

Tengadik v. Bitlaol, 9 ROP 120 (2002)
HIDEO TENGADIK,
Appellant,

v.

IDIP BITLAOL and
MARCELLA BITLAOL,
Appellees.

CIVIL APPEAL NO. 01-41
LC/E 01-353 & 01-354

Supreme Court, Appellate Division
Republic of Palau

Argued: May 1, 2002

Decided: June 5, 2002

[1] **Appeal and Error:** Clear Error; Standard of Review

Land Court findings of fact are reviewed for clear error.

[2] **Appeal and Error:** Standard of Review

A lower court's conclusions of law are reviewed *de novo*.

[3] **Appeal and Error:** Standing on Appeal

Where claimant fails to identify the lineage that he believes should be the decision maker pursuant to 25 PNC § 301(b), he lacks standing to raise the argument that the intent of the wrong lineage was considered by the lower court.

[4] **Land Commission/LCHO/Land Court:** Claimants

The Land Court can, and must, choose among claimants who appear before it and cannot choose someone who did not, even though his or her claim might be theoretically more sound.

Counsel for Appellant: Yukiwo Dengokl

Counsel for Appellees: Clara Kalscheur

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

Appeal from the Land Court, the Honorable GRACE YANO, Part-Time Judge, presiding.

MILLER, Justice:

Hideo Tengadik appeals the Land Court's decision after remand awarding four properties in Ngaraard State to Appellees. For the reasons stated below, we affirm.

BACKGROUND

This is the second time this land dispute has come before the Appellate Division of this Court. In *Tengadik v. Bitlaol*, 8 ROP Intrm. 204 (2000) ("*Tengadik I*"), the Appellate Court rejected Appellant's challenge to the Land Court's factual findings but remanded this case to the Land Court on the ground that the Land Court's failure to detail the legal analysis underpinning its award of the disputed property to Appellees rendered its decision unreviewable. *Id.* at 205-06. The background facts of this case are amply recited in *Tengadik I*, 8 ROP Intrm. at 204, but, to summarize briefly, this dispute centers on the ownership of several lots in Ngaraard that belonged to decedent Bitlaol before his death. Specifically, those lots are listed in the Tochi Daicho as Lot Nos. 1396, **1121** 1397, 1398, and 1417.¹ In both its decision underpinning *Tengadik I* and its second decision following remand, the Land Court awarded these lots ("the disputed properties") to Appellees, two adopted children of decedent. In the decision at issue in this case, the Land Court concluded as a matter of fact that Irrung Clan was actively and primarily responsible for decedent prior to his death and that the Clan wanted the disputed properties to go to Appellees. This appeal followed.

DISCUSSION

[1-3] Land Court findings of fact are reviewed under a clearly erroneous standard. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). A lower court's conclusions of law are reviewed *de novo*. See *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Appellant asserts that the Land Court erred as a matter of law when it looked to the wishes of decedent's clan rather than to the relevant lineage, as required by the plain text of 25 PNC § 301(b) (the property of an intestate decedent who did not acquire the land as a *bona fide* purchaser "shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the decedent was related . . .") (emphasis added). This Court has never taken a position on the issue of whether a clan as opposed to a lineage can be entitled to dispose of an intestate decedent's property under that section. But, while this is an interesting question, Appellant lacks standing to argue it in this case. As this Court explained in *Tarkong v. Mesebeluu*:

[T]he lineage's failure to act leaves [Appellant] without standing to raise [the argument that the intent of the wrong lineage was considered by the lower court]. It would be one thing if the paternal lineage had met and decided that [Appellant] should receive the land. It is quite another where there has been no meeting and there is no way of knowing how the lineage would choose to dispose of the land. We do not believe that a party has standing to raise an argument where, even if the

¹Lot Nos. 1316 and 1446 were originally at issue in this case as well, but the Land Court awarded them to other parties, and no appeal was taken from that decision. See *Tengadik I*, 8 ROP Intrm. at 204 n.1.

Tengadik v. Bitlaol, 9 ROP 120 (2002)

argument were successful, it is entirely speculative that she would succeed in her claim.

7 ROP Intrm. 85, 87 (1998). Appellant's argument here founders on these shoals. He has failed to identify the lineage that should be the decision-maker. Indeed, he himself argued below and on appeal that the wishes of the elders of Irrung Clan should be dispositive in this case, at least insofar as they correspond with his argument that a purported deed of transfer signed by two of those elders manifests an intent to assign decedent's properties to him. He has also adduced no evidence that *any* lineage has acted in relation to the disputed properties, let alone any evidence that this mystery lineage would support his claim. Thus, as in *Tarkong*, it remains "entirely speculative" whether Appellant would prevail even if the intent of an entity other than Irrung Clan were determined to be controlling.

[4] Moreover, even assuming *arguendo* that a lineage could assert a superior claim to Irrung Clan's, no such claim has been made in this case. As this Court has held, "[t]he Land **1122** Court can, and must, choose among claimants who appear before it and cannot choose someone who did not, even though his or her claim might be theoretically more sound." *Ngirumerang v. Tellames*, 8 ROP Intrm. 230, 231 (2000). This is exactly what the Land Court correctly did in this case. Consequently, Appellant's argument cannot succeed.²

Appellant also contends that there is insufficient evidence in the record to support the Land Court's decision that the wishes of the clan were in fact for Appellees to accede to ownership of the disputed properties. We disagree. As the Land Court noted, the current chief of Irrung Clan, Isaac Soaladaob, appeared at the hearing and testified in favor of Appellees' claims. The only contrary evidence of intent presented by Appellant was the purported deed of transfer, and the record manifestly supports the Land Court's decision to reject that document as unreliable. As the Land Court correctly noted, in a finding sustained on appeal in *Tengadik I*, the two signatories to that document cannot by themselves alienate clan land. Furthermore, one of those signatories filed an affidavit with the Land Court indicating that she believed that the document actually transferred the properties to Appellees rather than Appellant, significantly undercutting the reliability of the purported deed. Of equal significance are the document's internal inconsistencies, especially the fact that the purported deed lists *all* of decedent's properties while Appellant's own witness conceded that at least three of those properties had actually been given to other people. On this record, the Land Court's decision is decidedly not clearly erroneous, and reversal is unwarranted.

CONCLUSION

For the foregoing reasons, the Land Court's Determination of April 30, 2001 is AFFIRMED.

²In any event, we are doubtful of the proposition that, in the absence of a claim by any particular lineage, a clan cannot effectuate its wishes pursuant to § 301(b).