

IN RE OWNERSHIP OF NGERCHELNGAEL ISLAND

Land Court Case No. LC/B 08-1063

Land Court
Republic of Palau

Decided: September 4, 2014

Counsel for Ngarngedechibel Council of Chiefs..... Paul Reklai
 Counsel for Ngarameketii/Rubekul Kldeu..... Mariano Carlos
 Counsel for George Kebekol Raynold B. Oilouch
 Counsel for KSPLA Debra B. Lefing

[1] Return of Public Lands: Affirmative Defenses

35 PNC § 1304(b)(2) does not entitle the claimant to raise an affirmative defense to bar the claim of a public lands authority.

[2] Return of Public Lands: Definition of Public Lands**Land Court:** Public Lands Authorities

35 PNC § 101 does not address state governments or their agencies, much less their ownership or maintenance of lands.

[3] Land Court: Public Lands Authorities**Land Court:** Claims**Property:** Superior Title

For a state public lands authority to invoke and prevail through the definition at 35 PNC § 101, the national government must have been a previous owner and then subsequently transferred its interest to the state public lands authority.

[4] Return of Public Lands: Elements of Claim**Return of Public Lands:** Nature of Claim**Land Court:** Claims**Property:** Superior Title

In a return-of-public-lands analysis, the issue and the focus should not be the extent and duration of a state government's claimed ownership and maintenance of a particular land as that does not make the land public land under 35 PNC § 101. That query is relevant only in a superior title analysis where a state public lands authority and individual claimants are jockeying over who has exercised greater dominion over the land over a greater duration.

[5] **Land Court:** Public Lands Authorities
Land Court: Claims
Property: Superior Title

Because Ngerchelngael was no longer public land per the determination by the District Land Office in 1958—if it ever was public land in the first place—any subsequent transfers of interests in public lands by the Trust Territory Government to the Palau Public Lands Authority and eventually to KSPLA could not have transferred ownership of Ngerchelngael to KSPLA. There is no chain of title linking KSPLA back to the Trust Territory Government.

DETERMINATION OF OWNERSHIP

The Honorable C. QUAY POLLOI, Senior Judge:

I. PROCEDURAL BACKGROUND

This matter was set for a hearing commencing at 6 p.m. on July 7, 2014. Several days before the hearing, on June 30, 2014, Mr. Oilouch moved to dismiss KSPLA. Mr. Oilouch submitted a copy of a 1958 determination by the Trust Territory Government Land Office awarding ownership of Ngerchelngael-part to Owang Lineage. He then argued that pursuant to 35 PNC § 1304(b)(2)¹ KSPLA is barred by the doctrines of *res judicata* and collateral estoppel.

On July 3, 2014, KSPLA filed its opposition arguing, *inter alia*, that Owang Lineage was only awarded part of Ngerchelngael. Thus, the remaining part may be public land which KSPLA claims.

On July 4, 2014, having considered the motion to dismiss and the opposition to the motion, this Court ruled that the Kebekol claimants, as purchasers of Ngerchelngael from Owang Lineage, were in privity to Owang Lineage. Similarly, KSPLA, in as much as it claims to derive its ownership interests from the Trust Territory Government, is in privity to said government which was an adverse claimant against Owang Lineage before the District Land Office. Accordingly, the Court found that through 35 PNC § 1304(b)(2), the doctrine of *res judicata* applied to bar the claim of KSPLA. KSPLA was then dismissed.

¹ The statute reads in part as follows, “[e]xcept in cases where claims of Palauan citizens, clans or lineages prevailed over the claim of the Trust Territory Government, its Land Title Officer and all of its political subdivisions, the statute of limitations, laches or stale demand, waiver, *res judicata* or collateral estoppel as to matters decided before January 1, 1981, and adverse possession, may not be asserted against and shall not apply to claims for public land by citizens of the Republic.”

