Sadang v. Ongesii, 10 ROP 100 (2003)
RICHARD SADANG,
Appellant,

v.

MENGIDAB ONGESII,
Appellee.

CIVIL APPEAL NO. 02-12
LC/E 00-345

Supreme Court, Appellate Division
Republic of Palau

Decided: April 22, 2003[1]

Counsel for Appellant: Salvador Remoket

Counsel for Appellee: Raynold B. Oilouch

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

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; KATHLEEN SALII, Associate Justice.

PER CURIAM:

This appeal concerns the circumstances under which the Land Court may vacate a determination of ownership it has issued. After issuing a determination in favor of Appellant Richard Sadang, the Land Court vacated that determination, considered additional evidence, and then issued a determination in favor of Appellee Mengidab Ongesii. Because we believe the Land Court did so in error, we reverse and remand with instructions to reinstate the original determination of ownership.

BACKGROUND

The property in dispute is commonly known as "Ngellitel," identified as Tochi Daicho Lot. No. 65, and registered in the Ngaraard Tochi Daicho as the individual property of Ongesii, father of Appellee ⊥101 Mengidab Ongesii. At a June 2001 Land Court hearing, Mengidab Ongesii was represented by his son, a non-lawyer named John Mengidab, while Sadang was represented by counsel. The Land Court issued a July 4, 2001 determination of ownership in favor of Sadang. Upon Ongesii's motion, the Land Court extended the time for filing a notice of appeal until August 20, 2001.

[1]The parties waived oral argument, and the Court agrees that oral argument would not materially advance the resolution of this appeal.

On August 16, Ongesii (now represented by counsel) filed a motion for reconsideration asserting that: (1) he had originally lined up witnesses to testify on his behalf on the original hearing date, which was postponed; (2) his lay representative, Mengidab, became preoccupied with other matters and forgot to prepare for the hearing at its new date and was therefore unable to procure the witnesses who had agreed to testify; (3) Mengidab had been surprised by the testimony of the witnesses on behalf of Sadang at the hearing, but he did not know he could request a continuance to procure witnesses on behalf of Ongesii; (4) the land at issue was critically important for Ongesii because he had build a house thereon; and (5) these circumstances constituted cause for vacating the decision under ROP R. Civ. P. 60(b)(1). Along with the motion, Ongesii submitted affidavits from prospective witnesses, and argued that those witnesses would have rebutted the testimony that the Land Court relied upon in making its prior findings.

The day after Ongesii filed the motion, the Land Court vacated its decision and determination of ownership, and reopened and rescheduled the hearing to allow Ongesii to present additional witnesses. Sadang moved to set aside the Land Court's order, contending that Ongesii could not obtain relief because he could not show "mistake, inadvertence, surprise, or excusable neglect" within the meaning of Rule 60(b)(1). Following a September 18, 2001 hearing, the Land Court declined to set aside its order vacating the determination of ownership. The Land Court reasoned that although there was no Land Court Rule of Procedure relating to post-determination motions, it should entertain such motions as it was acting in the capacity of a trial court. Looking "for guidance" to ROP R. Civ. P. 60(b)(1), the Land Court found that the "demeanor" of Mengidab at the original hearing demonstrated that he met the requirements for relief from judgment based upon "mistake" and "inadvertence."

The parties subsequently agreed to submit additional affidavits rather than participate in another hearing with live witnesses. After considering the new affidavits along with the evidence presented at the original hearing, the Land Court determined that Ongesii was the owner of the property. On appeal, Sadang does not challenge the merits of the Land Court's final determination, but contends instead that the Land Court erred in vacating its initial determination of ownership, either because the Land Court cannot vacate its determinations at all, because the Land Court misapplied the Rule 60(b) standard to the facts of this particular case, or because the Land Court wrongly required Sadang to overcome the Tochi Daicho presumption "twice," i.e., both at the initial hearing and again upon reconsideration.

