SUSAN NGIRAUSUI,
Appellant,

v.

KOROR STATE PUBLIC LANDS AUTHORITY,
Appellee.

CIVIL APPEAL NO. 11-001
LC/B 09-0468

Supreme Court, Appellate Division
Republic of Palau

Decided: August 12, 2011[1]

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

The Appellate Division reviews the Land Court's conclusions of law de novo and its factual findings for clear error.

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

We will not set aside the Land Court's factual findings so long as they are supported by evidence such that any reasonable trier of fact could have reached the same conclusion, unless we are left with a definite and firm conviction that an error has been made.

[3] **Return of Public Lands**: Elements of Proof

To prove a claim for return of public lands, a claimant must demonstrate that the claimant is a citizen who has filed a timely claim; the claimant is either the original owner of the claimed property, or one of the proper heirs; and that the claimed property is public land which became public land by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration.

[4] **Return of Public Lands**: Burden of Proof

The burden of proof is on the claimant to establish, by a preponderance of the evidence, that she satisfies all requirements of the statute.

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

It is not the duty of the Appellate Division to re-weigh the evidence, test the credibility of witnesses, or draw inferences from the evidence.

Counsel for Appellant: Yukiwo P. Dengokl
Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice; and KATHERINE A. MARAMAN, Part-Time Associate Justice.

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

PER CURIAM:

Appellant Susan Ngirausui

[1] The panel finds this case appropriate for submission without oral argument, pursuant to ROP R. App. P. 34(a).

("Appellant" or "Ngirausui") appeals a December 17, 2010, Land Court Determination of Ownership, awarding Tochi Daicho Lot No. 218-part, identified as Cadastral Lot No. 013 B 05 on BLS Cadastral Plat No. 013 B 00, to Appellee Koror State Public Lands Authority ("Appellee" or "KSPLA"). Appellant argues that the Land Court erred in finding that Cadastral Lot No. 013 B 05 is part of Tochi Daicho Lot No. 218 and concluding that Appellant failed to prove the elements of her claim. For the reasons that follow, we **AFFIRM** the Land Court's Determination of Ownership.

I. BACKGROUND

The land at issue in this return-of-public-lands case is Tochi Daicho Lot No. 218-part, a land known as *Iweang*, located in Ngermid Hamlet, Koror State. Three parties filed claims of ownership of this land: Gregorio Ngirausui, Koror State Public Lands Authority, and Lazarus Ulengchong.[2] After Gregorio Ngirausui passed away, his daughter, Appellant Susan Ngirausui, pursued his claim.

Tochi Daicho Lot No. 218 is listed in the Tochi Daicho as being owned by Nanyo Shinto Shrine Society and as having an area of 71,466.8 tsubo or 236,253.88 square meters. Chamberlain Ngiralmau, an employee of the Bureau of Lands and Surveys, testified that the land Ngirausui claims is a portion of Tochi Daicho Lot No. 218.

According to Ngirausui, she inherited *Iweang* from her father, Gregorio Ngirausui. At the Land Court hearing, she testified that her father told her that he bought the land from Felix Osiik. As evidence of this transaction, she presented the "Contract for sale of Land" executed between Gregorio Ngirausui and Felix Osiik, dated January 6, 1978.

The second witness for Ngirausui, Felix Osiik, confirmed that he sold the land at issue to Gregorio Ngirausui. Before he sold the land, Osiik testified that he inherited the land from his father, Eterochel. Osiik testified that his father once cleared the boundary of the land and may have planted some mahogany trees on the land. Eterochel also showed him the boundary of the land. Osiik testified that as far as he can remember, the land had always been a jungle and had never been used. He added that he had seen no evidence nor heard of any use of the land by the Japanese.

Osiik testified that his father came to own the land when a woman named Smaserui conveyed it to him for services rendered. Some time after Eterochel passed away in 1975, Smaserui also passed away. Upon Smaserui's death, Osiik was called to her house and, in the presence of her children and relatives, Ulengchong, one of Smaserui's children, informed him that they were giving him the land that Smaserui gave to his father. Osiik testified that he did not know how Smaserui came to own the subject land. No evidence was presented showing that Smaserui was the original owner of the land.

[2] Although Lazarus Ulengchong filed a claim of ownership of the land at issue and was notified of the hearing, neither he nor his representative appeared before the Land Court to present his claim. The Land Court decided his claim based on the information available to the court. Ulengchong did not appeal the Land Court's decision.

The third witness for Ngirausui, Miseusech Ngchar, testified that his mother and uncle told him that the Japanese forced them out of their land and were told that it would be used for worship and that no one was allowed in the area. He also testified that he does not know who owns the land at issue.