On July 7, 2014, at 2:26 p.m., just hours before the commencement of the hearing, KSPLA filed its motion for reconsideration arguing that this Court misapprehended KSPLA's position in that (1) the land awarded in 1958 is only part of Ngerchelngael and the rest is public land and (2) other claimants in other cases before this Court have had their claims heard despite outstanding motions to dismiss and that (3) KSPLA may also claim Ngerchelngael under a superior-title theory.

A couple of hours afterwards, at 4:36 p.m., this Court issued an order on KSPLA's motion for reconsideration. In the order, the Court neither granted nor denied the motion for reconsideration but pointed out that whether the Ngerchelngael land before the District Land Office in 1958 is the same Ngerchelngael before this Court is an issue of fact. Accordingly, the Court ordered the parties to address this factual issue at the commencement of the hearing.

When the hearing commenced at 6 p.m., Mr. Oilouch was prepared to address the issue of whether the lot before this Court, worksheet lot 197-8000, was the same or different lot than that before the District Land Office in 1958. Mr. Oilouch, however, argued that because KSPLA had been dismissed and was now moving for reconsideration, it should go forward first on the issue. KSPLA, however, was not prepared to present evidence on the issue. Consequently, the hearing had to be recessed to the following day so that KSPLA could adequately prepare. Before the hearing recessed, however, discussions took place regarding the claims of the Ngarameketii/Rubekul Kldeu represented by Mr. Mariano Carlos Esq., and the Ngerbeched Council of Chiefs, the Ngarngedechibel, represented by *Ngircholsuchel* Paul Reklai. In the end, both councils of chiefs acknowledged the Kebekol claim as valid and withdrew their claims.

On the following day, KSPLA submitted an affidavit of National Surveyor Mario Retamal. The point made in the affidavit is that the lot before this court, worksheet lot 197-8000, exceeds the lot in Claim No. 129 before the District Land Office by over 48,000 square meters. Mr. Oilouch conceded that this factual issue was now clearly subject to litigation.

This Court then ruled in open court that it would suspend its order dismissing KSPLA, pending a hearing of the claims to receive all pertinent evidence. If it is found that the land before this Court is the same land as that before the District Land Office, the order dismissing KSPLA would be reinstated. If, however, the land before this Court includes lands that were not before the District Land Office, this Court would not dismiss KSPLA as to those other lands. It was then agreed that the hearing would continue on Friday, July 11, 2014 when all evidence would be received.

On Friday, July 11, 2014, Mr. Oilouch presented one witness Mr. George Kebekol, along with 7 exhibits these being Kebekol Exhibits A to G. Ms. Lefing for KSPLA presented one witness, Captain Harry Blesam of the Koror State Rangers. She also submitted KSPLA Exhibits 1 to 19. Below, the Court summarizes the claims and then

makes its factual findings and conclusions of law in order to arrive at an adjudicated outcome.

II. SUMMARY OF CLAIMS

A. Kebekol Claim

Mr. George Kebekol, 64-years old, D.O.B 12/22/50, testified in support of the claim. He testified that he is the son of the late Kebekol Alfonso and Rose Kebekol, a member of Owang Lineage.

As to Ngerchelngael, Mr. Kebekol testified that it was traditionally owned by Owang Lineage which was headed by a woman named Iterir Dirremengiau, a close relative of Rose Kebekol. Members of Owang Lineage, including Iterir Dirremengiau and Rose Kebekol, utilized Ngerchelngael during the Japanese period. They also leased part of the land to Japanese nationals. When the war came, Japanese soldiers took control of the island. After the war, the Owang people, including Iterir and Rose Kebekol, again utilized the island by farming and planting crops and betelnut and coconut trees. There was also a house or shelter that was on the island up until the early 1960's when it was destroyed by a typhoon.² From that point forward, they utilized a cave on the island as shelter.³

Towards the mid 1960's, Iterir Dirremengiau intended to sell Ngerchelngael to Kebekol Alfonso. On June 30, 1964, for payment received, Iterir Dirremengiau conveyed Ngerchelngael to Kebekol Alfonso. *See*, Kebekol Exhibit D. The following year, in 1965, Rosang Sugiyama and Tatsuo H. Adachi sued Iterir, Rose Kebekol, and Kebekol over the ownership of Ngerchelngael. Rosang Sugiyama and Tatsuo Adachi did not prevail. *See*, Kebekol Exhibit E.

