Espong Lineage v. Airai State Pub. Lands Auth., 12 ROP 1 (2004)

ESPONG LINEAGE, DEBKAR CLAN, TOSHIWO KYOTA, ALBERTANG RENGIIL, OBODEI IYAR, and KIKUO REMESKANG,
Appellants,

v.

AIRAI STATE PUBLIC LANDS AUTHORITY, JONATHAN KOSHIBA, and CHILDREN OF EBERDONG,
Appellees.

CIVIL APPEAL NO. 00-19
LC/N 05-98

Supreme Court, Appellate Division
Republic of Palau

Argued: September 20, 2004
Decided: October 5, 2004
⊥2
Counsel for Espong Lineage: Moses Uludong

Counsel for Debkar Clan and Toshiwo Kyota: J. Roman Bedor

Counsel for Albertang Rengiil: Ernestine K. Rengiil

Counsel for Obodei Iyar: Kevin Kirk

Counsel for Kikuo Remeskang: David Kirschenheiter

Counsel for ASPLA: John K. Rechucher

Counsel for Jonathan Koshiba: *Pro Se*

Counsel for Children of Eberdong: Oldiais Ngiraikelau

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable FRANCISCO J. KEPTOT, Associate Judge, presiding.

MILLER, Justice:

This is an appeal from the Land Court's determinations of ownership concerning several parcels of land located in Airai. After twelve days of hearings, the Land Court determined that

the land known as Moked and identified as Cadastral Lot Nos. 166-11144A and 166-11144B was owned by the Children of Eberdong, the land that is part of Irisong and identified as Cadastral Lot No. 166-11139C-1 was owned by Jonathan Koshiba, and the remaining seven lots known as Irisong and Ngerchemel and identified as Cadastral Lot Nos. 166-11144, 166-11144C, 166-11144C-1, 166-11139, 166-11139A, 166-11139C, and 157-11127 belonged to Airai State Public Lands Authority ("ASPLA"). ⊥3 The other claimants to the land, including Debkar Clan, Espong Lineage, Obodei Iyar, Albertang Rengiil, Toshiwo Kyota, and Kikuo Remeskang, appeal those determinations of ownership on several grounds. For the reasons set forth below, we remand the case to the Land Court for further proceedings.

BACKGROUND

Claims to the disputed lots were filed between 1976 and 1988 by over a dozen claimants. We will briefly summarize the basis of each of the six appellants' claims. Debkar Clan claims all of the land that was the subject of the hearing except for the portion of Irisong claimed by Toshiwo Kyota, the land claimed by Albertang Rengiil, and the land known as Moked awarded to the Children of Eberdong. Debkar Clan asserts that it exercised authority and control over these lands during the Japanese Administration and leased out these lots to Japanese nationals who farmed on them and paid rents to Debkar Clan. The Clan's evidence of ownership consists of Japanese writings which are purported to be receipts for the payment of rents.

Albertang Rengiil ("Rengiil") claims that she acquired her land through Debkar Clan. Rengiil filed a claim in 1976 to a large piece of Debkar Clan land known as Ngerchemel, and Lot Nos. 166-11144C and 166-11144C-1, which are the subject of her appeal, were part of this claim. Rengiil testified that the land was given to her by her adoptive father, Sob, who bore the title Obak ra Debkar during the Japanese time. Documents were introduced during the hearing to show that Sob and other individual members of Debkar Clan collected rent from Japanese farmers for their use of the land. Sob died before the war, and several members of Debkar Clan testified that the land was given to Rengiil at the eldecheduch of her father. Because Rengiil did not know the size of the land her father gave her, she relied on the cement boundary markers that were placed on the land during the Japanese land survey. Ngemelas Kitalong testified that Rengiil was given "4000 tsubo and some" by her father, Sob. Because the Land Court had awarded approximately 4000 tsubo of land to Rengiil in a previous case, the Land Court awarded the two lots at issue here to ASPLA.

Toshiwo Kyota ("Kyota") also claims that he acquired Lot Nos. 166-11139C and 166-11139C-1, which are part of a larger parcel of land known as Irisong, from Debkar Clan. Kyota purchased a portion of Irisong from Debkar Clan for $5,200.00 in 1978. Kyota testified that he has spent a lot of time and money developing the property, and there is now a house and a tapioca farm on the lots. Kyota claimed that he has been the only person farming, occupying, and exercising control over this land from 1978 until the present time, a period of over 25 years. In 1984, ASPLA exchanged a portion of Irisong, Lot No. 166-11139C-1, for land owned by Jonathan Koshiba ("Koshiba") through former Governor Roman Tmetuchel, but Kyota asserts that he was not aware of that transaction. The Land Court denied Kyota's claim and awarded Lot No. 166-11139C-1 to Koshiba and Lot No. 166-11139C to ASPLA as public land.

