KOROR STATE PUBLIC LANDS AUTHORITY,
Appellant,

v.

IDONG LINEAGE, BELECHL NGIRNGEBDANGEL, TELUNGALEK RA IKED AND METIEK, NGERBODEL HAMLET, and TECHEBOET LINEAGE,
Appellees.

CIVIL APPEAL NO. 08-058
LC/B 01-527; LC/B 01-528; LC/B 01-529; LC/B 01-530

Supreme Court, Appellate Division
Republic of Palau

Decided: January 14, 2010

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

The Appellate Division reviews the Land Court's findings of fact for clear error. Under this high standard, a lower court's findings of fact will be deemed clearly erroneous only when it is so lacking in evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.

[2] **Property:** Statute of Limitations

In actions claiming land, the statute of limitations and the doctrine of adverse possession are two sides of the same coin. To employ the statute of limitations against competing claimants to land, a claimant must show that its possession of the land was actual, open, visible, notorious, continuous, hostile, and under a claim of right for twenty years.

[3] **Property:** Statute of Limitations

Possession of land with consent of the owner is not hostile and therefore does not commence the running of the statute of limitations.

[4] **Property:** Adverse Possession

Land cannot be "taken" from the government through adverse possession.

[5] **Property:** Statute of Limitations

The statute of limitations cannot be employed to bar the government's claim to land.

[6] **Land Commission/LCHO/Land Court:** Claims

The Land Court must award contested land to a claimant and may not award the land to a non-claimant.

Counsel for Appellant: Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEXANDRA F. FOSTER, Associate Justice; HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

Appeal from the Land Court, the Honorable SALVADOR INGEREKLII, Associate Judge, presiding.

PER CURIAM:

On October 31, 2008, the Land Court issued its determinations of ownership of twenty-five worksheet lots on Bureau of Lands and Surveys Worksheet No. C3 B 00. Koror State Public Lands Authority ("KSPLA") claimed ten of the determined lots but was awarded none. KSPLA seeks reversal of the Land Court's determination of those ten lots. The following lots are at issue: Lot Nos. 181-034H, 181-191A, 181-191B, 181-191C, 181-191E, and 181-191P (awarded to Belechl Ngirngebdangel); Lot Nos. 181-191D and 181-191N (awarded to Idong Lineage); Lot No. 181-191H (awarded to Techeboet Lineage); and Lot No. 181-191L (awarded to Ngerbodel Hamlet).

KSPLA raises three primary arguments on appeal. First, KSPLA argues that competing claimants to all ten lots are barred by the statute of limitations because it has controlled the land for over twenty years. Second, KSPLA contends that the Land Court erred in awarding the six lots to Ngirngebdangel on the basis of the running of the statute of limitations because that defense is not effective against governmental entities in land claim actions. Lastly, KSPLA argues that the award of Lot No. 181-191H to Techeboet Lineage was clearly erroneous because the Land Court rejected the basis of Techeboet Lineage's claim. We address each argument in turn and order a partial vacation of the Land Court's determination.

BACKGROUND

As stated above, the Land Court made determinations of ownership as to twenty-five worksheet lots from Bureau of Land Surveys Worksheet No. C3 B 00 on October 31, 2008. The determined land is located in Ngerbodel, Ngerchemai Hamlet, Koror State. *See* Land Ct. Case Nos. LC/B 01-527, LC/B 01-528, LC/B 01-529, LC/B 01-530, Decision at 2 (Land Ct. Oct. 31, 2008). The Land Court heard testimony over three days in October, 2007. KSPLA claimed ten worksheet lots, primarily relying on residential leases it alleged to administer on the land. *See id.* at 7-8. The Land Court found that individual lease holders occupied four of the lots, but awarded no lots to KSPLA.[1] *See id.* at 9, 16-17. The Land Court rejected KSPLA's argument that the statute of limitations had run on its ten claimed lots because private claims to ownership of the land were asserted and pending during the leasehold terms. *See id.* at 16. The Land Court further stated that the lots at issue were not expropriated by the Japanese administration and therefore did not become government land at the end of World War II, the lots were not listed as government properties in the Tochi Daicho, and KSPLA's leases contained a disclaimer provision stating that it might not be the owner of the lands. *See id.* at 17. KSPLA filed a notice of appeal followed by its opening brief. No responsive briefs were filed.

