

Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth., 12 ROP 148 (2005)
ESTATE OF RIMAT NGIRAMECHELBANG and YASKO RAMURUI,
Appellants,

v.

NGARDMAU STATE PUBLIC LANDS AUTHORITY,
Appellee.

CIVIL APPEAL NO. 03-032
LC/H 01-424

Supreme Court, Appellate Division
Republic of Palau

Decided: July 4, 2005¹

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Counsel for Appellants: Yukiwo P. Dengokl

Counsel for Appellee: Christopher L. Hale

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice;
and LOURDES F. MATERNE, Associate Justice.

Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Senior Judge, presiding.

PER CURIAM:

This case presents an appeal from a Land Court adjudication and determination of ownership in favor of the Ngardmau State Public Lands Authority (“NSPLA”). The adjudication and determination of ownership was issued pursuant to the Land Court’s authority to administer Return of Public Lands claims, codified at 35 PNC § 1304(b). The Land Court found that the claimants to the land known as *Ngeyosech* or *Ngertuker*, (hereinafter “Ngeyosech”) Worksheet Lot No. 33-3004, failed to establish that the land was wrongfully taken by the Japanese. Ngeyosech was therefore awarded to the NSPLA. On appeal, the appellants claim: (1) the Land Court’s finding or conclusion that appellant had failed to prove wrongful taking is clearly erroneous; (2) the Land Court erred in its application of the proper standard of proof in matters involving claims for the return of public lands; (3) the Land Court improperly shifted the burden of proof on to the claimant; and (4) the Land Court should have applied the evidentiary rules more liberally.

This case was originally heard by the former Land Claims Hearing Office in 1995. The

¹The Court has determined that oral argument would not materially assist in the resolution of this appeal. See ROP R. App. P. 34(a).

Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth., 12 ROP 148 (2005) case, however, was never decided. The claimants agreed to admit the record of the prior proceedings into evidence in the Land Court. Further testimony was taken by the Land Court in 2001. The Land Court heard claims on the land at issue from three parties. The only issues on appeal concern claimant Rimat Ngiramechelbang (“Rimat”).

Rimat claimed Ngeyosech through her father, Sebal. She testified in great detail that Sebal received the land from the chief and people of Ngardmau as “nglat” because Ngiratechemel died in a battle between Ngardmau and Ngaraard, and his head was taken as “blebaol,” and his body was buried on Ngeyosech. Rimat also testified that Ngeyosech was taken during the Japanese 1150 time and that there was no compensation for the land. Rimat explained that she did not know whether Japanese nationals or the government took the land, and that her brother Wasisang had full knowledge about any use and sale of the land, but she did not. She also admitted that she first made a claim for the land in 1988.

The Land Court found that Rimat had not established her claim because she did not prove that the land was wrongfully taken by the Japanese. Although Rimat testified that the land was taken without compensation, the Land Court noted that it did not find that testimony credible. The Land Court explained that the testimony was not credible because while Rimat’s testimony about the land during the Spanish time was “specific and detailed,” her testimony about the Japanese taking her father’s land, and what her brother Wasisang did with the land was extremely vague, despite the fact that she would have been at least 25 years old during the period when the Japanese were conducting land surveys in Palau. The Land Court also noted that neither Rimat nor her daughter, Yasko Ramarui appeared at the 1976 monumentations of lands in Ngardmau, and that Rimat first showed an indication of owning this property when she made her claim in 1988. The Land Court then held that because Rimat failed to show a wrongful acquisition of Ngeyosech, her claim was rejected.

On appeal, Rimat claims that the Land Court erred in not crediting her testimony that the land was wrongfully taken, the Land Court required a higher burden of proof than normal, the Land Court improperly shifted the burden of proof on to Rimat, and the Land Court should have applied the evidentiary rules more liberally.

This Court reviews the Land Court’s findings of fact for clear error. A finding of fact is not clearly erroneous if it is supported by such evidence that a reasonable trier of fact could have reached the same conclusion. *Sadang v. Ngersikesol Clan*, 8 ROP Intrm. 63, 64 (1999). The findings of the trial court will not be set aside unless this Court is left with a definite and firm conviction that an error has been made. *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000).

In order for a claimant to make out a claim for a return of public lands, the claimant must demonstrate that: (1) she is a citizen who has filed a timely claim; (2) she owned the land prior to the wrongful taking by previous occupying powers or their nationals, or is an heir of the original owner; and (3) the claimed property is a public land which became a public land by a government taking that involved force, coercion, fraud, or without payment of just compensation or adequate consideration. *Masang v. Ngirmang*, 9 ROP 125, 128 (2002). Rimat claims that the Land Court erred in finding that she had not proved wrongful taking because she gave

Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth., 12 ROP 148 (2005) undisputed testimony that the land was taken by the Japanese without compensation. Rimat also claims that the Land Court mischaracterized her testimony. She asserts that she never said that she had no knowledge about the land being taken, as the Land Court stated, she merely said that she didn't know who had taken the land.

After reviewing Rimat's testimony and the conclusions of the Land Court, we find that there was sufficient evidence to support the Land Court's finding that Rimat did not establish a wrongful taking. Rimat provided the court with no details about who took the land or how the land was taken, other than to state that the land was taken without compensation. Moreover, the contrast ¶151 between her detailed testimony about how her father received the land certainly entitled the land court to conclude that her testimony that the land was taken was not credible. See *Ngiralulk v. Children of Obiliou*, 8 ROP Intrm. 32, 35 ("The appellate court generally defers to the lower court's findings regarding the credibility of witnesses, and only reverses the lower court's credibility findings in extraordinary cases."). Rimat's suggestion that the Land Court could not discount her testimony because it was undisputed ignores the clearly established precedent that a judge may choose to disbelieve even uncontroverted evidence. See *Ngerungor Clan v. Mochouang Clan*, 8 ROP Intrm. 94, 96-97 (1999). The Land Court's finding that Rimat's testimony that the land was wrongfully taken lacked credibility is not clearly erroneous.

Rimat also asserts that the Land Court did not apply the proper standard of proof. She claims that the court did not apply a preponderance of the evidence standard to the element of wrongful taking. Rimat's assertion is not borne out by the record. The Land Court found her testimony to be not credible, as discussed above. This does not mean that the Land Court required a higher burden of proof. As the Land Court found that Rimat presented no credible evidence on a necessary element of her claim, she could not have proved her claim by a preponderance of the evidence. The Land Court applied the correct burden of proof.

Rimat next asserts that once the Land Court heard testimony that the land was taken without compensation, the burden should have shifted to the NSPLA to provide rebuttal evidence. Even assuming *arguendo* that the burden shifts to NSPLA to provide rebuttal evidence, Rimat did not make out a prima facie case of wrongful taking because she did not provide any credible evidence. Finally, Rimat asserts that the court should have liberally applied the evidentiary rules. This argument does not alter in any way the fact that the judge did not believe Rimat's testimony. Therefore, this Court cannot see how a more liberal application of the evidentiary rules would alter the outcome of this case.

As our review of the case does not lead us to believe the Land Court committed any error of fact or law, the adjudication and determination of ownership is AFFIRMED.