West v. Ongalek ra Iyong, 15 ROP 4 (2007)
**SIZUE I. WEST, on behalf of the Ongalek ra Imetengel,
Appellant,**

v.

ONGALEK RA IYONG, Appellee.

CIVIL APPEAL NO. 06-022 LC/F 00-529
Supreme Court, Appellate Division
Republic of Palau

Decided: November 19, 2007[1]

Counsel for Appellant: Roman Bedor, Johnson Toribiong

Counsel for Appellee: Raynold B. Oilouch

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; C. QUAY POLLOI, Associate Justice Pro Tem.

Appeal from the Land Court, the Honorable RONALD RDECHOR, Associate Judge; ROSE MARY SKEBONG, Associate Judge; OLDIAIS NGIRAIKELAU, Part-Time Judge presiding.

POLLOI, Justice:

Appellant Sizue I. West challenges the Land Court's determination of ownership and ⊥5 accompanying decision in a dispute over ownership of the land upon which the Ngarchelong State Office building sits. Each party claimed that the Ngarchelong State Office building sits on land that was awarded to them, relying on determinations of ownership issued by the former Land Claims Hearing Office ("LCHO") based on Tochi Daicho listings. The determinations awarded lands to the disputing parties without reference to monumentations or survey maps. The Land Court found that the land in dispute occupied portions of the land awarded to Iyong and lands awarded to Ngarchelong State but not the land awarded to Imetengel. Having considered the arguments of the parties, we affirm the decision of the Land Court.

BACKGROUND

Appellant is the daughter of Imetengel Ongeranger, who is listed in the Tochi Daicho as owner of T.D. Lot 1112 ("Tilorch/Osmull"). Appellee represents the children of a man named Iyong, who was listed in the Tochi Daicho as owner of T.D. Lots 1167, 1168, 1169, and 1170 ("Kirang"). All of the above referenced lots are located in Mengellang Hamlet of Ngarchelong State.

[1] Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. P. 34(a).

The record indicates that in 1992, the LCHO conducted hearings for lands in Ngarchelong State. On February 21, 1992, the LCHO issued a Summary and Adjudication, awarding ownership of land known as "Kirang," Tochi Daicho Lot 1168, to Appellee. On the same day, the LCHO issued another Summary and Adjudication awarding Tochi Daicho Lot 1167, land known as "Kirang" to Appellee. These adjudications contained handwritten descriptions of the lots as "C. Lot No. 14-1134" and "C. Lot No. 14-1133," respectively. On October 30, 1997, the Land Court issued a Memorandum confirming the second adjudication in favor of Appellee, and based upon this Memorandum, the Land Court issued a Determination of Ownership awarding Tochi Daicho Lot 1167, known as "Kirang," to Appellee.

Also on October 30, 1997, the Land Court issued a Determination of Ownership, awarding Tochi Daicho Lot 1112, land known as "Tilorch/Osmull," to Ongalek Ra Imetengel, trustee by Sulial Imetengel.[2]

In 1999, Appellant filed suit in the Supreme Court, Trial Division, against the Ngarchelong State Government, claiming that the Ngarchelong State Building was being constructed on her family's land. She sought to enjoin construction of the building as well as money damages. The case was styled *Sizue West on behalf of Ongalek Ra Imetengel v. Governor Tobias Aguon and the Ngarchelong State Government,* Civil Action 99-315. During the course of this litigation, the Trial Division learned that Ongalek Ra Iyong had been awarded land that may also have included the land where the State Building was located. The Trial Division concluded that it could not rule on the matter without a final determination by the Land Court as to whether determinations of ownership issued to Imetengel (and Iyong) included the land at issue. Because there were conflicting claims, the Trial Division entered an ⊥6 order directing the Land Court to finalize its work in the matter.[3]

The resulting Land Court case was styled *Sizue West, Governor Tobias Aguon & Ongalek Ra Iyong,* claimants, LC/F *00-529*. After several status conferences, the Land Court was able to determine exactly which areas were being claimed by the parties using alphabetical designations. Based on the parties' identifications, Appellant claimed lots A, B, C, and D; Appellee claimed lots A and B; and Ngarchelong State claimed lots C, D, and E. The state building appeared to be located on lots B and C. These alphabetized parcels are all located inside a larger triangular area bordered by the road to Oketol on the west, the road to Ngarchelong Elementary on the east, and bordering the school property to the south.