DISCUSSION

Rule 60(b)(1) of the Palau Rules of Civil Procedure permits courts to relieve a party from a judgment based on "mistake, inadvertence, surprise, or excusable neglect." In addition to providing means for obtaining ⊥102 relief from a judgment, Rule 60(b) also expressly abolishes the common law remedies–"coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of review"–under which a party could previously obtain such relief. As the Land Court acknowledged, the Rules of Civil Procedure do not directly come into play here, because those rules apply only to proceedings before the Trial Division of the Supreme Court, the National Court, and the Court of Common Pleas. ROP R. Civ. P. 1(a). Under the Land Court's statutory scheme, there is only one remedy expressly provided for parties aggrieved by a Land Court's determination of ownership: they may appeal "directly to the Appellate Division of the Supreme Court." 35 PNC § 1312. Therefore, if the Land Court may afford a party relief from a determination of ownership, it must be through some inherent Land Court authority. We have not yet had occasion to decide whether the Land Court is endowed with such power. We also do not do so today, because we hold that the Land Court abused its discretion and exceeded whatever inherent power it might have had.

At common law, courts could afford parties relief from judgment under "a bewildering variety of writs and equitable remedies, shrouded in ancient lore and mystery." 11 Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 2851 at 225 (1995) (citation omitted). Fortunately, extended study of these esoteric remedies is unnecessary, because Rule 60(b) encompasses all of them. Under Rule 60(b), "relief is now available, either by motion or in an independent action, in any situation in which it could have been had by one of the ancient remedies." *Id.* § 2867 at 395.[2] Accordingly, we follow the Land Court's lead in looking to Rule 60(b) for guidance as to what inherent powers the Land Court might have. We conclude, however, that no relief was warranted in the circumstances presented here.

We have held that the mere failure to obtain counsel does not constitute "excusable neglect," *Gibbons v. Cushnie*, 8 ROP Intrm. 3, 4 (1999), and we cannot agree with the Land Court that the shortcomings of Ongesii's lay representative–becoming preoccupied with other matters and forgetting to prepare for the hearing, failing to anticipate the testimony of adverse witnesses or procure his own witnesses–constituted "mistake" or "inadvertence" under Rule 60(b)(1). In the appellate context, we have recently stated that "[w]e will not reverse and remand on the basis of evidence that the Appellant failed to take the opportunity to present to the lower court, noting that "[a]ny other rule would be unfair to those claimants who came to the Land Court hearing prepared." *Anastacio v. Yoshida*, 10 ROP 88, 91 (2003); *see Temael v. Ellechel*, 8 ROP Intrm. 324, 326 (2001) ("[T]he Land Court hearing is the 'main event,' where a claimant should marshal the facts in support of his or her claim as best as possible."); *cf. Arbedul v. Mokoll*, 4 ROP 189, 191 (1994) (holding that the trial court's discretion to grant trial de novo need not be exercised "merely because an appellant believes that a better case can be presented if granted a second opportunity"). We see no basis for affording parties a second ⊥103 opportunity

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[2]Rule 60(b) is derived from Federal Rule of Civil Procedure 60(b). It is therefore appropriate for this Court to look to United States authorities for guidance. *Secharmidal v. Tmekei*, 6 ROP Intrm. 83, 85 n.1 (1997).

to present their cases through motions to reconsider in the Land Court. *See, e.g.*, *Richardson v. Nat'l Rifle Ass'n*, 879 F. Supp. 1, 2 (D.D.C. 1995) ("A defeated litigant cannot set aside a judgment . . . because he failed to present on a motion for summary judgment all of the facts known to him that might have been useful to the court."); *Salter v. Hooker Chemical*, 119 F.R.D. 7, 9 (W.D.N.Y. 1988) (finding that the pro se plaintiff "failed to demonstrate the existence of exceptional circumstances sufficient to warrant the extraordinary relief provided by Rule 60(b)"); *see generally United States v. Cirami*, 563 F.2d 26, 33 (2d Cir. 1977) ("[C]ourts should not encourage the reopening of final judgments or casually permit the relitigation of litigated issues out of a friendliness to claims of unfortunate failures to put in one's best case."). We therefore conclude it was an abuse of discretion for the Land Court to vacate its original determination.

CONCLUSION

For the reasons stated above, we reverse and remand with instructions to reinstate the original determination of ownership in favor of Sadang.[3]

NGIRAKLSONG, Chief Justice, concurring:

I concur with the Majority that the original determination of ownership in favor of Sadang be reinstated. There is no legal basis, expressed or inherent, for the Land Court to give a party a second chance to present his case through a motion to reconsider. In my view, the Land Court, in this instance, does not have even a "discretion" to abuse. The Land Court acted without any legal authority.

[3]Although we obviously offer no opinion on the merits, we note that the original determination, once reinstated, may be challenged on direct appeal.