COURT'S OPINION

PER CURIAM:

On March 4, 2011, appellant Mary Berman timely filed her petition for rehearing. She seeks our review of what she contends are three errors in our February 18, 2011 Opinion.

Two of Berman's alleged errors are points of law. After careful review, we determine that we neither overlooked nor misapprehended any relevant law and we further note that, although termed "disingenuous" by Berman, these are points that only her husband, not Berman, would have had standing to raise.

The third error, which Berman asks us to correct, is a factual finding. We made no findings of fact. The fact she objects to is our statement that "Sergeant Iriarte, who after his arrival was the officer in charge, arrested Berman for obstruction of justice and for pushing Iriarte in the chest." Berman v. Pohnpei, 17 FSM Intrm. 360, 369 (App. 2011). These were the facts found by the trial court: "Berman was arrested by Sergeant Iriarte for obstruction of justice and for pushing Iriarte in the chest." Berman v. Pohnpei, 16 FSM Intrm. 567, 571 (Pon. 2009). They remained the facts on appeal as the events that occurred that led to Berman's arrest. We did not overlook that the Pohnpei police station's booking sheet differs from those facts in some respects as to the charges for which she was booked. That, however, would have no effect on this appeal's outcome. Rehearing will be denied when, even if the court had misapprehended a certain fact, the result in the case would not change. Goya v. Ramp, 14 FSM Intrm. 305, 307 (App. 2006).

Accordingly, since we neither overlooked nor misapprehended any material points of law or fact, we summarily deny Berman's petition for rehearing. Nena v. Kosrae (II), 6 FSM Intrm. 437, 438 (App. 1994). The mandate will issue in seven days. FSM App. R. 41.

* * * *

FSM SUPREME COURT APPELLATE DIVISION

MARIKO SETIK and ORAN SETIK,	)	APPEAL CASE NO. C6-2008
	)	
Appellants,	)	
	)	
vs.	)	
	)	
HERSIN RUBEN and MORIA RUBEN,	)	
	)	
Appellees.	)	
	)	

OPINION

Argued: January 11, 2011
Decided: March 25, 2011

BEFORE:

Hon. Martin G. Yinug, Acting Chief Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCES:

For the Appellants: Salomon Saimon, Esq.
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For the Appellees: Stephen V. Finnen, Esq.
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* * * *

HEADNOTES

Appellate Review – Standard of Review – Civil Cases

The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. If, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Setik v. Ruben, 17 FSM Intrm. 465, 471 (App. 2011).

Appellate Review – Standard of Review – Civil Cases

Conclusions of law will be reviewed de novo. Setik v. Ruben, 17 FSM Intrm. 465, 471 (App. 2011).

Appellate Review – Standard of Review – Civil Cases

When the appellants have submitted the trial transcript, as well as a translation, that includes numerous references by multiple witnesses to the alleged customary gift to the appellants, the appellate court, upon reviewing all the evidence in the record, including the translated transcript, is left with the definite and firm conviction that a mistake has been made, and therefore concludes that the trial court was clearly erroneous in finding that there was "no material evidence" of the customary gift. Setik v. Ruben, 17 FSM Intrm. 465, 471-72 (App. 2011).

Property – Registered Land

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral, but in some situations, a customary oral transfer must be registered to be enforceable. The reason is not that the Torrens land registration system must supplant custom and tradition. Rather, the reason is one of evidence because certificates of title are prima facie evidence of ownership as stated therein against the world. Setik v. Ruben, 17 FSM Intrm. 465, 472 (App. 2011).

Property – Registered Land

Land Commission determinations of ownership are meant to dispose of all competing claims to

land. When a customary oral transfer has been confirmed in a writing, that writing constitutes tangible prima facie evidence of the claim, which preserves the claim, and as such assists any tribunal, including the Land Commission, before which the claim is raised. Setik v. Ruben, 17 FSM Intrm. 465, 472 (App. 2011).

Property – Registered Land

A determination of ownership is presumed valid and cannot be set aside unless a challenger proves by a preponderance of the evidence that there has been fraud in the registration process. Setik v. Ruben, 17 FSM Intrm. 465, 472 (App. 2011).

Property – Registered Land

Chuuk has retained Title 67 of the Trust Territory Code, governing land registration, which is based on the Torrens system. Setik v. Ruben, 17 FSM Intrm. 465, 473 (App. 2011).

