Ngatpang State v. Rebluud, 11 ROP 48 (2004)
NGATPANG STATE and
INGLAI CLAN,
Appellants,

v.

ELLABED REBLUUD,
Appellee.

CIVIL APPEAL NO. 02-037
Civil Action No. 99-38

Supreme Court, Appellate Division
Republic of Palau

Argued: November 3, 2003
Decided: January 21, 2004
⊥49
Counsel for Appellants: John K. Rechucher

Counsel for Appellee: Yukiwo P. Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

MICHELSEN, Justice:

Ngatpang State appeals the Trial Division's determination that Ellabed Rebluud is the owner in fee simple of land in Ngatpang known as Ikelbeluu, and Inglai Clan appeals the Trial Division's denial of its motion to intervene. Because we agree with the Trial Division that the Ngatpang government allowed Rebluud to claim title to Ikelbeluu without making its own claim at the pertinent time and that Inglai Clan's motion was not timely, we affirm.

BACKGROUND

In the 1950s, the people of Ngatpang agreed to have Ngatpang Municipality, predecessor to Ngatpang State, file a single claim to all of the residents' land with the understanding that Ngatpang Municipality would then redistribute the land to the original owners.[1] In 1959, Trust Territory Land Title Officer George Harris awarded the land to Ngatpang Municipality in Determination No. 126 ("D.O. 126"). More than 40 years later, Ngatpang State still retains significant portions of the D.O. 126 land, including a 542,382-square-meter parcel known as

[1]See the discussion in *Ngatpang State v. Amboi*, 7 ROP Intrm. 12, 13 (1998).

Ikelbeluu, now numbered as Lot No. 107-8145. Rebluud claims that in the early 1970s, the Ngaimis, the traditional Council of Chiefs who exercised the government powers of Ngatpang, orally conveyed Ikelbeluu to him.

The parcel is located in a relatively remote area. Rebluud spent three months clearing a path to the land through mangrove, then developed a marshy area to plant taro. Later, in 1975, the Ngaimis discussed options for returning the D.O. 126 land to private owners at a public meeting and established procedures for a homesteading program that made every adult citizen of Ngatpang eligible for a tract of at least seven chiob, or almost seven hectares.[2] Following the procedures ⊥50 described at the 1975 meeting, other members of the community began clearing their claims and planting crops, as Rebluud already had done. In January 1976, Rebluud completed a Land Acquisition form and, accompanied by members of the Land Commission, marked his boundaries in the first of several attempts to formalize his claim. The marked land was also aerial photographed, and, in 1980, Rebluud submitted his Application for Land Registration to the Land Commission.

In 1982, the Land Commission held hearings for several claimants who had marked and monumented their property as Rebluud had, but it did not schedule a hearing for Ikelbeluu. No determinations were made until after the Ngaimis sent a letter to the Land Claims Hearing Office ("LCHO") in 1989, disclaiming any interest of Ngatpang State in the D.O. 126 lands which, by definition, included Ikelbeluu. The LCHO then issued ownership determinations to the claimants for the plots at issue in the 1982 hearings, but since no hearing on Ikelbeluu had been held, the LCHO took no action on Rebluud's claim. Ngatpang State did not appeal any of the determinations. Four years later, however, it filed suit in an attempt to reassert ownership of those lands. In *Ngatpang State v. Amboi*, 7 ROP Intrm. 12 (1998), we affirmed the LCHO's findings in favor of the claimants, holding that Ngatpang State waived its right to challenge the LCHO determinations by failing to appeal. Because Rebluud's claim was not part of that litigation, the *Amboi* case did not resolve the ownership of Ikelbeluu.

