UCHELKEUKL CLAN,
Appellant,

v.

ISIDORO RUDIMCH and DEAN RUDIMCH,
Appellees.

CIVIL APPEAL NO. 09-016
LC/M 01-747, 01-748

Supreme Court, Appellate Division
Republic of Palau

Decided: April 20, 2010

[1] **Appeal and Error:** Standard of Review

When a lower court chooses between two permissible views of evidence, the Appellate Division should not disturb its factual findings.

Counsel for Appellant: Clara Kalscheur

Counsel for Appellees: Yukiwo P. Dengokl

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Land Court, the Honorable RONALD RDECHOR, Associate Judge, presiding.

PER CURIAM:

Appellant Uchelkeukl Clan[1] contends that the Land Court erred in awarding ownership of three lots to the Children of Indalcio Rudimch. Because the Land Court did not clearly err in deciding the appealed issues, we affirm the Land Court's decision below.

BACKGROUND

Uchelkeukl Clan appeals from three determinations of ownership by the Land Court awarding land to the Children of Rudimch rather than appellant. The lots at issue—Lot Nos. 03M010-002, 03M010-007, and 03M010-008 on Worksheet No. 03M010—were awarded to the Children of Rudimch in Determination of Ownership Nos. 11-331, 11-332, and 11-333, respectively. These three lots are located in Ngerkeai Hamlet in Aimeliik State. The Land Court, per Judge Rdechor, conducted a hearing on the parties' claims to the land over four days in November, 2008 and conducted a site visit as part of the hearing. After receiving written closing arguments and replies, the Land Court took the matter under advisement and issued its findings of facts, conclusions of law, and determinations of ownership on April 14, 2009. *See* Land Ct. Case Nos. LC/M 01-747, 01-748, Decision (Land Ct. Apr. 14, 2009). Uchelkeukl Clan filed a timely appeal to those determinations, contending that the Land Court erred in denying its claims to the land. As laid out below, the parties' views diverge

[1] Although appellant refers to itself as "Uchelkeyukl Clan" in the text of its brief, we utilize the spelling of the appellant used in the caption, as that is how appellant self-identified itself in its Notice of Appeal.

on the history and common names of the land at issue.

I. Uchelkeukl Clan's Version of the History of the Land.

Uchelkeukl Clan states the following history of the land (*see* Uchelkeukl Clan Br. at 6-7):

The three properties of *Meker*, *Kerekur*, and *Oltachel* have belonged to Uchelkeukl Clan since time immemorial and title has never been transferred away from the clan. In the early 1900s, the Rengulbai title bearer of the Uchelkeukl Clan permitted a group of Pohnpeians to live on a portion of *Meker* and use some of the coconut trees. During this time members of Uchelkeukl Clan continued to live on other portions of *Meker*, as well as on *Kerekur* and *Oltachel*, and built houses on the lands.

The Pohnpeians sold the coconut trees to a Japanese national, but the Japanese national later misconstrued the sale to be a sale of the land rather than just a use-right to the coconut trees. No written record of the sale from the Pohnpeians to the Japanese national was made. Documents exist stating that the Japanese national gave his interest in *Meker* to his Palauan mother-in-law, Urrimech. These documents also retrospectively claim that the land was sold by the Pohnpeians to the Japanese national.

Following World War II, the land of *Meker* was awarded to Urrimech in an appeal over ownership of the land by the Trust Territory Government. In 1962, Suekosan Rechuldak (apparently the sister-in-law of the Japanese national) executed a quit claim deed transferring her interest in *Meker* to "Indalesion" Rudimch.

II. Children of Rudimch's Version of the History of the Land.

For its part, the Children of Rudimch recount the history of the land as follows (*see* Rudimch Br. at 4-7):

The land known as *Meker* (which comprises at least all of the three claimed lots if not more) was sold by a Palauan clan to the German government in 1911 to be used for the settlement of Ponapean prisoners.[2] Ownership of *Meker* passed to the Japanese government once that government took over administration of Palau, and the Japanese government asserted ownership over the land in 1922 when the Ponapean prisoners left. In 1922 the Japanese government gave *Meker* to Juichiro Miyashita (a Japanese national) under a homestead contract that vested ownership in Miyashita after payment of rent for 25 years. Miyashita built a house on *Meker* and lived there briefly before renting out the land to sharecroppers for a number of years. Miyashita deeded his interest in *Meker* to his mother-in-law, Urrimech, on July 15, 1945 (shortly before the term of his homestead contract was fulfilled) and relocated to Japan. Urrimech leased out *Meker* for the next two years.

