In re: Determination of ownership of land called *Olang* identified as Worksheet Lots 181-12073 and 181-12074, located in Ngerkesoaol Hamlet, Koror State.

SANTOS IKLUK,

v.

KOROR STATE PUBLIC LANDS AUTHORITY,
Claimants.

LC/B 04-0137
LC/B 04-0138

Land Court
Republic of Palau

Decided: September 9, 2013
***Appeal of this Decision is pending**

[1]**Land Commission/LCHO/Land Court:** Superior Title

Under the superior title standard, a claimant claims that, *ab initio*, the land never became public land.

[2]**Land Commission/LCHO/Land Court:** Burden of Proof

Although ordinarily both the government and the private claimant stand on equal footing, if there is an adverse Tochi Daicho listing for the land, the claimant has the "added burden of establishing by clear and convincing evidence that [it is] incorrect."

[3] **Property:** Proof of Ownership

Finally, ownership can be inferred from long, uninterrupted use of land that is consistent with ownership and without objection from adverse claimants.

Counsel for KSPLA: Debra Lefing, Esq.
Counsel for Santos Ikluk: Mariano Carlos, Esq.

The Honorable, C. QUAY POLLOI, Senior Judge:

PROCEDURAL BACKGROUND

These two consolidated cases were initially before Associate Judge Ronald Rdechor. He heard the matters starting in October 2011 and then in January and February of 2012. On May 7, 2012, Associate Judge Rdechor issued his "Findings of Fact, Conclusions of Law, and Determination." On May 21, 2012, claimant Santos Ikluk filed an appeal. On March 28, 2013, the Appellate Division issued its Opinion reversing and remanding the matter for the Land Court to "re-evaluate Ikluk's claim under the superior title standard." *Ikluk v. KSPLA* Civ. App. No. 12-020, slip. op. at 7. The Appellate Division decided to remand the case because "superior title and return of public lands claims may be asserted individually or together."[1] *Id.* at 4

[1]The case of *Carlos v. Ngarchelong SPLA*, 8 ROP Intrm. 270 (2001) was the impetus for the holding that the theories of wrongful taking and/or superior title may be raised in the alternative by a single claimant. That case was soon followed by *Kerradel v. Ngaraard State Pub. Lands Auth.,* 9 ROP 185 (2002). In *Kerradel*, the Land Court dismissed appellant's return of public land claim because it was untimely filed. The Appellate Division remanded the case back to the Land Court for the reason that a superior title action preexists and predates Article XIII claims so, "Appellant . . . was entitled to, and did, claim the land on the theory that it never became public land in the first place." *Id*. at 185. For over a decade now, the Land Court has routinely heard

citing *Kerradel v. Ngaraard State Pub. Lands Auth.,* 9 ROP 185, 185-186 (2002). By the time the case was remanded to the Land Court, Associate Judge Rdechor had resigned. The matter was then assigned to the undersigned judge.

A status conference was held on June 7, 2013 and a hearing was then scheduled for July 17, 2013. Because of technical issues, the hearing was held the following day, July 18, 2013. After the hearing, the parties submitted their written closing arguments. KSPLA submitted its closing on the deadline date of August 30, 2013. Santos Ikluk submitted his closing on September 3, 2013, or four days after the deadline date.[2] The parties were permitted to make replies by Friday, September 6, 2013 but none were filed. The Court then took the matter under advisement.

Having considered the evidence adduced at the July 18, 2013 hearing and the arguments raised in the written closing arguments, this Court now issues this "Decision After Remand." For the reasons stated below, the worksheet lots at issue are determined to be owned by Koror State Public Lands Authority.

