Pedro v. Tiakl, 8 ROP Intrm. 221 (2000)
MARIA PEDRO,
Appellant,

v.

HATSUE TIAKL,
Appellee.

CIVIL APPEAL NO. 99-20
D.O. No. 07-145

Supreme Court, Appellate Division
Republic of Palau

Argued: October 3, 2000
Decided: October 11, 2000

Counsel for Appellant: J. Roman Bedor

Counsel for Appellee: Salvador Remoket, David J. Kirschenheiter

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

SALII, Justice:

Appellant Maria Pedro appeals from the Land Court's June 2, 1999, Determination awarding Appellee Hatsue Tiakl ownership of land in Airai known as Omechebuchel or Tab, Cadastral Lot Number 016-N-09. We vacate in part and affirm in part.

Background

This appeal arises from a dispute over a parcel of land. Pedro claimed the land belonged to her father Ngirasibong, while Tiakl claimed to have acquired it from her father Lukisang. In proceedings in the Land Claims Hearing Office ("LCHO") in 1990, Pedro's sister testified that Ngirasibong lived on the land, built a house there, farmed there, and wished to leave it to Pedro. She stated, ⊥222 however, that she did not know how he acquired it or whether he was only "borrowing" it.

Tiakl, on the other hand, testified that Ngiraked Melobchelild gave the land to her father Lukisang, in accordance with the custom of *ulsiungel,* to express gratitude for Lukisang's gifts of food, kerosene, clothing, and betelnut. Tiakl explained that Melobchelild wanted her to have the land, because Lukisang, being a Japanese national, otherwise would have had no land to leave her. An independent witness, Ngiraungiang Tebei, recounted a similar story. Tiakl further testified that Melobchelild acquired the land from Ngichemuul Beouch, who received the land

when the Airai community divided its land among individuals. According to Tiakl, her father left for Japan when she was twelve years old, leaving her uncle Ngiruchelbad Belechel to care for the land as her trustee. She testified that they knew others like Ngirasibong were farming the land, but did not object because their families were related to hers by marriage.

On June 22, 1990, the LCHO issued an Adjudication holding that Ngirasibong and Melobchelild both owned the land, and that Tiakl was "not of Palauan blood" and so could not own land. The LCHO divided the land, and in two separate Determinations of Ownership, awarded Tiakl Lot 016-N-09(a) and Pedro Lot 016-N-09(b). Pedro appealed to the Trial Division, asserting that the LCHO arbitrarily divided the land when each party claimed exclusive ownership. Tiakl did not cross appeal.

The Trial Division invited the parties to submit additional testimony and supplemental briefs. Tiakl's uncle Ngiruchelbad Belechel and cousin Ichiro Rechebei further corroborated Tiakl's account that Melobchelild gave Lukisang the land to express his gratitude. On March 23, 1992, the Trial Division reversed the LCHO's Adjudication. It held that the LCHO erred in finding that Tiakl, whose mother was Palauan, was "not of Palauan blood," and erred in awarding Tiakl half the land after finding that she could not own land. Finally, the court held that the LCHO erred in finding that Ngirasibong and Melobchelild owned the same land. The court remanded for correction of these errors and issuance of a new determination.

On June 2, 1999, the Land Court, as the LCHO's successor on remand, awarded Tiakl the entire lot, based on the evidence that Melobchelild gave Lukisang the land as *ulsiungel,* and that Lukisang acquired title before the Constitution prohibited land ownership by non-Palauans, and its finding that Ngirasibong "never had . . . title." Pedro then brought this appeal.

Analysis

A. The Scope of the Land Court's Authority on Remand

Pedro contends that the Land Court erred in awarding Tiakl the entire lot on remand, because Tiakl failed to appeal the initial LCHO Determination awarding Pedro Lot 016-N-09(b). By failing to appeal that Determination, Pedro argues, Tiakl became bound thereby, waiving any interest she might have had in that half of the lot. We agree. The Palau National Code provides that a "determination of ownership . . . shall be subject to appeal by any party aggrieved thereby," and after the time for appeal has lapsed, a certificate of title shall issue and shall be "conclusive upon all persons who have had notice of the proceedings." 35 PNC §§ 1113-14.[1] In this case the LCHO issued ⊥223 two distinct Determinations, and while Pedro appealed the Determination awarding Tiakl Lot 016-N-09(a), Tiakl never appealed the Determination awarding Pedro Lot 016-N-09(b). The unappealed Determination in Pedro's favor as to Lot 016-N-19(b) therefore became binding and conclusive on Tiakl.