Constitutional Law – Due Process – Notice and Hearing; Property – Land Commission or Land Court

Before a land registration team commences hearing with respect to any claim, the Land Commission must provide notice at least thirty (30) days in advance. Specific notice must be served upon all parties shown by the preliminary inquiry to be interested. Setik v. Ruben, 17 FSM Intrm. 465, 473 (App. 2011).

Constitutional Law – Due Process – Notice and Hearing; Property – Land Commission or Land Court

In failing to make a reasonable inquiry as to the Setiks' occupation of the land, in failing to provide notice to the Setiks of the determination of ownership hearing, and in issuing the determination of ownership to another without an application by her, the Land Commission deprived the Setiks of due process. The determination of ownership was thus not valid, and the matter must be remanded to the Land Commission for a new determination. Setik v. Ruben, 17 FSM Intrm. 465, 474 (App. 2011).

Property

In Chuuk, lineage land cannot be transferred, distributed, or sold by an individual member of the lineage without the consent of all adult members of that lineage. Setik v. Ruben, 17 FSM Intrm. 465, 474 (App. 2011).

Property – Registered Land

The purpose and benefit of the lengthy procedure and notice requirements needed to register land is that a certificate of title, once issued, is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and shall be prima facie evidence of ownership as therein stated against the world. Setik v. Ruben, 17 FSM Intrm. 465, 475 (App. 2011).

Property

The bona fide purchaser rule is a rule of property law, and as such is a question of state law. Setik v. Ruben, 17 FSM Intrm. 465, 475 (App. 2011).

Contracts; Property

Good faith is an objective standard. Setik v. Ruben, 17 FSM Intrm. 465, 475 (App. 2011).

Property; Property – Registered Land

The bona fide purchaser rule does not apply when the land was lineage land which the seller had no authority to convey since the courts have historically been wary of applying the rule where the purported seller has no authority to sell, and when the Land Commission's determination of ownership was invalid for lack of notice to the occupants since a certificate of title must be based on a valid determination of ownership. Setik v. Ruben, 17 FSM Intrm. 465, 476 (App. 2011).

Property – Registered Land

Since a certificate of title must be based on a valid determination of ownership, the invalidity of a determination of ownership means that the subsequent certificate of title is likewise invalid and thus cannot be conclusive against the world. Setik v. Ruben, 17 FSM Intrm. 465, 476 (App. 2011).

Property – Adverse Possession

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously, and under claim of right, and the owner does not challenge such action until after the statute of limitations has run. Setik v. Ruben, 17 FSM Intrm. 465, 476 (App. 2011).

Property – Adverse Possession

For an adverse possession claim, the occupation must be without permission, open, notorious, and exclusive. Thus when the occupation of the land was permissive and non-hostile, the occupants have not adversely possessed the land. Setik v. Ruben, 17 FSM Intrm. 465, 476-77 (App. 2011).

* * * *

COURT'S OPINION

MARTIN G. YINUG, Acting Chief Justice:

This is an appeal from the Chuuk State Supreme Court ("CSSC") Appellate Division's opinion entered October 2, 2008, published as Setik v. Ruben, 16 FSM Intrm. 158 (Chk. S. Ct. App. 2008). Specifically, appellants Mariko and Oran Setik ("the Setiks") contest the appellate court's affirmation of the trial court's confirmation of a Land Commission issuance of a certificate of title to appellees Hersin and Moria Ruben ("the Rubens") for Lot No. 6197 ("the Lot"), part of land known as Namwosepi. For the reasons below, we reverse the CSSC Appellate Division and remand this matter for further hearings consistent with state and national law including this opinion.

I. Posture of the Case and Background

The appellate court frames the procedural history thus:

> The Chuuk State Supreme Court trial division judgment was entered on October 28, 2003. At issue was the validity of a land transfer from Martina Asan and members of her lineage to the appellees, Hersin and Moria Ruben.
>
> The property was registered with the Land Commission on August 7, 1989 when a determination of ownership was issued naming Martina Asan and members of her lineage as owners. Record on Appeal at 22. On April 8, 1999, appellees executed a sale agreement with Martina Asan and members of her lineage for the purchase of the property. On November 22, 2000, the Land Commission issued a certificate of title to appellees based on the August 7, 1989 determination of ownership and the April 8, 1999 sale agreement.
>
> On May 1, 2001, appellees filed their complaint for trespass against appellants, Mariko and Oran Setik, who were occupying the land at the time of its sale to appellees. On May 28, 2001, appellants answered and counterclaimed. Appellants contended that the land had been registered by Mauris and Pikiso Bossy in 1971 and, in 1973, the Bossys transferred an enduring, customary right to occupy the land through the custom

