Tellei v. Daniel, 2 ROP Intrm. 131 (1990)
JOSEPHA TELLEI, Representing, TMELEU CLAN,
Appellant,

v.

SIEKO DANIEL, ET AL.,
Appellees.

CIVIL APPEAL NO. 12-88
Civil Action No. 143-79

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: August 2, 1990

Counsel for Appellant: John K. Rechucher

Counsel for Appellees: Johnson Toribiong

BEFORE: LOREN A. SUTTON, Associate Justice; ARTHUR NGIRAKLSONG, Associate Justice; ROBERT A. HEFNER,[1] Associate Justice.
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NGIRAKLSONG, Associate Justice:

This is a land dispute originally involving multiple parties and a substantial part of the Airai Airport land. The land was condemned by the Trust Territory Government in 1975 and hearings to determine ownership of the various lots began in 1978.

The issue before this Court is the Appellant's standing to maintain this appeal.

The late Chief Ngiraked Matlab was the head of Tmeleu Clan of Airai, one of the claimants in the condemnation proceeding. (Trust Territory High Court Civil Action No. 72-79). The Chief himself was a claimant and was claiming some of the same lots his clan, Tmeleu, was claiming. [Transcript of hearing on Motion to Dismiss at pages 7 and 12].

On June 2, 1978, Chief Ngiraked Matlab gave a power of attorney to Appellant Josepha Tellei to act as the attorney-in-fact for him "with respect to all the lands belonging to Tmeleu Clan of Airai Municipality." [Appellant's Exhibit A]. On September 5, 1978, some of the members of Tmeleu Clan confirmed in writing the Appellant's appointment to represent the clan in these land proceedings. [Appellant's Exhibit B]. Appellant attended the Palau Land Commission proceedings and asserted the Clan's claim to certain lots, including Lot Nos. 006 N

[1] Honorable ROBERT A. HEFNER, Presiding Judge, Superior Court of the Commonwealth of the Northern Mariana Islands.

06, 006 N 07 and 006 N 10.

Determinations of Ownership were issued on September 4, 1979, in favor of Chief Ngiraked Matlab and other claimants and against Tmeleu Clan. [Appellant's Exhibit C].

On December 12, 1979, Chief Ngiraked Matlab executed an ⊥133 affidavit which stated that the Palau Land Commission's Determination establishing title to Lot Nos. 006 N 10, 006 N 07 and 006 N 06 as his individual property was not correct, because the land belonged to Tmeleu Clan. [Appellant's Exhibit D].

On December 19, 1979, Appellant filed an appeal from the determination of the Palau Land Commission to the Trial Division of the High Court pursuant to 67 TTC 117.

On February 6, 1985, Chief Ngiraked Matlab appointed Ngeriut Matlab as his new attorney-in-fact to look after the Clan's land and in the same instrument revoked Appellant's appointment. [Appellant's Exhibit F]. Ngeriut Matlab, the new attorney-in-fact, executed an affidavit on February 6, 1985, stating that Tmeleu Clan had no interest in the appeal of this case. [Appellant's Exhibit E].

On April 19, 1985, Appellees filed a motion to dismiss the appeal, asserting that Appellant Tellei was not an "aggrieved party" because her appointment as attorney-in-fact for Chief Ngiraked had been revoked. The then trial judge, Chief Justice Nakamura, after a hearing, ruled that Tellei was an "aggrieved party" and denied the motion to dismiss on June 7, 1985.

After this ruling, there was a hearing for a trial de novo, for which no written ruling was issued. There were pending motions but no action was taken on them, until the Chief Justice recused himself from the case on March 25, 1988, and reassigned the case to Associate Justice Pro Tem Frederick J. O'Brien.

On June 6, 1988, 3 years later, Appellees filed the same motion to dismiss before Associate Justice Pro Tem O'Brien, ⊥134 stating that Appellant had "no standing". Appellees characterized their motion to dismiss as a motion to "reconsider," even though no rule exists that allows such motion.

At the time Appellees refiled their motion to dismiss, there were no new facts, evidence, pleading or legal theories from those that existed before the first trial judge. Without a hearing, Associate Justice Pro Tem O'Brien granted Appellees' motion to dismiss, basing his decision on an agency theory between Chief Ngiraked Matlab and the Appellant. The court reasoned that when Chief Ngiraked Matlab revoked his appointment of the Appellant as his attorney-in-fact, Appellant's rights and powers to represent the clan also came to an end.

The issues raised by both parties come down to Appellant's standing to maintain the appeal. None of the parties, particularly the Appellant, raised the "law of the case" doctrine.

Before the counsel began their oral argument, they were advised that we have considered

the "law of the case" doctrine and its applicability to this case. The counsel were subsequently invited to brief the issue. Both parties have filed their supplemental briefs.

The "law of the case" doctrine is a rule which states that a judge should not for various policy reasons overrule a previous decision or order of the first judge on the same court level. The rule in the past was an absolute bar on the second judge from overruling or reconsidering the decision or order of the first judge. The rule has been modified to allow the second judge to ⊥135 overrule or reconsider the previous decision of the first judge for good reasons. *U.S. v. Desert Gold Mining Co.*, 433 F.2d 713 (9th Cir. 1970).

In this case, the second judge would have been justified in overruling the first judge if there were new facts or evidence, *Beety v. Washington Water Powers Co.* , 238 F.2d 123 (9th Cir. 1956), or if there was a new pleading or legal theory. *Breelord v. Southern P. Co.* , 231 F.2d 576 (9th Cir. 1955) and *Hardy v. North Buttle Mining Co.* , 22 F.2d 62 (9th Cir. 1977). There was absolutely no change in the circumstances of this case when the second judge considered the same motion and overruled the first judge's decision.

We hold that where there are no new facts, evidence, pleading or legal theory, the second trial judge should not overrule or reconsider a decision of the first trial judge. Our holding is necessary to "prevent undue controversies between courts of co-ordinate jurisdiction[;]" *In Re Insull Utility Invest., Inc.* , 74 F.2d 510, 516 (7th Cir. 1935) and to "promote an orderly administration of justice and to preserve the orderly functioning of the judicial system." *TCF Film Corp. v. Goorley*, 240 F.2d 711, 714 (3rd Cir. 1957).

We conclude that it was an error for the second judge to reconsider and overrule the decision of the first judge in the absence of new facts, evidence, pleading or legal theory. The ruling and order of the present Trial Court on Appellee's motion to dismiss issued on June 6, 1988, is hereby vacated and this matter is remanded to the same Court for proceedings consistent ⊥136 with this opinion.