Other evidence was submitted at the hearing to controvert the testimony of Ngirausui's witnesses. KSPLA submitted evidence of a sworn Statement of Fact, signed by Smaserui, which states that the Continental Hotel Site was part of a tract of land owned by Iechad Ilek which was purchased for 1,700 Yen by the Japanese Shinto Association in Palau for use as a shrine. Also, Ulengchong filed a claim in 1984 for the entire Tochi Daicho Lot No. 218 as his individual property. After Ulengchong passed away, his son, Lazarus, also claimed Tochi Daicho Lot No. 218. In its Determination of Ownership, the Land Court took judicial notice of Ulengchong's 1984 claim.

Based upon this evidence, the Land Court found that Ngirausui failed to satisfy her burden of proving the elements of her claim. Specifically, the Land Court found that Ngirausui failed to prove that she is the proper heir or successor in interest of the original owner of the land, Ilek Iechad, and that the claimed property became public land as a result of a wrongful government taking. Because Ngirausui failed to satisfy all elements of her claim, the Land Court determined that Tochi Daicho Lot No. 218-part, now identified as Cadastral Lot No. 013 B 05 on BLS Cadastral Plat No. 013 B 00, is and shall remain a public land administered by KSPLA.

II. STANDARD OF REVIEW

[1, 2] The Appellate Division reviews the Land Court's conclusions of law de novo and its factual findings for clear error. *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007). We will not set aside the Land Court's factual findings so long as they are supported by evidence such that any reasonable trier of fact could have reached the same conclusion, unless we are left with a definite and firm conviction that an error has been made. *Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 168 (2006).

III. DISCUSSION

Appellant raises two arguments on appeal. First, she argues that the Land Court clearly erred in finding that Cadastral Lot No. 013 B 05 is part of Tochi Daicho Lot No. 218. Second, she contends that the Land Court erred in concluding that Appellant failed to prove the second and third elements of her claim.

A. The Land Court Did Not Clearly Err in Finding that Cadastral Lot No. 013 B 05 is Part of Tochi Daicho Lot No. 218.

Appellant argues that the Land Court committed clear error in finding that Cadastral Lot No. 013 B 05 is part of Tochi Daicho Lot No. 218 because the Land Court failed to resolve some apparent confusion during the hearing as to the exact location of Cadastral Lot No. 013 B 05. In support of her argument, Appellant points to her testimony and Eterochel's 1974 Application for Registration of Land Parcel. Ngirausui testified on direct examination that Cadastral Lot No. 013 B 05 should be next to Tochi Daicho Lot Nos. 213,

214, and 215. Then on cross examination, she testified that her claim is for part of Tochi Daicho Lot No. 218, based on the Contract for Sale of Land between her father and Felix Osiik, which identifies the land as Lot 218. Appellant also highlights Eterochel's 1974 application for land registration acquired from Smaserui, which originally described the land as being Tochi Daicho Lot No. 178-1-C, but was crossed out and replaced with "Part Lot No. 218-D." Osiik testified that he does not know who made this change to his father's application. Appellant concludes that because of the confusion in the record, the Court should be left with a definite and firm conviction that a mistake was made by the Land Court in finding that Cadastral Lot No. 013 B 05 is part of Tochi Daicho Lot No. 218.

Notwithstanding Appellant's insistence that the record is muddy on the issue of the location of Cadastral Lot No. 013 B 05, there is sufficient evidence in the record to support the Land Court's finding that Lot No. 013 B 05 is part of Tochi Daicho Lot No. 218. First, Osiik testified that the land at issue is part of *Iweang* and identified it on a map as Cadastral Lot No. 013 B 05. During that same testimony, Osiik indicated that the subject land is the same as the land identified in the 1978 Contract for Sale of Land between him and Appellant's father, which describes the land as Lot No. 218 and part of *Iweang*. Second, when Gregorio Ngirausui filled out his Application for Land Registration, he indicated that the land is listed in the Tochi Daicho as "218-part." Third, Appellant's witness, Ngiralmau, testified on redirect examination that the lot at issue is a portion of Tochi Daicho Lot No. 218. Although Appellant claims that her testimony evidenced confusion as to the location of the land at issue, her testimony was in actuality consistent. On direct examination she testified that the land is next to Tochi Daicho Lot Nos. 213, 214, and 215, and on cross examination she testified that the land is part of Tochi Daicho Lot 218. By examining Ngirausui's Exhibit 7, one can see that all of these lots are next to each other and that there is no inconsistency or confusion in her testimony. As to the crossed-out description of land on Osiik's 1974 application for land registration, the Land Court does not discuss this piece of evidence. Although Osiik does not know who made the change to his father's application, he did not indicate during his testimony that the change was incorrect, or a misrepresentation of the land that his father actually claimed. Indeed, in 1978, Osiik signed a land commission form giving Gregorio Ngirausui power to represent him before a land registration team and a land commission regarding part of Lot No. 218, a land which Osiik claimed to own or to hold in trust.

