

**NGARNGEDCHIBEL and IDID CLAN,
Appellants,**

v.

**KOROR STATE PUBLIC LANDS
AUTHORITY,
Appellee.**

CIVIL APPEAL NOS. 10-047 & 11-002

LC/B 09-0128

LC/B 09-0129

LC/B 09-0130

LC/B 09-0131

LC/B 09-0132

LC/B 09-0133

LC/B 09-0134

Supreme Court, Appellate Division

Republic of Palau BEFORE:

Decided: February 23, 2012

[1] Return of Public Lands: Burden of Proof

A land authority has no obligation to press its claim before the court; it need not even appear in court for it to retain lands it owns over the claims of private parties.

[2] Appeal and Error: Preserving Issues

This Court has consistently held that arguments raised for the first time on appeal are deemed waived.

[3] Return of Public Lands: Burden of Proof

Had the Land Court concluded that PPLA was the proper public owner rather than KSPLA, it

could have made that determination without the participation of PPLA as a party. Contrary to *Rusiang Lineage*, which concerned private parties, cases involving claims to publicly-owned lands do not require the Land Court to limit its determination to the parties before it. As we stated in *Masang*, because the burden is on the private claimants, if no claimant satisfies § 1304(b)'s requirements, the land will simply remain with the land authority, whether the authority is a party to the proceedings or not.

Counsel for Ngarngedchibel: Raynold Oilouch

Counsel for Idid Clan: Salvador Remoket

Counsel for Koror State Pub. Lands Auth.: J. Uduch Sengebau Senior

ARTHUR NGIRAKLSONG, Chief Justice;
KATHERINE A. MARAMAN, Part-Time Associate Justice;
RICHARD H. BENSON, Part-Time Associate Justice.

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

PER CURIAM:

Appellants Ngarngedchibel and Idid Clan appeal the determination by the Land Court that certain lots in Medalaii Hamlet, Koror, are owned by the Koror State Public Lands Authority (KSPLA). Ngarngedchibel, the Council of Chiefs for Ngerbeched, contends that it should be awarded title to the lots by default because the true owner of the land is the Palau Public Lands Authority (PPLA), which was not party to the dispute below. Idid Clan argues that it is the true owner of the land, and that the Land Court

clearly erred in its determination to the contrary. We reject both Appellants' arguments and affirm.

BACKGROUND

This case concerns Bureau of Lands and Surveys ("BLS") lots designated 2006 B12-002, 2006 B 12-003, 2006 B 12-004, 2006 B 12-005, 2006 B 12-006, and 2006 B 12-006A. The land was registered in the Tochi Daicho as owned by the Japanese government and, during the occupation, was used as the site for a hospital. It later became the site of Micronesian Occupational College ("MOC") and is now the site of Palau Community College ("PCC").

On June 14, 2010, the Land Court began an ownership hearing, and several claimants argued that the land should be returned to private ownership. Among them were Ngarngedchibel and Idid Clan, each of which presented evidence during the hearing. KSPLA also participated in the hearing, contending that the land should remain public.

Ngarngedchibel claimed that it has owned the PCC lots since time immemorial. Ngircholsuchel Paul Reklai, a spokesperson for Ngarngedchibel, testified that the land became part of Ngerbeched as a gift from Koror. According to him, Ngerkebesang was waging war on Koror when the Ngerbeched people came to Koror's rescue. As thanks, the Ibedul presented Ngerbeched with the lands that are now the subject of this dispute. Ngircholsuchel Reklai's testimony was corroborated by a chant, a recording of which was submitted as evidence, and by two additional witnesses who provided the same history. Ngarngedchibel also presented

testimony that the land was taken prior to the Japanese period and later used for a hospital.

As part of Idid Clan's case, Bilung Gloria Salii testified to the relationship between her family and the land. Her great-grandmother was a Chuukese woman who was stranded near Idid Clan lands during the Spanish period. She was pregnant and left behind by an English ship. Idid Clan took her in. She died giving birth to Bilung Ngerdokou, Bilung Salii's grandmother. She was buried at Idid Clan's odesongel, on the land where the PCC administration building now sits. The birth of Bilung Ngerdokou and the death of the Chuukese woman occurred during the Spanish period. Bilung Salii also testified that westerners took the land, though she was not certain during which period or by which foreign power.

Idid Clan also submitted a copy of another Land Court decision, *In re Land Known as Iengid Located in Medalaii Hamlet, Koror State*, Civ. Action No. 00-206 (Sup. Ct. Tr. Div. Nov. 14, 2002) (*Iengid*). In *Iengid*, the Land Court concluded that land located on the current site of PCC belonged to Ibai Clan. *Iengid*, at 1, 7. Idid Clan was party to the dispute in *Iengid*, but it did not prevail. *Id.* at 4. During the proceedings in that case, Bilung Salii acknowledged that some of the land on what is now PCC's campus was given to Ibai Clan. *Id.* at 4. Relying on evidence provided by Ibai, which showed Ibai Clan's claim "reaching all the way to the road," the court determined that Ibai had the better claim vis-à-vis Idid Clan. *Id.* at 4-5. During the proceedings below in the present case, Bilung Salii testified that Idid Clan did not give any of the presently disputed lands to Ibai Clan.