Faced with continued inaction at the Land Court, Rebluud filed a quiet title suit in the Trial Division. After the court granted Rebluud's motion for summary judgment in part, finding as a matter of law that Rebluud was the owner of seven chiob, trial was held to determine ownership of the remaining portions of Ikelbeluu. On the final day of the trial, Inglai Clan filed a motion to intervene pursuant to ROP R. Civ. P. 24(a). Inglai Clan contends that its chief, the late Rekemesik Ngiratkel Etpison, filed a claim to Ikelbeluu with the LCHO in 1988, but that the claim was only discovered just before trial. The trial court denied Inglai Clan's motion to intervene. Ngatpang State appeals the Trial Division's judgment, and Inglai Clan appeals the denial of its motion to intervene.

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[2]According to the minutes from the meeting, each citizen was entitled to "at least 7 chiob." Ngatpang State claims that there was a recording error and that the Ngaimis actually decided that each citizen was eligible for "no more than 7 chiob," but offered little evidence in support of that claim. The Trial Division relied on the written record granting each citizen at least seven chiob, and, as we must review the Trial Division's factual findings for clear error, *see Irikl Clan v. Renguul* , 8 ROP Intrm. 156, 158 (2000), we find no reason to overturn that finding.

ANALYSIS

A. Jurisdiction

Ngatpang State argues that the Trial Division lacked jurisdiction because the power to adjudicate claims like Rebluud's was conferred on the State in NSPL 7-86 and NSPL 101-98, and previously was given to the LCHO by virtue of the 1989 letter. We disagree. This Court has jurisdiction over all matters in law and equity, including those involving state law. *See* Palau Const. art. X, § 1 ("The judicial power of Palau shall be vested in a unified judiciary."). This is a dispute over the ownership of land and falls squarely within that jurisdiction. If, as Ngatpang State asserts, NSPL 101-98 or any other state law bears upon, or even determines, the outcome of this case, that does not mean that the Supreme Court lacks jurisdiction. Rather, it means that we will utilize that law in resolving the issues presented, assuming there are no constitutional or statutory impediments.

The 1989 letter raises somewhat ⊥51 separate concerns. Ngatpang State cannot confer jurisdiction on the LCHO or the Land Court or vary either body's procedures, because the national government established those entities to complete the national land registration program and to implement the provisions of the Return of Public Lands Clause. *See* 35 PNC § 1304. The LCHO and the Land Court were not authorized to accept separate assignments from state governments. *Id*. As a result, the 1989 letter is more properly viewed as a waiver of ownership claims from the Ngaimis regarding D.O. 126 lands and not a grant of jurisdiction or an establishment of different procedures applicable to land parcels that are of interest to the Ngatpang government.

B. Validity of transfer

With the jurisdictional question resolved, we now turn to the merits of Rebluud's claim. For more than 30 years, Rebluud has attempted to follow the varying procedures explained to him–most of them set by the Ngaimis–about how to claim Ikelbeluu. Ngatpang State currently argues that all of Rebluud's efforts come to naught because the Ngaimis did not have the authority to transfer the property to him in the early 1970s. The State concedes that the Ngaimis purported to give Ikelbeluu to Rebluud but argues that the transfer was invalid because Ngatpang State–not the Ngaimis–was the actual owner of the land. The State therefore concludes that the Ngaimis did not have the authority to give the land to Rebluud.[3]

Although the Ngaimis did not officially possess the governmental powers of the Ngatpang government until 1982,[4] there is sufficient evidence to conclude that the Ngaimis had

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[3]Because the *Amboi* case was decided largely on procedural grounds, we did not determine conclusively whether the Ngaimis had the authority to transfer lands owned by Ngatpang Municipality. We did, however, take note that the Ngaimis was exercising governmental authority. *See Amboi*, 7 ROP Intrm. at 13 ("In September 1975, the Ngaimis, the traditional council of chiefs of Ngatpang Municipality, decided that it was time to return the D.O. 126 lands to its original owners.").