> referred to as "Niwinin Kilisou," and that they had otherwise gained a legal interest in the property through adverse possession by their continuous occupation of the land since 1973. The matter went to trial and, on October 29, 2003, judgment was entered in favor of appellees. The trial court found that appellants had a mere use right in the property under permission first from the Bossys and then from Martina Asan, which was extinguished when Martina Asan and her lineage members sold the property to appellees. The trial court noted that appellants did not offer any evidence to support their contention of a customary right in the property.

16 FSM Intrm. at 162.

The basis of the Setiks' claim to Namwosepi arises from an act of great generosity more than sixty years ago. During the Second World War, Mauris or Rappua Bossy ("Mauris") and his brother Pikiso were forced laborers aboard a Japanese Imperial Navy vessel which visited Lekinioch. The vessel was disabled, and the Japanese did not allow the Bossy brothers a share of food or water from the vessel. Mariko Setik's father, Meio Luk, discovered them while bringing provisions to the vessel, and brought them back to Lekinioch, where the family took care of them until the vessel was repaired almost half a year later. In return for this act of kindness, Pikiso Bossy ("Pikiso") promised that when the Luks reached Weno, he would show them his appreciation, and that he would tell his relatives about the act of kindness. After the Bossy brothers reached Weno, the oldest of their sisters, Filong Bossy ("Filong"), went to Lekinioch with her daughter in 1955 to visit the Luks, and confirmed that the Bossys would show appreciation when the Luks reached Weno. The other sister is Nukun Bossy, who is the mother of Martina Asan ("Martina"). The birth order of the Bossys is as follows: Mauris, Filong, Nukun and Pikiso. Filong has at least one child, a daughter named Inar, who herself has a son named Santus or Santos ("Santos"). Martina has a son named Elieisar. Pikiso has three children: Kachie, a daughter; Lino or Nino ("Nino"), a son; and Lamper, a son.

In 1959, Mariko, her husband and her mother Simiko Luk reached Weno, and stayed with Mariko's uncle. Pikiso Bossy discovered them there, and told Mariko to tell her husband that they could go and build the house on the Lot. The Setiks settled on the Lot in 1973. That year, Martina Asan, who conveyed the Lot to the Rubens, told Mariko to register the Lot. However, the Setiks did not have money, and they needed $200.00 for the Land Commission to conduct a survey, which completes the registration process, so the Setiks did not even bother to start the process. Nevertheless, they developed the Lot, turning it from a muddy swamp supporting nothing but taro into a piece of land that sustains a large family house, a cooking house, and a small taro patch, with room enough yet to bury Simiko Luk when she passed away.

On August 7, 1989, the Land Commission issued its determination that Martina Asan was the owner of Namwosepi. The Setiks had no knowledge of this determination. The Land Commission's files contain no application by Martina Asan for the determination—the only application in the files is one by Pikiso Bossy in the name of Pikiso and Filong Bossy dated November 22, 1971.

In 1999, Martina entered into an agreement with the Rubens to sell the Lot. The Rubens hesitated at first, because they were aware that the Setiks resided on the Lot. However, Martina assured the Rubens that the Setiks were on the Lot solely by her permission and at her discretion. Martina showed the Rubens the 1989 determination of ownership, which did not show any competing claim by the Setiks. The Rubens took that as evidence that the Setiks had no valid claim to the Lot, and agreed to purchase the Lot. The Rubens asked the Setiks to move out in 2001. The Setiks then asserted their right over the Lot by the customary transfer, and also offered Martina $10,000.00—which they understood was the purchase price to convey to the Rubens, in the apparent hope that this would be sufficient to reinforce their claim to the Lot. Martina never conveyed the money to the Rubens.

The remainder of the procedural history is substantially as the CSSC described, *supra*. For this appeal, the Setiks submitted as part of the appendix to their brief the trial transcript in Chuukese. One of us issued a single-justice order on December 7, 2010, requiring the Setiks to provide a certified translation, among other options, by January 4, 2011. [Setik v. Ruben, 17 FSM Intrm. 301 (App. 2010).] The Setiks served a certified translation on the Rubens on January 4, 2011, and filed that translation with the court the next morning. At oral argument, the Rubens did not challenge the translation of the trial transcript.

