KOROR STATE PUBLIC LANDS AUTHORITY,
Appellant,

v.

KATEY GIRAKED,
Appellee.

CIVIL APPEAL NO. 12-035
LC/B No. 08-0297

Supreme Court, Appellate Division
Republic of Palau

Decided: August 13, 2013

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

We review the Land Court's factual determinations for clear error and will reverse its findings of fact only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.

[2] **Appeal and Error:** Frivolous Appeal

Empirically, appeals challenging the factual determinations of the Land Court are extraordinarily unsuccessful. Given the standard of review, an appeal that merely re-states the facts in the light most favorable to the appellant and contends that the Land Court weighed the evidence incorrectly borders on frivolous.

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

To prevail on a return-of-public-lands claim under section 1304(b), a claimant must

prove: (1) he or she is a citizen who has filed a timely claim; (2) [he or] 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.

Counsel for Appellant: J. Uduch Sengebau Senior
Counsel for Appellee: Yukiwo P. Dengokl

BEFORE: KATHLEEN M. SALII, Associate Justice; R. ASHBY PATE, Associate Justice; and KATHERINE A. MARAMAN, Part-Time Associate Justice.

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

PER CURIAM:

This appeal arises from the Land Court's award of part of the land in Ngerchemai Hamlet, Koror, known as *Isngull*,[1] to Appellee Katey Giraked (Appellee) pursuant to her return-of-public-lands claim under Article XIII, § 10 of the Constitution and 35 PNC § 1304. For the following reasons the decision of the Land Court is affirmed.[2]

BACKGROUND

In its Findings of Fact, Conclusions of Law, and Determination issued on August 14, 2012, the Land Court made the following findings as to Appellee's claim for return of public land:

1. Lot 247 is listed in the Tochi Daicho as owned by the Tropical Industrial Research Bureau of the South Seas Islands Government Agency.

2. Presently, Lot 247 is classified as public land administered by KSPLA. KSPLA has leased lots within Lot 247.

3. Ngiraked owned a large tract of land known as *Isngull* which he conveyed to [his] child Katey Ochob Giraked.

4. The land *Isngull* consists of several Tochi Daicho Lots several of which have been adjudicated and title issued to Katey Giraked.

5. Lot 247, inclusive of the lots before the Court, is part of a larger tract of land *Isngull*.

6. Ngiraked aka Giraked is the father of claimant Katey Ochob Giraked.

7. The land *Isngull* was formerly owned by Ngiraked and wrongfully taken by the Japanese without compensation, and registered as owned by a Japanese Governmental Agency.

[1] The lots at issue are identified as Cadastral Lot Nos. 021 B 04 and 021 B 05, formerly Tochi Daicho Lot 247.

[2] Although Appellant requests oral argument, we determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

> 8. While still maintaining ownership and control over Lot 247 and prior to its wrongful taking by the Japanese, Ngiraked leased part of Lot 247 to a Japanese national who owned and operated a store on the land.

With respect to Appellee's status as the proper heir to Ngiraked's property, the Land Court concluded based on testimony in the record that Ngiraked declared his intent to have his daughter, Appellee, inherit all of his properties, including *Isngull*.

Based on these factual findings, the Land Court determined that Appellee had met the burden of proof as to her claim for return of public land by a preponderance of the evidence. The Land Court awarded the lots at issue to Appellee.

This appeal followed.

STANDARD OF REVIEW

Appellant Koror State Public Lands Authority challenges only the Land Court's finding that Appellee is the "proper heir" to the original owner of the claimed land.

[1] We review the Land Court's factual determinations for clear error and will reverse its findings of fact "only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion." *Ngirakesau v. Ongelakel Lineage*, Civ. App. Nos. 10-037, slip op. at 5–6 (Nov. 11, 2011) (citing *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 165 (2004)). We will not substitute our view of the evidence for the Land Court's, nor are we obligated to reweigh the evidence or reassess the credibility of witnesses. *See Rengchol v. Uchelkeiukl Clan*, Civ. App. Nos. 10-018 & 10-024, slip op. at 9 (Oct. 7, 2011) (citing *Ebilklou Lineage v. Blesoch*, 11 ROP 142, 144 (2004)). *See also Ngarngedchibel v. Koror State Pub. Lands Auth.*, Civ. App. Nos. 10-047 & 11-002, slip op. at 5 (Feb. 23, 2012). "Where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous." *Rengchol*, slip op. at 6 (citing *Ngirmang v. Oderiong*, 14 ROP 152, 153 (2007)).

[2] With respect to appeals that challenge a court's factual findings, this Court recently held:

> Empirically, 'appeals challenging the factual determinations of the Land Court . . . are extraordinarily unsuccessful.' *Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007). Given the standard of review, an appeal that merely re-states the facts in the light most favorable to the appellant and contends that the Land Court weighed the evidence incorrectly borders on frivolous.

Koror State Pub. Lands Auth. v. Tmetbab Clan, Civ. App. No. 11-014, slip op. at 6 (July 2, 2012). *See also Kawang Lineage v. Meketii Clan*, 14 ROP 145, 146 (2007)).

ANALYSIS

[3] To prevail on a return-of-public-lands claim under section 1304(b), a claimant must prove:

> (1) he or she is a citizen who has filed a timely claim; (2) [he or] 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).

