Authorities respond that this issue should be considered nevertheless because it raises questions about the Land Court's jurisdiction. Without expressing any view on the jurisdictional issue, which has not been fully briefed, we exercise our discretion to consider the timeliness issue and simply reject it as without merit.

[3]Although the Lands Authorities point out that the shape of the sketch attached to Skang's claim resembles the contours of Cadastral Lot 018 P 01, the boundary markers delineating former Lot 103-9013 correspond directly to the boundary markers delineating Cadastral Lot 019 P 01.

[4]The Lands Authorities have appended to their brief an affidavit executed by the Land Registration Officer for Ngchesar State on April 28, 2003, contemporaneous with the filing of that brief and nearly six months after the issuance of the determination under review. The affidavit is troubling for several reasons, most obviously, that its submission was entirely inappropriate since it was not a part of the record below. *See Pedro v. Carlos*, 9 ROP 101, 103 (2002) (noting "the well-established principle that the Appellate Division cannot consider new evidence"). Even taken at face value, the affidavit's assertion that "[t]he map signed by claimant Balbina Mekreos clearly indicated that she was claiming Cadastral lot # 18 P 01" raises the question of how she came to sign the map in the first place.

evidence the record of the prior hearing on Skang's original claim, which comported with the oral testimony regarding ownership by the Lineage. The record of the 1979 hearing contained Skang's testimony to the effect that the property belonged to Tab Lineage and gave an account of how the Japanese government came to possess the property.[5] In response, the Lands Authorities offered testimony from a witness to the effect that the land was public land prior to registration in the Tochi Daicho.

Based on this evidence, the Land Court had to evaluate conflicting testimony in order to assess whether the land belonged to Tab Lineage. Where "there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous." *Iderrech v. Ringang*, 9 ROP 158, 160 (2002). Reversal under the clearly erroneous standard is warranted "only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion." *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002). Because there is ample evidence supporting the proposition that Tab Lineage owned the property prior to the listing in the Tochi Daicho, the Land Court's decision was not clearly erroneous and reversal on that point is not warranted.

3. Did the trial court err in finding that the testimony of PPLA witness Rechesengel Anastacio Ngiraiuelenguul was not credible?

Next, the Lands Authorities argue that the Land Court erred in finding that the testimony of PPLA witness Rechesengel Anastacio Ngiraiuelenguul was not credible. Essentially, the Lands Authorities reiterate their earlier contention that the Land Court should have given greater weight to the Lands Authorities' evidentiary witness than the evidence presented by Tab Lineage. However, it is not the duty of the appellate court to test the credibility of the witnesses, but rather to defer to a lower court's credibility determination. *Kerradel v. Elbelau*, 8 ROP Intrm. 36, 39 (1999). The Land Court was presented with contradicting testimony. After observing the witnesses and examining the evidence, it chose to accept Tab Lineage's version of the events. Based on the record before this Court, it cannot be said that the Land Court's credibility determination was clearly erroneous.

4. Did the Land Court err in ruling that ⊥166 the 1981 Determination of Ownership did not have preclusive effect?

The Lands Authorities argue that the Land Court should have given *res judicata* effect to the 1981 Determination of Ownership in favor of PPLA that was issued by the Land Commission on Skang's claim. 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.

[5]Part of the Land Authorities' argument in this regard is a renewal of its contention, which we have already rejected, that Skang's claim and his testimony at the 1979 hearing related to Cadastral Lot No. 018 P 01 and not the land at issue.

The Lands Authorities argue that because the determination of ownership was not issued until April 23, 1981, it should be considered *res judicata*. We reject this contention.

The hearing on Skang's claim for the contested property was held on March 1, 1979. Based on that hearing, the Ngchesar State Land Registration Team issued an "Adjudication by Land Registration Team" on May 29, 1979, awarding the land to the PPLA. The adjudication was approved by the District Land Commission on November 6, 1979. On April 23, 1981, the District Land Commission issued a determination of ownership in favor of PPLA.[6] The question is whether, based on these facts, the prior claim was "decided before January 1, 1981" within the meaning of the statute. If it was, then the prior decision could not be given preclusive effect. The Land Court held that, notwithstanding that the determination of ownership was not issued until April 1981, it had no preclusive effect because the "'decision' that [the] land belonged to PPLA was made in 1979."