This Court is not left with a definite and firm conviction that an error has been made based on a change on a single land registration form, when the overwhelming evidence in the record supports the Land Court's finding that Cadastral Lot No. 013 B 05 is Tochi Daicho Lot No. 218. Because there is sufficient evidence in the record such that a reasonable trier of fact could have reached the same conclusion, the Land Court's finding is not clearly erroneous.

B. The Land Court Properly Denied Ngirausui's Claim Because She Failed to Prove By a Preponderance of the Evidence that She is the Heir of the Original Land Owner.

[3, 4] 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 its "acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration." Palau Const. art. XIII, § 10. This constitutional directive is implemented by 35 PNC § 1304(b). To prove a claim under § 1304(b), a claimant must demonstrate that: "(1) the claimant is a citizen who has filed a timely claim; (2) the claimant is either the original owner of the claimed property, or one of 'the proper heirs'; and (3) the claimed property is public land which became public land by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration." *Markub v. Koror State Pub. Lands Auth.*, 14 ROP 45, 47 (2007). The burden of proof is on the claimant to establish, by a preponderance of the evidence, that she satisfies all requirements of the statute. *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 93-94 (2006).

Appellant argues that the Land Court improperly concluded that she failed to prove by a preponderance of the evidence the second and third elements of her claim. Specifically, Appellant contends that the Land Court erroneously concluded that Iechad Ilek was the original owner of Tochi Daicho Lot No. 218 and that Appellant is not a proper heir or successor in interest of Ilek. She also argues that the Land Court erred in concluding that she failed to prove that the land was wrongfully acquired.

As to the issue of ownership, Appellant contends that the Land Court erroneously discounted objective and credible evidence. Appellant traces her ownership of the land to the inheritance from her father Gregorio Ngirausui, who purchased it from Felix Osiik, who inherited it from his father Eterochel, who acquired it from Smaserui in exchange for services rendered. As evidence of Smaserui's original ownership of the land, Appellant points to Eterochel's 1972 Land Acquisition Record and 1974 Application for Registration of Land Parcel, in which he indicated that the land he was monumenting and claiming was acquired from Smaserui. Appellant also notes Felix Osiik's testimony that his father Eterochel acquired Lot No. 013 B 05 from Smaserui and that his father cleared that Lot, built a shack on it, planted mahogany trees on it, and that it has remained a jungle without use by the Japanese or Appellee.

[5] Contrary to Appellant's contention, the evidence in the record is sufficient to support the Land Court's finding that Appellant failed to meet her burden of proof that she is a proper heir or successor in interest of the original owner of the land. Although the story linking Appellant to Smaserui is uncontested, Appellant failed to present any evidence, apart from Osiik's testimony, to establish Smaserui's ownership of the land. Indeed, Osiik testified that he did not know how Smaserui came to own the land. Contradicting Appellant's assertion that Smaserui originally owned the land is a 1969 Statement of Fact signed by Smaserui that in 1939, acting on behalf of Iechad Ilek, she sold his land to the Japanese Shinto Association for use as a shrine. Moreover, the Tochi Daicho for Koror indicates that Tochi Daicho Lot No. 218 is owned by Nanyo Shinto Shrine Society. Despite Appellant's evidence that Eterochel

claimed to have acquired the land from Smaserui, it was not clear error for the Land Court to question the evidence of Smaserui's ownership of the land, and to credit the Statement of Fact that the land was sold from Ilek to the Japanese Shinto Association and the Tochi Daicho listing Nanyo Shinto Shrine Society as the owner. *Ngiradilubech v. Timulch*, 1 ROP Intrm. 625, 629 (1989) (holding that the Tochi Daicho listings for states other than Peleliu and Angaur are presumed to be correct). It is not the duty of the Appellate Division to reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence. *Ebilklou Lineage v. Blesoch*, 11 ROP 142, 144 (2004).

Finally, Appellant's argument that other parts of the Shinto Shrine area have been awarded to others is also unconvincing because it does not prove that Cadastral Lot No. 013 B 05 was ever owned by Smaserui. As the Land Court properly stated, Smaserui could not convey what she did not own. Therefore, Appellant's ability to trace her alleged ownership of the land to Smaserui is of no consequence to her claim. Despite Appellant's insistence that Smaserui was the original owner of the lot, the evidence in the record supports the Land Court's conclusion that Appellant failed to prove by a preponderance of the evidence that she is the proper heir or successor in interest of the original owner of the land. Accordingly, the Land Court's conclusion is not clearly erroneous.

Because Appellant failed to establish that she is a proper heir or successor in interest of the original owner of the land, she cannot satisfy all the elements necessary to prevail on her return-of-public-lands claim. Thus, Appellant's argument that the Land Court erred in concluding that she failed to prove the third prong, that the land at issue was wrongfully acquired, is now moot.

IV. CONCLUSION

For the reasons set forth above, the Land Court's Determination of Ownership is hereby **AFFIRMED**.