[1] The cited provisions were in effect at the time of the LCHO's initial adjudication in this case. The same rule applies under the Land Claims Reorganization Act of 1996. *See* 35 PNC § 1313(a)(2).

Tiakl argues that Pedro's notice of appeal contested both Determinations because it disputed all of the LCHO's findings and conclusions, including its decision to split the lot. However, the clear statutory language giving conclusive effect to unappealed determinations forbids relitigation of unappealed determinations based on inferences drawn from appeals of separate determinations.[2] Because the Determination awarding Pedro Lot 016-N-09(b) was not appealed to the Trial Division, the Land Court erred in reconsidering ownership of that lot on remand. We therefore vacate the Land Court's June 2, 1999, Determination insofar as it pertains to Lot 016-N-09(b), and reinstate the June 22, 1990, Determination of Ownership awarding Pedro Lot 016-N-09(b). We consider the other issues raised in this appeal only insofar as they pertain to Lot 016-N-09(a).

B. Evidence of Prior Ownership

Pedro contends that the Land Court erred in finding that Lukisang rather than Ngirasibong owned the land because the Land Court judge, who was not present at the 1990 hearings, improperly discredited the testimony that Ngirasibong owned the land. To the contrary, however, the finding that Lukisang rather than Ngirasibong owned the land is amply supported by the record, even if Pedro's witnesses' testimony is taken as true. Pedro's witnesses testified that Ngirasibong farmed the land and built a house there, but conceded that they did not know how he purportedly acquired it or whether he was merely "borrowing" it. While they stated that Ngirasibong attempted to assert control over the land by pledging it as collateral, they conceded that neither Tiakl nor anyone else outside their immediate family knew of this act. Thus, even by their own account this undisclosed act was not adverse to any other party's claim of ownership.

In contrast to this testimony that failed to explain how Ngirasibong acquired ownership of the land he was using, Tiakl presented a specific account of Lukisang's acquisition of the land that was traced back through two prior owners and corroborated by an independent witness as well as family members. Tiakl also explained the relationships between her family and Ngirasibong's that prompted her to allow Ngirasibong to use the land in her absence. Tiakl's account and Pedro's account are consistent with one another, and when taken together establish that Lukisang owned the land, having acquired it as an expression of gratitude from Melobchelild, while Ngirasibong farmed and lived there because of relationships between the two families. Thus, even accepting all of Pedro's evidence as true, there is ample evidence to support a finding that Tiakl's father owned the land, and we find no merit in the assertion that the Land Court erred in so finding.[3]

⊥224 C. Statute of Limitations

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[2] Even if we could infer an appeal of a determination based on an appeal from a different determination, we find no basis for doing so here. Pedro's Notice of Appeal contends that the Land Court erred in holding that "Tiakl owns a portion of the lot . . . described as Lot No. 016-N-09(a)," and nothing in that Notice of Appeal can be construed as contesting the Determination as to Lot 016-N-09(b).

[3] Because there is no indication that the Land Court made any credibility determinations, we need not address the scope of a court's discretion to decide credibility issues based on a record of proceedings that the trier of fact did not attend.

Pedro contends that even if Lukisang owned the land, the Land Court erred in failing to dismiss Tiakl's claim as untimely under 14 PNC section 402, which provides that actions for the recovery of land must be commenced within twenty years of when a claim accrues. According to Pedro, because Ngirasibong's use of the land was sufficiently "open and hostile" to trigger the accrual of Tiakl's claim, the limitations period began to run on May 28, 1951, the effective date of the limitations statute, making Tiakl's claim untimely when it was filed in 1988.

We disagree. To trigger the running of the limitations period, a party's possession of the land must be, *inter alia,* hostile or adverse and under a claim of right or title. *See Rebluud v. Fumio*, 5 ROP Intrm. 55, 56 (1995). There is virtually no evidence that Ngirasibong's farming and living on the land was hostile or adverse to Tiakl's interest therein or was under a claim of right or title, particularly where Tiakl testified that she consented to this use of her land due to relationships between the two families. Ngirasibong did not disclose his pledging the land as collateral to Tiakl, her trustee, or others outside his family. Thus this act, which is the only act indicative of ownership rather than mere use, is not sufficiently adverse to Tiakl's claim of ownership to trigger accrual thereof. [4] The Land Court therefore could properly find that Ngirasibong's use of the land did not trigger the accrual of Tiakl's claim and that Tiakl's claim was not time-barred.

