Mesubed v. Iramek, 7 ROP Intrm. 137 (1999)
DIRRECHEMIICH MESUBED,
Appellant,

v.

KUBARII IRAMEK,
Appellee.

CIVIL APPEAL NO. 47-97
Civil Action No. 94-95

Supreme Court, Appellate Division
Republic of Palau

Argued: November 11, 1998
Decided: January 15, 1999

Counsel for Appellant: Johnson Toribiong
Counsel for Appellee: Yosiharu Ueda, T.C.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

MICHELSEN, Justice:

This appeal is from a decision of the Trial Division, which upheld a determination by the Land Claims Hearing Office that the ownership of land known as Imerab located in Ngiwal State should be awarded to Appellee.[1] We affirm.

The Tochi Daicho lists Krasai as the owner of Imerab. Appellant Mesubed is Krasai's daughter and his only surviving child. ⊥138 Appellee Iramek is Krasai's nephew, the son of his brother.

There was a house on the property during the Japanese times and Mesubed and Iramek lived there with Krasai. When the war began, they left the property. The residence did not survive the war.

Prior to his death in 1956, Krasai was ill and both Appellant and Appellee testified that they took care of him. After Krasai's death, Iramek moved back to Imerab built another house to replace the one destroyed, and has lived there until the present time without protest. He never asked anyone's permission to build or live there because, he testified, Krasai gave him the land. He has also planted trees and plants on the land.

[1] The land is designated as Cadastral Lots D-010-062 and D-010-059 and Tochi Daicho lots 773 and 774-part.

Both parties assert that Krasai promised that the land would be theirs after his death although both concede that there were no witnesses to such statements. Mesubed testified that she has not objected to Iramek living on the land because he is family, specifically, her first cousin.

The LCHO determined that Iramek lived on the land in excess of 20 years without any objection from Mesubed and awarded the property to him. On appeal to the Trial Division, Mesubed argued that it was error for the LCHO to rely on the doctrine of adverse possession since Iramek and Mesubed are members of the same family. The Trial Division agreed that the doctrine of adverse possession does not apply to determining title among family members, [2] but was not convinced that the LCHO actually relied on that doctrine in making its decision. The Trial Division reviewed the record de novo and found that the parties' conduct was more consistent with Iramek's version of the events and therefore affirmed the decision of the LCHO awarding the land to Iramek.

Mesubed's argument in this appeal is that the Trial Division committed the same error as the LCHO; reliance upon occupation of property to defeat another family member's claims. Mesubed argues that Iramek's use of the property has no legal significance under Palauan custom where family cooperation and mutual assistance is the rule rather than the exception." (Emphasis added). We believe such an uncategorical statement is unsupportable. This is not a case of a clan member claiming ownership of clan property based upon long occupancy of clan land. While mere occupation of land is not determinative of ownership, this Court has previously relied on evidence regarding the use and possession of land in a dispute between family members over the ownership of land. For example, this Court has previously explained:

> While possession of land is not always an indication of ownership, we believe it is a fair inference that occupation of the land by appellee's family following [the land owner's] death and for the past thirty or more years is indicative of a ⊥139 tacit or de facto disposition of the land to them.

Elewel v. Oiterong, 6 ROP Intrm. 229, 233 (1997).

Iramek's use of the land may also be contrasted with Mesubed's failure to perform any act consistent with ownership over a period of nearly forty years. Mesubed has not lived on the land nor did she give permission to Iramek to live there. Further, Mesubed apparently never discussed with anyone that she was the rightful owner of the land before filing her claim. In fact, at oral argument, her counsel conceded that there was no offer of proof at any time that Mesubed asserted an ownership interest prior to filing her LCHO claim. While not conclusive, it is certainly relevant when determining ownership that a claimant has not performed any acts consistent with ownership for a significant period of time. *See e.g., Armaluuk v. Orrukem* , 4 TTR 474, 478 (Tr. Div. Palau 1969) (denying the plaintiff relief based on the passage of time during which she failed to assert her rights to the land). In the usual case, an owner of land will

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[2] The existence of a family relationship between an owner and a party claiming adverse possession defeats the requirement that possession be hostile. *Osarch v. Kual*, 2 ROP Intrm. 90, 92 (1990).

have evidence demonstrating an interest in the property prior to filing a claim during government proceedings. For example, rent may be collected. Permission to use land may be granted. Objections to land use may be noted. Statements may be made at an eldecheduch. Other knowledgeable parties may recognize the ownership tight. An owner of property ought to be able to point to at least some act over a forty-year period consistent with ownership of the property. Mesubed provided no such evidence.

Evidence regarding an individual's use and possession of land, and the absence of evidence that the adverse party acted consistent with ownership, is relevant in determining ownership of the land irrespective of whether the doctrine of adverse possession applies. The Trial Division''s reliance upon such evidence was not clearly erroneous. ROP R. Civ. Pro. 52(a).

Accordingly, the decision of the Trial Division is affirmed.