II. Issues Presented

Setik presents seven issues on appeal:

1. The appellate court erred in law and fact in recognizing the act of the Land Commission in allowing Martina Asan to register the land in 1989 because she was never in a position to register the land because it had already been encumbered by the custom of "Niwinin Kilisou" whereby the Bossys conveyed Namwosepi to Setik in 1973.

2. "Niwinin Kilisou" was proven by preponderance of the evidence *contra* the trial and appellate courts because, according to a 2007 case before the appellate division of the Chuuk State Court–which case was not explicitly overturned by the appellate court here–no immediate registration is necessary to establish validity of such a transfer.

3. Contrary to the findings of the lower courts, Martina Asan was not an heir for purposes of inheritance of any lands in Weno in which the Bossys had an interest because she and her mother–who is admittedly a Bossy–never had interest in land in Weno except for Satawan.

4. The lower courts committed clear error in finding that there was no customary evidence for the "Niwinin Kilisou" since established law allows customary, oral transfers of land in Chuuk.

5. The lower courts erred as a matter of law in declining to set aside the 1989 Certificate of Title to Martina Asan because any time there is a competing claim to land in Chuuk, the matter must be remanded to the Land Commission, which has primary jurisdiction.

6. The bona fide purchaser rule applied by the CSSC appellate court is a foreign rule and therefore has no place in Chuuk under equity, custom, and statute.

7. The lower courts were clearly erroneous in finding that there was no adverse possession because all the elements had been proven and because in addition the land belongs to the appellants by right of custom.

We characterize the issues differently.

1. Did the lower courts commit clear error in finding no evidence for "Niwinin Kilisou"?

2. Are customary oral transfers of land such as "Niwinin Kilisou" enforceable without registration?

3. Did the Land Commission err in its determination of ownership?

4. Did Martina Asan have other authority to sell the Lot?

5. Does the bona fide purchaser rule apply in Chuuk, and if so, were the Rubens bona fide

purchasers?

6. Does adverse possession apply in Chuuk, and if so, did the Setiks adversely possess the Lot?

III. Standards of Review

Trial court decisions concerning questions of fact will be reviewed on the clearly erroneous standard.

> The standard of review of a trial court's factual findings is whether those findings are clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. If, upon reviewing all the evidence in the record, the appellate court is left with the definite and firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court.

Pohnpei v. AHPW, Inc., 14 FSM Intrm. 1, 24 (App. 2006). Those parts that are conclusions of law will be reviewed *de novo*. Nanpei v. Kihara, 7 FSM Intrm. 319, 323-24 (App. 1995).

IV. Analysis

A. *Evidence for "Niwinin Kilisou"*

The question whether the lower courts erred in finding no evidence for "Niwinin Kilisou" is a question of fact. We note that the CSSC appellate court deferred to the trial court:

> The trial court concluded that appellants had not proven the existence of a customary right. In their appellate brief, appellants do not identify any evidence that the trial court should have considered but merely recite their belief in having obtained a customary right from the Bossys in 1973.
>
> . . . .
>
> The trial court did not find *any evidence* in support of an alleged enduring, customary right granted to appellants in 1973. This court does not find anything in the record to suggest that the trial court should have found, by a preponderance of the evidence, that appellants were granted any such right. Therefore, the trial court's finding was not clearly erroneous.

Setik v. Ruben, 16 FSM Intrm. at 163 (emphasis added).

For its part, the trial court dedicated one full sentence to its finding on "Niwinin Kilisou": "Defendants refused to vacate the premises claiming that they (defendants) are the rightful owners through the Chuukese traditional customs [sic] "Niwinin Kilisou" before the year 1973 by Mauris Bossy and Pikiso Bossy. There was *no material evidence* offered by the defendants to prove of the matter asserted." Judgment at 2, Ruben v. Setik, CSSC CA. No. 82-2001 (Oct. 29, 2003) (emphasis added).

The single-sentence finding does not support the CSSC appellate court's characterization of the trial court's findings. There is a substantial and meaningful difference between "[not] any evidence" and "no material evidence." Further, for this appeal, the Setiks submitted the trial transcript–as well as a translation–which includes numerous references, by multiple witnesses, to the alleged customary gift to the Setiks. The witnesses, other than Mariko Setik, included Nino, son of Kachie, daughter of

Pikiso; Elieisar, son of Martina; and Santos, son of Inar, daughter of Filong. The CSSC appellate court's opinion indicates that the Setiks did not provide the transcript–or perhaps a translated transcript–to that panel; therefore the CSSC appellate court did not have the opportunity to review the entire trial record.

