Lulk Clan v. Estate of Tubeito, 7 ROP Intrm. 17 (1998)

LULK CLAN, ODILANG CLAN, TAKAKO SUMANG, OMREKONGEL CLAN and ESUROI OBICHANG,
Appellants,

v.

ESTATE OF KOSAMUNDA TUBEITO, FLORENTINE YANGILMAU, FAUSTINO TIRSO, KUTERBIS KUTERMALEI, SUMOR ALBIS, QUADALUPE CARLOS, and MARIANO CARLOS,
Appellees.

CIVIL APPEAL NOS. 6-97 & 7-97
Civil Action No. 285-94

Supreme Court, Appellate Division
Republic of Palau

Argued: November 21, 1997
Decided: February 20, 1998

Counsel for Appellants Lulk Clan, Odilang Clan and Takako Sumang: Johnson Toribiong, Esq.

Counsel for Appellant Omrekongel Clan: Yosiharu Ueda, Esq.

Counsel for Appellant Esuroi Obichang: J. Roman Bedor, Esq.

Counsel for Appellee Estate of Rosamunda Tubeito: David J. Kirschenheiter, Esq.

Counsel for Appellee Florentine Yangilmau: William L. Ridpath, Esq.

Counsel for Appellees Faustino Tirso, Kuterbis Kutermalei, Sumor Albis, Quadalupe Carlos and Mariano Carlos: Mariano W. Carlos, Esq.

⊥18

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

MILLER, Justice:

This appeal involves a dispute over the ownership of 17 lots in the Echol area of Ngerkebesang Island. The Land Claims Hearing Office (LCHO) issued a Determination of Ownership on July 12, 1994, awarding the lots to appellees. On February 10, 1997, the trial court affirmed the LCHO determination. We affirm the trial court's ruling.

1. BACKGROUND

Lulk Clan v. Estate of Tubeito, 7 ROP Intrm. 17 (1998)

This case is a sequel to *Espangel v. Tirso* , 2 ROP Intrm. 315 (1991). Appellees are descendants of the settlers from the islands of Pulo Anna and Merir who were evacuated after the typhoon of 1904. The settlers built houses and lived in Echol; they cleared the land, farmed it and divided it among themselves until the Japanese occupation. In the 1930s, the Japanese Government confiscated part of the land and used it for military facilities. This occurred before the completion of the Japanese Land Survey and the Tochi Daicho. The Tochi Daicho lists the owner of almost all the lots as the "South Seas Islands Government Agency," indicating ownership by the former Japanese Government.[1]

During World War II, the settlers were evacuated out of Echol. After the war, Palau came under the control of the Trust Territory. Because Ngerkebesang Island had been seized and used by the Japanese Government, the Trust Territory took ownership of the island. The settlers returned to Echol but the land was almost uninhabitable and lacked a supply of water. Most settlers relocated to Echang but some set up gardens in Echol. During this time, some clans in Ngerkebesang sought to regain the land that the Japanese had confiscated. That litigation resulted in the Land Settlement Agreement and Indenture of 1962. The Agreement quitclaimed Ngerkebesang Island to the clans and other parties who claimed through, from or under them. Appellants are three of the clans named in the Agreement and two individuals who claim through them.

The LCHO determined, and the trial court agreed, that the settlers had owned the lots in dispute before they were taken by the Japanese Government. Following earlier decisions that had interpreted the Land Settlement Agreement as restoring ownership to those who had owned the land before it was taken by the Japanese Government, it awarded the land to appellees as the heirs of the settlers. The trial court affirmed these determinations.

Appellants argue on appeal that the trial court erred in its factual finding that the lots were given to the settlers in fee simple and with the consent of the clans. Appellants also argue that the trial court failed to attribute legal significance to the presumption arising from the Tochi Daicho listing for the lots in dispute. Finally, appellants assert that appellees' claims are barred by the statute of limitations, adverse possession and laches; that the trial court's decision violates the Constitution of Palau; and that appellees' rights were terminated by the land hearings ⊥19 conducted in the 1950s.

II. DISCUSSION

We review the trial court's factual findings, which here adopted the findings of the LCHO, under the clearly erroneous standard. *Silmai v. Rechucher*, 4 ROP Intrm. 55, 57 (1993). This Court has interpreted the standard to mean that

> if the trial court's findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be

[1] The exception is Lot No.24 A 16. The owner is listed as Daumelesak who is appellee Faustino Tirso's father. Certain lots adjacent to the lots in this dispute, and the subject of our prior decision, are listed in the names of some of the settlers.

> set aside unless this Court is left with a definite and firm conviction that a mistake has been committed.

Umedib v. Smau, 4 ROP Intrm. 257. 260 (1994).

> With regard to the events in 1904, the trial court concluded:
>
> The LCHO found that Espangel Ewatel had given the subject property to the settlers after consulting with and obtaining the consent of the chiefs of the other clans who owned property in Echol. Espangel was the chief of Omrekongel, the ranking clan in Ngerkebesang Island, and was the paramount or overall chief of the island. Although the evidence was conflicting on this point, there was ample evidence to support the LCHO finding, and this Court sees no reason to disturb it.
>
> The LCHO's finding is supported by evidence that the settlers occupied Echol from 1904 onward without protest or disturbance until they were removed by the Japanese. It is further supported by the fact that, as earlier mentioned, the adjacent properties are registered in the Tochi Daicho in the name of settlers. Those lots were the subject of the Land Commission hearings which resulted in determinations, over the clans' objections, that the lots were owned by the descendants of the settlers. The Commission hearings were upheld on appeal.