STANDARD OF REVIEW

[1, 2] The Appellate Division has instructed the Land Court to "re-evaluate Ikluk's claim under the superior title standard." *Ikluk v. KSPLA* Civ. App. No. 12-020, slip op. at 7. Under the superior title standard, a claimant claims that, *ab initio*, "the land never became public land." *See, Wasisang v. Palau Pub. Lands Auth.* 16 ROP 83, 84 (2008). Under this theory, both the claimant and the public lands authority stand on equal footing albeit affirmative defenses are available for the government that are otherwise unavailable in Article XIII claims. These affirmative defenses include laches, estoppel, waiver, stale demand, and the statute of limitations. *See generally,*

claimants raise these two alternative theories for claiming public land. Recently, however, on August 22, 2013, the Appellate Division in *Klai Clan v. Airai State Pub. Lands Auth.,* Civ. App. No. 12-051 (2013) changed the standard by holding that the Appellant could not raise a superior title claim because the Appellant's, "only filed claim was for a return of public lands." *Id*. at pg. 4. Then, on September 4, 2013, the Appellate Division emphasized this new requirement by stating that, "even if Idid Clan began arguing a superior title claim after filing a claim for return of public lands, the Land Court does not have the authority to amend a claim by consent of the parties." *Idid Clan v. KSPLA,* Civ. App. 12-036, Slip. Op. at 10 (2013). Under *Klai Clan* and *Idid Clan*, a claimant who filed using a form for claiming public lands can no longer raise a superior title argument. The only time that a claimant can raise both theories is if the claimant preserved both by filing two separate claims, one for a return of public lands (and doing so before the 1989 deadline) and another on a form for claiming private lands (and doing so by the 60-day deadline which the Appellate Division points out as stemming from Land Court Regulation 11 but that has been superseded by statute, namely, 35 PNC §1307). Because it has been the practice of the Bureau of Lands & Surveys to issue notices for filing claims based on the Tochi Daicho for most states and because public lands are usually identified by Tochi Daicho lot numbers, the chances of a claimant filing a public land claim as well as a private land claim for the same public land is virtually nonexistent. Under *Klai Clan* and *Idid Clan*, a superior title action filed in the Trial Division is now the only recourse for a claimant whose superior title claim for a public land is dismissed by the Land Court because the claimant only filed using a "Claim for Public Land" form.

[2] Counsel for Mr. Ikluk is reminded that making submissions after the deadline date can have negative repercussions including sanctions or the Court not considering the submission.

Espong Lineage v. Airai State Pub. Lands Auth., 12 ROP 1, 5, (2004). Although ordinarily both the government and the private claimant stand on equal footing, if there is an adverse Tochi Daicho listing for the land, the claimant has the "added burden of establishing by clear and convincing evidence that [it is] incorrect." *Wasisang,* 16 ROP at 85.

DISCUSSION

I. Santos Ikluk's Claim

Before evaluating Ikluk's claim under the superior title standard, the basis of his claim is first discussed. Claimant Santos Ikluk testified that he is retired and resides at Ngerkebesang Hamlet where he bears the title *Espangel*. The land he claims is called *Olang* and it is located Ngerielb in Ngermid. He testified that *Olang* is supposed to be one lot but on the map it has been split into two parcels. On Ikluk Exhibit A, the lots that he claims are highlighted in yellow and are numbered 181-12073 and 181-12074.

Mr. Ikluk went on to testify that the land *Olang* encompasses an area beyond the lots he claims. The entirety of *Olang* was originally owned by Ollaol during the Japanese Era. A Japanese man wanted to plant lemon trees on the land and asked to purchase the land from Ollaol. The Japanese man could not make a full payment, so he made partial payments. Eventually, the Japanese Government came and told Ollaol and the Japanese man and others that *Olang* and the area of Ngerieilb would be used for a Japanese shrine so they had to move. Eventually World War II came and went. Afterwards the lands became Trust Territory lands.

Early in the Trust Territory period, a man named Armaluuk claimed various lands including *Olang*. He claimed that the land belongs to Ngerketiit Lineage and not the government. In 1958, a determination of ownership was issued by the Trust Territory. It was admitted into evidence as Ikluk Exhibit B. It is dated July 8, 1958 and is entitled Determination of Ownership and Release No. 162 wherein *Olang* and other named lands are awarded to Ngerketiit Lineage.