Upon reviewing all the evidence in the record, including the translated transcript, we are left with the definite and firm conviction that a mistake has been made, and we conclude that the trial court was clearly erroneous in finding that there was "no material evidence" of the customary gift.

B. *Enforceability of Customary Oral Transfers*

The question whether customary oral transfers of land such as "Niwinin Kilisou" are enforceable is a question of law, and in this case, we consider two inquiries: (1) whether customary oral transfers may ever be enforceable; and (2) whether situations may arise where customary oral transfers must be recorded. These are questions of state law, and we defer in part to the CSSC's interpretation of state law.

The appellate court below did not address the question whether customary oral transfers may ever be enforceable. To answer this particular question, we turn to a Chuuk land case that the trial division of the FSM Supreme Court heard in 2001: "There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral." Marcus v. Truk Trading Corp., 10 FSM Intrm. 387, 389 (Chk. 2001).

We recognize that in some situations, a customary oral transfer must be registered to be enforceable. The reason is not that the Torrens land registration system must supplant custom and tradition. Rather, the reason is one of evidence. As the CSSC has noted, "[c]ertificates of title are prima facie evidence of ownership as stated therein against the world." Setik v. Ruben, 16 FSM Intrm. at 164 (citing Ruben v. Hartman, 15 FSM Intrm. 100, 113 (Chk. S. Ct. App. 2007)). Determinations of ownership before the Land Commission are meant to dispose of all competing claims to land. When a customary oral transfer has been confirmed in a writing, that writing constitutes tangible prima facie evidence of the claim, which preserves the claim, and as such assists any tribunal, including the Land Commission, before which the claim is raised. A claimant who depends on oral testimony faces the eventuality of the death of witnesses and the possible erosion of memory even before that. Thus, although a writing such as a registration of a customary transfer is not necessarily dispositive, it is more reliable evidence than oral testimony of an customary transfer. Further, written registration may be indispensable evidence in one other context. Thus, there is no deadline, as it were, for registering a customary oral transfer of land t is valid as a matter of custom; however, in order to be enforceable against competing claims, such a transfer must be registered, or otherwise raised at a determination of ownership hearing.

The CSSC has held that a determination of ownership is presumed valid and cannot be set aside unless a challenger proves by a preponderance of the evidence that there has been fraud in the registration process. Ruben v. Hartman, 15 FSM Intrm. at 113 (citing Luzama v. Ponape Enterprises Co., 7 FSM Intrm. 40, 51 (App. 1995)). *See also* Mori v. Haruo, 15 FSM Intrm. 468, 471 (Chk. S. Ct. App. 2008) (a party claiming ownership after the appeals period for the determination of ownership before the Land Court has expired has a burden to show at a minimum that that determination is incorrect). While a party may allege fraud or mistake based on any number of facts, a written registration of that party's claim is strong evidence of that fraud or mistake in the determination of ownership which that party challenges.

C. *The Land Commission's Determination of Ownership*

Although the trial court did not address the August 7, 1989 issuance of the determination of ownership by the Land Commission, and instead focused only on the certificate of title issued to the Rubens, the question of the 1989 determination of ownership did come before both the CSSC appellate court and this court. As we noted above, while it is true that a certificate of title is presumed valid against the world, a party may nevertheless challenge the determination of ownership upon which the certificate of title is based. The CSSC appellate court did not review the 1989 determination of ownership beyond stating that that determination did not identify any rights in the Setiks, and that the Setiks did not contend fraudulent registration or deprivation of rights, or "otherwise present any basis for setting aside the 1989 land registration proceedings." Setik v. Ruben, 16 FSM Intrm. at 164. In this appeal, counsel for the Setiks began his presentation-in-chief thus: "At a minimum, we're asking for notice and an opportunity to be heard at lower levels, especially at the Land Commission." Thus, we turn to procedure at the Land Commission, and questions of due process.