Obodei Iyar ("Iyar") claimed all of the land that was the subject of the hearing due to his father's ownership of the land. Iyar presented a written history of the land stating that the land was traditionally part of a village in Airai called Ngerchemel, and when another village called Ngeruluobel conquered Ngerchemel several hundred years ago, the ⊥4 victors distributed the conquered village's land among themselves. Iyar asserts that his father's ownership can be traced to an ancestor who received this land as a result of the war between the two ancient villages.

Espong Lineage claimed all of the land that was the subject of the hearing except for the portion of Ngerchemel known as Moked that was claimed by the Children of Eberdong. The Lineage asserts ownership of the land through a member of Espong Lineage named Ebiledil, who was one of the two women from Ngeruluobel who enlisted warriors from other villages to help conquer Ngerchemel several hundred years ago. Ngerchemel and Irisong were given to Ebiledil as a reward for her efforts. Espong Lineage claims that it has owned and used this land from the time of the conquest of Ngerchemel until the Japanese occupation of Palau, and the Japanese Government forcibly took over and used part of the land during World War II. After the war, several members of the Lineage immediately moved into and occupied and used the land, and some of their crops and house sites are still visible today.

On March 3, 1998, Kikuo Remeskang ("Remeskang") filed a claim for the land known as Moked and identified as Lot Nos. 166-11144A and 166-11144B. Although Remeskang claimed the land as his privately-owned property, the Land Court dismissed Remeskang's claim, finding that it was an untimely claim for public land because it was filed after January 1, 1989. Notwithstanding the dismissal, the Land Court allowed Remeskang's son, Job Kikuo, to participate in the proceedings on behalf of Debkar Clan and cross-examine appellee Albert Eberdong as to his claim to the same land. However, the Land Court eventually awarded ownership of the land to the Children of Eberdong. Remeskang died after he appealed the denial of his claim, and his son was substituted as the appellant.

STANDARD OF REVIEW

This Court reviews the Land Court's factual findings under the clearly erroneous standard. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). Under this standard, if the Land Court's findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made. *Id*. Conclusions of law are reviewed *de novo*. *See Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

ANALYSIS

I. Land Awarded to ASPLA[1]

Appellants Espong Lineage, Debkar Clan, Rengiil, Iyar, and Kyota argue that the Land

[1]We include in this section the land awarded to Jonathan Koshiba, whose claim is derived from ASPLA.

Court's Adjudication and Determination that Irisong and Ngerchemel are public lands was clearly erroneous because it was not supported by the evidence of record. While we are not prepared to say that that finding was clearly erroneous, neither are we confident, given the confusing procedural posture of these cases, that it is correct, and we therefore remand for further proceedings.

The lands at issue in this case were designated geographically and elicited both claims for the return of public lands – that ⊥5 lands belonging to claimants and their predecessors had been wrongfully taken by the Japanese and/or Trust Territory administrations – and claims, typical to land registration proceedings, that the lands or parts of them had never been taken but were always privately owned by the claimants or their predecessors. There is nothing wrong with combining both types of claims in one proceeding and in some cases it may be impossible not to do so, since various parties may differ not only as to who owned a piece of land historically but also as to whether they were or were not taken by foreign powers. But in doing so, it is important to bear in mind that the two types of claim are fundamentally different, with different burdens of proof and different defenses applicable to each.

We have previously "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 v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185, 185 (2002). In a return of public lands case pursuant to Article XIII and § 1304, the claimant acknowledges that an occupying power acquired the land but attempts to prove that the acquisition was wrongful. *PPLA v. Tab Lineage*, Civil Appeal No. 02-55, slip op. at 10 (June 10, 2004). The claimant does not seek to challenge the government's ownership of the land, and need not confront the affirmative defenses available to the government in quiet title actions, but the claimant must show that the land was acquired by an occupying power "through force, coercion, fraud, or without just compensation or adequate consideration." *Id*.; 35 PNC § 1304(b)(1). By contrast, a claimant asserting superior title is "claim[ing] the land on the theory that it never became public land in the first place." *Kerradel,* 9 ROP at 185. Such a claimant stands on equal footing with the governmental entity claiming the land, but the claimant must confront "the availability of affirmative defenses not available to the government in Article XIII claims." *Id*. at 186 n.2 (quoting *Carlos v. Ngarchelong State Pub. Lands Auth.*, 8 ROP Intrm. 270, 272 n.8 (2001)).