D. The Custom of *Ulsiungel*

Pedro next contends that the Land Court erred in finding that Lukisang acquired the land through the custom of *ulsiungel*, because *ulsiungel* is "a gift of land for services performed by the donee for the donor when the donor was ill or infirm," *Maidesil v. Remengesau*, 6 TTR 453, 456 (1974), and there was no evidence that Melobchelild was ill or infirm when he received the support from Lukisang. *Maidesil,* however, did not hold that illness or infirmity was an essential element of the custom of *ulsiungel.* Rather, the *Maidesil* court had no occasion to consider that issue because the donor in that case lacked any authority to convey the land as *ulsiungel* or otherwise. *See id.*[5] We need not decide here whether the custom of *ulsiungel* requires a showing of illness or infirmity, because undisputed evidence indicated that Melobchelild gave Lukisang the land for Tiakl's benefit out of gratitude for Lukisang's services. While the concept of *ulsiungel* explains the motivation behind this conveyance, the motivation is ultimately immaterial, as landowners may convey their land regardless of their reasons for doing so. [6] ⊥225 Thus, this is not a case where the transaction may be given effect only if it strictly complied with

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[4] Absent evidence that another party asserted some claim of ownership, we do not agree with Pedro that Tiakl was "sleep[ing] on her rights." *Techemding Clan v. Mariur*, 3 ROP Intrm. 116, 120 (1992).

[5] This Court has similarly alluded to *ulsiungel* without considering its precise content. *See In re Dengokl,* 6 ROP Intrm. 142, 144 (1997) (noting that *ulsiungel* "has been described" as a gift of land for services rendered while the donor was ill or infirm); *Umedib v. Smau,* 4 ROP Intrm. 257, 257 (1994) (defining *ulsiungel* as "payment for services rendered").

[6] Contrary to Pedro's assertion that there was no proof of Melobchelild's authority to convey the land, there is evidence that Melobchelild acquired the land from Beouch, who acquired it from the Airai community.

the requirements of customary law. Because the evidence that Melobchelild transferred the land to Lukisang out of gratitude supports a finding that Lukisang acquired the land, we need not decide whether this transfer occurred in accordance with the custom of *ulsiungel.*

E. Ownership by a Japanese National

Pedro contends that Tiakl could not have properly acquired the land from Lukisang because Lukisang, as a Japanese national, was prohibited from owning property under a regulation which, according to Pedro, provided that, "[p]ersons other than government agents are prohibited from entering into contracts with natives with a view to the sale, purchase, conveyance or mortgage of land, except with the sanction of the Governor of the Nanyo Cho." However, the record established that Lukisang acquired the land as an expression of gratitude rather than through a bargained-for exchange that could be characterized as a contract, [7] and the regulation, as presented by Pedro, did not proscribe non-contractual conveyances. [8] Moreover, Melobchelild conveyed the land to Lukisang not for Lukisang's own benefit, but rather on behalf of Tiakl because her father otherwise would have had no land to give her. Because the conveyance to Lukisang did not occur pursuant to a contract and was in essence a conveyance to Tiakl, a Palauan citizen, rather than to her Japanese father, we reject Pedro's assertion that the conveyance was invalid. [9] We thus find no error in the Land Court's determination awarding the land to Tiakl.

Conclusion

For the foregoing reasons, we VACATE the Land Court's June 2, 1999 Determination insofar as it pertains to Lot 016-N-09(b), and reinstate the Land Claims Hearing Office's June 27, 1990 Determination awarding Lot 016-N-09(b) to Appellant Pedro. We AFFIRM the Land Court's June 2, 1999 Determination insofar as it awarded the remainder of the original Lot 016-N-09 to Appellee Tiakl.

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[7] *See Restatement (Second) of Contracts* § 17 (stating that contract formation requires "a manifestation of mutual assent to the exchange and a consideration"); *id.* § 71 ("[t]o constitute consideration, a performance must be bargained for").

[8] In citing the version of the regulation that Pedro presented in these proceedings, *see* Br. App. A, we do not purport to accept that version as a definitive statement of the governing law under the Japanese administration. We hold only that the evidence regarding the conveyance failed to establish a violation of the language that Pedro herself invokes.

[9] Pedro cites *Ngeskesuk v. Solang*, 6 TTR 505, 510-511 (Tr. Div. Palau Dist. 1974), which noted that a Japanese man who "purchased" property registered it in his son's name, and "assumed that this was done because of the . . . prohibition against individual Japanese nationals acquiring . . . land." This case is distinguishable because Lukisang did not purchase the land for himself, but rather received it, as an expression of gratitude, on behalf of his daughter.