Mr. George Kebekol's parents showed him the boundaries of the land purchased. The island is basically bounded on three sides by the ocean. To the east, however, is a shared boundary with the remaining portion of Ngerchelngael that connects to the rest of the much larger rock island. Mr. Kebekol testified that this eastern boundary starts at a southern point marked "A" on Court Exhibit 1. At this corner is an ancient dock. The boundary runs northwards to point "B" on Court Exhibit 1. According to Mr. Kebekol,

² Mr. Kebekol drew a red square on Court Exhibit 1 to depict the location of the house that once stood on the land. The house would have been on the western side of Ngerchelngael.

³ Mr. Kebekol used a brown highlighter to indicate the location of the cave which would be on the southwest corner of Ngerchelngael, fronted by a stone platform dock shown with a red highlighter.

at point “B” is an igneous basalt⁴ boulder—as opposed to sedimentary limestone—which is another natural marker connecting points “A” and “B” to delineate the eastern boundary of the portion of Ngerchelngael that his father purchased from Iterir. Towards the location of point “B” is the water catchment tank which Mr. Kebekol indicated by using a brown marker to draw a square and identified by the initials “WC” for water catchment on Court Exhibit 1.

Mr. Kebekol testified that from 1974 on, he regularly visited Ngerchelngael and maintained the island. Up to the present, offspring of the Owang people’s yellow taro (“Prak”) are also still on the island as well as coconut and betelnut trees. Mr. Kebekol was not aware of any usage of the island by KSPLA or Koror State. Instead, he knows that the people of Ngerbeched would ask him first before utilizing the island such as collecting water from the water catchment tank on Ngerchelngael.

In his closing argument, Mr. Kebekol argues that (1) lot 197-8000 is not public land and (2) that KSPLA is otherwise barred from claiming the lot because: (a) KSPLA has not presented facts to justify this Court’s prior order dismissing KSPLA; (b) KSPLA failed to monument its claim; and (c) KSPLA is otherwise barred by the doctrines of *res judicata* and issue preclusion that are applicable in this case through 35 PNC § 1304(b)(2).

B. KSPLA Claim

KSPLA presented 19 documentary exhibits and one witness, Captain Harry Blesam of the Koror State Rangers. KSPLA raises three bases for its claim. First, it claims that not all of Ngerchelngael was awarded in Claim No. 129, so this Court should reconsider its dismissal order to prevent manifest injustice. And because not all of Ngerchelngael was awarded in Claim No. 129, *res judicata*, if it does apply, should not apply to the un-awarded portion of Ngerchelngael. Put differently, because *res judicata* only applies to what was awarded in Claim No. 129, KSPLA is not barred from claiming the balance.

Second, all of Ngerchelngael—or at least the portion of Ngerchelngael that was not awarded in Claim No. 129 and to which *res judicata* should not apply—should be awarded to KSPLA because under authorities such as *Estate of Ngiramechelbang v. Ngardmau S.P.L Auth.*, 12 ROP 148, 150-51 (2005) general statements are insufficient proof of a wrongful taking. Here, argues KSPLA, the Kebekol claimants have only made such general statements, if any, without more.

Finally, KSPLA claims that under a superior title standard, its claim prevails because the Kebekol claimants: (1) did not prove that the land never became public land; (2)

⁴ The witness used the Palauan word “baderitech” which to this Court is igneous basalt rock.

had lesser use and control over the land as opposed to KSPLA; and (3) are barred by the statute of limitations at 14 PNC § 403.