The Land Court then heard the claims and allowed the parties to call witnesses and produce evidence. Following the hearing, the Land Court issued its decision on May 10, 2006, as well as a Determination of Ownership, awarding parcels A and B (Lot No. 14-1134) to Appellee and finding that parcels C and D (Lot No. 14-1137) had previously been awarded to the

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[2]Unlike the lots for Appellee, each of which had a Summary and Adjudication, the record does not contain a Summary and Adjudication for Appellant's Tochi Daichio Lot 1112, which is a prerequisite to a Determination of Ownership.

[3]Because the Land Court found that Appellant's land, Tochi Daichio Lot 1112, is not within the disputed area where the state building is situated, and because we are affirming that finding, this issue, as raised in Civil Action No. 99315, may be mooted.

Ngarchelong State Government. Additionally, the Land Court concluded the Ngarchelong State Building sits on parcel B, inside Iyong's land. The Land Court thus ruled against Appellant's claim that parcels A, B, C, and D comprised Tochi Daicho Lot 1112. This appeal followed.

STANDARD OF REVIEW

This Court reviews the Land Court's findings of fact for clear error. *Ibelau Clan v. Ngiraked,* 13 ROP 3, 4 (2005). Under this standard, the factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Palau Pub. Lands Auth. v. Ngiratrang,* 13 ROP 90, 93 (2006). The Land Court's conclusions of law are reviewed de novo. Id.

DISCUSSION

Appellant raises two primary arguments in this appeal. She first challenges the weighing of the evidence and factual findings of the Land Court. Second, she contends the Land Court erred by not following the "mandate" of the Trial Division. Both arguments are without merit.

A. Factual Findings

Appellant argues that the Land Court erred in finding that Tochi Daicho Lot 1112 was not comprised of or otherwise within the area composed of parcels A, B, C, and D (the "triangular area"). Essentially, Appellant challenges the weight the Land Court gave to the various pieces of evidence before it. Because there was more than adequate evidence to support the Land Court's findings, there was no clear error.

First, old records showed sketches of the lands at issue, Iyong Ex. C, showing that Appellee's properties, Tochi Daicho Lots 1168, ⊥7 1169, and 1170 are all located inside the triangular area straddled by the road to Oketol and the road to the school. The Land Court also relied on Iyong Exhibit A, another sketch showing Appellee's land to be inside the area between the two roads and meeting with the government land on the road to the school. Sizue Exhibit 3 also showed that Iyong's land met the government land on the road to the school.

In addition, the Land Court relied on the testimony of Appellant and her husband, as well as statements of her brother Sulial made in the 1992 hearing, all confirming that their land is on the road to Oketol and not on the road to the school. Tr. at 50-57, 125. The Land Court heard testimony of Appellant's husband, Mr. West Saiske, who was present at the Land Commission monumentation of lands in that area in 1975. Mr. Saiske stated that a representative of Appellant's family, Omengebar, brother of Imetengel, had attended the monumentation and placed markers for their land. Those markers were used to create aerial photo map sheet 14. Land Court Ex. 1. Notably, Omengebar claimed a different lot than the lot where the state building now sits. Tr. at 110-11; 83-87; Iyong Ex. A. He claimed a parcel of land joining the road to Oketol but not the road to the school.

Finally, the Land Court heard the testimony of James Iyong Madracheluib, a grandson of

Iyong and witness for Appellee. Madracheluib also stated that the lot in question belonged to Iyong and that Appellant's family owned apiece of land on the road to Oketol but not on the road to the school. Tr. at 147, 160, 187.

Appellant, nonetheless, argues that the Land Court should have found in its favor based on other pieces of evidence. Namely, a map of the Ngarchelong Elementary School, which Appellant claims shows T.D. 1112 is in that area. The Land Court did not seem to find this map helpful or persuasive. Appellant also states that during the 1992 hearing before the LCHO, the children of Imetengel identified their father's land as being within the school area. Appellant finally claims that Land Court Exhibit 1, which is the aerial photo map with alphabetical claimed parcels marked on it, shows that T.D. 1112 includes parcels A, B, C, and D.[4] Obviously, the Land Court did not feel these pieces of evidence were very persuasive. It is not clear error for the Land Court to credit one proffer of evidence over another so long as one view of the evidence supports the fact finder's decision. *Tangelbad v. Siwal Clan,* 9 ROP 169,171 (2002).

