

Iyar v. Becheserrak, 9 ROP 154 (2002)
OBODEI IYAR, SKEBONG ILAPISIS, and EICHI DELMEL,
Appellants,

v.

**ANA BECHESERRAK, HESUS BELIBEI, HERMAN NOBUO BELIBEI, ELEU
LINEAGE, KIKLANG SBAL, EICHI DELMEL, ALBERTANG RENGIL, MAX ALIK,
MASAE TANAKA, and BENGED RIUMD,**
Appellees.

CIVIL APPEAL NO. 99-26
LC/N 04-98

Supreme Court, Appellate Division
Republic of Palau

Decided: July 17, 2002

[1] **Civil Procedure:** Relief from Judgment; **Evidence:** Exclusion; **Judgments:** Relief from Judgment

The Land Court's exclusion of exhibits was cured by its subsequent decision to admit them in response to a post-hearing motion for reconsideration.

[2] **Appeal and Error:** Standard of Review; **Evidence:** Exclusion

To prevail on appeal on the grounds that evidence was improperly excluded, it must be shown that the decision to exclude caused substantial prejudice.

[3] **Civil Procedure:** Presumptions; **Deeds;** **Evidence:** Clear and Convincing

Clear and convincing evidence is required to overcome the presumption that a duly recorded deed is presumed delivered.

¶155

[4] **Evidence:** Standard of Proof

The standard for determining whether a piece of evidence is in fact what its proponent claims it to be is preponderance of the evidence.

Counsel for Iyar: Kevin Kirk

Counsel for Ilapsis: Carlos Salii

Counsel for Delmel: J. Roman Bedor, T.C.

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Counsel for Becheserrak: Pro Se

Counsel for Hesus Belibei: Clara Kalscheur

Counsel for Herman Belibei: Pro Se

Counsel for Eleu Lineage: Pro Se

Counsel for Rengiil: Ernestine Rengiil

Counsel for Sbal and Alik: Oldiais Ngiraikelau

Counsel for Tanaka: Pro Se

Counsel for Riumd: Pro Se

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

Appeal from the Land Court, the Honorable FRANCISCO KEPTOT, Associate Judge, the Honorable ICHIRO DINGILIUS, Associate Judge, and the Honorable GRACE YANO, Part-Time Judge, presiding.¹

PER CURIAM:

Except for the fact that a scorecard is necessary to keep track of the various parties, this appeal is not a particularly complicated one. It stems from a unanimous decision by a three-judge panel of the Land Court adjudicating competing ownership claims to 26 parcels of a large property in Airai State commonly known as “Ochelochel.” The gravamen of each party’s claim is cogently set out in the Land Court’s impressively organized decision and a detailed recapitulation of those claims is unnecessary here.

We have three different Appellants before us, Obodei Iyar, Skebong Ilapsis, and the Estate of Eichi Delmel.² Because of the fractured nature of this proceeding, each Appellant brings in train several different Appellees. Insofar as it is necessary, we will identify these individuals in connection with our consideration of each Appellant’s arguments.

I. The Claims of Obodei Iyar

Obodei Iyar asserted claims to 16 of the 26 parcels comprising Ochelochel. The Land

¹Land Court Judge Dingilius did not sign the decision as he resigned from the Land Court shortly before it was entered. He did, however, participate in deliberations concerning this case and concurred with the panel’s unanimous result.

²Eichi Delmel died after filing his timely notice of appeal. His estate continues to pursue this matter. For convenience, we shall refer to this Appellant as “Eichi.”

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Court rejected all of these claims as not credible, and Iyar appeals 11 of those 16 adverse determinations, specifically Determination of Ownership Nos. 07-154, 07-158, 07-159, 07-160, 07-161, 07-162, 07-163, 07-164, 07-166, 07-167, and 07-172. As **¶156** grounds for error in each case, Iyar contends that the Land Court's decision to exclude six proffered exhibits (written statements in support of Iyar's theory of ownership from various people, all but one of whom was deceased at the time of the hearing) contravened the Land Court Rules of Procedure, and that he was sufficiently prejudiced thereby so as to warrant reversal. This line of argument is not well taken.

[1] In the first place, whatever error might have arisen from the Land Court's initial decision to exclude the exhibits was cured by the Land Court's subsequent decision, apparently in response to Iyar's post-hearing motion for reconsideration, to admit them and to consider them as part of the record as it made its determinations. Indeed, the Land Court specifically discussed and rejected these exhibits in its written Determination, finding (at the conclusion of a lengthy discussion about why Iyar's other testimony and evidence were not at all credible) that they were not reliable because they had all been prepared by Iyar himself after he had spoken with the six elderly witnesses, none of whom signed the documents under oath. Determination at 21.

