Wasisang v. Remeskang, 12 ROP 35 (2004)
MURPHY WASISANG,
Appellant,

v.

YUSIM REMESKANG,
Appellee.

CIVIL APPEAL NO. 03-045
LC/H 02-388 & 02-389

Supreme Court, Appellate Division
Republic of Palau

Argued: November 19, 2004
Decided: December 15, 2004

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Counsel for Appellant: Ernestine K. Rengiil

Counsel for Appellee: Raynold B. Oilouch

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

Appeal from the Land Court, the Honorable RONALD RDECHOR, Associate Judge, presiding.

MICHELSEN, Justice:

This appeal is from a Land Court's determination of ownership, and the issue presented is whether the Land Court's *sua sponte* taking of judicial notice to portions of testimony given in a different proceeding was proper. Because the Land Court failed to afford the parties an opportunity to request a hearing concerning its taking of judicial notice as required by the Land Court Rules of Procedure, we remand this matter for further proceedings.

BACKGROUND

Both parties trace their claim of ownership from Remeskang, the adoptive father of Appellee Yusim Remeskang (Yusim), who they contend was previously the owner of land known as Ulatelyabed, located in Urmang Hamlet, Ngardmau State, and described as Lot No. H-135 on the Bureau of Lands and Surveys Worksheet No. H-003. Wasisang's claim to the land was premised on a 1990 statement by his adoptive mother Ucherriang, who was also his biological grandmother and Remeskang's niece, that Remeskang had given Ulatelyabed to her. According to Wasisang, although Remeskang lived in Ngarchelong, he would frequently travel to

Ngardmau to collect steel wire to make fishing traps. On those visits to Ngardmau, Remeskang would sometimes stay with Ucherriang and her husband. In 1951 or 1952, according to Wasisang's recollection of his adoptive mother's statements, Remeskang gave her the land as a token of gratitude for her hospitality, and the land passed to him when his mother died.

Yusim's contrary testimony was that prior to Remeskang's death in 1970, Remeskang showed him that land and said that, as Remeskang's oldest living male child, he would inherit it when Remeskang died. Yusim denied that Remeskang had given Ulatelyabed to Ucherriang and asserted that Remeskang still owned it when he died.

In weighing the parties' claims for Ulatelyabed, the Land Court judge concluded that he did not have sufficient evidence to determine whether Remeskang gave the land to Wasisang's mother as a gift. To help resolve the dispute, the Land Court took judicial notice of the testimony of Koichi West and Tadao Ngotel, given during a Land Court hearing concerning land known as ⊥37 Urung in Ngaraard State. West and Ngotel testified in the Urung case that Remeskang was unable to walk, and the Land Court found that this testimony weakened Wasisang's claim that Remeskang traveled to Ngardmau to collect steel wire and, on one of those trips, gave his family the land. Based on that finding, the Land Court concluded that Remeskang had not given Ulatelyabed as a gift to Wasisang's family, and so it passed to Yusim when Remeskang died.

On appeal, Wasisang's main argument is that the Land Court erred by not taking judicial notice of the testimony Martin Sokau gave during the Urung hearing. Sokau, Yusim's biological brother and his representative during the Land Court proceeding, testified in the Urung matter about Remeskang's trips to Ngarchelong for steel wire. Wasisang maintains that the Land Court should also have taken judicial notice of this testimony, which he claimed bolstered his claim of ownership, in addition to the testimony given by West and Ngotel.

ANALYSIS

Rule 5 of the Land Court Rules of Procedure provides that the Land Court may, on its own initiative, take judicial notice of "facts not reasonably subject to dispute and which are either (1) generally known within the territorial jurisdiction of the Land Court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." LCR Proc. 5. Rule 5 also affords parties an opportunity to be heard on the question of judicial notice upon promptly making such a request. If the Land Court takes judicial notice in its findings of facts and conclusions of law, then a party has ten business days within which to request a hearing, and the time to issue a determination of ownership will not commence until that ten-day period has lapsed or until after a hearing, if requested, is held. LCR Proc. 5.

Appellant does not challenge the propriety of taking judicial notice,[1] but instead merely

[1]Although the issue is not squarely before us, we question whether the substance of testimony of a person given in another proceeding is a proper subject for judicial notice. While the fact that a witness testified, or even testified in a particular fashion, may "not reasonably be subject to dispute," the facts asserted in

asks that additional testimony be noticed as well. He was not able to make that request below, however, because the Land Court issued its Determination of Ownership three business days after taking judicial notice in the findings of fact, thereby denying the parties the time provided by the Rules to request a hearing to object or to suggest additional matters that, in fairness, should also be judicially noticed. The failure to comply with Rule 5 was error, and so we remand the case to the Land Court to allow Appellant an opportunity to be heard on the issue of judicial notice.

We also wish to provide in this opinion our reasons for denying Appellee's motions to reschedule oral argument and to ⊥38 file a response brief out of time. We denied these motions on November 18, 2004, and indicated that a supplemental memorandum would explain our decision.

Appellant's opening brief was filed in January of this year. On the eve of oral argument and ten months after his response brief was due, Appellee filed an untimely motion for extension of time and asked that oral argument be postponed. We denied these motions because no good cause was shown. The fact that Appellee chose to rely on the representations of Mr. Sokau, a lay representative, who in turn explained that he relied on the advice of yet another non-lawyer for a considerable period before finally consulting an attorney, does not change this result. We remind litigants that the Land Court hearing is the "main event" at which they should set forth their strongest case. *Temael v. Ellechel*, 8 ROP Intrm. 324, 326 (2001). It would be unfair to the other parties in land cases, who also appeared without counsel in the Land Court, to have their appeals delayed because the losing party has decided to hire an attorney long after the expiration of the established deadlines.

CONCLUSION

The case is remanded to the Land Court to allow Appellant an opportunity to be heard on the issue of judicial notice.

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the testimony -- certainly, as here, as to matters that occurred a half-century ago -- are neither "generally known" nor readily determined by "resort to sources whose accuracy cannot reasonably be questioned." *See Wyatt v. Terhune*, 315 F.3d 1108, 1114 (9th Cir. 2003) ("Factual findings in one case ordinarily are not admissible for their truth in another case through judicial notice."); *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994) ("[A] court may take judicial notice of a document filed in another court not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.") (internal quotations omitted).