We agree with the Land Court that Skang's claim was "decided" in 1979 when the District Land Commission approved the Adjudication by the Land Registration Team. Once the adjudication was approved, the rights of the parties were determined, and nothing was left to be done except the ministerial task of issuing the determination of ownership. As such, the matter was decided, for purposes of 35 PNC § 1304(b)(2), before January 1, 1981, and bears no preclusive effect on the instant litigation. The Lands Authorities' reliance on *Ngatpang State v. Amboi*, 7 ROP Intrm. 12, 15 (1998), and *Ulochong v. LCHO*, 6 ROP Intrm. 174, 177 (1997), is misplaced. In each of those cases, although an adjudication had been issued by the Land Registration Team, the Land Commission had never acted upon it and remained free to accept or reject it. *See* 35 PNC § 926 (repealed). Here, by contrast, the Land Commission approved the Adjudication in November 1979.[7] Thus, although we are unaware of any explanation for the delay between that approval and the ⊥167 issuance of a formal determination of ownership in April 1981, the earlier date is the date by which it was effectively decided.

5. Did the trial court err in ruling that the 1981 Determination of Ownership could not be construed as evidence against the claimant?

As a fallback argument, the Lands Authorities contend that, even if it should not be considered preclusive, the Land Court erred by not considering the 1981 determination of ownership as evidence. This argument is also without merit. After concluding that the determination of ownership had no preclusive effect on the instant proceeding, the Land Court proceeded to state:

The 1981 D.O. can not be construed as evidence against the claimant although the

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[6]The 1981 Determination of Ownership was signed by two of the three land commissioners who approved the 1979 adjudication.

[7]A more closely analogous case, although arising in a different context, is *Gibbons v. ROP*, 1 ROP Intrm. 547MM (1988). There, we concluded that two rulings of the trial court that, in combination, resolved all of plaintiffs' claims, "effectively terminated th[e] case at the trial level," *id.* at 547QQ, and made it a proper subject of appeal, notwithstanding the trial court's inadvertent failure to enter a separate judgment.

> record of proceedings before the Land Registration Team in 1979 can properly be considered as evidence and given such weight as the Court deems appropriate.

It then footnoted the applicable language from 35 PNC § 1304(b)(2):

> The record of proceedings of the District Land Title Officer or the Palau Land Commission may be introduced as evidence in land ownership proceedings before the Land Court. The record shall be given such weight as the Land Court or Trial Division, in the exercise of its discretion, deems appropriate.

This discussion makes clear that the Land Court was fully aware of the applicable law and applied it correctly: While the 1981 determination was not preclusive, the record of proceedings leading to that determination was evidence to which the court could give such weight as it deemed appropriate. PPLA argues that the court should have given weight to the 1981 determination, but that document served only to certify the result of the 1979 proceedings. Separate and apart from the record of those proceedings, the determination–which, like all determinations, contains no reasoning and conveys no information other than that PPLA prevailed–has no evidentiary value.

6. Did the trial court err in ruling that the claimant did not have to rebut the evidence of the Tochi Daicho with clear and convincing evidence?

The Ngchesar Tochi Daicho recorded Lot 107 as being public land in the Japanese Administration. The Lands Authorities contended before the Land Court that Tab Lineage had the burden of rebutting the Tochi Daicho with clear and convincing evidence. The Land Court rejected this contention, discussing at length the nature of claims for public lands and citing our recent decisions in *Carlos v. Ngarchelong State Public Lands Authority*, 8 ROP Intrm. 270 (2001), and *Kerradel v. Ngaraard State Public Land Authority*, 9 ROP 185 (2002). We agree.

In *Carlos* and *Kerradel*, "we distinguished between a claim for the return of public lands, which is governed by the provisions of 35 PNC § 1304 . . . and a quiet title claim asserting that a private claimant has superior title to a piece of property than the governmental entity claiming ownership of it." *Kerradel*, 9 ROP at 185. In so doing, we noted that a claimant asserting superior title ⊥168 "must confront an 'adverse Tochi Daicho listing, and the availability of affirmative defenses not available to the government in Article XIII claims.'" *Kerradel*, 9 ROP at 186 n.2 (quoting *Carlos*, 8 ROP Intrm. at 272 n.8). The clear implication of this statement, as the Land Court recognized, is that a claimant seeking the return of land pursuant to Article XIII and § 1304 need not rebut the Tochi Daicho. The reason is obvious. In asserting superior title, a claimant is "claim[ing] the land on the theory that it never became public land in the first place." *Kerradel*, 9 ROP at 185. If the Tochi Daicho is in the name of the government, therefore, the claimant must prove, and must do so by the clear and convincing evidence standard to which we have long adhered, that that listing was wrong.