Appellant also challenges the Land Court's reliance on the 1992 summary adjudications and 1997 determinations of ownership for the Iyong and Imetengel lands. Appellant argues that the determinations are faulty because the cadastral lot numbers maybe based on incorrect data. In other words, Appellant attempts now to challenge the LCHO's process in monumenting the lands in 1975 and awarding the lands in the 1992 hearing. This tactic fails for multiple reasons.

First, there is no indication in the record that Appellant, in the proceeding before the Land Court below, challenged the earlier LCHO process by raising the issue regarding the cadastral numbers appearing on the summary and adjudications. Having failed to raise such issue ⊥8 below, Appellant is barred from raising it now. *See Rechucher v. Lomisang,* 13 ROP 143, 149 (2006) ("Having failed to raise these issues [i.e., adverse possession and statute of limitations] before the Land Court, . . . he is barred from raising them here"); *Kotaro v. Ngirchechol,* 11 ROP 235, 237 (2004) ("No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited the issue, even if it concerns a matter of constitutional law.").

Second, even if Appellant raised the issue below, the argument is nonetheless without merit because it assumes that the Land Court based its findings solely on the summary and adjudications and the determinations of ownership stemming from the 1992 hearing. However, as detailed above, there were many items of evidence suggesting the positioning of the lands which the Land Court consulted. In other words, even if Appellant had prevailed on the issue regarding the cadastral lot numbers appearing on the summary and adjudications, the Land Court still could have made the same findings regarding the positions of the lands and their owners based on other available evidence.

Finally, a party may only collaterally attack a prior determination of ownership if it can carry the burden of proving non-compliance with statutory or constitutional requirements by clear and convincing evidence. *Nakamura v. Isechal,* 10 ROP 134 (2003). Again, there is no indication that Appellant raised such a collateral attack below. There was, however, an oblique

[4] The map shows no such thing. It does not reference T. D. 1112 at all.

reference in the testimony of one of the Appellant's witnesses regarding the Ngarchelong aerial photo map, which was in his opinion, unofficial and incomplete. Tr. at 105-06. But that alone is not clear and convincing evidence sufficient to prove non-compliance with statutory or constitutional requirements.

All of the evidence mentioned above supports the Land Court's findings including the specific finding that Tochi Daicho Lot 1112 is not even within the larger parcels within which the smaller alphabetized parcels are located. Det. of Ownership at 10 ("Imetengel's Tochi Daicho Lot 1112 is neither within Lot No. 14-1134 nor Lot 14-1137."). Because a reasonable trier of fact could have reached the same conclusions reached by the Land Court, it did not commit clear error.

B. The "Mandate" of the Trial Division

Appellant argues that the Land Court decision should be vacated because the Land Court failed to comply with the "mandate" of the Trial Division contained in its August 9, 2000 order. The pertinent language of that order reads:

> The Court hereby directs the Land Court, with such assistance of the Bureau of Lands and Surveys as may be required, to finalize its work in this matter. That is, it should take whatever steps are necessary to complete the formal survey of the area in question and draw the boundaries of the lands awarded as it must eventually do in order that certificates of title may be issued. The Land Court may perform this task based on its review of the LCHO proceedings that resulted in the adjudications at issue, or by making such further inquiry as it deems fit. The Court imposes no deadline, but is respectfully requested [sic] to give this matter its immediate attention so that it maybe resolved as swiftly as practicable.

Trial Division Order, August 9, 2000.

