Ngirachemoi v. Ingais, 12 ROP 127 (2005)

EDESOMEL NGIRACHEMOI,
Appellant,

v.

HANA INGAIS,
Appellee.

CIVIL APPEAL NO. 04-003
LC/E 04-01

Supreme Court, Appellate Division
Republic of Palau

Argued: March 14, 2005
Decided: June 9, 2005

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Counsel for Appellant: Honora E.R. Rudimch

Counsel for Appellee: Salvador Remoket

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice; and LOURDES F. MATERNE, Associate Justice.

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

PER CURIAM:

Edesomel Ngirachemoi ("Edesomel") brings this appeal attacking the Land Court settlement, which gave the land known as Edidei, Tochi Daicho Lot No. 1866 ("Edidei") to claimant Namiko Adelbai. Adelbai subsequently transferred Edidei to the appellee, Hana Ingais. Edesomel now claims that the settlement should be invalidated because he was denied due process and because the agreement was not placed in writing and signed by the parties as required by the Land Court rules.

Five parties filed claims for Edidei when the Land Court issued notice that it was beginning its Land Registration process for the land. The matter was set on the calender of part-time Land Court judge Grace Yano. Judge Yano scheduled a status conference. Notice was served on the parties, and the status conference was held. The appellant, Edesomel, did not appear at the status conference. His daughter, Valentina Edesomel ("Valentina"), however, was in attendance.

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According to the Summary of Proceedings issued by the Land Court, during the status conference the four other claimants and Valentina agreed that the land should be given to Namiko Adelbai. Adelbai then informed the court that she was transferring her interest in the land to Hana Ingais. The Land Court issued its Determination of Ownership in favor of Hana Ingais, reflecting the terms of the settlement. The notice of the Determination of Ownership was served on Edesomel's son, Jesse Edesomel, and Edesomel timely appealed to this Court.

Edesomel first asserts that the settlement needs to be vacated because the Land Court did not comply with Rule 15 of the Land Court Rules and Regulations, which requires all settlement agreements to be recorded and acknowledged under oath by the parties.[1] It is undisputed that the settlement agreement at issue was not recorded, and accordingly, Rule 15 was indeed violated. However, violations of procedural rules rarely compel reversal. *Thermo King Corp. v. White's Trucking Serv.,* 292 F.2d 668, 678 (5th Cir. 1961). Here, reversing the settlement agreement would not satisfy the purpose of the procedural rule requiring agreements to be recorded and acknowledged under oath, which is to ensure that there is no dispute about what the terms of the settlement are or whether all in attendance agreed to it. In this case, the appellant does not dispute that Valentina agreed to the terms, or that the terms of the settlement were as the Land Court represented them. Accordingly, the failure to strictly comply with the procedural rule was harmless.

The appellant's remaining claim on appeal merits greater consideration. Edesomel contends that he was denied due process because he did not receive an opportunity to be heard. Specifically, he contends that his daughter Valentina was not his agent, that he had appointed his son to his power of attorney and duly notified the Land Court about this, and thus the Land Court should not have permitted her to bind his rights in a settlement agreement.[2]

As an initial matter, it must be noted that had Edesomel received notice of a settlement conference and had neither he nor his claimed agent shown up for that conference, then he would have waived his opportunity to be heard and the issue of whether Valentina was his agent would be moot. *See* 16B Am. Jur. 2d *Constitutional Law* § 947 (1998) (A defendant who has notice can "choose for himself or herself whether to appear or default, acquiesce or contest."). However, Edesomel was given notice of a status conference, not a settlement conference. These are sufficiently different that it is not automatic that Edesomel waived his opportunity to be heard on settlement, merely by not appearing at a status conference.

Edesomel claims that Valentina did not have authority to settle his claims, only to attend the status conference and find out the status of his case. Ingais responds that Valentina had apparent authority to settle on behalf of Edesomel by appearing at the status conference. "So far as concerns a third person ⊥130 dealing with an agent, the agent's 'scope of authority' includes

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[1]"Where any parties to any claim agree to a settlement or compromise, the particulars shall be recorded and acknowledged under oath by the parties and shall have the same force and effect as a decision by the Land Court." LC Reg. 15.

[2]Although Edesomel argues that the court could not reasonably believe Valentina to be his agent when it was aware that his son possessed his power of attorney, he has cited no authority for the proposition that a principal may have only one authorized agent.

not only the actual authorization conferred upon the agent by the principal, but also that which has apparently been delegated to the agent." 3 Am. Jur. 2d *Agency* § 75 (2002). An agent's apparent authority results from statements, conduct, lack of ordinary care, or other manifestation of the principal's consent, whereby third persons are justified in believing that the agent is acting within his or her authority." *Id.* at § 76. Apparent authority arises when a principal places an agent "in a position which causes a third person to reasonably believe the principal had consented to the exercise of authority the agent purports to hold." *Makins v. Dist. of Columbia,* 861 A.2d 590, 594 (D.C. 2004).

In determining whether the agent had apparent authority to bind the principal, "[c]onsideration should be given, inter alia, to the actual authority of the agent, and the party asserting apparent authority, any declarations or representations allegedly made by the agent, and lastly, the customary practice of other agents similarly situated." *Makins,* 861 A.2d at 595. Here, the record is devoid of any factual findings that would clarify whether Valentina had apparent authority to settle Edesomel's claim. Relevant considerations include whether Judge Yano explicitly asked her if she had authority to settle the claim and any response given, as well as if there had been previous settlement discussions. If there had been settlement discussions prior to the status conference, it is more likely that the claimants and Judge Yano would reasonably believe that Valentina had authority to settle by her appearance at the status conference. Since we are uncertain as to the answers to these questions, we REMAND this case to the Land Court so that it may make findings. Once these findings are made, we will consider the issue of apparent authority. Accordingly, we retain jurisdiction over this appeal and instruct the Land Court to forward its findings to us. *See Roman Tmetuchl Family Trust v. Whipps,* 8 ROP Intrm. 317 (2001).