[2] Moreover, to prevail on appeal, Iyar must demonstrate that the Land Court's initial decision to exclude somehow caused him substantial prejudice. *See Fanna Mun. Gov't v. Sonsorol State Gov't*, 8 ROP Intrm. 9 (1999).³ He has singularly failed to do so. Iyar contends that irrespective of the exhibits' eventual admission, he was prejudiced by being prevented from explaining why the Land Court should credit the statements contained in those exhibits, leaving those statements to stand unadorned and without context before the Land Court. But, as Appellees Hesus and Herman Belibe and Albertang Rengiil correctly note in their response briefs, the record plainly reveals that Iyar had an opportunity to explain what these exhibits were. *See Iyar T.R. vol. III at 643-53*. He could have afforded himself a further opportunity to do so had he made an offer of proof, which he neglected to do. Furthermore, contrary to Iyar's claim that the Land Court simply glanced at these exhibits as an afterthought, the Land Court exhaustively analyzed all six of the initially excluded exhibits and found them to be manifestly not credible. Given all of the evidence against him, it cannot be said that Appellant Iyar was prejudiced by the timing of the admission of his proffered exhibits. *See S. Pac. Transp. Co. v. Chabert*, 973 F.2d 441, 448 (5th Cir. 1992). The Determinations in question here are therefore affirmed.

II. The Claims of Skebong Ilapsis⁴

Ilapsis, on behalf of Ngetkib Hamlet, challenges the Land Court's award of four of the parcels comprising a subunit of Ochelochel known as Isuis. Specifically, Ilapsis takes issue with Determination of Ownership Nos. 07-153, 07-154, 07-156 and 07-168. These Determinations

³Although *Fanna* invokes ROP Rule of Evidence 103, and the Land Court has its own set of evidentiary rules, we see no logical reason to invent a different standard of review for appeals challenging Land Court – as opposed to Trial Division – evidentiary decisions.

⁴On his own motion, Justice Michelsen chooses to recuse himself from consideration of Appellant Ilapsis's claims because of an attenuated family relationship between the Justice and Appellee Max Alik.

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each awarded the lot in question to Ana Becheserrak who is *pro se* and who has not filed a response brief. **L157** In support of his claims, Ilapsis contends that the Land Court committed clear error in rejecting his tracing of Ngetkib Village's ownership of the disputed properties back to an historic point in time when the village set aside the parcels as an offering to a demigod called Obakelsehall in gratitude for the deity's assistance in helping the village win a battle. Ilapsis claims that the Land Court erred by focusing on the demigod and treating the story as a fairy tale rather than focusing on the fact that, irrespective of whether anyone believes in the demigod (then or now), the story serves to situate the village's claim of ownership at a particular time.

Ilapsis's argument, however, misstates the basis for the Land Court's decision. The Land Court specifically found that even if Ilapsis's version of events were accurate, "long and exclusive use of the land by others defeats the hamlet's claim of ownership." Determination at 21. Moreover, the Land Court found that Ana Becheserrak's claims to the parcels were amply supported by the record, in the form of litigation engaged in by her predecessor in interest in 1955; a transfer of the land from the predecessor to her; and her lengthy, continuous and ongoing use of the parcels. On this record, it cannot be said that the Land Court's decision was clearly erroneous, and the Determinations attacked by Ilapsis should be affirmed.

III. The Claims of Eichi Delmel

Although it is not entirely clear from the face of his brief, it appears that Eichi contests Determination of Ownership Nos. 166-11162 and 166-11165, which the Land Court awarded jointly to Eichi, his aunt Benged Riumd, Masae Tanaka, the daughter of Eichi's adoptive father Mobil Delmel, and Patrick Delmel (Mobil and Benged's brother). In support of his claim below, Eichi introduced an un-notarized document purporting to be a quitclaim deed executed in 1992, which ostensibly transferred Mobil's, Benged's and Patrick's interests in Ochelochel to Eichi. Testimony at the hearing cast significant doubt on the veracity of the purported deed and the Land Court ultimately found that it was invalid, as Mobil Delmel did not sign it, and did not otherwise consent to the transfer of his interest.⁵ Consequently, it held that Eichi, Benged, Patrick and Mobil remained the joint owners of the property and that Tanaka had acceded to Mobil's interest upon Mobil's death.

[3, 4] On appeal, Eichi contends that the Land Court erroneously rejected the quitclaim deed on the ground that the evidence did not support the conclusion that Mobil had not signed it. Eichi also asserts that the Land Court could only reject the deed if there was clear and convincing evidence to do so, as the deed was duly recorded and is therefore entitled to a presumption of validity. But Eichi conflates the standard for overcoming a presumption that a duly recorded deed was properly *delivered*, which is indeed a clear and convincing evidence test, *see, e.g., Ueki v. Alik*, 5 ROP Intrm. 74, 77 (1995), with that for determining whether a piece of evidence is in

⁵The Land Court's ruling on this point recites that Mobil died in 1998. This statement is an accurate one, as the death certificate on file in the clerk of courts office indicates that he died on February 13 of that year, and is a further indication of the thoroughness and accuracy of the Land Court's decision, because testimony at the hearing suggested that Mobil died in 1994. Eichi's effort to use this testimony to argue that the Land Court was mistaken and that its decision as a whole is suspect is thus quite unavailing.

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fact what its proponent claims it to be, which is simply a preponderance test. It is the latter issue that is present in this case. Essentially, **¶158** therefore, Eichi's argument boils down to a claim that the Land Court's Determination was predicated on an incorrect factual finding. After reviewing the entire record, the Court is satisfied that the Land Court was not clearly erroneous. Reversal is therefore unwarranted.

CONCLUSION

For the foregoing reasons, the Land Court's Determinations are **AFFIRMED** in their entirety.