Remengesau v. Sato, 4 ROP Intrm. 230 (1994)
ONGELIBEL REMENGESAU,
Appellant,

v.

BIEB SATO,
Appellee.

CIVIL APPEAL NO. 5-93
Civil Action No. 176-92

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: June 3, 1994

Attorney for Appellant: Johnson Toribiong

Attorney for Appellee: John K. Rechucher

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; PETER T. HOFFMAN, Associate Justice

HOFFMAN, Justice:

This case is an appeal from a decision of the trial division upholding the adjudication and determination of the Land Claims Hearing Office (LCHO) in regard to Tochi Daicho Lot No. 1799 in Ollei Hamlet, Ngerchelong State. The land was determined to be the property of appellee Bieb Sato, as representative for herself and her siblings a determination which appellant Ongelibel Remengesau disputes. The judgment is affirmed.

BACKGROUND

The land in question was originally the individual property of a man named Ngirangau, who died sometime before the Japanese land survey of 1938-42. The Tochi Daicho lists his brother Kedelaol as the individual owner. At his eldecheduch, the land was given to Etei, the only surviving child of Ngirangau. Etei and her family ⊥231 entered the land after the war, and they have occupied and worked it without any objection ever since. Etei died two years before the LCHO hearing, and her daughter Bieb Sato, representing all of Etei's children, now claims the land.

Remengesau, the daughter of Kedelaol, claims the land as the natural child of Kedelaol, who is listed as the owner of the property in the Tochi Daicho. According to her testimony, her mother died and her father adopted her out to relatives in another village sometime before World

War II, when she was very young. Her father continued to visit her, and on one of these visits, after Remengesau was married and after the birth of her first child, her father promised that she would receive the land in question. There is some dispute as to whether Remengesau attended the eldecheduch held for her father, but it is clear that following her father's death Remengesau only infrequently visited the land in question and never made any effort to exert control over it.

The LCHO found the land to be the property of Etei, but it is not completely clear how it arrived at this conclusion. A fair reading of the LCHO's findings of fact is that the tribunal found the presumption of correctness accorded to Tochi Daicho listings to have been rebutted because the land had only been listed in Kedelaol's name out of expediency and that Etei was the actual owner of the land inherited from her father Ngirangau.

After reviewing the LCHO record, the trial court concluded that the presumption of correctness given the Tochi Daicho had not been rebutted, but the court concurred nonetheless with the LCHO's ⊥232 decision, albeit for different reasons. The court specifically found that Kedelaol was the owner of the land at the time of his death; that before his death, Kedelaol stated that Etei would receive the land upon his death; and that Etei took the property from her uncle's eldecheduch in accordance with his wishes.

DISCUSSION

The first challenge Remengesau raises is whether the trial court erred in making a new finding of fact--that Etei acquired the land as a result of Kedelaol's eldecheduch--without conducting a de novo hearing. More specifically, Remengesau argues that the court should not make findings of fact different from the LCHO's findings without either conducting a trial de novo or at least apprising the parties of its intended findings and allowing them to brief the issue.

We begin by noting that there is some question as to whether the court's finding contradicted those made by the LCHO. The court found the LCHO's findings regarding the ownership of the land to be ambiguous, and we agree. The larger issue, however, is no more than a variation on a theme that this Court has previously addressed. While a trial court hearing an appeal from the LCHO may in its discretion grant a trial de novo, such a new trial is not a matter of right. *Arbedul v. Mokoll*, Civil Appeal No. 7-93, slip op. at 3 (Apr. 13, 1994). A trial court has available to it several methods of reviewing LCHO factual findings: It may, in its considered discretion, choose to adopt the LCHO hearings in whole or in part, or to conduct a complete trial de novo, or to retry ⊥233 selected issues in the case. *Ngiratereked v. Joseph*, Civil Appeal No. 3-92, slip op. at 4 (Dec. 17, 1993). The trial court is also free to arrive at independent findings of fact based on the record, id., but when credible evidence is in conflict on a material issue, the trial court should consider and may give weight to the fact that the LCHO heard and observed the witnesses and accepted one version of events rather than another.

In arriving at independent findings of fact, it is left to the sound discretion of the trial judge to determine when the opportunity to observe the demeanor of a witness and the ability to hear the testimony being given is of such importance to the resolution of a factual dispute that the taking of additional evidence or a new trial is preferable to relying solely on the record.

Finally, in light of a court's great latitude in making findings of fact, parties appealing an LCHO determination are well-advised to address the entire record and make all appropriate legal arguments. Remengesau had such an opportunity in her trial brief. We hold that the court did not abuse its discretion by deciding not to grant a de novo hearing.

Remengesau's second argument assigns error to the trial court's finding that the property was disposed of at Kedelaol's eldecheduch. More specifically, Remengesau argues that Kedelaol orally conveyed the land to her before his death, and therefore it was no longer part of Kedelaol's estate to be given out at his eldecheduch.

Our scope of review is quite limited: an appellate court will ⊥234 not overturn a trial court's factual findings unless they are clearly erroneous. 14 PNC § 604(b); ROP Civ. Pro. 52(a); *Riumd v. Tanaka*, 1 ROP Intrm. 597, 601 (1989). There is ample evidence in the record, based on the testimony of various witnesses, to support the court's conclusion that Kedelaol was the owner of the land in question at the time of his death, that he had directed the property to go to Etei, and that the eldecheduch followed these instructions. It is evident that the court at least implicitly rejected Remengesau's inconsistent version of the facts. The court's findings, therefore, were not clearly erroneous.

Remengesau's final argument is that, assuming there was no valid inter vivos gift to her, she should have received the property through intestate succession. To arrive at this conclusion, she argues that at the time of Kedelaol's death there was no statute governing intestate succession; that an eldecheduch could not have disposed of the property since to transfer title based on the actions of an eldecheduch is to recognize that land reverts to clan or lineage control upon the death of the individual owner; and that in the absence of an intestate succession statute inheritance of land is controlled by patrilineal distribution. Remengesau supports her argument by citing several Trust Territory decisions appearing to question the passing of title to real property by the actions of an eldecheduch. *Ngeskesuk v. Solang*, 6 T.T.R. 505 (Tr. Div. 1974); *Obkal v. Armaluuk*, 5 T.T.R. 3 (Tr. Div. 1970); *Ngiruhelbad v. Merii*, 1 T.T.R. 367 (Tr. Div. 1958). See also *Ngirumerang v. Watanabe*, 7 T.T.R. 260 (App. Div. 1975).

⊥235 We do not read those cases so broadly. In our view, they stand for the proposition that individually owned land does not revert to clan or lineage ownership on the death of its owner, but instead becomes the property of the owner's heirs. We do not question that proposition here. But we do not believe it inconsistent with that proposition to give recognition to the actions taken at an eldecheduch in determining who those heirs were. Accord, *Kubarii v. Olkeriil*, Civil Appeal No. 7-91, slip op. at 3 (Aug. 14, 1991) (upholding reliance on eldecheduch in determining intestate succession prior to enactment of Palau District Code § 801).

CONCLUSION

The court was entitled to make new findings of fact without conducting a de novo hearing. The court's finding that the property was given to Sato's mother during Kedelaol's

eldecheduch was not clearly erroneous.

The judgment of the trial division is AFFIRMED.