By contrast, in a return of public lands case pursuant to Article XIII and § 1304, the claimant does not seek to challenge the government's ownership of the land. Rather, the

claimant acknowledges that an occupying power acquired the land but attempts to prove that the acquisition was wrongful. The long line of cases regarding the evidentiary standard for challenging a Tochi Daicho presumption of ownership is thus inapplicable in such cases.[8] The question raised by a claim for the return of public lands is not whether the government acquired the land, but whether "the land became part of the public land . . . through force, coercion, fraud, or without just compensation or adequate consideration" and whether "prior to that acquisition the land was owned" by the claimant or his or her predecessors. *See* § 1304(b)(1), (2). The Tochi Daicho does not answer either part of the question. A listing in favor of the Japanese administration shows that the government had acquired the land by the time of the land survey, but provides no information as to how or from whom the land was acquired.[9] The Land Court was therefore correct to conclude that the Tochi Daicho presumption had no role to play in this case.

7. Did the trial court err in ruling that the land was taken "without just compensation or adequate consideration"?

The Lands Authorities contend finally that the Land Court erred in determining that the land was taken "without just compensation or adequate consideration." Specifically, the Lands Authorities claim that Tab Lineage did not properly raise the point before the Land Court, that the Land Court misinterpreted the statute, and that, in fact, the Lineage had received adequate consideration.

As noted above, one of the elements of ⊥169 a claim for the return of public lands is a showing that the land became public land as a result of the acquisition by previous occupying powers or their nationals "through force, coercion, fraud, or without just compensation or adequate consideration." The Lands Authorities argue first that Tab Lineage claimed that the land had been taken by force, but failed to claim that it had been taken "without just compensation or adequate consideration." The Land Court rejected this argument, finding that although the Lineage did assert that the land had been taken by force (an assertion that the court found was unsubstantiated by the evidence), it also asserted a lack of just compensation. In particular, the Land Court pointed to the Claim for Public Lands form filed by Balbina which stated the land had been taken by the Japanese and that no compensation had been received for it.

We see no error in the Land Court's consideration of this theory. The gist of the Lineage's presentation, as claimed by Balbina and as testified to by Skang before the Land

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[8]We do not mean to suggest that Tochi Daicho listings are always irrelevant in return-of-public-lands cases. Thus, for example, as to land that was taken after the completion of the Tochi Daicho survey, a listing in a claimant's name (or that of a predecessor-in-interest) will obviously assist the claimant both in meeting its burden of showing that it owned the land prior to its taking and in resisting the claims of adverse claimants. *See, e.g., Olngebang Lineage v. ROP*, 8 ROP Intrm. 197, 200-01 (2000) (applying Tochi Daicho presumption as between rival claimants).

[9]The Land Authorities asserted below that the land at issue here was traditionally public land even prior to its listing in the Tochi Daicho. They were surely entitled to, and did, assert evidence in favor of that theory. We fail to see, however, how the listing itself supports that theory. Except by reference to extrinsic evidence, we know of no way to look behind a Tochi Daicho listing in favor of the Japanese administration to determine whether the land was previously chutem buai or privately-owned.

Commission, was that the contested property became the property of the Japanese government without the payment of compensation as a result of Ultirakl Ngirakebou's "lack of know-how, confusion and error." While the Land Court found that these facts did not amount to a taking by "force," they were surely enough, given the lack of formal pleadings in Land Court proceedings, to put forward a claim for a taking without just compensation.[10]

The Lands Authorities next argue that the Land Court misconstrued 35 PNC § 1304(b) in ruling that the land was taken without just compensation or adequate consideration. As we understand their argument, they contend that in failing to give full effect to the words "just" and "adequate," the Land Court improperly read the statute to allow a claim even when the land was given away. As a result, they appear to suggest, the mere fact that Tab Lineage may have received no consideration was not a sufficient basis to uphold their claim. We agree with the Land Authorities that the words "just" and "adequate" must be given full effect. In our view, however, those words broaden rather than narrow the reach of the statute. Thus, in *PPLA v. Tmiu Clan*, 8 ROP Intrm. 326, 328 (2001), we noted that although normally "courts do not inquire into the adequacy of consideration," and any consideration will suffice, "a different rule applies" in return-of-public-lands cases and a claim will succeed "if there is a showing that there was no 'adequate consideration' supporting the transfer of title to the government." *See id.* at 329 (defining "adequate consideration" as "consideration that is fair and reasonable under the circumstances"). That having been said, we assume that the Land Authorities are right that a claimant should not prevail if it can be shown that a claimant (or his or her predecessors) gave the land away voluntarily without remuneration. *Cf. Baulbei Clan v. Melekeok State Pub. Lands Auth.*, 11 ROP 117, 120-21 (2004) ("A party claiming land under Article XIII, Section 10 must show that ⊥170 alien ownership of the land was acquired through some type of duress or fraud or was transferred for inadequate compensation. . . . [T]he plain language of Article XIII, Section 10 does not pertain to agreements voluntarily entered into by the traditional owners relating to the use of their land.").