As part of the land registration administered by the United States after the conclusion of World War II, Urrimech filed a claim to the land, but the land was awarded to

[2] "Ponapeans" were inhabitants of Ponape, the previous moniker of what is now known as Pohnpei, home to present-day "Pohnpeians."

the Trust Territory Government. No other claimants filed claims to the land. Urrimech appealed the decision, and the Trust Territory High Court overruled the determination of ownership in favor of the Trust Territory and instead awarded *Meker* to Urrimech upon the condition that she complete the final payment of the homestead contract. Urrimech did so and *Meker* was released to her. *Meker* was sold by Urrimech's daughter, Sueko Rechuldak, to Indalecio Rudimch on April 20, 1962.

Around 2005, some persons claiming to be acting under the authority of Uchelkeukl Clan entered a portion of *Meker* and began to cut down coconut trees and other plants. Two of Rudimch's relatives, Dean and Ivan Rudimch, sued to quiet title and for ejectment and damages on behalf of the estate of one of Rudimch's sons, Isidoro Rudimch.

STANDARD OF REVIEW

The parties properly agree that factual findings of the Land Court are reviewed under the clearly erroneous standard. *See Ngerungel Clan v. Eriich*, 15 ROP 96, 98 (2008). Under this high standard, we will deem the Land Court's findings clearly erroneous and will reverse only if such findings are so lacking in evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *See Singeo v. Secharmidal*, 14 ROP 99, 100 (2007). Although a *de novo* standard of review is applicable to the Land Court's determination of law, no such legal determinations have been appealed.

DISCUSSION

[1] Read in a vacuum, both parties' purported histories of the land sound reasonable. And, both parties presented some evidence in support of their stories, although the Children of Rudimch produced far more documentary evidence. When a lower court chooses between two permissible views of evidence, we will not disturb its factual findings. *See Ngirmang v. Oderiong*, 14 ROP 152, 154 (2007). For the reasons laid out below, Uchelkeukl Clan has failed to prove that the Children of Rudimch's view of the evidence is "impermissible."

Uchelkeukl Clan identifies three bases for its appeal. First, it claims that the notice of the 1950s hearing that eventually resulted in the determination of ownership in favor of Urrimech (a predecessor-in-interest of the Children of Rudimch) only related to the lot commonly known as *Meker* and not to the other two lots commonly known as *Kerekur* and *Oltachel*. Therefore Uchelkeukl Clan states that the Land Court should not have relied upon the determination of ownership in Urrimech's favor when deciding the current ownership of *Kerekur* and *Oltachel*. Second, Uchelkeukl Clan contends that the Land Court erred by assuming that Uchelkeukl Clan was not referenced as a landowner or land claimant on any of the maps submitted by the Children of Rudimch. Lastly, Uchelkeukl Clan claims that the Land Court improperly discounted the testimony of its witness Sariang Timulech.

Uchelkeukl Clan's first argument, that the previous determination regarding the ownership of *Meker* did not include all of the three lots currently at issue, must fail. Uchelkeukl Clan's major premise is that the 1954 notice of hearing of the land referred

only to the land of *Meker* and did not name either *Kerekur* or *Oltachel*.

At the outset we note that Uchelkeukl Clan argues that each of the three numbered worksheet lots boast different common names, whereas the Children of Rudimch contend that all three lots (although called different names) are part of a larger tract named *Meker*. Uchelkeukl Clan stated in the record that Lot No. 03M010-002 is *Meker*, Lot No. 03M010-007 is *Kerekur*, and Lot No. 03M010-008 is *Oltachel*. (*See* Land Ct. Case Nos. LC/M 01-747, 01-748,. Uchelkeukl Clan Closing Argument at 1 (Land Ct. Feb. 3, 2009)). However Uchelkeukl Clan has also stated that both Lot Nos. 03M010-002 (*Meker*) and 03M010-007 (*Kerekur*) are part of *Meker* (while steadfastly maintaining that *Oltachel* is a wholly distinct land). (*See id.* at 1-2.)

Therefore, by Uchelkeukl Clan's own admission, any notice of hearing naming *Meker* would put prospective claimants on notice that the hearing would pertain to at least Lot Nos. 03M010-002 and 03M010-007. And, if, as the Land Court determined, *Meker* comprises *Oltachel* as well (or at least the portion of *Oltachel* contained within Lot No. 03A010-008), the 1954 notice for hearing on *Meker* would have notified claimants to all of the three lots-at-issue. Indeed, as explained below, Uchelkeukl Clan's entire basis for appeal boils down to the question of whether the Land Court erred in its determination that Lot No. 03A010-008 is part of the greater land known as *Meker* that was awarded to Urrimech in the 1950s and conveyed to Indalecio Rudimch in 1962.

