KSPLA v. Diberdii Lineage, 3 ROP Intrm. 305 (1993)

IN THE MATTER OF THE APPEALS FROM THE DECISION OF THE LAND CLAIMS HEARING OFFICE (LCHO)

KOROR STATE PUBLIC LANDS AUTHORITY (KSPLA) and OBODEI S. IYAR,
Appellants,

v.

DIBERDII LINEAGE,
Appellee .

NONA LUII, ESEBEI ARBEDUL, KSPLA and IDID CLAN,
Appellants,

v.

MERIANG CLAN,
Appellee.

REPUBLIC OF PALAU, COLLEGE OF MICRONESIA, SUGIYAMA FAMILY, IBAI LINEAGE,
Appellants,

v.

JONATHAN KOSHIBA, et al.,
Appellees.

CIVIL APPEAL NO. 9-91
Civil Action Nos. 654-89, 656-89, 210-90, 227-90, 275-90, 453-90

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: October 5, 1993

Counsel for Obodei Iyar: Kevin N. Kirk
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Counsel for College of Micronesia: R. Barrie Michelsen
Counsel for KSPLA: Mark Doran, Antonio Cortes

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate

Justice; and LARRY W. MILLER, Associate Justice.

PER CURIAM:

In these consolidated appeals we are called upon to define the jurisdictional parameters of the Land Claims Hearing Office ("LCHO"). The trial court held that Article X § 5 of the ⊥306 Palau Constitution, which vests the trial division of the Supreme Court with original and exclusive jurisdiction over those matters in which the national or state government is a party, prevents the LCHO from hearing claims where the national or a state public lands authority is a party. We reverse.

BACKGROUND

These consolidated appeals involve claims to three different parcels of land. Two of the parcels, "Diberdii" and "Meriang/Desekel," were held by the Koror State Public Lands Authority ("KSPLA") when claims were filed for their return. The third, "Iengid," was still controlled by the Trust Territory Government. In all three claims, the LCHO determined that the parcels had become public land through a forceful taking without compensation. It therefore ordered Meriang/Desekel returned to Meriang clan of Ngerbeched, Diberdii to Diberdii lineage of Metuker clan, and Iengid to Ibai lineage of Koror.

The question of whether the LCHO had jurisdiction to hear the claims under Article X § 5 was first raised by KSPLA when the claims were appealed to the trial court. The trial court, reasoning that "national and state public lands authorities are part and parcel of their respective governments," concluded that the LCHO lacked jurisdiction under Article X § 5 to determine claims when a state public land authority was a party. The trial court vacated the LCHO land ownership determinations and ordered the claims tried before the trial division of the Supreme Court.

⊥307 DISCUSSION

This Court has recently addressed and settled the question of the LCHO's status vis-a-vis the unified judiciary. In *Otiwii v. Iyebukel Hamlet, et al.*, Civil Appeal No. 28-91 (September 14, 1992), we held that the "LCHO is an inferior court of limited jurisdiction created by law pursuant to Article X, Section 1 of the Palau Constitution." [1] *Otiwii* notes that the LCHO has concurrent jurisdiction with the trial division of the Supreme Court when determining land claims. *Otiwii* at p. 10. However, *Otiwii* did not address whether the LCHO's concurrent jurisdiction would extend to cases where a state or the national lands authority is a party. That issue is presented to this Court for the first time in this appeal.

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[1] Article X § 1 reads in part,

> The judicial power of Palau shall be vested in a unified judiciary, consisting of a Supreme Court, a National Court, and such inferior courts of limited jurisdiction as may be established by law.

Article X § 5 of the Palau Constitution, the constitutional provision at issue here, reads in part:

> The trial division of the Supreme Court shall have original and exclusive jurisdiction over . . . those matters in which the national government or a state government is a party. In all other cases, the National Court shall have original and concurrent jurisdiction with the trial division of the Supreme Court.

The first question this Court will address is whether this constitutional provision deprives the LCHO of jurisdiction to hear disputes where one of the parties is a state public lands ⊥308 authority. Resolution of this issue turns on how the Court interprets the term "state government", as that term is used in Article X § 5. The KSPLA, echoing the trial court's Order, argues that "state government" should be defined to include state public lands authorities.

We disagree. State public lands authorities are not, as the trial court states, "part and parcel of their respective governments." Rather, they are separate "legal entities" created by state governments for the express purpose of receiving land from the Palau Public Lands Authority. *See* 35 PNC § 215(a). State public lands authorities are governed by boards of trustees. *Id.* at § 215(b). These boards are comprised of eight people, half of whom are the chief executive officer of the state and his or her appointees. *Id.* The other four positions are reserved for the paramount hereditary chief of the state and three people appointed by the chief with the advice and consent of his traditional chiefs' council. *Id.* Thus, by statute, state public lands authorities are designed not to be a part of state government, but are hybrid entities including both state and traditional representatives. Morever, state public lands authorities derive their rights, interests, powers, responsibilities, duties, and obligations not from their respective state governments but by grant from the Palau Public Lands Authority. 35 PNC § 215(c). In light of these ⊥309 distinctions, we conclude that state public lands authorities are not encompassed by the term "state government" in Article X § 5.[2]

Support for this reading can be garnered from analogous United States case law. Article III, § 2, cl. 2 of the United States Constitution provides, "In all Cases . . . in which a State shall be a Party, the Supreme Court shall have original Jurisdiction." The United States Congress has further provided that the Supreme Court shall have original and exclusive jurisdiction over controversies between two or more states. 28 U.S.C. § 1251(a). In applying these constitutional and statutory provisions, the United States Supreme Court has traditionally taken a narrow view, and has invoked its original jurisdiction sparingly. *Illinois v. City of Milwaukee, Wisconsin* , 92 S.Ct. 1385, 1388 (1972). As one commentator notes, "even where the Court has original and exclusive jurisdiction . . . it regards that jurisdiction as obligatory only in appropriate cases." James W. Moore, *Moore's Federal Practice* ¶ 350.02[5] (2d ed. 1982).

