Tmetbab Clan v. KSPLA, 16 ROP 91 (2008)

TMETBAB CLAN,
Appellant,

v.

KOROR STATE PUBLIC LANDS AUTHORITY,
Appellee.

CIVIL APPEAL NO. 07-013
LC/B 04-111

Supreme Court, Appellate Division
Republic of Palau

Decided: December 9, 2008[1]
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Counsel for Appellant: Yukiwo P. Dengokl

Counsel for Appellee: Imelda Bai Nakamura

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice.

Appeal from the Land Court, the Honorable ROSE MARY SKEBONG, Associate Judge, presiding.

PER CURIAM:

Appellant appeals the land court's determination that Appellee owns the area in Ngerkesoaol Hamlet of Koror State known as Nanden. Because the land court made no errors of law, and because its findings of fact are not clearly erroneous, we affirm.

BACKGROUND

This appeal concerns several parcels of land located in Ngerkesoaol, collectively and commonly known as Nanden. Nanden is comprised of Tochi Daicho Lots 422 and 423 and filled land created by the Japanese government. The Tochi Daicho lists Masaichi Kochi, a Japanese national, as owner of Lots 422 and 423. The Japanese government acquired possession of Nanden around 1940 and constructed a power plant there. After the Allies defeated Japan in World War II, Nanden came under the control of the Trust Territory of the Pacific Islands. Eventually, Nanden was conveyed to Appellee.

In 2007, the land court held a hearing to determine ownership of Nanden. After the

[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).

hearing, the land court issued a document titled "Summary of the Proceedings; Findings of Fact; Conclusions of Law; and Determination ("Determination"). The land court dismissed six of the claims to Nanden because they were either untimely, unsubstantiated, or merged with another claim. The remainder of the Determination dealt with claims filed by (1) Ngermellong Clan, (2) Tmetbab Clan, (3) Appellee, and (4) Lalii Markub.

The land court rejected the claims of Ngermellong Clan, Tmetbab Clan, and Lalii Markub. Central to the land court's analysis was that none of these claimants presented credible evidence that the Tochi Daicho listing in favor of Masaichi Kochi was incorrect or that Kochi had obtained Lots 422 and 423 in a wrongful manner. Rather, the land court found:
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> The weight of the evidence, however, shows an individual [Masaichi Kochi] who had been on the land peaceably and industriously, without complaints from anyone; and who is registered, along with the predecessors of most of the present claimants, as owner of these lands. There was no evidence, and no reason to infer that because he was a Japanese national, his acquisition of title to Lots 422 and 423 involved coercion or fraud or consideration that was not agreeable to all parties. The failure to prove that Kochi's ownership of Nanden was incorrect or wrongful, was fatal to all of the claims herein.

Determination at 25. Because the above claimants could not rebut the Tochi Daicho's presumption of correctness, the land court found that none of them could prove that they were the owners of Nanden immediately prior to its acquisition by the Japanese government. The land court therefore found that Appellee should retain ownership of the land.

STANDARD OF REVIEW

We review land court factual findings for clear error. *Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 168 (2006). "Under this standard, if the 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.* Moreover, "[i]t is not the appellate panel's duty to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence." *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007). Rather, land court determinations are affirmed so long as the factual findings are "plausible." *Id.* We review land court legal conclusions *de novo*. *Singeo v. Secharmidal*, 14 ROP 99, 100 (2007).

DISCUSSION

Article XIII, Section 10 of the Constitution provides for the return of public land to its original owners when the land became public due to the wrongful actions of a foreign occupying power. Palau Const. Art. XIII, § 10. This constitutional directive is carried out by 35 PNC § 1304(b), which provides that ownership of public lands shall be returned to any citizen or citizens of Palau who can prove:

> (1) that the land became part of the public land . . . as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation or adequate consideration, and
> (2) that prior to that acquisition the land was owned by the citizen or citizens or that the citizen or citizens are the proper heirs to the land.

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35 PNC § 1304(b). To be entitled to public land, "a claimant must demonstrate that: (1) he or she is a citizen who has filed a timely claim; (2) she is either the original owner of the land, or one of the original owner's 'proper heirs;' and (3) the claimed property is public land which attained that status by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration." *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 94 (2006). Section 1304(b) also provides that the following defenses may not be asserted against Palauan citizens in a return-of-public-lands case: statute of limitations, laches or stale demand, waiver, res judicata or collateral estoppel as to matters decided before 1981, and adverse possession. 35 PNC § 1304(b)(2).