During its case, KSPLA submitted several quitclaim deeds. The first was between the Trust Territory government and PPLA dated July 24, 1979. The 1979 deed ceded all public land to PPLA with several exceptions. Among the exceptions was the MOC (now PCC) land. PPLA quitclaimed the same land, excluding the MOC land, to KSPLA on May 14, 1980. On March 10, 1982, PPLA executed yet another quitclaim deed ceding some of the formerly excepted land to KSPLA, but again excluding the MOC land. This deed also contains language suggesting that once the Trust Territory transferred title of remaining public lands to the national government, such lands would transfer to KSPLA.

On June 17, 2010, the last day of the hearing, PPLA attempted to intervene in the proceedings. PPLA argued that its interests were not represented by any other party. Although it contended that it did not receive notice, it is clear from the record that, as early as 2006, PPLA was notified that monumentation of the PCC land was underway.

In its final order, the Land Court awarded ownership of the lands to KSPLA.¹ The court rejected Ngarngedchibel's claim because it failed to prove that the land belonged to Ngerbeched at the time of the taking by a foreign power. While the court concluded that Idid Clan "owned the lands at some time in the past," it noted that there was little or no evidence to support the contention that Idid Clan owned the land immediately prior to its taking. Pointing to the *Iengid* case,

the court reasoned that Idid Clan may have given up the disputed land to Ibai, as it did with the *Iengid* lands. Although the court found Bilung Salii's testimony credible, it noted that her testimony suggested that one of the four saus of the Idid Clan, rather than the clan itself, owned some of the lands. Further, the court noted, Bilung Salii could not recall with specificity when or by whom the lands were taken. Thus, the court rejected Idid Clan's claim, and declared KSPLA the rightful owner.

In the same order, the court rejected PPLA's motion to intervene. Because PPLA was notified of the monumentation and did not attempt to intervene in the proceedings until mere hours before their conclusion, the court denied the motion. PPLA is not party to this appeal and did not attempt to appeal the Land Court's decision. Idid Clan and Ngarngedchibel now appeal the determination that the lands belong to KSPLA.

STANDARD OF REVIEW

We review the factual determinations of the Land Court for clear error and its legal conclusions de novo. *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 93 (2006). We will not substitute our view of the evidence for the Land Court's. Thus, in order to prevail, Appellants must show that no reasonable trier of fact could have reached the same conclusion based on the evidence presented to the Land Court. *Sungino v. Blaluk*, 13 ROP 134, 136 (2006).

ANALYSIS

A claimant seeking return of public land must show:

¹ One parcel, not subject to this appeal, was awarded to the Roman Tmetuchl Family Trust

(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 the acquisition the land was owned by the citizen or citizens or that the citizen or citizens are the proper heirs to the land

35 PNC § 1304(b).

[1] Under § 1304(b), a claimant bears the burden before the Land Court. “At all times, the burden of proof remains on the claimants, not the governmental land authority, to establish, by a preponderance of the evidence, that they satisfy the requirement of the statute.” *Ngiratrang*, 13 ROP at 93-94. A land authority has no obligation to press its claim before the court; it need not even appear in court for it to retain lands it controls over the claims of private parties. *See Masang v. Ngirmang*, 9 ROP 215, 216-17 (2002) (concluding the land authority did not participate in the court proceedings but remained owner of the land by virtue of private claimants’ failure to satisfy their burden).

I. Ngarngedchibel’s Claim

Rather than arguing that it met its burden before the Land Court, Ngarngedchibel attempts to persuade us that it should win by default. In its brief, Ngarngedchibel admits

that the land is likely public and states that “PPLA would have easily prevailed in the ownership of the PCC site.” But, Ngarngedchibel contends, PPLA was not a claimant, and this Court has held in the past that the Land Court may not award land to a non-claimant. *Rusiang Lineage v. Techemang*, 12 ROP 7, 9 (2004) (concerning a land dispute between private parties). Therefore, Ngarngedchibel argues that it should be relieved of its burden and be awarded the land.² However, the *Rusiang* case concerned a land dispute between private parties and is not applicable here.

The record suggests the possibility that PPLA, rather than KSPLA, ought to be the public administrator of the lands in dispute. There was no evidence presented that PPLA ceded the land to KSPLA. The quitclaim deeds all appear to exclude the MOC land, and PPLA’s attempt to intervene below suggests that it may have some remaining interest in the land separate from KSPLA’s. But PPLA is not a party to this appeal, and we do not reach the merits of Ngarngedchibel’s argument because, as we explain below, it was waived.