III. FINDINGS OF FACT

1. Ngerchelngael is located a couple of miles southeast of M-Dock in Koror. It is part of a much larger rock island complex called Ngerubsachel or Ulebsechel. The part of Ngerchelngael before this Court is lot number 197-8000 with an area of 72,646 square meters, as shown Worksheet No. 197-part labeled as Court Exhibit 1.
2. Ngerchelngael is accessible from Koror only by boats which may be docked at areas that are the sites of ancient docks. Ngerchelngael consists of an area suitable for farming and building dwellings as well as areas of rugged limestone ridges.
3. Before 1924, Owang Lineage occupied, used, and claimed ownership of Ngerchelngael. Owang Lineage leased part of Ngerchelngael to Japanese nationals and collected rent on the lease.
4. In 1924, the Japanese Government declared that all limestone islands were government lands since German times. The Japanese Government asked Owang Lineage to pay rent for Ngerchelngael but Owang Lineage refused to pay rent. Owang Lineage continued to use Ngerchelngael until 1943 when Ngerchelngael was occupied by Japanese soldiers during World War II. Owang Lineage members began using the land again after World War II.
5. On August 17, 1956, a Notice of Hearing was issued by Land Title Officer D. W. LeGoullon for Ngerchelngael, stating that Iterir is the only known claimant to the tract which is “on record as belonging to the Japanese Government seized by the U.S. Government, now in control of the Alien Property Custodian, Trust Territory Government.” Kebekol Exhibit C.
6. On September 4, 1956, a hearing on Ngerchelngael was held before District Land Title Officer D. W. LeGoullon and it was determined that the land be released to Owang Lineage.
7. On February 16, 1958, Determination of Ownership and Release No. 129 was issued stating that Owang Lineage owns, “Ngerchelngael, a part and more fully described as follows: the western part of the extension to the north of Ngerubsachel Island, 2.7 miles southeast of M dock.”
8. In the early 1960’s a house that was built on Ngerchelngael by the Owang people was destroyed by a typhoon.
9. On June 30, 1964, Iterir Dirremengiau sold Ngerchelngael to Kebekol Alfonso by way of a deed which references Claim No. 129 with an area of

approximately 262,524 square feet and as depicted in a sketch attached to the deed.

10. In 1965, Rosang Sugiyama and Tatsuo Adachi sued Iterir, Rose Kebekol, and Kebekol over Ngerchelngael and on March 4 of that year, a judgment was issued in which the plaintiffs did not prevail and the sale from Iterir to Kebekol was legally validated.
11. In 1974 onwards, George Kebekol began conducting his own activities on Ngerchelngael such as clearing the area and planting trees as well as improving upon the water catchment on the land.
12. In 2009, Koror State Government and Adventure Line Productions entered into an agreement to film the *French Survivor* on the rock islands including Ngerchelngael.
13. In about 1996, Harry Blesam became a Koror State Ranger. Ranger Blesam first set foot on Ngerchelngael in 1997 to dispose of crown-of-thorns starfish (“*Rusch*”) collected from a nearby reef. Blesam has remained a ranger for the past 18 years and has risen to the rank of captain which he has held for the past 10 years. Captain Blesam has routinely patrolled the rock islands including Ngerchelngael to ensure there are no logging activities and that camp fires are put out. The last time he set foot on Ngerchelngael was when the *French Survivor* was being filmed on the island for at least a couple of months during which a ranger was always present to monitor the activities.

IV. CONCLUSIONS OF LAW

Most Land Court cases do not raise novel legal issues—facts are found and decisions are made based on the preponderance of the evidence or another standard of proof as appropriate. This case, however, is different: three legal issues must be resolved and the legal conclusions drawn may affect the adjudication outcome.

The first legal issue—apparently an issue of first impression—is *whether 35 PNC § 1304(b)(2) entitles a private claimant in privity to a party who prevailed over the Trust Territory Government to raise affirmative defenses against a public lands authority*. The pertinent part of the statute reads as follows:

Except in cases where claims of Palauan citizens, clans or lineages prevailed over the claim of the Trust Territory Government, its Land Title Officer and all of its political subdivisions, the statute of limitations, laches or stale demand, waiver, res judicata or collateral estoppel as to matters decided before January 1, 1981, and adverse possession, may not be asserted against and shall

not apply to claims for public land by citizens of the Republic. 35 PNC § 1304(b)(2).