Mr. Ikluk also testified that part of *Olang* was given by Adelbai Ollaol to George Ngirarsaol. The person named Adelbai Ollaol is a male son of Ollaol, the owner of *Olang* during the Japanese Era. On Ikluk Exhibit A-1, the part of *Olang* that was given by Adelbai to George Ngirarsaol is numbered 016 B 23. It is just south of one of the lots that Ikluk claims, namely, 181-12073. Mr. Ikluk testified that the reason why he is familiar with George Ngirarsaol's lot is because Adelbai Ollaol brought him to the area and told him that the part of *Olang* that is adjacent to George Ngirarsaol's land would belong to him, Santos Ikluk.

Mr. Ikluk explained why Adelbai gave him this part of *Olang*. He testified that Adelbai is his maternal uncle and gave him *Olang* as payment for services rendered. Specifically, in the late 1970's or early 1980's, Adelbai's sister Aot was to be wedded and the customary food called *ngader* had to be prepared. Adelbai asked Mr. Ikluk to prepare the *ngader* which Mr. Ikluk did prepare. Adelbai received the *bus* payment for the *ngader* but used up the funds. Accordingly, he asked Mr. Ikluk to visit him on the weekend which Mr. Ikluk did. Adelbai then took Mr. Ikluk to the land

Olang and then showed him George Ngirarsaol's portion of *Olang* and the other portion that he, Adelbai, then gave to Mr. Ikluk. Adelbai told Mr. Ikluk that when paperwork regarding ownership had to be completed then Mr. Ikluk could bring such matters to him so that he can assist with processing them.

Eventually, Mr. Ikluk noticed a "Private Property" sign on the land. He inquired about the matter which led to his filing a claim for ownership. Mr. Ikluk explained that he filed his claim not for the return of public lands because the land belonged to Adelbai and now it is his land. This is so because ownership was previously determined in 1958 as shown by Ikluk Exhibit B, the Trust Territory determination awarding ownership to Ngerketiit Lineage. When questioned by counsel for KSPLA, Mr. Ikluk explained that the 1958 determination of ownership is itself proof that the Tochi Daicho listing naming the government as owner was incorrect. Instead, the land is private land at least since 1958 and that is why he filed a regular claim for a private land, instead of a public lands claim.

Having summarized Mr. Ikluk's evidence, the Court now turns to the merits of the claim under the applicable legal standard. As a superior title action, Mr. Ikluk must prove that the land at issue never became public land in the first place. If it is listed in the Tochi Daicho as owned by the government, Mr. Ikluk must prove by clear and convincing evidence that the listing is erroneous. *See generally, Wasisang v. Palau Pub. Lands Auth.* 16 ROP 83 (2008); *Espong Lineage v. Airai State Pub. Lands Auth.,* 12 ROP 1, 5, (2004).

Instead of proving that *Olang* never became public land in the first place, Mr. Ikluk sought to prove that there was a wrongful taking by the Japanese. This is highlighted by this testimony at the hearing that the Japanese Government came and told Ollaol and the Japanese man and others that *Olang* and the area of *Ngerieilb* would be used for a Japanese shrine so they had to move. This position was reiterated in Mr. Ikluk's written closing argument whereby his counsel states that, "Santos Ikluk testified that the part of Olang that he is claiming was taken by Nanyo Shinto Shrine Society during the Japanese time and became part of Tochi Daicho 218." Ikluk *Closing Argument* at 1.

For the wrongful-taking argument to apply, Mr. Ikluk must have filed a claim for public lands by the statutory deadline of January 1989. He did not do this. Instead, he filed his claim on July 20, 2000 and did so using a Land Court "Claim of Land Ownership" form.[3] Consequently, he can only raise and prove a superior title claim. *See generally*, *Klai Clan v. Airai State Pub. Lands Auth.,* Civ. App. No. 12-051 (2013); *Idid Clan v. KSPLA,* Civ. App. 12-036, slip. op. at 10 (2013) (both cases standing for the proposition that a claimant who only filed a claim for public lands cannot raise a superior title claim if he did not also file a separate claim for private lands). By focusing on a wrongful taking theory, Mr. Ikluk failed to prove his superior title claim.