Appellant argues that in awarding Nanden to Appellee, the land court applied the legal doctrines prohibited by § 1304(b)(2). Appellant acknowledges that the land court never mentions these doctrines in its Determination. Appellant maintains, however, that the land court implicitly applied one or more of these doctrines. Specifically, Appellant asserts that when the land court rejected its oral account of how Nanden came to be owned by Appellant, it applied the doctrine of stale demand. Likewise, Appellant maintains that when the land court noted that certain actions by Martin Itpik contradicted its claim to Nanden, the land court applied the prohibited doctrines, though Appellant does not specify which doctrine the land court relied upon.

We find Appellant's arguments unpersuasive. Despite Appellant's discussion of laches and stale demand and waiver, it never addresses the basis for the land court's decision, which was that Appellant failed to prove that it owned Nanden immediately prior to the land's acquisition by the Japanese government. Appellant bears the burden of establishing by a preponderance of the evidence that he or she satisfies all the requirements of § 1304(b). *Ngiratrang*, 13 ROP at 93-94. To meet the second element of a return-of-public-lands claim, Appellant must overcome the Tochi Daicho, which states that Nanden was owned by Masaichi Kochi. To overcome the Tochi Daicho's presumption of correctness, a claimant "must not only show that it presented sufficient evidence that, if credited by the Land Court, would amount to clear and convincing evidence that the listing was wrong, but also that the Land Court's failure to credit that evidence was clearly erroneous – that no reasonable fact finder could have concluded otherwise." *Ebilkou Lineage v. Blesoch*, 11 ROP 142, 144 (2004). "When the listing in the Tochi Daicho is for *individual* ownership[] . . . the rebuttal evidence must be *particularly* clear and convincing." *Espangel v. Tirso*, 2 ROP Intrm. 315, 318 (1991).

Appellant does not argue that it presented sufficient evidence at the hearing to rebut the Tochi Daicho. Rather, Appellant contends that its "failure to protest or to challenge the listing in the Tochi Daicho cannot be used against Appellant's claim for to do so would be the same as raising the bar of laches or stale demand, waiver, or res judicata and collateral estoppel against

such claim." Appellant's Opening Br. 9. Appellant's argument is incorrect. The land court's decision had nothing to do with the prohibited legal doctrines and everything to do with Appellant's failure to meet its burden of proof. It may be true that a claimant cannot have p.95 its claim to public land barred solely because it or its predecessors failed to object to the Tochi Daicho at the time it was compiled. A claimant must, however, present some evidence to rebut an adverse Tochi Daicho listing. Because Appellant did not do so, it was not error for the land court to reject Appellant's claim.

We also find Appellant's remaining arguments unconvincing. The land court did not apply the doctrine of stale demand in discounting the probative value of Appellant's oral history. It appears that rather than finding Appellant's story "too old to be true," the land court found the oral account insufficient because it contained large gaps and was uncorroborated by any other evidence. Likewise, the land court did not run afoul of § 1304(b)(2) when it noted that Martin Itpik, a member of Appellant, acted in the past as if Appellant did not own Nanden. A claimant's action or inaction regarding land is relevant to a determination of the land's ownership. *Mesubed v. Iramek*, 7 ROP Intrm. 137, 139 (1999); *see also Obak v. Joseph*, 11 ROP 124, 128 (2004). Therefore, the land court may take into account that a claimant has engaged in acts inconsistent with ownership without implicating the theories prohibited by 35 PNC § 1304(b)(2). *Cf. Obak*, 11 ROP at 124.

Finally, Appellant is not entitled to Nanden because its best evidence of ownership was allegedly lost due to the passage of time. Appellant's frustration with the delay in adjudicating the ownership of Nanden is perhaps understandable. But this delay prejudiced *all* claimants, including Appellee. We see no reason to give Appellant preferential treatment. *See*, *e.g.*, *Llecholch v. Rengiil*, 5 ROP Intrm. 53, 54 (1995). As stated by the trial court in *Llecholch*: "A delay in determining ownership was experienced by all claimants to the property. Appellant has not shown why appellee, who did not cause the delay, should suffer a forfeiture to compensate apellant for the delay in processing his claim." *Id.*

CONCLUSION

We find that the land court made no errors of law and that its factual findings are not clearly erroneous. Thus, the land court's determination of ownership is **AFFIRMED**.