Nonetheless, we see no error in the Land Court's ruling. Even accepting the possibility that a clan might intentionally give away its property to an occupying power, as we read the record, no argument was made, much less supported by evidence, that either Kebou Clan or Tab Lineage intended to give its land to the Japanese administration. To the extent the Lands Authorities mean to suggest that the Land Court should have inferred that to be the situation here (or that it should not have inferred otherwise), they misconstrue the burden of proof in such situations. To constitute a gift, "there must be a clear, unmistakable, and unequivocal intention on the part of a donor to make a gift," *In re Rengiil*, 8 ROP Intrm. 118, 119 (2000), and the person claiming that a gift was made must prove it by clear and convincing evidence, *Long v. Turner*, 134 F.3d 312, 316-17 (5th Cir. 1998). If the Lands Authorities believed that Kebou Clan intended to make an outright gift of their property, they had the burden to prove donative intent.

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[10]The Lands Authorities assert that had they known that this theory would be presented, they would have countered with evidence that compensation had been received. We address below the particular evidence that the Land Authorities say they would have adduced. As a general matter, however, we believe that if a governmental party to a return-of-public-lands case has evidence that a claimant received payment for the land claimed, it would be well-advised to present such evidence regardless of the particular theory asserted.

In the absence of such proof, the question whether gifted land falls within the statutory language was simply not presented below. Accordingly, there is no basis for contending that the Land Court misinterpreted 35 PNC § 1304(b).

Finally, the Lands Authorities argue that the Land Court erred as a matter of fact in finding that the land was taken without just compensation or adequate consideration because the Lineage received adequate consideration from the Trust Territory government, even if it received none from the Japanese government at the time of the taking. As the Lands Authorities read Skang's testimony before the Land Commission, the Lineage (or Kebou Clan) gave up its claim to the land for the promise of a homestead.

The Lands Authorities' analysis is strained on several counts. First and foremost, they misconstrue Skang's testimony. Nothing in the Land Commission transcript indicates that Skang testified that Kebou Clan intended or agreed to relinquish its claim to the contested property by seeking a homestead on the same land. Quite the contrary, the Clan merely pursued an available avenue for recovery of the land by planting crops in order to acquire the land under the homesteading program. With the advent of Article XIII of the Constitution, Tab Lineage reasserted its claim to the property. The Lands Authorities have failed to show how the instant claim is incompatible with the previous one, nor have they cited to any case law supporting the proposition that a claim under the homesteading program serves to bar a later claim under the Constitution or the Land Claims Reorganization Act.

In any event, even if there were some agreement by the Clan or Lineage to relinquish its claim, the opportunity to reacquire wrongfully taken property through the Trust Territory homesteading program does not amount to "adequate consideration" as we have previously interpreted that phrase. *See PPLA v. Tmiu Clan*, 8 ROP Intrm. 326, 328-29 (2001); *see also supra* p. 169. In *Tmiu Clan*, we found that a clan's agreement to forego its claim to one land that had been wrongfully taken from it in exchange for other lands that had also been wrongfully taken was not supported by adequate consideration. *A fortiori*, we cannot conclude that a clan's agreement to forego its rights to a piece of property in exchange for nothing but the mere ⊥171 opportunity to reacquire that *same* property was adequately supported. A chance to get back one's land is not a "fair and reasonable" replacement for title to that land. For all of these reasons, the Land Court's conclusion that Tab Lineage did not receive just compensation or adequate consideration was not in error.

CONCLUSION

For the foregoing reasons, we affirm the determination of the Land Court.