Here, the Land Court determined that all of the land in dispute, except for the two lots awarded to the Children of Eberdong, was public land. To the extent this was a conclusion that the claimants had failed to establish claims for the return of public lands pursuant to § 1304(b), we find no error. Indeed, all of the appellants disclaimed any reliance on a public lands claim at oral argument, stating that they are claiming superior title to the land on the ground that the land has historically been privately-owned land that was used and occupied by the claimants personally or by their predecessors in interest. However, as stated above, we are less confident that the appellants' claims were properly assessed in the context of a land registration proceeding where there is no presumption that the land is publicly-owned and where all claimants, private and public, start on equal footing. Here, although Judge Keptot relied on several claimants' testimony that the Japanese had used parts of their land, his opinion does not appear to address

their contention that the Japanese had not acquired title to pass on to ASPLA, but that, in fact, the claimants or their predecessors had returned to the land after the war. Nor do we find any analysis of the claimants' contention that the land that was actually taken by the Japanese for use as a police station or school was either located outside of Ngerchemel and Irisong or was much smaller than the portion that Judge ⊥6 Keptot found to be public land in this case. We do not suggest that he was required to accept this testimony, but we believe it should have been considered and weighed against the conflicting evidence presented by ASPLA. We therefore remand this case to the Land Court to allow it to consider all of the competing claims, placing an equal burden on each of the claimants, including ASPLA, to prove that his or her or its title was superior.

II. Land Awarded to Children of Eberdong

Only two appellants, Remeskang and Iyar, filed claims to the land known as Moked that was eventually awarded to the Children of Eberdong. In this case, as in the *Kerradel* case, the Land Court dismissed Remeskang's claim on the ground that he was seeking the return of public lands and, therefore, his claim was untimely filed. *See Kerradel*, 9 ROP at 185. However, Remeskang was entitled to, and did, claim the land on the theory that it never became public land in the first place. *See id.* A claim for the return of public lands must have been filed no later than 1989, but a claim of superior title is not subject to the same limitations period. *See* 35 PNC § 1304(a) and (b). "Citizens had a right to contest government claims of title to property before the enactment of the Constitution, and that right continues after the expiration of the period for filing Article XIII claims." *Carlos*, 8 ROP Intrm. at 272 (footnotes omitted). Although the Land Court was correct in determining that Remeskang was barred from filing an untimely claim for the return of public lands, he is nevertheless entitled to proceed on his claim of superior title. *See Kerradel*, 9 ROP at 185-86. While the Children of Eberdong do not argue that Remeskang's claim was untimely as long as it was a claim for privately-owned land, they point to other deficiencies in his claim. Because Remeskang was never given an opportunity to present his claim, we leave those arguments to be considered by the Land Court on remand. The determination of ownership regarding Moked will be vacated and the matter remanded to the Land Court to allow that court to hear Remeskang's claim (and the Children of Eberdong's defenses to it) in the first instance.

The only other claimant to Moked was Iyar, whose claim the Land Court rejected on its merits, finding that Eberdong's mother, Mekesong, had a better claim to the land than Iyar's father. Iyar does not argue that this finding was clearly erroneous, and his only argument on appeal, that Judge Keptot should have recused himself due to his involvement as a witness to the monumentation of the claims made by Debkar Clan and Kyota, has no bearing on Iyar's claim for Moked.[2] Even if Judge Keptot had personal knowledge of Debkar Clan's and Kyota's claims or of the markers claimed to delineate the boundary between public and private land, such knowledge would not lead his impartiality to be reasonably questioned or have an impact on his ability to consider and weigh the evidence presented by Iyar and the Children of Eberdong as to

[2]Although Debkar Clan and Kyota also argued that Judge Keptot should have recused himself, because we are remanding the case to the Land Court and Judge Keptot is no longer hearing cases, this argument is moot.

the ownership of this land. *See* Model Code of Judicial Conduct, Canon 3E(1)(a) (2000); *Idid Clan v. KSPLA*, 6 ROP Intrm. 302, 304 (1996); *compare Ngiratechekii v. Klai Clan*, 7 ROP Intrm. 152, 153 (1999) (case heard by different judge on remand because Judge Keptot had been a ⊥7 member of the adjudicative body that had previously issued a decision as to the ownership of the disputed land). Therefore, while we uphold Iyar's right to proceed as to the lands found to be public, his claim to Moked is denied.

CONCLUSION

For the reasons discussed above, we vacate the determinations of ownership and remand this matter to the Land Court for further proceedings consistent with this opinion. Because Judge Keptot is no longer hearing cases, this case will be assigned to a different Land Court judge on remand. Except as to Kikuo Remeskang's claim, which has yet be heard at all and for which a further hearing is necessary, the Land Court may, but need not, hear additional evidence before reaching new determinations on remand.