Chuuk has retained Title 67 of the Trust Territory Code, governing land registration, which is based on the Torrens system. Setik v. Ruben, 16 FSM Intrm. at 163 (citing Mori v. Haruo, 15 FSM Intrm. at 471). Before a land registration team commences hearing with respect to any claim, the Land Commission must provide notice at least thirty (30) days in advance. *See generally* 67 TTC 110(1). As with the rules of civil procedure, the Trust Territory Code distinguishes between general notice and specific notice, the latter of which must be served "upon all parties shown by the preliminary inquiry to be interested . . . ." 67 TTC 110(1)(c). The preliminary inquiry refers to the procedure a land registration team must follow, upon appointment, to determine claims "by individuals, families, lineages, clans, or otherwise, within the area for which [the team] is responsible . . . ." 67 TTC 107(1). Before the Land Commission can issue the certificate of title, there is a period of one hundred twenty (120) days within which an aggrieved party may appeal. 67 TTC 115.

We consider case law from Kosrae, because like Chuuk, Kosrae had retained Title 67 of the Trust Territory Code, Palik v. Henry, 7 FSM Intrm. 571, 574 (Kos. S. Ct. Tr. 1996),[1] and because Kosrae cases exist which address similar questions of due process. In Palik, the Kosrae State Land Commission failed to provide notice to at least two interested parties of not only the preliminary inquiry and the formal hearing, but also the determination of ownership process, a failure which the Kosrae State Court held to be a denial of due process. *Id.* at 576. Nor did the court give quarter to the argument that constructive notice was sufficient:

> First, the notice requirement is given as imperative, notice "*shall*" be given as follows. 67 TTC 110(1). Second, the notice requirement is conjunctive, not disjunctive. There is no word "or" between possible methods of notice. Notice must be given in each of the manners specified. *Id.*
>
> Third, 67 TTC 110 itself provides for both constructive notice – posted on land, at municipal office, and the principal meeting place – and actual notice served on interested parties. *Id.* Although 67 TTC 112 provides for notice for hearings in the disjunctive, by "actual or constructive" notice, the Court concludes that the more specific provisions of 67 TTC 110 requiring actual notice apply here. The more specific statute takes precedence over the less specific. *See* Olter v. National Election Comm'r, 3 FSM Intrm. 123, 129 (App. 1987).

[1] While Kosrae amended its land registration statutes in 2001, we consider here cases before that time.

Palik, 7 FSM Intrm. at 577.

Later Kosraean authority continues to support this line of reasoning. *See, e.g.*, Sigrah v. Kosrae State Land Comm'n, 9 FSM Intrm. 89, 93-94 (Kos. S. Ct. Tr. 1999); Nena v. Heirs of Melander, 9 FSM Intrm. 523, 525 (Kos. S. Ct. Tr. 2000).[2]

In this case, at oral argument, the Setiks noted in response to a question that none of the history which led to the "Niwinin Kilisou" was ever presented before the Land Commission, because they never had notice of the hearings which led to the determination of ownership in 1989. At trial, Mariko testified that nobody from the Land Commission contacted her as part of that process.[3] Appellants' Translated App. Ex. A at 26-27, 31. Nothing in the record contradicts this, and the Rubens did not challenge this at oral argument.

We are disturbed by other parts of the record. First, Minoru Kama, an employee of the Land Commission in the Survey section, testified that the Land Commission's file for the Lot did not contain any application by Martina for determination of ownership. Rather, the determination seems to have been based on the 1971 application filed by Pikiso and Filong. Mr. Kama's reply to the question whether the Land Commission can issue a determination of ownership to a person who has not filed an application was simple: "Cannot." Appellants' Translated App. Ex. A at 84. Second, Moria Ruben testified at trial that she at first had felt unsure about buying the land from Martina, because she was aware that the Setiks were staying on the land. Appellants' Translated App. Ex. A at 36. This suggests that a reasonable inquiry under 67 TTC 107(1) would have revealed the Setiks' claim, and that therefore the Land Commission should have given notice to the Setiks. That the Land Commission does not appear to have done so before issuing the determination of ownership in 1989 is a problem.

From our review of the record, we hold that, in failing to make a reasonable inquiry as to the Setiks' occupation of the Lot, in failing to provide notice to the Setiks of the determination of ownership hearing, and in issuing the determination of ownership without an application by Martina, the Land Commission deprived the Setiks of due process. We further hold that the 1989 determination of ownership was not valid, and instruct the trial court to remand this issue to the Land Commission for a new determination.