MILLER, Justice, concurring:

The foregoing opinion addresses all that is necessary to resolve this case. I write separately, and speaking only for myself, to make a further observation as to one of the issues raised. The return-of-public-lands provision of the Constitution, Article XIII, Section 10, was promulgated in the face of, and in reaction to, decades of Trust Territory decisions rejecting the

vast majority of public lands claims on the basis that wrongful takings by the Japanese or prior administrations were "ancient wrongs" that the United States administration had no obligation to correct. *E.g.*, *Ngirudelsang v. Trust Territory*, 1 TTR 512, 514-15 (Tr. Div. 1958), *citing Cessna v. United States*, 18 S. Ct. 314 (1898). In light of that history and even prior to the enactment of the statutory provision on *res judicata*, which first became part of the law in 1996, *see* RPPL 4-43, § 4(b), a series of Trial Division decisions had concluded as a constitutional matter that the doctrine of *res judicata* was inapplicable to claims for public land authorized by Article XIII, Section 10. *See Kirk v. LCHO*, Civil Action No. 24-95, slip op. at 2 (August 21, 1995) (citing cases). It would frustrate the Framers' intent, those cases held, to allow such claims to be defeated by the mere fact that the claimants or their predecessors had tried and failed to recover their lands in the past.[11]

This constitutional issue has not been raised here and, given our conclusion above, need not be considered at this time. But I believe it is worth mentioning for two reasons. First, I believe it bolsters our conclusion that the statutory direction that *res judicata* should not be applied to "matters decided before January 1, 1981" is applicable here. In the absence of any legislative history, we do not know why the OEK chose that cut-off date. But we do know that January 1, 1981 was the effective date of the Palau Constitution, *see* Palau Const. art. XV, § 1, and it is at least plausible that, in enacting a statutory bar to the applicability of *res judicata* as to "matters decided before January 1, 1981," the OEK meant to draw a line between those cases decided under pre-constitutional standards and those decided in conformity with Article XIII, Section 10. Here, although the adjudication by the Land Registration Team appears to have credited Skang's testimony that the land "truly belong[ed] to Tab Lineage and was taken by the Japanese Government"–a finding that would have supported a claim under Article XIII, Section 10–it nevertheless concluded that his only avenue for relief was the future issuance of a quitclaim deed by PPLA based on the homesteading of the property. Thus, the fortuity that the determination of ownership in favor of PPLA was not issued until after the Constitution had come into effect should not obscure the fact ⊥172 that Skang's claim was decided–and rejected–*before* January 1, 1981 and on the basis of pre-constitutional standards.

Second, notwithstanding the statutory bar, it is possible that the constitutional issue may arise again with respect to matters decided *after* January 1, 1981. Although the Constitution came into effect on that date, the first statute to implement Article XIII, Section 10 did not become effective until 1987, with the abolition of the Land Commission and the creation of the Land Claims Hearing Office. *See* RPPL Nos. 2-18, 2-24. Thus, it is possible that there exist post-January 1, 1981 determinations in which the Land Commission rejected claims for public lands not because the claims lacked merit, but because it had not been given authority to act on them. If such a determination should be put forward as the basis for a *res judicata* defense, I would re-visit the constitutional issue and urge my colleagues to join me in doing so.

NGIRAKLSONG, Chief Justice, concurring:

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[11]Indeed, the strict application of *res judicata* in those circumstances would have the perverse effect of disallowing the claims of those who had tried to recover their lands and allowing only those who had taken no action in the past to benefit from the constitutional provision.

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Justice Miller in his concurrence questions the constitutionality of RPPL 4-43, § 4(b) which bars the application of *res judicata* to claims or "matters decided before January 1, 1981" under the return-of-public-lands provision of the Constitution.

Since this constitutional issue was not raised in this case, I would leave it to be decided when it is properly presented by the parties in an appropriate case. This Court has previously stated that the issues on appeal are identified and chosen by the parties, and "an appellate court is limited in its deliberation by the record on appeal and the issues framed by the parties." *Nakatani v. Nishizono,* 2 ROP Intrm. 7, 12 (1990); *see also Gibbons v. Seventh Koror State Legislature*, 11 ROP 97, 110 (2004) (Ngiraklsong, C.J., dissenting).

I also caution against issuing dicta that may be viewed as an advisory opinion. This Court has stated that we do not render advisory opinions. *See KSPLA v. Meriang Clan*, 6 ROP Intrm. 10, 13 (1996); *Koror State Gov't v. ROP*, 3 ROP Intrm. 127, 128-29 (1992).

With few exceptions, *see Tell v. Rengiil*, 4 ROP Intrm. 224, 225-26 (1994), I believe we should only decide issues properly presented by the parties. I do not need to mention the hazards of a court deciding issues other than those presented by the parties.