What is the foregoing statute saying? The first rule of statutory interpretation is that the plain meaning of a statute shall be applied. *See generally, Ucherremasech v. Hiroichi*, 17 ROP 182 (2010). If the language of the statute is clear, a court will not look to other sources in order to divine the legislative intent. *Id.* A Court will do so only if the statutory language is ambiguous. *Id.* “Ambiguity exists where a provision or a term is ‘capable of being understood by reasonably well-informed persons in two or more different senses.’” *Id.* at 190.

Admittedly, the language of 35 PNC § 1304(b)(2) as quoted above is convoluted—it is a series of phrases constituting a single sentence that is a paragraph long containing 74 words and several legal concepts. That, however, does not necessarily mean that it is ambiguous. The first clause of the statute reads as follows: “[e]xcept in cases where claims of Palauan citizens . . . prevailed over the claim of the Trust Territory Government”. There can be no debate that this language first makes an exception covering those who prevailed over the Trust Territory Government. This means those who are not in the exception are the ones subject to remaining operative part of the statute. And those not in the exception are those who did not prevail over the Trust Territory Government. The language, therefore, is better understood when re-written more directly as follows: “If a Palauan citizen who claimed public land before January 1, 1981 did not prevail over the Trust Territory Government then when that citizen makes a new claim to the same public land after January 1, 1981, affirmative defenses shall not be raised to bar the citizen’s claim.”⁵ This bar on raising affirmative defenses against claims to public lands by citizens was needed otherwise it would frustrate the intent of the return-of-public-lands clause in Article XIII, Section 10 of the Constitution if such claims were “defeated by the mere fact that the claimants or their predecessors had tried and failed to recover their lands in the past.” *Palau Pub. Lands Auth. v. Tab Lineage*, 11 ROP 161, 171 (2004) *Miller, Justice, concurring*. Although reworded for clarification purposes, the foregoing rendition is the plain meaning of the statutory language.

[1] That, however, is all that the statute says. It does not also say the following: affirmative defenses may be raised by a private claimant who previously prevailed over the Trust Territory Government to bar the claim of a public lands authority. Instead, the statute, in the next sentence, goes on to state that, “[t]he record of proceedings of the District Land Title Officer . . . may be introduced as evidence in land ownership proceedings before the Land Court.” 35 PNC § 1304(b)(2). Had the legislature intended for the

⁵ That such affirmative defenses shall not be raised to bar claims to public lands but may be raised in superior title claims has been reiterated in many cases over the years and this holding remains so. *See e.g., Ngarameketii v. Koror State Pub. Lands Auth.*, 18 ROP 59 (2011).

District Land Title Officer's determination in favor of a citizen to have preclusive effect against the government, it could have easily stated so instead of declaring that such records may only be introduced as evidence. Accordingly, this Court holds as a matter of law that 35 PNC § 1304(b)(2) does not entitle George Kebekol to raise an affirmative defense to bar the claim of KSPLA.⁶ Consequently, this Court's grants KSPLA's motion to reconsider and further rescinds the previous order dismissing KSPLA.⁷

The second legal issue is *whether the claim of KSPLA prevails through the statute of limitations defense at 14 PNC § 403*. The Appellate Division has held that the statute of limitations at 14 PNC § 403 and the doctrine of adverse possession are two sides of the same coin. *See, Koror State Pub. Lands Auth. v. Idong Lineage*, 17 ROP 82 (2010). "Therefore, KSPLA must show that its possession of the land was actual, open, visible, notorious, continuous, hostile, and under claim of right for twenty years to employ the statute of limitations defense against competing claimants." *Id.* at 84. KSPLA has not shown either through its documentary exhibits or its live witness that it has possessed the land for over 20 years and through that period has met the other requirements of the defense. The dated documents submitted, such as Secretarial Order 2969 (1978) and Public Law 5-8-10 (1980), do not speak directly to KSPLA's possession of Ngerchelngael.⁸ Those that do address Ngerchelngael directly are very recent documents as in the case of those relating to the *French Survivor* show that was filmed in 2009. *See e.g.*, KSPLA Exhibits 15, 16, and 17. Meanwhile, KSPLA's only live witness, Captain Harry Blesam, has been a ranger for only *18 years*. Even if his testimony proved possession that met the various elements of the defense (*i.e.*, actual, open, visible, notorious, continuous, hostile, and under claim of right)—which testimony does little to prove as much—the final element of 20 years is clearly not met.