D. *Martina Asan's Authority to Sell the Lot*

Beyond the errors the Land Commission committed in the 1989 determination of ownership proceedings, which would have denied Martina the authority to sell the Lot, other facts would have denied her that authority. In Chuuk, "lineage land cannot be transferred, distributed or sold by an individual member of the lineage without the consent of all adult members of that lineage." Marcus v. Truk Trading Corp., 10 FSM Intrm. at 389. Two matters that undermine Martina's authority arise from trial testimony. First, several witnesses who are adult members of the Bossy lineage testified to their disapproval of the sale, including her own son, Elieisar, and Santos, son of Inar, daughter of Filong.

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[2] Substantial portions of the opinion are also published as Nena v. Heirs of Melander, 10 FSM Intrm. 362 (Kos. S. Ct. Tr. 2001). The differences between these opinions is simply the deadline for the Land Commission to complete its renewed determination of ownership.

[3] We note that Mariko may have become confused at some point between the 1989 determination of ownership hearings and the 2000 issuance of the certificate of title. During trial, when her trial counsel asked her about the survey, she responded that she was in Guam at the time, and that the Rubens "went up." (It is not clear if she meant that the Rubens went to Guam, or to the Land Commission.)

Second, trial testimony from Mariko and blood members of the Bossy clan suggests that the Setiks had effectively become part of the clan. We do not reach the question whether the Setiks were part of the Bossy clan, as this is a question of fact which a trial court would be in a better position to determine; we note only that if they were effectively part of the Bossy clan, then Martina would have required their approval as well to sell the Lot, and not just the approval of the blood members of the clan.

Nevertheless, because we also hold that the Land Commission committed error in the 1989 determination of ownership, we hold that Martina Asan had no authority to sell the Lot.

E. *The Bona Fide Purchaser Rule*

The Setiks challenge the CSSC appellate court's holding that the bona fide purchaser rule applies in Chuuk, and that the Rubens were bona fide purchasers. The Setiks contend as a matter of policy that "the social nature of Chuuk would allow just about anyone to buy questionable lands and claim sanctuary" if the bona fide purchaser rule stands in Chuuk. They point as an example to the fact that the Rubens were aware that the Setiks lived on the Lot at the time they entered into the purchase agreement with Martina.

We reject this aspect of Setiks' argument. First, although in the past Chuuk has viewed the bona fide purchaser rule with ambivalence,[4] the CSSC Appellate Division spelled out in this very matter why the bona fide purchaser rule would apply in Chuuk:

> The purpose and benefit of the lengthy procedure and notice requirements needed to register land is that a certificate of title, once issued, is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and shall be prima facie evidence of ownership as therein stated against the world.

Setik v. Ruben, 16 FSM Intrm. at 158. *Cf.* Mori v. Haruo, 15 FSM Intrm. at 472 (applying the bona fide purchaser rule to reverse the trial court's mischaracterization of the appellee-defendant as a bona fide purchaser for value without notice).

Second, the bona fide purchaser rule is a rule of property law, and as such is a question of state law. *See* Bank of Guam v. Semes, 3 FSM Intrm. 370, 382 (Pon. 1988) ("the Court should respect . . . the strong state interest in land matters"). Where the highest court of a state has promulgated or confirmed a rule of property law, and the rule does not offend the national constitution, the national court may not disturb the pronouncement by that state's highest court.

Finally, the Setiks do not appear to appreciate the meaning of "bona fide," which is Latin for "in good faith." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 140 (11th ed. 2003); BLACK'S LAW DICTIONARY 69 (pocket ed. 1996). This misappreciation is surprising because the Setiks quote BLACK'S definition for the bona fide purchaser rule.

> One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has *in good faith* paid valuable consideration for property without notice of prior adverse claims.

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[4] *See, e.g.*, Muritok v. William, 8 FSM Intrm. 574, 576 (Chk. S. Ct. Tr. 1998) (if the seller had no authority to sell property, the buyer acquired no title to the property).

BLACK'S LAW DICTIONARY 1355 (9th ed. 2009) (emphasis added). We do not presume to know whether the Setiks mean to disparage the good faith of their fellow Chuukese; however, we believe that good faith is an objective standard.