STANDARD OF REVIEW

[1] We review the Land Court's findings of fact for clear error. *See Ngerungel Clan v. Eriich*, 15 ROP 96, 98 (2008). Under this high standard, a lower court's finding of fact

[1] The Land Court only found that four of the lots were leased, but did not find the identity of the lessor or the lessees. *See* Land Ct. Decision at 9. Indeed, one of the lots found to be leased (Lot No. 181-191M) was not claimed by KSPLA.

will be deemed clearly erroneous only when it is so lacking in evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *See Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 165 (2004). We conduct our review of questions of law, on the other hand, *de novo*. *See Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007).

DISCUSSION

Before addressing KSPLA's substantive arguments, we engage in preliminary housekeeping. KSPLA listed Telungalek ra Iked and Metiek as appellees on the face of its opening brief and served them with a copy of the brief. But KSPLA does not claim—and has never claimed—any of the lots awarded to Telungalek re Iked and Metiek (Lot Nos. 181-034, 181-034C, and 181-034E). KSPLA had no business listing Telungalek re Iked and Metiek as a party to the appeal in the first place and we dismiss them as appellees.

I. KSPLA's Statute of Limitations Defense

KSPLA argues that the Land Court erred by awarding Lot Nos. 181-191A, 181-191B, 181-191C, 181-191D, 181-191E, 181-191H, 181-191L, 181-191N, 181-191P, and 181-034H to other claimants in the face of its statute of limitations defense. KSPLA claims that the statute of limitations bars all competing claims to the lots because it leased the lots at issue to individuals at least as far back as 1976 and the Land Court hearing did not take place until 2007.[2] (*See* Appellant's Br. at 8-11.) KSPLA misses the mark.

[2, 3] KSPLA's first miscue is its reliance on the lease documents as sufficient evidence to support its statute of limitations defense. As KSPLA itself points out, in actions claiming land, the statute of limitations and the doctrine of adverse possession are "two sides of the same coin." *Ilebrang Lineage v. Omtilou Lineage*, 11 ROP 154, 157 n.3 (2004); *see also infra* Section II. Therefore, KSPLA must show that its possession of the land was actual, open, visible, notorious, continuous, hostile, and under claim of right for twenty years to employ the statute of limitations defense against competing claimants. *See id.* KSPLA has failed in this regard. Rather, it submits the lease documents as its evidence without pointing the court to testimony demonstrating that it (or its lessees) actually possessed the land for twenty years with the requisite hostility necessary to invoke the statute of limitations defense.[3] The testimony

[2] For simplicity of reference, we refer to KSPLA and the Trust Territory government (its predecessor for purposes of this claim) as one entity.

[3] KSPLA states, without citation, that "Evidence in the record reflects that all appellees who claimed lots within Tract/Lot Numbers 40163, 40164, and 40165 were aware of the government's claim, possession, control, and maintenance of the lots as government or public lands as far back as 1974 and at the latest 1976." (Appellant's Br. at 10.) Especially where, as here, the appellant is represented by competent counsel, it is not the responsibility of the court to scour the record searching for facts to support the appellant's claim.

that KSPLA cites does not bolster its statute of limitations claim because it merely states that some of the claimants were aware of the leases, not that the lessees hostilely possessed the land. (*See* Appellant's Br. at 10-11.) KSPLA's one reference to possession, Roisisbau Ngirchechol's testimony that Delngelii Kintaro possessed Lot No. 181-191D since 1956 (*see id.* at 10), was explicitly dealt with by the Land Court when it found that Kintaro possessed the land with the consent of Idong Lineage. *See* Land Ct. Decision at 11-12. Possession with the consent of the owner is not hostile and therefore does not commence the running of the statute of limitations. *See Seventh Day Adventist Mission of Palau, Inc. v. Elsau Clan*, 11 ROP 191, 194 (2004) (requisite hostility for adverse possession not found where use is permissive). For these reasons, the Land Court was correct in finding that the appealed lots did not become the property of KSPLA through the running of the statute of limitations for recovery of land.