In reaching its decision that Lot No. 03A010-008 is part of *Meker*, the Land Court relied upon no single piece of evidence. *See* Land Ct. Decision at 11-13. First, the Land Court recounted testimony of the Children of Rudimch's witnesses stating that the Rudimch family has used Lot No. 03A010-008 the same as it has used the rest of the land purchased by Indalecio Rudimch since 1962. The Land Court also relied on testimony that the Rudimch family planted coconut trees on Lot No. 03A010-008 and that the family understood the boundary of *Meker* to extend to a land known as *Klsobel* (which is not the same as Lot No. 03A010-008). The Land Court further noted that the maps entered into evidence by the Children of Rudimch demonstrated that the Rudimch land bordered *Klsobel* without reference to any land in the immediate area owned by Uchelkeukl Clan. Because *Meker* extended all the way to *Klsobel* (beyond Lot No. 03A010-008), the Land Court found that Lot No. 03A010-008 is part of *Meker*. To support this conclusion, the Land Court referenced testimony of Uchelkeukl Clan's witness, Sariang Timulech, demonstrating a discrepancy between the land Uchelkeukl Clan claims is *Oltachel* (and not *Meker*) and the boundaries of Lot No. 03A010-008.

Uchelkeukl Clan claims that, in determining that Lot No. 03A010-008 lies within the borders of *Meker*, the Land Court erred in its "assumption" that the maps entered into evidence by the Children of Rudimch contain no reference to Uchelkeukl Clan as a landowner or land claimant. Uchelkeukl Clan admits that it is not named on any of the maps, but argues that the maps make references that are broad enough to include the clan and were not drawn with the intention of specifically identifying all owners or claimants of land. However, the Land

Court stated as much in its opinion and factored that consideration into its decision: "It is true that these maps were not created to indicate ownership of land adjacent to that being surveyed. Nevertheless, these maps serve as good evidence of who claimed what at the time of each particular survey." Land Ct. Decision at 13. We will not overturn the Land Court's determination of ownership because it chose one competing inference over another regarding one category of evidence, especially when that evidence was considered along with other categories of evidence in reaching the final determination.

Uchelkeukl Clan's final asserted point of error—the Land Court's decision to discount a portion of Sariang Timulech's testimony—is not well-taken. Sariang Timulech testified that houses of certain Uchelkeukl Clan members were located on *Oltachel*. When the Land Court visited the site, however, some of the houses were located on Lot No. 03A010-008 and some were located on nearby land outside the lot boundaries. Uchelkeukl Clan contends that this discrepancy caused the Land Court to unfairly "dismiss" a portion of Timulech's testimony. Uchelkeukl Clan complains that the Land Court ignored the fact that the land commonly known as *Oltachel* and Lot No. 03A010-008 may not overlap completely and therefore Timulech's testimony could have been accurate despite the location of some of the houses outside of the boundaries of the worksheet lot.

In actuality, however, the Land Court did appreciate that *Oltachel* and Lot No. 03A010-008 may not share perfect boundaries. *See* Land Ct. Decision at 13 ("Court Exhibit 1, however, indicates that while these persons may or may not have lived in *Oltachel*, many of [] them lived outside of Lot No. 03M010-008."). The Land Court did not find that the discrepancy undermined Timulech's testimony—it found that the discrepancy undermined Uchelkeukl Clan's assertion that the land commonly known as *Oltachel* and Lot No. 03A010-008 were identical. *See id.* ("This discrepancy undermines Uchelkeukl Clan's assertion that *Oltachel* and Lot No. 03M010-008 are one and the same."). Uchelkeukl Clan misreads the Land Court's opinion in this respect. Given that the Land Court did not "dismiss" a portion of Timulech's testimony, we cannot find that any such dismissal was clearly erroneous.[3]

Given the breadth and variety of evidence before the Land Court in favor of its finding that *Oltachel*—or at least the part of *Oltachel* contained within Lot No. 03M010-008—is in fact a portion of the greater land *Meker*, we cannot say that its ruling was clearly erroneous. Uchelkeukl Clan has presented us with no new legal arguments, but instead asks us to review the same evidence presented before the Land Court and reach a different conclusion. The evidence is not so overwhelming as to require such a result. Prudence dictates that we reserve reversal of factual determinations of a lower court for

[3] To the extent that the Land Court chose to discount some (or all) of Timulech's testimony, we defer to the lower court's judgment on such credibility determinations. *See, e.g.*, *Sungino v. Blaluk*, 13 ROP 134, 137 (2006) ("Furthermore, '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.'" (quoting *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 165 (2004)).

only those situations in which the lower court's rulings are clearly erroneous. That scenario is not presently before us.

CONCLUSION

Because the Land Court's findings were not clearly erroneous on the appealed bases, we AFFIRM its decision below determining ownership of Lot Nos. 03M010-002, 03M010-007, and 03M010-008 in favor of the Children of Rudimch and against Uchelkeukl Clan.