⁶ Whether George Kebekol is otherwise entitled to raise the same affirmative defenses under equity or some other authority has not been raised and, therefore, is not decided.

⁷ It is noted that a statute that more directly addresses the issue of prior proceedings having preclusive effect is 35 PNC § 1310(b). This statute, however, was not invoked by the parties, so it will not be addressed.

⁸ KSPLA Exhibit 13 is a "Public Notice" apparently dated in 1969 and issued by Ibedul Ngoriakl as Mayor of Koror. The notice explains that all of the rock islands belong to the municipality of Koror as being "inherited from God" and may only be used in accordance with "common customs" and "any other customary laws". Whether Ngoriakl was issuing the notice as a traditional Ibedul or as a democratic Mayor or as both and the implications thereof over the ownership over Ngerchelngael is a large gray area. In the end, there was little to show that KSPLA has possessed Ngerchelngael since 1969 and that such possession was actual, open, visible, notorious, continuous, hostile, and under claim of right.

Accordingly, this Court holds that the claim of KSPLA does not prevail thought the statute of limitations defense at 14 PNC § 403.

The third legal issue is *the extent and parameters of the definition of “public lands” as so legally defined at 35 PNC § 101*. KSPLA argues that Ngerchelngael is public land under the definition at 35 PNC § 101 which definition is as follows:

Public lands are defined as being those lands situated within the Republic which were owned or maintained by the Japanese administration or the Trust Territory Government as government or public lands, and such other lands as the national government has acquired or may hereafter acquire for public purposes.

[2][3][4*] It is first noted that the foregoing definition does not address state governments or their agencies, much less their ownership or maintenance of lands.⁹ It is next noted that the definition does not address any particular categories of lands such as the rock islands. By contrast, the definition explicitly refers to the “Republic” and also to the “national government” in relation to lands “owned or maintained” by a previous occupying power as public lands. It is apparent, therefore, and this Court holds that 35 PNC § 101 defines “public lands” vis-à-vis the Republic or the national government and not states. Logically, therefore, for a state public lands authority to invoke and prevail through the definition at 35 PNC § 101, the national government must have been a previous owner and then subsequently transferred its interest to the state public lands authority. Otherwise, absurd results may occur, such as a state public lands authority invoking 35 PNC § 101 to claim public lands still held by the national government because the state public lands authority has “owned or maintained” the land.

Turning to the facts, despite the 1924 declaration that limestone islands were public lands, the Japanese government at least implicitly considered Ngerchelngael as belonging to Owang Lineage. Then, by an adjudication done in the 1950’s, the Trust Territory Government lost to Owang Lineage. Thus, Ngerchelngael was never “owned or maintained by the Japanese administration or the Trust Territory Government.” 35 PNC § 101. Ownership of Ngerchelngael, therefore, could not have transferred from the Trust Territory Government to the Palau Public Lands Authority

[*] ⁹ It must be clarified that the land must have been “owned or maintained”—not by the national government or a state government or its agencies but—“by *the Japanese administration or the Trust Territory Government*.” 35 PNC § 101. In a return-of-public-lands analysis, the issue and the focus should not be the extent and duration of a state government’s claimed ownership and maintenance of a particular land as that does not make the land public land under 35 PNC § 101. That query is relevant only in a superior title analysis where a state public lands authority and individual claimants are jockeying over who has exercised greater dominion over the land over a greater duration.

and on down to KSPLA. Consequently, KSPLA's claim does not prevail through the statutory definition of public lands at 35 PNC § 101.