We do not believe that the bona fide purchaser rule applies in this particular case, for two reasons. First, the CSSC has historically been wary of applying the rule where the purported seller has no authority to sell. This rule was first laid out in Muritok v. William, 8 FSM Intrm. 574 (Chk. S. Ct. Tr. 1998), *see* note 4 *supra*. The CSSC appellate division revisited this rule in Mori v. Haruo, in which the court concluded that, where a lineage's claim was presented at the determination of ownership proceedings, even though it was not recorded, that claim established that the individual could not dispose of the property unilaterally. "It is not the Land Commission's function to vest, in any particular person, the authority to sell lineage land." 15 FSM Intrm. at 473. By comparison, in this matter, Martina never filed an application with the Land Commission; at best, she may have claimed to have stepped into the shoes of Pikiso and Filong Bossy, who did file an application on November 22, 1971–an interpretation which, at best, confirms that the Lot was lineage land which Martina had no authority to convey.

Second, as we pointed out in section C, *supra*, the Land Commission's 1989 determination of ownership was invalid for lack of notice to the Setiks. The sale agreement between Martina and the Rubens relies fundamentally on the validity of the certificate of title issued under the 1989 determination of ownership. Because a certificate of title must be based on a valid determination of ownership, the invalidity of the 1989 determination of ownership means that the subsequent certificate of title is likewise invalid. In other words, because a certificate of title certifies the determination of ownership, where the determination of ownership is invalid, the certificate of title certifies an invalid fact, and thus cannot be conclusive against the world.

For the above reasons, we affirm that the bona fide purchaser rule applies in Chuuk, but hold that the bona fide purchaser rule does not apply to the facts in this matter, because the seller had no authority to sell, and more importantly, because the due process violations of deprivation of notice and opportunity to be heard at the Land Commission rendered the determination of ownership invalid.

F. *Adverse Possession*

The Setiks argue that the CSSC appellate court erred as a matter of law in concluding that the Setiks have not met the elements of adverse possession. The Setiks cite a correct formulation of the rule, albeit via a different jurisdiction. "Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, and the owner does not challenge such action until after the statute of limitations has run." Etscheit v. Adams, 6 FSM Intrm. 365, 389 (Pon. 1994) (citing Iriarte v. Anton, 2 Pon. S. Ct. R. 8, 13 (Tr. 1986)).

The Setiks do not allege sufficient facts, however. They allege that they had lived on the Lot for well over 20 years when Martina made the claim. This is both factually incorrect and legally insufficient. The Setiks moved onto the Lot in 1973. The Land Commission issued the determination of ownership in 1989. To call the difference of 16 years "well over 20 years" is factually incorrect.[5] Further, even if the Setiks had occupied the Lot for "well over 20 years," the length of occupation is

[5] We note, however, that the claim of "well over 20 years" is consonant with the fact that the Setiks had no notice of the 1989 determination of ownership, and that their first inkling that Martina was making a conflicting claim was in 2000, which at 27 years removed from 1973 is indeed "well over 20 years."

legally insufficient. According to the correct rule the Setiks themselves cite, that occupation must also be without permission, open, notorious and exclusive.

The CSSC appellate court noted that the Setiks' occupation of the Lot was permissive and nonhostile. We agree. Evidence in the trial transcript indicates that, until 2000, relations between the Setiks and Martina were friendly, even familial. The same facts that undermine Martina's authority to sell the Lot to the Rubens therefore also undermine the Setiks' claim in adverse possession. Therefore, we agree with the lower court's holding that the Setiks have not adversely possessed the Lot. Nevertheless, we need not reach the question of adverse possession because of the due process violations in the determination of ownership proceedings. Thus, we decline to affirm explicitly the CSSC appellate court's holding on adverse possession.

V. Conclusion

The following are our conclusions of law:

1. We confirm that customary oral transfers are valid, but must be registered to be enforceable against competing claims.

2. We confirm that the bona fide purchaser rule applies in Chuuk.

3. We hold that the bona fide purchaser rule does not apply where the purported seller had no authority to convey, and that the rule does not apply where the determination of ownership was conducted in a way that violated the due process of the party claiming an interest against both the buyer and the seller.

4. We hold that the Land Commission failed to require Martina to file an application before beginning determination of ownership proceedings, failed to conduct a reasonable preliminary inquiry, and failed to give notice to the Setiks, and that by these failures, the Land Commission abused its discretion and violated the Setiks due process rights.

Based on these conclusions, we HEREBY REMAND this matter to the CSSC Appellate Division with instructions to remand this matter to the CSSC Trial Division, with further instructions to remand this matter to the Chuuk State Land Commission to determine ownership of Lot No. 6197, with particular instruction to give Mariko and Oran Setik the opportunity to present evidence of their claim of a customary transfer of land.

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