[4]The Ngatpang State Constitution vests the Ngaimis with "[a]ll powers of the State Government." Ngatpang Const. art. IV, § 1.

the authority to transfer Ikelbeluu to Rebluud in the early 1970s. At the time of the transfer, four of the ten members of the Ngatpang Municipal council were also Ngaimis members, so the council was not ignorant of public meetings being held or decisions made by the Ngaimis. Moreover, members of the Ngatpang Municipal government–including Techitong Rebluud, Appellee's brother who was the Ngatpang Municipal Magistrate in 1975 and 1976, and Ngiraremiang Olewachel, the Municipal Clerk who recorded the minutes from the 1975 meeting–claimed lands pursuant to the decisions of the Ngaimis. The fact that some of these officials successfully claimed more than seven chiob without objection suggests that the Ngatpang State government was treating the transfers from the Ngaimis as valid.

The Ngaimis' 1989 letter to Senior Land Commissioner Jonathan Koshiba also supports Rebluud's claim. In the letter, the Ngaimis "release[d] and discharge[d] any and all claims made on behalf of the State of Ngatpang for the lands under Claim No. 126." The Ngaimis also conceded that "the land under Claim No. 126 is a private land," and indicated that determinations of ownership ⊥52 could be issued to private citizens based upon any "competent evidence, either oral or physical." This release, executed after the Ngaimis was officially vested with the executive functions of state government, is a waiver of any objection based upon any technically-flawed or premature determinations of the Ngaimis before 1989. Although the letter provides for unclaimed land to revert to the State, Rebluud timely filed his claim with the Land Claims Hearing Office under this new procedure, his third attempt to formalize his claim. As a result, Ikelbeluu cannot be said to have reverted to Ngatpang State under the reversion provision.

For similar reasons, we reject Ngatpang State's reliance on NSPL 101-98. NSPL 101-98 outlined procedures for citizens to use or claim D.O. 126 lands. Because we find that the Ngaimis properly transferred Ikelbeluu to Rebluud in the 1970s, then waived any objections to that transfer in the 1989 letter, Rebluud was the owner of Ikelbeluu when NSPL 101-98 took effect in 1999. Therefore, we are not persuaded by Ngatpang State's contention that it has the power to determine ownership of Ikelbeluu through 101-98.

C. Intervention

Inglai Clan claims the Trial Division erred in denying its motion under ROP R. Civ. P. 24, which gives a party the right to intervene "upon timely application."

> In deciding timeliness, trial court should consider (i) the period during which the movant knew or should have known of his interest in the case prior to making his motion; (ii) the degree of prejudice to existing parties from granting the intervention; (iii) the degree of prejudice to the movant if intervention is denied; (iv) the presence of unusual circumstances affecting a determination of timeliness; (v) the reason for and length of the delay in moving to intervene; (vi) the stage of the proceedings; (vii) the purpose for which intervention is sought; and (viii) the necessity of intervention as a means of protecting the movant's rights.

Bemar v. Dalton, 7 ROP Intrm. 161, 161 (1999). "Timeliness is fundamental not only to intervention, but to the overall conduct of a lawsuit . . . . 'The purpose of the [timeliness] requirement is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal.'" *Sokaogon Chippewa Cmty. v. Babbitt,* 214 F.3d 941, 949 (7th Cir. 2000) (quoting *United States v. S. Bend Cmty. Sch. Corp.*, 710 F.2d 493, 396 (7th Cir. 1989)). A finding that a motion to intervene was untimely should not be overturned absent an abuse of discretion. *Bemar*, 7 ROP Intrm. at 161.

We find no abuse of discretion here. By failing to file a claim after issuance of the public notice of the proceeding, Inglai Clan is charged with knowledge that, pursuant to that notice, there was a pending claim for Ikelbeluu and that all claims were required to be brought by December 31, 2001. By the time Inglai Clan brought its motion to intervene, the trial was in its final day. Allowing Inglai Clan to intervene would have meant a continuance requiring further delay and expense. A case in active trial should not be recessed simply because Inglai Clan failed to keep track of the status of its various ⊥53 claims. Accordingly, the trial court did not abuse its discretion in denying Inglai Clan's motion to intervene.

CONCLUSION

For the foregoing reasons, the judgment of the Trial Division is affirmed.