Ngatpang State v. Ngiradilubech, 11 ROP 89 (2004)

NGATPANG STATE and
RUBEANG HIROMI NABEYAMA
Appellants,

v.

ABRAHAM NGIRADILUBECH, ANTONIO NGIRNGETRANG, JR., IDUB RENGOLBAI, JERRY NGIRATUMERANG, UCHELLAS NGIRATUMERANG, MELVIN NGIRATUMERANG, DORSHA NGIRATUMERANG, ESTATE OF NGIRAIBAKES ARURANG, MARTINEZ ARURANG, LANSANG ARURANG, HELACIO NGIRAIBAKES, NGESENGES TIMULCH NAKAMURA, ESTATE OF MIYOKO RIMIRCH, ITONG UMEDIP, IMECHEI RENGUUL, HELEN NGIRASOB, FELIX MAIDESIL, COSTANTINO NGIRAKED, DELANGEBIANG CLAN, and SURANGEL WHIPPS, JR.
Appellees.

CIVIL APPEAL NO. 02-029
LC/L 00-530 through 00-564

Supreme Court, Appellate Division
Republic of Palau

Argued: December 18, 2003
Decided: March 3, 2004
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Counsel for Ngatpang State: John K. Rechucher

Counsel for Nabeyama: Moses Uludong, T.C.

Counsel for Whipps: Raynold B. Oilouch

Counsel for remaining Appellees: J. Roman Bedor, T.C.

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

Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Senior Judge, presiding.

MICHELSEN, Justice:

Ngatpang State and Eteet Clan filed this appeal challenging the jurisdiction of the Land Court to issue ownership determinations for 12 lots of land on parcels known as *Ngibakes*, *Ngebachel* and *Edumail* in Ngatpang State. Because we agree that the Land Court lacked jurisdiction to hear these claims, we vacate the judgment and remand the case to the Land Court for the purpose of vacating the determinations of ownership issued in this case.

BACKGROUND

This case arises out of another dispute concerning land determined in 1959 to be owned by Ngatpang Municipality, predecessor to Ngatpang State, as part of Determination of Ownership No. 126 ("D.O. 126"). We addressed claims for other D.O. 126 lands in *Ngatpang State v. Amboi*, 7 ROP Intrm. 12 (1998) and *Ngatpang State v. Rebluud*, 11 ROP 48 (2004).

In 1989, the Ngaimis, the traditional council of chiefs of Ngatpang who have "[a]ll powers of the State Government" pursuant to Article IV, Section 1 of the Ngatpang State Constitution, notified the Palau Land Commission by letter that they "release[d] and discharge[d] any and all claims made on behalf of the state of Ngatpang for the land under claim no. 126." The letter (hereinafter "the 1989 letter") purported to set out procedures for individuals to submit claims to D.O. 126 lands to the Land Claims Hearing Office for determinations of ownership. Pursuant to the terms of the letter, all claims had to be submitted within two years and any unclaimed portions of land were to revert to the Ngaimis.[1]

⊥91 Appellees monumented their claims the following year. The claims had been scheduled for hearings in 1997 and 1998 when Ngatpang State filed motions to dismiss or transfer the case to the Supreme Court, arguing that because the lands were the property of Ngatpang Municipality (as stated in D.O. 126), the Land Court lacked jurisdiction because of the provisions of Article X, Section 5 of the Palau Constitution.[2] Judge Dingilius agreed with the State and dismissed the action. The court found that, because it lacked jurisdiction, it could not refer the cases to the Supreme Court, but it invited the claimants to refile their claims in the Trial Division. The dismissal was not appealed.

Two years after the dismissal, the matter was set for status conference in the Land Court, and a date for reargument was established. Appellants again argued that the Land Court lacked jurisdiction, but, this time, Senior Judge Senior disagreed. Citing the 1989 letter, the Court found that Ngatpang State had released its claims to the D.O. 126 lands. As such, the Court found that Ngatpang State could not be a claimant to the lands, and hence was not a party before the Court, so Article X, Section 5 did not limit its jurisdiction over the remaining claims.

The Land Court issued Determinations of Ownership in favor of Appellees. In this appeal, Ngatpang State reasserts its position that the Land Court lacked jurisdiction, and Eteet Clan argues that Land Court erred in finding it waived its claims.

ANALYSIS

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[1] In *Rebluud*, we noted that "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." *Rebluud*, 11 ROP at 51.

[2] "The trial division of the Supreme Court shall have original and exclusive jurisdiction over all matters . . . in which the national government or a state government is a party."

