

**ELSAU CLAN and EDARUCHEI CLAN,  
Appellants,**

**v.**

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

CIVIL APPEAL NO. 12-009 & 12-010  
LC/R 10-0129

Supreme Court, Appellate Division  
Republic of Palau

Decided: January 30, 2013

[1] **Land Commission/LCHO/Land  
Court:** Evidence

Challenges to the sufficiency of the evidence in Land Court proceedings are extraordinarily unsuccessful. The appellant must show that no reasonable finder of fact could have reached the same conclusion. In situations where there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous.

[2] **Land Commission/LCHO/Land  
Court:** Return of Public Lands

There are three requirements under 35 PNC § 1304(b) that a claimant must meet in order to prevail on his or her claim. To successfully prove a claim for the return of public lands, claimant must show that (1) the claimant is a citizen who filed a timely claim, on or before January 1, 1989; (2) the claimant is either the original owner of the claimed property or a proper heir of the original owner; and (3) the claimed property became public land as a result of a wrongful

taking (through force, coercion, fraud, or without just compensation or adequate consideration) by a foreign government.

[3] **Appeal and Error:** Fact Finding

An appellate court's role is not to determine issues of fact or custom as though hearing them for the first time. The trial court is in the best position to hear the evidence and make credibility determinations, and if the evidence before it is insufficient to support its findings, the Court should remand rather than determine unresolved factual or customary issues on appeal.

Counsel for Appellant Elsau Clan:  
Salvador Remoket

Counsel for Appellant Edarucheil Clan:  
Yukiwo P. Dengokl

Counsel for Appellee: William L. Ridpath

BEFORE: ARTHUR NGIRAKLSONG,  
Chief Justice; KATHLEEN M. SALII,  
Associate Justice; LOURDES F.  
MATERNE, Associate Justice.

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

PER CURIAM:

This opinion consolidates the claims of both Elsau Clan and Edarucheil Clan, which appeal from a Land Court proceeding concerning both parties' claims on the same piece of property. Because both parties appeal the Land Court's decisions regarding the same piece of property, and appeal on the same ground, we consider their claims together. After careful consideration of the arguments and record, we **AFFIRM** the

decisions of the Land Court as to both Clans.

### **BACKGROUND**

This case concerns a small island, known as Mesmurs, located near the island of Ngercheu within Peleliu State. The island is uninhabited but has been visited by neighboring islands for many years. Four Clans, Edaruchei Clan of Ngerkeyukl, Elsau Clan, Edaruchei Clan of Ngerdelolk, and Ucheliou Clan, brought Return of Public Lands claims under Article 13, Section 10 of the Palau Constitution. The Land Court conducted proceedings on the claims from August 23 to September 1, 2011.

At the hearing discussing the use of the land, the Land Court dismissed the claim of Edaruchei Clan of Ngerdelolk because the Clan missed the deadline for filing of claims mandated under 35 PNC §1304(b). The Court also dismissed Ucheliou Clan's claim because it failed to prove that it had owned the property before it became public land. Neither Edaruchei Clan of Ngerdelolk nor Ucheliou Clan appealed the Land Court's decision.

The remaining two claimants, Edaruchei Clan of Ngerkeyukl and Elsau Clan, presented testimony from various witnesses at the hearing, all of whom sought to establish the exclusive use of the land by their respective Clans for the purpose of showing ownership. Testimony included declarations that the Clans used the property without having to seek permission from any other group and other statements intending to establish that each Clan was viewed by neighboring groups to be the rightful owners of the island. The vast majority of this

testimony consisted of members of each Clan reminiscing about the use of the property and recounting hearsay statements by Clan leaders who had indicated to the witnesses that the island belonged to their Clan.

The Land Court considered the testimony and found that, although Edaruchei Clan and Elsau Clan timely filed their claims, both Clans failed to present sufficient evidence of exclusive control of the island and, thus, failed to prove that their respective Clan owned the property prior to it becoming public land. This was in part due to the Clans' competing testimony that they each had exclusive control.

Edaruchei and Elsau Clans appeal the decision of the Land Court, each arguing in favor of the sufficiency of the evidence they presented.

### **STANDARD OF REVIEW**

[1] Challenges regarding the sufficiency of evidence in Land Court proceedings are questions of fact, which we review for clear error, only overturning the Land Court's decision if we determine that no reasonable finder of fact could have reached the same conclusion. *Marino v. Andrew*, 18 ROP 67, 68 (2011). Because of this high burden, "challenges to the sufficiency of the evidence in Land Court proceedings are extraordinarily unsuccessful." *Id.* at 69 (internal quotation marks and citation omitted). This is partly because where there are two permissible views of the evidence, the Land Court's findings cannot be clearly erroneous. *Id.*

## DISCUSSION

[2] Return of Public Lands claims are governed by Article 13, Section 10 of the Palau Constitution and 35 PNC §1304(b). Section 1304 requires a claimant seeking the return of public land to prove that: (1) the claimant is a citizen who filed a timely claim on or before January 1, 1989; (2) the claimant is either the original owner of the claimed property or a proper heir of the original owner; and (3) the claimed property became public land as a result of a wrongful taking by a foreign government. 35 PNC §1304(b). One way that a party may show that it is the original owner of the claimed property is to establish its exclusive use of the property. *See Ilebrang Lineage v. Omtilou Lineage*, 11 ROP 154, 156 (2004) (“[A] court may find that long, uninterrupted use by one party is proof that the party has always owned the land.”). Further, the government’s obligation in Return of Public Lands cases is very minimal, with the burden of proof resting on the claimant at all times during the course of the proceedings. *In re Tabkusik*, 18 ROP 16, 20 (Land Ct. 2010). Thus, the Land Court begins with the presumption that the land in question is to remain public land and will only decide otherwise where the claimant is able to meet the elements of Section 1304. *Id.*

Here, the Land Court determined that both Elsau Clan and Edaruchei Clan failed to meet the second element of Section 1304(b), specifically, that their respective Clans were the original owners of the property. The Clans attempted to prove ownership through testimony that sought to establish exclusive control. The parties contend that because the evidence they each presented established that their respective

Clan had been *exclusively* using the land, this was sufficient to meet their burden of proving the second element of Section 1304(b).

[3] The Land Court, however, astutely observed that with two essentially opposing parties presenting relatively equally-weighted evidence to show their use of the land, neither established exclusivity. The Land Court is in the best position to determine the credibility of evidence presented before it. *See Imeong v. Yobech*, 17 ROP 210, 215 (2010) (“The trial court is in the best position to hear the evidence and make credibility determinations . . .”). Here it appears that the Land Court found each Clan’s evidence sufficient to undercut the opposing Clan’s claim for exclusive use of the property. We see no clear error in the Land Court’s determination that neither party met its burden to show that it owned the property. Thus, viewing this decision in light of the competing testimony presented before the Land Court, we hold that a reasonable fact finder could have come to the same conclusion. *See Marino*, 18 ROP at 68. Accordingly, we decline to disturb the decision of the Land Court.

## CONCLUSION

For the foregoing reasons, the decisions of the Land Court are **AFFIRMED**.