[3] This type of private claim has been labeled a superior title claim by the Appellate Division. *See, Idid Clan v. KSPLA,* Civ. App. 12-036, slip op. at 9 (2013).

II. KSPLA's Claim

KSPLA submitted 7 exhibits that were, to an extent, voluminous. Some of these exhibits were more so self-explanatory. Others, however, were far from being clear as to their relevance to the land at issue. KSPLA did little in terms of authenticating, laying a foundation, and then presenting sufficient testimony so that the Court could better appreciate the importance of each document and how they relate to each other. Although the Rules of Evidence do not apply at the Land Court, the parties are reminded that this Court will not go out of its way to make sense of extensive documents if they are not adequately explained at a hearing.

KSPLA's witnesses did provide other useful testimony. The first witness was 51-year-old Pasquana Blesam. Ms. Blesam testified that she is a Realty Manager at KSPLA, having been working in that capacity for about 16 years. She testified that she manages and maintains all of the KSPLA lease files. Because of her work, she knows what leases pertain to what lands. She then referred to KSPLA Exhibit 5, which are two residential leases between KSPLA and Suko Ngiraului. She explained that the leases concern the area that is now worksheet lot 181-12074.

The next witness was 58-year-old Mr. Roman Remoket. He testified that he is currently a surveyor for KSPLA. He previously worked for the Bureau of Lands and Surveys from 1975 to about 1980 during the Trust Territory administration. As to Ikluk's Exhibit A, he testified that the lands claimed by Mr. Ikluk are government lands. The basis of his knowledge is that in about 1975 to 1976, during the Land Commission of the Trust Territory period, he accompanied elder men such as Blacheos Kemaitelong. With maps on hand, they walked the land to confirm the boundary between public and private lands. The markers were already in existence, and they went to the area to relocate the markers. This confirmation activity was done before the aerial photo survey program started. The purpose of the aerial survey was to identify and survey government lands. Although he did not hear and retain the name of the land they traversed, he did hear the men mention a boundary shared between the government and Armaluuk.

Mr. Remoket then testified that lot numbers181-12072 and 181-12073 are within an area of government lands. This is based on what the elder men, mainly from Koror, indicated. As to Armaluuk's land, the elder men said that they would go to Armaluuk's land and then go down to relocate the markers between the private and public lands. The land that was referred to as Armaluuk's land is where Ilang-Ilang is presently located. [4]

Having summarized KSPLA's claim, the Court now turns to its merits. For three reasons, the Court concludes that KSPLA's claim prevails. First, adverse claimant Santos Ikluk conceded that the part of Olang that he is claiming "became part of Tochi Daicho Lot 218" which is listed under Nanyo Shinto Shrine Society. Ikluk *Closing Argument* at 1. It is then listed as public land although there is no monumentation record or other documents on file that show

[4]The Court takes judicial notice that this is the area that is referred to as George Ngirarsaol's land.

that Tochi Daicho 218 was ever monumented and surveyed. Be that as it may, KSPLA claims that the lot at issue is Tochi Daicho 218, a point which Mr. Ikluk did not refute but conceded.

Second, the Court credits surveyor Roman Remoket's testimony that, based on his personal experiences with elders walking the boundaries in the 1970's, the boundary between private and public lands in the vicinity ran generally between Armaluuk's lot, which is now George Ngirarsaol's land, and the lands to the north of that lot. That area to the north (*i.e.*, the public land area) includes the lands now claimed by Mr. Ikluk.

[3] Finally, ownership can be inferred from long, uninterrupted use of land that is consistent with ownership and without objection from adverse claimants. *See generally, Obak v. Joseph*, 11 ROP 124 (2004). For several years now, KSPLA has leased out at least one of the two lots. There was no evidence submitted to show that Mr. Ikluk objected to this usage by KSPLA. For this third reason, ownership is awarded to KSPLA.

CONCLUSION

For the foregoing reasons, the lots at issue are hereby determined to be owned by Koror State Public Lands Authority. Appropriate determinations of ownership shall issue forthwith.