Appellant cites the "mandate rule" in support of its argument that the Land Court "was not free to deviate from the mandate ofthe Trial Division to establish the boundaries of lot 1112." Brief of Appellant at 6. This argument fails for several reasons. First, while the above language appears to remand the matter to the Land Court,[5] the Trial Division lacks appellate authority over the Land Court, and consequently it cannot issue a mandate or remand a case back to the Land Court. *See Airai State Pub. Lands Auth. v. SDA Mission,* 12 ROP 38 (2004).
In *SDA Mission*,[6] the Land Court had conducted return-of-public-lands ("R.P.L.") proceedings under Article XIII of the Palau Constitution. The proceedings were properly noticed, and Smengesong Clan was the only claimant to assert an Article XIII claim. The Land Court assumed that ASPLA had good title to give and issued a determination of ownership to the Clan. Meanwhile, SDA Mission claimed ownership by virtue of the authority granted by the Trust Territory government and by deeds from the purported owner of the property. However, SDA

[5] Indeed, even the Land Court thought this was the case, as the Land Court's decision specifically refers to the Trial Division's Order as a "remand."

[6] Neither party cited this case in the briefs, but it speaks clearly to this issue.

Mission had no Article XIII claim because it was already in possession and never claimed to be the original owner whose rights were taken, as under the R.P.L. clause.

After the Clan began to enter the property based on its new determination of ownership, SDA Mission brought suit in the Supreme Court, Trial Division, asking the court to (1) declare the determination of ownership null and void, (2) find fraud, (3) find trespass, and (4) enjoin the clan from further entering the lot. The Trial Division concluded that the Land Court should not have issued the determination of ownership without making sure all interested parties were before it. The Trial Division vacated the determination of ownership and *sua sponte* remanded the case to the Land Court for further proceedings.

The issue before the Appellate Division was "whether the Trial Division . . . may, in deciding a quiet title action, *sua sponte* vacate a land court determination of ownership for that property and return the case to the Land Court for further fact findings." *Id.* The Appellate Division found that the Trial Division, having no appellate authority over the Land Court, lacked the authority to remand a case to the land court or vacate a determination of ownership of the Land Court. The order remanding the case to the Land Court was vacated and the case was remanded to the Trial Division for decision on the merits.

The significance of *SDA Mission* to the case at hand is that even if the order of the Trial Division contained a mandate, such mandate would have been null and void vis-a-vis the Land Court. This is because all authority discussing mandates and the mandate rule presupposes an appellate court/lower court relationship. *See e.g., Tengoll v. Tbang Clan,* 11 ROP 61 (2004). But as clarified in *SDA Mission,* the Trial Division and the Land Court have no such relationship.

Second, even if the Land Court was under a mandate, there is nothing in the language of the order that expressly mandates the Land Court to establish the boundaries of Tochi Daicho Lot 1112. Instead, the order stated that the Land Court "should take whatever steps are necessary to complete the formal survey of the *area in question* and draw the boundaries of the lands awarded." (emphasis added). And this the Land Court did since the "area in question" involved the lots with alphabetical designations A, B, C, and D. Tochi Daicho Lot 1112 was not within any of these alphabetized areas, as found by the Land Court, so it was not within the "area in question" and that is why the Land Court was not required to delineate its boundaries.

Third, even assuming that the Land Court was somehow mandated to delineate the boundaries of Tochi Daicho Lot 1112, the Land Court's failure to do so does not necessarily constitute reversible error. This is because the Land Court's factual findings regarding the ownerships of lands within the "area in question" are not materially affected by the Land Court's failure to define the boundaries of Tochi Daicho Lot 1112 since, as Land Court also determined, Tochi Daicho Lot 1112 is not within the "area in question." In other words, if the Land Court had found that Tochi Daicho Lot 1112 was within the "area in question" but failed to delineate its boundaries then there would be reversible error or at least an entitlement to a remand to correct the oversight. But that is not the case here. "An error, not of constitutional dimension, is harmless unless it is more probable than not that the error materially affected the verdict." *Polloi v. ROP*, 9 ROP 186,190 (2002) (articulating the harmless error standard in a criminal case and

noting that in civil cases, the test for harmless error is even less stringent). Thus, if failure to delineate the boundaries of Tochi Daicho Lot 1112 was error at all, it was harmless. However, in the interest of judicial economy, we issue a limited remand to the Land Court for the limited purpose of delineating the boundaries of Tochi Daicho Lot 1112 and issuing a certificate of title for that land as well.

CONCLUSION

As the Land Court did not commit clear error in its factual findings, the decision of the Land Court is affirmed with a limited remand directing the Land Court to define the boundaries of Tochi Daicho Lot 1112 and issuing a certificate of title for that land as well.