We agree with Appellants' claim that the Land Court lacked jurisdiction. Once the Land Court dismissed the case, it was no longer before that Court. Subsequent to that dismissal, a second Land Court judge could not set it for status conference, determine a date for reargument, or issue a determination of ownership. Once the order of dismissal was entered, any party aggrieved by the decision had the option to appeal the Land Court's jurisdictional order or to accept the suggestion of Judge Dingilius and refile the claim in the Trial Division.

In any event, we agree with Judge Dingilius that, under Article X, Section 5 of the Constitution, the Land Court did not have jurisdiction. In deciding otherwise, Judge Senior essentially determined that Ngatpang State was not a party by evaluating the strength of its claim and determining that its argument could not prevail on the merits. We disagree with that approach. Article X, Section 5 requires that cases in which the national or state government is a real party in interest must be heard in this Court. A state is party when "it has a substantial interest in the subject matter, rather than merely a 'nominal, formal or technical interest in the claim.'" *KSPLA v. Diberdii Lineage*, 3 ROP Intrm. 305, 311 (1993). Since Ngatpang State as successor in interest to Ngatpang Municipality is the holder of a determination of ownership, the state has at least a *prima facie* claim of ownership. This claim is, of course, contested in this case and others because of the 1989 letter. Nonetheless, Ngatpang State is a claimant here, regardless of arguments that other claimants will make regarding the 1989 letter. To say, as did the Land Court, that Ngatpang had waived its claims in 1989 is not a determination of jurisdiction, but a ⊥92 consideration of the merits.[3]

As an alternative argument, Appellees contend that the Land Court had jurisdiction because Ngatpang State Public Lands Authority–and not Ngatpang State–was the true claimant. Appellees point to the *KSPLA* case, which held that Article X, Section 5 does not prohibit the Land Court from exercising jurisdiction over cases in which a state public lands authority is a party. *KSPLA*, 3 ROP Intrm. at 305. Therefore, Appellees argue, if NSPLA was the true claimant, the Land Court would have had jurisdiction. We first note that the Land Court never treated NSPLA as a party, so determining retroactively that NSPLA was the actual claimant would create a host of notice and due process problems.[4]

Even without that problem, the record points to Ngatpang State–and not NSPLA–as the true party in interest. These lots were not conveyed from the Palau Public Lands Authority to NSPLA pursuant to the procedures established in 35 PNC § 215. Instead, the parcels were conveyed in a 1959 determination of ownership to Ngatpang Municipality, predecessor to Ngatpang State. Therefore, Ngatpang State was the successor in interest when Ngatpang

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[3]This raises the question whether a State could file a claim in bad faith for the sole purpose of forcing the claimants to adjudicate their claims in the Supreme Court. We see no strategic advantage for a State to file an obviously frivolous claim in the Land Court, since such a claim would be quickly exposed in this Court's Trial Division. In addition, pursuing a frivolous claim would subject counsel for the State to sanctions. For these reasons, we do not believe that the Land Court must consider the merits of a State's claim in order to prevent this hypothetical abuse.

[4]After the Land Court dismissed Ngatpang State's claim, Rebelkuul Felix Osilek filed a claim on behalf of NSPLA. The court dismissed that claim "based on its earlier finding that Ngatpang State had released and discharged any and all claims to the lands . . . in March 1989." Since the Land Court did not have jurisdiction to make the original finding, this conclusion is not binding either.

Municipality became Ngatpang State.

Appellees claim that NSPLA became the real party in interest because Ngatpang State Public Law 101-98, transferred "all pending or incomplete applications or permits of homestead for lands within and under the authority of Ngatpang" to NSPLA. The law does not appear to transfer the actual title to those lands, so Ngatpang State remains the real party in interest. *See e.g. KSPLA*, 3 ROP Intrm. at 312 ("ROP may at some point receive the property should the Trust Territory Government ever convey it. . . . But until such a transfer takes place, ROP's interest in the property is at best only nominal, or technical."). Since Ngatpang State is the real party in interest, Article X, Section 5 requires that the case be heard in the Trial Division.

Because the Land Court's determination here occurred after the first judge dismissed the original case, its determinations of ownership and its finding that Eteet Clan waived its claims are void. "A judgment may properly be rendered against a party only if the court has authority to adjudicate the type of controversy involved in the action." Restatement (Second) of Judgments § 11 (1980); *accord Wooley v. Baton Rouge,* 211 F.3d 913, 919 (5th Cir. 2000) ("[A]ny action taken by a court without proper subject matter jurisdiction is absolutely null and without effect."); *People v. Mueller*, 851 P.2d 211, 214 (Colo. App. 1992) ("Any action taken by a court when it lacks jurisdiction is a nullity.").
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CONCLUSION

For the foregoing reasons, we remand the matter to the Land Court to vacate the determinations of ownership issued in this case.