Thus, the Supreme Court has held that the term "States," as it is used in Article III and 28

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[2] The fact that Koror State has chosen to incorporate its traditional leaders into its state government does not affect our analysis. The meaning of "state government" in Article X § 5 and the intent of the legislature in drafting section 215(b) cannot be altered by the actions of an individual state.

U.S.C. § 1251(a), should not be read to include their political subdivisions. *Illinois*, 92 S.Ct. at 1390. In *Illinois*, the State of Illinois moved to file a bill of complaint in the Supreme Court against four cities in Wisconsin and two Wisconsin sewerage commissions. The issue central to ⊥310 exclusive jurisdiction was whether the suit was in reality one against Wisconsin under a theory that the named defendants were instrumentalities of the state. The Court rejected this theory and remitted the case to the district court. *Id.*

When a public entity within a state is sued, the Supreme Court has jurisdiction to hear the action only if the state itself is joined as a defendant. *See e.g. New York v. New Jersey* , 41 S.Ct. 492, 494 (1921); *Missouri v. Illinois*, 21 S.Ct. 331, 344 (1901) (Illinois properly joined in suit by Missouri seeking to enjoin Chicago Sanitary District from dumping raw sewage into the Mississippi River). Even if the state is joined, the Court further requires that the actions of the public entities be appropriately attributed to the state. *See Louisiana v. Texas* , 20 S.Ct. 251 (1900) (Court did not have jurisdiction over a case involving the Texas Health Officer's implementation of a constitutional statute in an unconstitutional manner because the state of Texas had not authorized or confirmed the action).

By similar reasoning, we find that state public lands authorities are not the "state government" for purposes of Article X § 5, and accordingly that no state government was a party to these actions. Thus, we find no constitutional impediment to the LCHO having adjudicated the two cases in which the KSPLA was a party.

A different question is presented by the third action in these consolidated appeals, where the trial court found the Republic of Palau ("ROP") was a party. To resolve the issue of ⊥311 whether the LCHO had jurisdiction to hear this claim, we turn again to precedent from the United States. Although on its face the United States Constitution grants the Supreme Court original jurisdiction over all cases in which a state shall be a party, the Court has chosen to restrict application of this clause to only those cases in which a state is a real party in interest. *See Kansas v. United States* , 27 S.Ct. 388 (1907) (Court refused to hear case in which a state attorney general brought suit as trustee for the interests of a railroad company). The rule the Supreme Court has developed is that a state can invoke the Court's original jurisdiction only when it seeks to protect its own property, and not to vindicate the rights of others. *Oklahoma v. Atchison, Topeka and Santa Fe R.R. Co.* , 31 S.Ct. 434, 437 (1911). In *Oklahoma v. Cook* , 58 S.Ct. 954 (1938), for example, the state of Oklahoma moved for original jurisdiction in a case where it sought to enforce the statutory liability of shareholders of an insolvent state bank for the benefit of the bank's depositors. The Court denied the motion, holding that it has no original jurisdiction where a state merely seeks recovery for the benefit of another. *Id.* at 957.

We adopt the reasoning of the United States Supreme Court and hold that the "original and exclusive jurisdiction" clause of Article X § 5 applies only to cases where the national government or a state government is a real party in interest, that is, when it has a substantial interest in the subject matter, rather than merely a "nominal, formal or technical interest in the claim." ⊥312 *Maryland Casualty Co. v. King* , 381 P.2d 153, 156 (Okla. 1963). In the present case, ROP did not claim any interest in Iengid, the property which was the subject of the LCHO hearing. ROP made but one brief appearance before the LCHO to argue that the LCHO lacked

jurisdiction to hear claims to Iengid because the property was still under the auspices of the Trust Territory High Commissioner. In essence, ROP argued the Trust Territory's case. Under the conveyancing scheme established by Secretarial Order 2969, ROP may at some point receive the property should the Trust Territory Government ever convey it. *See* Sec. Order 2969 § 4. But until such a transfer takes place, ROP's interest in the property is at best only nominal, or technical.

After the LCHO rejected ROP's argument, ROP did not pursue the matter. ROP did not appear before the trial court, nor has it appeared before this Court. Relying on the precedent and reasoning cited above, we hold that ROP's limited involvement in the case and its failure to claim any interest in the subject property did not deprive the LCHO of jurisdiction to hear the claim.[3]

⊥313 CONCLUSION

We hold that the term "state government" in Article X § 5 of the Palau Constitution does not include state public lands authorities. We also hold that in order for Article X § 5's original and exclusive jurisdiction clause to apply, the national government or a state government must be a real party in interest.

The Order of the trial court is therefore REVERSED. The case is REMANDED for further proceedings consistent with this opinion.

[3] In its brief before this Court, the College of Micronesia repeats the argument made by ROP before the LCHO; that is, that the LCHO is without jurisdiction to hear claims to Iengid because title to the property is still vested in the Trust Territory Government. Because the trial court did not address the issue below, we will not address it here. *See Brock v. Rogers & Babler, Inc.*, 536 P.2d 778, 784 (1975) (court refused to rule on an issue when no formal order on the issue had been entered); 5 Am Jur. 2d *Appeal & Error* § 725 (1962) ("The proceedings on appeal are ordinarily strictly limited to review of matters directly affecting the judgment, order, or decree appealed from . . . ."). The College of Micronesia is free to raise the argument again on remand.