II. The Land Court's Imposition of Statute of Limitation Against KSPLA

KSPLA appeals the Land Court's award of Lot Nos. 181-191A, 181-191B, 181-191C, 181-191E, 181-191P, and 181-034H to Belechl Ngirngebdangel. The Land Court awarded these six lots to Ngirngebdangel because it found that any other claims to the lots had been "barred by the doctrine of estoppel, laches, and statute of limitations." Land Ct. Decision at 10. The Land Court's opinion is void of any discussion or analysis with respect to estoppel and laches, thus precluding meaningful review of those findings. We take the lack of estoppel and laches analysis to mean that the true basis for the Land Court's awards to Ngirngebdangel was the statute of limitations bar. We review its awards accordingly and find that vacation of a portion of the Land Court's ownership determinations is necessary.[4]

The Land Court found that Ngirngebdangel purchased a parcel of land from Iked Etpison in 1976 and another parcel from Yukiwo Etpison in 1983. *See* Land Ct. Decision at 9. The Land Court found that any claims for recovery of the land are now barred by 14 PNC § 402 because no one objected to Ngirngebdangel's occupation during the twenty years following his purchase of the land.[5] *See id.* at 10.

In Palau, the statute of limitations regarding actions to recover land and the doctrine of adverse possession are regarded as constant bedfellows. This view is so well entrenched in the case law that it would require us to embark on a startling departure

[4] In actuality it appears that the Land Court failed to explicitly express its rationale for awarding Lot No. 181-191E to Ngirngebdangel rather than KSPLA. We would reach the same result—vacation of the award—regardless of whether we assumed that Lot No. 181-191E was also awarded on statute of limitations grounds or if we instead halted our analysis at the realization that the Land Court failed to sufficiently set forth the basis of its decision with respect to KSPLA's claim to Lot No. 181-191E. We are not pleased to have the luxury of such options; the Land Court should ensure that its opinions carefully set out the bases of each determination of ownership.

[5] 14 PNC § 402(a)(2) provides that actions for the recovery of land (or any interest in land) shall be commenced within twenty years after the cause of action accrues.

from precedent to overrule it today. *See, e.g.*, *Brikul v. Matsutaro*, 13 ROP 22, 24 (2005) (a claimant obtains much the same result whether claiming under adverse possession or invoking the statute of limitations; both doctrines require proof of the same elements); *Ilebrang Lineage*, 11 ROP at 157 n.3 ("14 PNC § 402(a) and adverse possession are two sides of the same coin."); *Otobed v. Etpison*, 10 ROP 119, 120 (2003) ("This Court has treated the statute of limitations in land disputes as though it creates an ownership interest for an adverse claimant, just as adverse possession does."); *Palau Pub. Lands Auth. v. Salvador*, 8 ROP Intrm. 73, 77 (1999) ("Adverse possession and the statute of limitations *must* be considered together." (emphasis added)).

[4, 5] It is also well-established that land cannot be "taken" from the government through adverse possession. *See Salvador*, 8 ROP Intrm. at 76 ("[O]ne cannot obtain title against the government based upon a claim of adverse possession. This is a long-standing and well-known rule, admitting of few exceptions."). Because land administered by Palau Public Lands Authority is treated as 'government land' for the purpose of avoiding adverse possession (*see id.* at 74 n.1), it is a fair extension to provide the same protection to lands held by state public lands authorities, as the public nature of land is not extinguished by the transfer of government land from the national public lands authority to a state public lands authority. *See* 35 PNC § 215 (authorizing the creation of state public lands authorities to carry out the same function as Palau Public Lands Authority on the state level).[6] Given that adverse possession and the statute of limitations are two sides of the same coin, it is a sensible extension of the rule that the statute of limitations defense cannot be asserted against the government in land claims—otherwise the bar against the use of adverse possession against the government would lack all meaning.

Connecting the dots, the Land Court's decision granting the lots in question to Ngirngebdangel was clearly erroneous because the statute of limitations is not an effective defense against a government entity in a land claim contest. The awards of Lot Nos. 191-191A, 181-191B, 181-191C, 181-191E, 181-191P, and 181-034H to Belechl Ngirngebdangel are vacated. Because the basis of the vacation is specific to the government, the Land Court should consider only the claims of KSPLA and Ngirngebdangel in re-awarding these disputed lots.[7] The Land Court is, of course, free to re-

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[6] We are cognizant that we have previously deemed that Koror State Public Lands Authority is not the "state government" for purposes of jurisdiction under ROP Const. art. X, § 5. *See Koror State Pub. Lands Auth. v. Diberdii Lineage*, 3 ROP Intrm. 305, 308 (1993). *Cf. Republic of Palau v. Airai State Pub. Lands Auth.*, 9 ROP 201, 206 (2002) (although separate from the state government itself, state public lands authorities are governmental entities). Setting jurisdictional gymnastics aside, the rule against obtaining government land via adverse possession focuses on the public nature of the land, not of the entity administering the land. The land held by KSPLA is public land; therefore it cannot be "taken" by adverse possession.