Appellant challenges only the second element of Appellee's claim and concedes the balance of the Land Court's factual findings set out above. According to Appellant, the Land Court clearly erred when it found that Appellee is the proper heir to Ngiraked's ownership interest in the portion of *Isngull* at issue in Appellee's claim, a finding the Land Court concluded was "beyond dispute." Specifically, and without any legal support, Appellant contends that Appellee is not the proper heir under 35 PNC § 1304(b) because "[w]hen Ngiraked gave the land Isngull to Katey" in advance of his death in 1940, "Ngiraked did not own Tochi Daicho Lot 247." In other words, Appellant contends that because Ngiraked's land was wrongfully taken by the Japanese government, Ngiraked did not own the land and his attempt to devise the land to his daughter was, therefore, ineffective. In support of its argument, Appellant points to the Land Court's factual finding that Tochi Daicho Lot 247 was still owned by an agency of the Japanese Government as of 1960 and, thus, "[t]he Land Court cannot award Tochi Daicho Lot 247 to Katey Giraked based on what her father told her before his death in 1940!"

One might generously characterize this argument as novel. Appellant certainly does not point to any legal authority to support its assertion of error, and we are not aware of any of our decisions that lend even slight credence to the argument. It is self-evident that a person whose land has been taken by force or without just compensation is no longer in possession of the property such that the owner may affect an actual transfer of the property. The purpose of Article XIII, § 10 and the statutory return-of-public-lands process is, quite obviously, to correct such injustices. The question for the trial court under these circumstances, when it is conceded that the land has been wrongfully taken, is to whom the land should be returned.

In *Markub v. Koror State Public Lands Authority*, we explained the appropriate inquiry relating to the Land Court's determination of a "proper heir":

> Article XIII, Section 10, is a command to the national government to act swiftly to undo past injustice. Where land was wrongfully taken by a foreign power, the government has the duty to find the "original owners or their heirs" and give it back. . . . There is no reason to believe that the framers of the Constitution, faced with the choice of returning the land to "the most closely related persons who filed a timely claim" and doing nothing, would have chosen the latter.

* * *

> Looking at §1304(b), the language of the statute does not compel us to put aside other indicators of legislative intent and public policy and enforce the statute as written. While it is possible to read the words "proper heirs" to mean only the exact persons dictated by the intestacy statute, it is not the lone interpretation. The addition of the word "proper" could have been meant simply to ensure that a claimant show a true relationship to the original landowner, or, as between competing claimants, to ensure that the Court choose the one with the strongest claim. As the *Masang* opinion recognized, in all other land matters, we have directed the Land Court to "choose among the claimants who appear before it" even if, as sometimes happens, there is another person whose claim "might be theoretically more sound" but who failed to file a claim. *Ngirumerang v. Tellames*, 8 ROP Intrm. 230, 231 (2000); *see Masang*, 9 ROP at 128 n.3. There is thus nothing extraordinary in finding that "the most closely related persons failed to file claim" are "proper heirs" within the meaning of §1304(b).

14 ROP 45, 48–49 (2007) (footnote omitted). Thus, the lesson of *Markub* is that the phrase "proper heir" is defined broadly in light of its constitutional and statutory context and the injustice that return-of-public-lands claims are designed to remedy. Here, the Land Court found the land at issue was taken by force and without compensation by the Japanese government. The Court also found the original owner, Ngiraked, is Appellee's father and that he declared his wish in advance of his death that his properties should go to Appellee. Those findings are not challenged. The Land Court concluded: "By a preponderance of the evidence Katey has established that she is the proper heir of her father, Ngiraked, entitled to inherit *his ownership interest* to Lot 247." Emphasis added. Accordingly, Appellee is an heir of the original owner, and, considering *Markub*, we have no difficulty upholding the Land Court's determination on this record that Appellee is also the proper heir to Ngiraked's interest as the rightful owner of the portion of *Isngull* at issue here.[3] It is *presumed* in the context of a return-of-public-lands claim that Ngiraked did not own the land at issue at the time of his declaration that his properties should go to his daughter. Appellant's insistence that Appellee must somehow prove that Ngiraked effectively transferred actual ownership of and title to Lot 247 to Appellee in order to succeed on her return-of-public-lands claim is nonsense. If that had occurred, Appellee would not have needed to file a legal claim seeking an award of ownership of the land from the government.

Appellant's argument contains two poorly developed challenges to the Land Court's findings that Lot 247 was part of the land known as *Isngull* and that Ngiraked

[3] Although the evidence adduced at trial here renders it unnecessary to take judicial notice of our previous ruling, the Court feels obliged to note that we have already upheld the finding that Appellee is the proper heir of Ngiraked in another matter involving Appellee's claims to lots that are part of *Isngull* based on Ngiraked's customary declaration of his wish to bequeath his lands to Appellee. *See Rechucher v. Ngiraked*, 10 ROP 20, 26–27 (2002).

distributed his properties to Appellee in accordance with custom. Despite expert testimony that Ngiraked's statement of his intent to transfer his lands to Appellee was effective to eliminate the need for an ebedel a kesol to discuss and then to distribute those lands at an cheldecheduch, Appellant argues without reference to any supporting testimony that the lack of an cheldecheduch undermines Appellee's status as the proper heir. The Court has reviewed the record with respect to both findings and concludes there is substantial testimony in the record to support both, such that a rational trier of fact could reach the same conclusions. *See* Tr. 8–12, 23–26, 31, 36–41. Appellant does not cite to any contrary testimony in the record that would convince us that the Land Court committed clear error in either respect, and further discussion is not warranted.

This appeal was, at best, unnecessary and, at worst, frivolous. Ultimately, this appeal reduces to Appellant's perceived tension between the Land Court's finding that another entity owned the land that Ngiraked purported to devise to his daughter and the finding that she is, in fact, the proper heir to that land. No such tension exists, and we emphatically put that argument to rest now.

CONCLUSION

For the foregoing reasons, the decision of the Land Court is **AFFIRMED**.