V. DISCUSSION

There being no other novel legal issues, the Court now turns to the factual issues and applies the preponderance of the evidence standard to make its ultimate findings.

1. Do the facts show that Ngerchelngael was or was not a public land under a previous occupying power?

The evidence shows that in 1924, the Japanese Government declared that all limestone islands were government lands since the German times.¹⁰ This declaration notwithstanding, the evidence also shows that the Japanese Government implicitly conceded that Ngerchelngael belonged to Owang Lineage. As found by District Land Title Officer D. W. LeGoullon in 1958, “[a]pparently the Japanese considered this land as belonging to Owang Lineage despite the statement to the contrary”. Kebekol Exhibit C. Accordingly, this Court finds that Ngerchelngael did not become public land despite the general Japanese declaration regarding limestone islands.

2. If it became public land during the Japanese period, was Ngerchelngael wrongfully taken?

Again, the evidence shows that in 1924, the Japanese Government declared that all limestone islands were government lands since the German times. The Japanese apparently were continuing on with what the Germans did—they simply took over unoccupied or uncultivated lands. *See*, KSPLA Exhibit 12 at 12. If that is how Ngerchelngael came to be public land, by a simple declaration, then, logically, there was no just compensation paid by the Japanese Government for Ngerchelngael. This necessarily constitutes a wrongful taking, so Ngerchelngael should be returned to the original owner pursuant to Article XIII Section 10 of the Constitution. Here, the original owner, Owang Lineage, sold the land to George Kebekol's father in 1964 and his wife Rose Kebekol filed a timely claim on June 27, 1989. *See*, Kebekol Exhibit D.

3. If it became public land during the Japanese period, did Ngerchelngael lose its public lands status at a later point?

In the 1950's, the District Land Office gave notice of a hearing for Ngerchelngael and held such hearing after which, for reasons stated based on facts found, awarded ownership to Owang Lineage. From that point forward, Ngerchelngael, if it was ever public land, was no longer public land. *See*, Kebekol Exhibit C.

¹⁰ This German declaration “was not generally recognized by Palauans.” KSPLA Exhibit 12, *Manual for Surveys of Palau Lands* at 12.

4. Could ownership of Ngerchelngael have legally transferred to KSPLA from any previous government owner?

[5] Because Ngerchelngael was no longer public land per the determination by the District Land Office in 1958—if it ever was public land in the first place—any subsequent transfers of interests in public lands by the Trust Territory Government to the Palau Public Lands Authority and eventually to KSPLA could not have transferred ownership of Ngerchelngael to KSPLA. There is no chain of title linking KSPLA back to the Trust Territory Government.

5. Who has had greater use and possession of Ngerchelngael?

In a superior title analysis, the claimants stand on equal footing. *See generally, Espong Lineage v. Airai State Pub. Lands Auth.*, 12 ROP 1, 5, (2004). Because of the equal stance, “evidence of (a claimant’s) use and possession of the property may be relevant in ascertaining ownership.” *Ikluk v. Udui*, 11 ROP 93, 96 (2004).

In 1969, Mayor Ibedul Ngoriakl of Koror Municipality issued a notice regarding the ownership of the rock islands in general. From that point forward, the evidence is silent as to Koror Municipality, Koror State, or KSPLA’s exercise of dominion over Ngerchelngael at least until 1997 when Ranger Harry Blesam first set foot on the island to dispose of crown-of-thorns starfish. Thereafter, aside from routine yet fleeting drive-by inspections, no other physical activity took place on Ngerchelngael until 2009 when the *French Survivor* was filmed on Ngerchelngael.

By contrast, Owang Lineage members lived and used the island before, during, and after the Japanese period. They had farms and structures built and also leased part of the land. Their use was such that the Japanese government implicitly recognized their ownership, something which the Trust Territory Government explicitly recognized in a 1958 determination. Subsequently, Owang Lineage through Iterir Dirremengiau deeded and sold ownership of Ngerchelngael to George Kebekol’s parents in 1964, who also utilized the island before and after the purchase. George has also carried out his own activities on the island particularly from 1974 forward and some people of Ngerbeched would ask permission or at least give him notice before getting on the island.