[7] In a separate and concurrently-decided appeal, Techeboet Lineage appealed the award of

award the land to Ngirngebdangel upon reconsideration and with proper support.

III. KSPLA's Challenge to the Award of Lot No. 181-191H to Techeboet Lineage

[6] KSPLA appeals the award of Lot No. 181-191H to Techeboet Lineage on the ground that the award (or at least the reasoning supporting the award) was clearly erroneous. The Land Court found that the land was acquired by Kisaol, a non-claimant, and her Japanese husband. *See* Land Ct. Decision at 12. Because contested land must be awarded to a claimant and may not be awarded to a non-claimant, the Land Court was faced with the dilemma of awarding the lot to a claimant that it did not believe was the true owner. *See Ngirumerang v. Tmakeung*, 8 ROP Intrm. 230, 231 (2000) ("The Land Court can, and must, choose among the claimants who appear before it and cannot chose someone who did not, even though his or her claim might be theoretically more sound."). The Land Court awarded the land to Techeboet Lineage because one of the claimants representing its interests was Bilung G. Salii, the niece of Kisaol, and "Bilung was the only claimant who claimed through her relationship to Kisaol." Land Ct. Decision at 13.

KSPLA argues two errors in the Land Court's determination: (1) the land was not owned by Kisaol, but rather by her Japanese husband; and (2) Techeboet Lineage's claim was not made through a relationship with Kisaol. (*See* Appellant's Br. at 17-18.) We decide this appeal on the second ground. Because the person whom the Land Court felt was the true owner of the lot did not file a claim to the lot, the Land Court was forced to award the land to one who it did not feel was the true owner. *See* Land Ct. Decision at 12-13. This difficult reality does not insulate the Land Court's decision from appellate review: the Land Court must still award the land to a claimant based on sound reasoning under the circumstances.

The Land Court awarded Lot No. 181-191H to Techeboet Lineage because one of its representatives is the niece of Kisaol (whom the Land Court deemed to be the true owner of the land). However, no testimony supports the Land Court's reasoning that Techeboet Lineage claimed the land *through* its representative's relationship with Kisaol. Although Salii made several vague remarks in her testimony to "Kisaol's property" or "property of Kisaol," she later clarified that the claimed land was Idid Clan land and that Kisaol lived there as a clan member. (*See* Tr. 111:9-10 ("It's the property of Idid so Kisaol and her Japanese husband lived there."); 111:18-19 ("It's Idid property and Kisaol lived there."); 112:3-4 ("It's the property of Idid and Kisaol is a member of Idid that's why she lived there."); 112:7-9 ("It's the property of Idid and Kisaol is a member of Idid that's why she lived there."); 112:11-12 ("I just know that it's Idid property that is why Kisaol lived there."); 121:19-20 ("It was [Idid Clan's] property from way back and Kisaol is an Idid

certain lots to Ngirngebdangel, including five lots–Lot Nos. 181-191B, 181-191C, 181-191E, 181-191P, and 181-034H–also appealed by KSPLA. *See Techeboet Lineage v. Ngirngebdangel*, 17 ROP 78 (2010). We affirmed the award of all lots to Ngirngebdangel over Techeboet Lineage in the other appeal. The vacation in the instant case does not permit Techeboet Lineage another bite at the apple.

Clan member so she was living there.").) According to Salii, Techeboet is a lineage of Idid Clan. (*See* Tr. 86:20-21.) Techeboet Lineage's representative, Bilung G. Salii, testified that Kisaol lived on the land with permission of Techeboet Lineage, not as a landowner. It was clearly erroneous for the Land Court to base its decision on the reasoning that Techeboet Lineage's claim was made through a relationship with the landowner Kisaol.

Although we empathize with the Land Court's position of being forced to award land to one that it does not believe to be the true owner, we vacate its decision with regard to Lot No. 181-191H. On remand the court should re-determine ownership of the lot based on the evidence before it.[8]

CONCLUSION

For the above-stated reasons, we affirm in part and vacate in part the Land Court's determinations of ownership in the proceeding below. On remand the Land Court should re-determine the vacated determinations of ownership consistent with the guidance in this opinion.

[8] The Land Court is free to re-determine ownership in favor of Techeboet Lineage based on different reasoning.