Tesei v. Belechal, 7 ROP Intrm. 89 (1998)

KERENGEL TESEI,
Appellant,

v.

MIDOL BELECHAL,
Appellee.

CIVIL APPEAL NO. 14-97
Land Court D.O. No. 07-94

Supreme Court, Appellate Division
Republic of Palau

Argued: July 23, 1998
Decided: July 30, 1998

Counsel for Appellant: David Kirschenheiter; Salvador Remoket

Counsel for Appellee: John K. Rechucher

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

MILLER, Justice:

This is an appeal from a Land Court decision awarding appellee Midol Belechal a taro patch in Oikull Hamlet, Airai State. Appellant Kerengel Tesei contends that the Land Court's decision was clearly erroneous and should be reversed. We disagree and affirm,

I. BACKGROUND

On February 26, 1997, appellant Kerengel Tesei and appellee Midol Belechal appeared before the Land Court, each claiming ownership of a taro patch located in Oikull Hamlet, Airai State. The two claimants told conflicting stories concerning the ownership history of the land. Appellant asserted that the property was the *Lkul a Dui* [1] of Bars Clan, that her father was the previous chief of Bars Clan, that her father had given appellees grandmother permission to use the patch, that appellee's grandmother grew old and was no longer able to use the patch, that appellant's father then allowed appellant to tend the patch and that appellant continues to tend the patch to this day. The chief of Bars Clan did not testify at the hearing.

Appellee and her brother, who testified on her behalf, maintained that their great

[1] *Lkul a Dui* refers to a special taro patch reserved for the chief of a clan to use at his discretion.

grandmother had received the taro patch as *ulsiungel*,[2] that the land had passed from her to their grandmother and eventually to appellee, and that appellee used the patch regularly. The Land Court found appellee's explanation more credible and awarded the property to her in an Adjudication and Determination issued on March 18, 1997. This appeal followed.

II. DISCUSSION

Although the Appellate Division has not yet had occasion to announce the standard by which it will review decisions of the Land Court, both the parties and this Court agree that such matters are governed by the"Land Claims Reorganization Act of 1996, 35 PNC §§ 1301- ⊥90 1321, which created the Land Court, does not specify the standard of review the Court is to apply to Land Court decisions. Under the prior Palau Lands Registration Act, two appeals were permitted - - from the Land Claims Hearing Office to the Trial Division and then from the Trial Division to this Court. On the first appeal, we permitted the Trial Division a great deal of discretion to review the record and, if it deemed appropriate, to substitute its own findings of fact for those of the LCHO. *See generally Ngiratreked v* . Joseph, 4 ROP Intrm. 80, 83 (1993). On the second appeal to this Court, however, we applied the clearly erroneous standard. *E.g., Silmai v. Rechucher*, 4 ROP Intrm. 55, 57 (1993). Against this background, we believe it a fair reading of legislative intent that, in simplifying the appellate process by providing a single, direct appeal to this Court, the OEK expected and intended that we would apply the clearly erroneous standard and not engage in fact finding of our own.

Under the clearly erroneous standard, if the Land Court's findings are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless the Court is left with a "definite and firm conviction" that a mistake has been made. *See Kulas v. Becheserrak*, 7 ROP Intrm. 76, 77 (1998). Applying this standard, we believe that the Land Court's determination should be upheld.

We do not agree with appellant that the Land Court erred by finding significance in the fact that the chief of Bars Clan did not appear to claim the taro patch. It is not unreasonable to draw a negative inference from the fact that a claim of clan ownership is presented without the testimony or support of the clan's title holders or strong members. This is especially true in this case, where the taro patch was asserted to be the *Lkul a Dui* of Bars Clan and under the chief's control.[3]

Nor do we attach any particular significance to the fact that both appellant's and appellee's understanding of their rights to the taro patch come from stories passed down to them by their relatives. Neither party presented first-hand knowledge of ownership. That a finder of

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[2] *Ulsiungel* is compensation received in exchange for services rendered. *See In the Matter of Dengokl*, 6 ROP Intrm. 142, 144 (1997); *Umedib v. Smau*, 4 ROP Intrm. 257, 257 (1994).

[3] As was noted at oral argument, the absence of participation by the clan's chief also raises an issue of standing. Because no customary evidence was presented nor any findings made by the Land Court on this point, we leave open the question whether any clan member may pursue a claim on behalf of the clan or whether a clan member claiming property in the clan's name must first consult, or seek the consent of, the clan's chief.

fact must weigh competing hearsay evidence may make its task more difficult. But that fact gives this Court no greater license or justification to substitute its own judgment for that reached below.

The Land Court listened to both sides and made its best determination of which story was more credible. Although at bottom, appellant argues that her explanation of events was more credible and consistent than appellee's and that therefore the Land Court should have found in her favor, we are in no position to reach that conclusion. The determination of the Land Court is accordingly AFFIRMED.