As between KSPLA and the Kebekol claimants and their predecessors in interest, the latter has had more extensive use and possession of Ngerchelngael over a greater period of time. Accordingly, in terms of superiority of title, the Kebekol claimants prevail.

6. Is the Ngerchelngael that was awarded in the 1950’s to Owang Lineage the same Ngerchelngael that is before this Court, worksheet lot 197-8000?

Although KSPLA has no ownership of what was awarded to Owang Lineage, it claims that the lot now before this Court includes land which was not awarded to Owang Lineage. The basis of this assertion is that the lot before this Court, worksheet lot 197-

8000, exceeds the size of that which was awarded to Owang Lineage by at least 48,000 square meters. KSPLA, therefore, claims that it should own the balance given its blanket claim for all rock islands.

KSPLA's claim fails for four reasons. First, a visual inspection shows that the shape of the lot depiction in the 1950's (Kebekol Exhibit C) is very much similar to the shape of today's lot, 197-8000. On the basis of this visual inspection, it is more likely that what was claimed in the 1950's is the same as what is today claimed.

Second, there was evidence to show that Ngerchelngael extends beyond worksheet lot 197-8000. George Kebekol testified that they own a part but not the entirety of Ngerchelngael. Specifically, they own the part of Ngerchelngael delineated from the other part of Ngerchelngael with the boundary starting at an ancient dock to the south and running north to a basalt boulder, indicated by markers A and B on Court Exhibit 1. Thus, the "part" that was awarded in the 1950's could well be the part before this Court.

Third, while it is true that worksheet lot 197-8000 exceeds the size of the 1950's lot by over 48,000 square meters, it is also apparent by a visual inspection of the 1950's sketch that the size of the entire lot was calculated using a rudimentary method: the geometric formula for calculating the area of a right-angle triangle, this formula being the base multiplied by the height and divided by two ($A=BH/2$). Finding the area for one right-angle triangle is one thing. Finding the area for a large irregular shape through the creation of a series of right-angle triangles is quite another. The accuracy of the final result depends on the accuracy of (1) the initial field measurements, (2) the creation of the series of right-angle triangles, and (3) the series of human applications of the formula. It is also apparent that some of the triangles on the sketch do not have the numbers required for each calculation because either the base length is missing or the height is missing. Consequently, it is reasonable to doubt the accuracy of the final numbers calculated in the 1950's. By contrast, it is not unreasonable to say that, after 50 years, today's technology is a bit more accurate. The lot before this Court, therefore, is likely the same as that adjudicated in the 1950's but the area calculations made then may not be as accurate as today's calculations.

Finally, Title 35 PNC § 1307(d) states that, "[a] Claimant who fails to personally attend or send an authorized representative to a scheduled monumentation may not contest the boundary determinations and monumentation resulting from the session." Here, there is a "Land Claim Monumentation Record" on file signed by George Kebekol on September 11, 2008 acknowledging the monumentation of Ngerchelngael as Worksheet No. 197-part. The same, however, cannot be said with respect to KSPLA as it does not have a similar record on file to show that it attended or was involved with the monumentation of Ngerchelngael. Consequently, KSPLA "may not contest the boundary determinations and monumentation resulting from the session." 35 PNC § 1307(d).

For the foregoing reasons, it is hereby found and concluded that the Ngerchelngael “part” that was awarded in the 1950’s to Owang Lineage is the same Ngerchelngael before this Court, worksheet lot 197-8000.

VI. CONCLUSION

Given the foregoing factual findings and conclusions of law and for the reasons stated above, ownership of Ngerchelngael Island, Worksheet Lot 197-8000, is awarded to George Kebekol. A Determination of Ownership shall issue forthwith consistent with this Decision and upon which the parties may then appeal.