[2] At no point during Ngarngedchibel’s presentation did it argue that KSPLA was an improper claimant to make the case for public ownership of the PCC lands. Indeed, other than PPLA in its motion to intervene, no one during the proceedings below suggested that the land was owned by PPLA rather than KSPLA. “This Court has consistently held

² When it filed its brief, Ngarngedchibel was the only appellant. Ngarngedchibel does not explain in reply why its claim should prevail over Idid Clan’s.

that arguments raised for the first time on appeal are deemed waived.” *Rechucher v. Palau*, 12 ROP 51, 54 (2005).

The prudence of our forfeiture rule is illustrated in this case. PPLA could have appealed the denial of its motion to intervene, but it elected not to for reasons unknown to the Court. Because PPLA was never a party to the proceedings below, the Land Court did not have the opportunity to carefully consider the relative merits of KSPLA’s and PPLA’s assertions of ownership of the PCC land. If Ngarngedchibel believed that it was relieved of its burden of proof because PPLA was not a party, it should have flagged the issue for the Land Court. Failure to raise an argument below deprives the Land Court of the opportunity to adjudicate an issue in the first instance and frustrates our ability to review that court’s decision for clear error. Thus, we conclude that Ngarngedchibel’s argument was forfeited.

[3] We note that, had the Land Court concluded that PPLA was the proper public owner rather than KSPLA, it could have made that determination without the participation of PPLA as a party. Contrary to *Rusiang Lineage*, which concerned private parties, cases involving claims to public lands do not require the Land Court to limit its determination to the parties before it. As we stated in *Masang*, because the burden is on the private claimants, if no claimant satisfies § 1304(b)’s requirements, the land will simply remain with the land authority, whether the authority is a party to the proceedings or not. 9 ROP at 216-17. But, as we cautioned in *Masang*, without the participation of the land authority at trial, its interests might not be fully vindicated by the adversarial process. *Id.*

at 218. PPLA’s failure to timely intervene in the proceedings prevented it from presenting its case. Its interests may not have been fully vindicated before the Land Court, but because it did not appeal the denial of its motion to intervene, we do not consider the relative merits of PPLA’s claim as compared to KSPLA’s.

II. Idid Clan’s Claim

Idid Clan points to three alleged errors in the Land Court’s ruling. First, Idid Clan argues that there was no evidence to support the Land Court’s finding that Idid Clan did not own the lands immediately prior to their acquisition by a foreign government. Second, Idid Clan contends that the Land Court’s assumption that clans and lineages are distinct was error. Finally, Idid Clan suggests that KSPLA did not have a proper claim to the land and should not have been awarded title.

The Land Court concluded that Idid Clan did not satisfy its burden to prove the statutory requirement of § 1304(b)(1). The court relied in part on the *Iengid* case to conclude that Idid Clan may have conveyed its lands to Ibai. In *Iengid*, a copy of which Idid Clan presented to the court as evidence, Ibai Clan prevailed over Idid Clan because Idid Clan “acknowledged” through Bilung Gloria Salii, that “part of the land had been given out to Ibai.” *Iengid*, at 4. The Land Court noted that there was no evidence that Idid retained the land in this matter. Additionally, the Land Court pointed to Idid Clan’s lack of evidence concerning the taking of the land. Indeed, Bilung Salii was unable to provide any details regarding when or by whom the lands were taken—details the court could expect to be forthcoming if Idid was the owner at the time

of taking. See *Estate of Ngiramechelbang v. Ngardmau State Pub. Lands Auth.*, 12 ROP 148, 150 (2005) (affirming the Land Court when private claimant seeking return of public land “provided the court with no details about who took the land or how the land was taken, other than to state that the land was taken without compensation”). As the court pointed out, “Idid presented no evidence regarding the circumstances under which the land became public land.” The burden of proof was on Idid to present such evidence. Given that Idid had the burden of proof and failed to show by the preponderance of the evidence that it owned the land immediately prior to taking, the Land Court’s conclusion was not clear error. See *Sungino*, 13 ROP at 136.

Idid Clan’s second argument, that the Land Court erred in assuming clans and lineages are distinct, is also unpersuasive. The Land Court merely expressed the “general view” that lineage- and clan-owned lands are separate. It thus rejected Idid’s contention that a claim to a portion of the property by the Omtilou Lineage, a lineage of Idid Clan, supported Idid Clan’s claim to the land. The Land Court acknowledged that some clans view lineages as non-distinct, but stated that Idid Clan made no showing that such was the case as between the Idid Clan and the Omtilou lineage. Because Idid Clan had the burden of proof and presented no evidence on the matter, it was not clear error for the Land Court to conclude that the clan and lineage were separate entities.

Finally, Idid Clan’s third argument fails for the same reason Ngarnchibel’s similar claim fails: it was waived. At no point during the proceedings below did Idid Clan contend that KSPLA, by virtue of the

1982 quitclaim deed’s omissions, could not be awarded the land. Again, while it may be unclear whether PPLA or KSPLA has the best case for title to the land, such confusion does not relieve Idid of its burden to prove the merits of its own claim.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the Land Court’s determination that neither Ngarnchibel nor Idid Clan met its burden under 35 PNC § 1304(b).