Trial Court Decision at 5-6 (citation omitted).[2]

The historical materials submitted both to the courts below and to this Court show, at best, that there is room for debate about events that are now almost a hundred years old.[3] But "[w]here there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous." *Ngiramos v. Dilubech Clan*, 6 ROP Intrm. 264, 266 (1997). As the trial court noted, there is ample evidence to support the finding that the ⊥20 land was conveyed to the settlers with the approval of the clans. As such, we are unable to conclude that this finding is clearly erroneous.

With regard to the issue of the significance of the Tochi Daicho listing, the trial court stated:

> Under the Land Settlement Agreement, the Trust Territory quit-claimed Ngerkebesang Island (referred to therein as Arakabesan Island), except for certain retained areas, to the clans of the island and to "all others claiming through, from or under" the clans. Thus, the effect of the Land Settlement Agreement was to restore the property rights to those who held the rights just before the Japanese

---

[2] *See Espangel v. Tirso*, 2 ROP Intrm. 315, 317-22 (1991) (reversing Trial Division and upholding Land Commission determination that descendants of original settlers held lots in fee simple).

[3] Indeed, what those materials show is that this same debate was played out before the Japanese authorities, which reached the same conclusion that was adopted by the trial court here.

seized the property. *Torul v. Arbedul*, 3 T.T.R. 486,492 (Tr. Div.1968).

* * * *

> The subject property is all within Tochi Daicho lot number 1827, with the exception of 24 A 16, which is part of TD lot 1751. These lots are listed in the Tochi Daicho as property of the Japanese South Seas Bureau, reflecting the confiscation of the land by Japan. Thus, the Tochi Daicho registration of the property is of little help in determining ownership. It is noteworthy, however, that the lots adjacent to the subject property are listed in the Tochi Daicho in the names of various settlers.

Trial Court Decision at 4-5.

Appellants argue that the trial court erred because it did not attribute legal significance to the presumption arising from the Tochi Daicho listing that these lands were owned by the Japanese Government. Appellants also claim that the trial court was incorrect to rely on *Torul*. Appellants interpret *Torul* as not applying to the lots involved in this dispute because the land seizure occurred before the creation of the Tochi Daicho and the Japanese took only a portion of the Island.

We disagree. As noted above, *Torul* construed the Land Settlement Agreement "to restore the rights in the land to those who had acquired such rights directly or indirectly from or under any of the clans named and who last held those rights prior to ... Japanese interests." We followed this interpretation in *Espangel v. Tirso* , in concluding that the descendants of settlers who were parties there were entitled to rely on the Agreement in claiming the lands then at issue. Appellants have not asked us to reconsider that aspect of the decision in *Espangel*. Rather, they ask us to distinguish *Espangel* by according dispositive significance to the fact that the lands now at issue were listed as government land in the Tochi Daicho. We see no basis for such a distinction. In particular, we see no legal significance in the fact that the lands now at issue were seized by the Japanese at an earlier date than the lands at issue in *Espangel*. If, as has been previously determined, the Land Settlement Agreement was intended to benefit those persons who "last held . . . rights [in the land] prior to . . . Japanese interests," then it was proper for the LCHO and the trial court to look behind and before the Tochi Daicho to determine who those persons were.

⊥21 To be sure, the fact that the claimants in *Espangel* could trace their claims ta the Tochi Daicho was proof that their predecessors were indeed the persons who "last held . . . rights" in the lots at issue there. Appellees here, by contrast, were required to present extrinsic proof that their predecessors occupied the particular lots that they claimed. But, to our understanding, appellants have not contested that appellees' predecessors were in fact the last occupants of their respective lots, much less have they argued that the particular findings in that regard made by the LCHO and the trial court were clearly erroneous. Rather, we understand them only to argue, as some of them did in *Espangel*, that the settlers' occupation of the lands was only by way of use rights and not ownership. But that argument is based on the same factual contentions that we have already rejected above.[4]

Two other arguments made by appellants are worth a brief discussion. First, we reject appellants' reliance on *Uchellas v. Etpison* , 5 ROP Intrm. 86 (1995), for the simple reason that appellants did not prevail before the District Land Title Officer and can point to no determination or judgment to which we must (or can) give preclusive effect. Rather, their rights -- and appellees -- vis-a-vis the lands now at issue are defined by the Land Settlement Agreement as that Agreement has been construed. Second, with respect to appellant Esuroi Obichang's argument based on adverse possession, we agree for substantially the reasons stated by the trial courts[5] that appellees' filing of claims with the Land Commission in 1992 was sufficient to toll the running of the statute of limitations.

We have considered the remainder of appellants' arguments and find them to be without merit.

III. CONCLUSION

For the reasons set forth above, the judgment of the trial court is AFFIRMED, and the Land Court is directed to issue certificates of title in accordance therewith.

---

[4] As seen above, in upholding the finding that appellees' predecessors owned the land, the trial court relied in part on the fact that adjacent lots (presumably those that were the subject of the *Espangel* case) are listed in the Tochi Daicho as the individual property of settlers. That reliance was proper, since there has been no suggestion that different settlers received disparate treatment.

[5] "This legislature enacted a comprehensive system for the determination of ownership of land in Palau . . . . That system was in place in 1972, when Yangilmau and the others filed their claims with the Land Commission. In filing their claims with the Land Commission instead of pursuing their claims in court, they were simply following the procedures established by the legislature to determine ownership, and they should not suffer any penalty for following these procedures rather than pursuing their remedies in court." Trial Court Decision at 8-9.