Ikeya v. Melaitau, 3 ROP Intrm. 386 (Tr. Div. 1993)

IN THE MATTER OF THE APPEAL FROM THE DECISION OF THE LAND CLAIMS HEARING OFFICE

TOSKO IKEYA and the HEIRS OF NGOWAKL, ACTING THROUGH RAYMOND ULECHONG,
Appellants,

v.

OCHERAOL MELAITAU, REP. BY HIDEO E. TERMETEET,
Appellee.

CIVIL ACTION NO. 519-90

Supreme Court, Trial Division
Republic of Palau

Decision and order
Decided: June 17, 1993

MILLER, Associate Justice:

This appeal involves a taro paddy called "Iwek" located in Ngiwal State. It is undisputed that the land was the individual property of Eusevio Termeteet and was thus registered in his name in the Tochi Daicho. This dispute arose following his death in 1989. After a hearing, the Land Claims Hearing Office awarded the land to appellee Hideo Termeteet, Eusevio's son. Hideo's claim was challenged below and on appeal here by Tosko Ikeya, who sought that the land be awarded to Raymond Ulechong, a cousin of Hideo, who would hold the land as trustee for the descendants of Ngowakl, their common grandfather.

The LCHO based its determination on section "801 [of the] Palau Nation Code" and on "decisions made by the Trial Division of [the] High Court and Appellate Division of the High ⊥387 Court, [that] any clan, lineage or Palauan custom should not have the power or authority over any individually owned lands". However, both the decisions to which the LCHO made reference and Section 801 (of the Palau District Code) have been superseded for pertinent purposes by 39 PNC 102. It is clear, therefore, that the LCHO's reasoning was faulty; whether the result it reached was also erroneous is a far more complicated question.

39 PNC 102(b), (c) and (d), concern the status of individually owned land after the owner has died. The Court will address seriatim the potential applicability of each section.

Pursuant to 39 PNC 102(b):

> Lands held in fee simple by an individual may be devised by such individual by written will attested before and deposited with the Clerk of Courts, or by a sworn

> oral or written statement as to the content of the will by the devisor in the presence of three witnesses not taking under the will before the Clerk of Courts.

It is undisputed that Eusevio did not leave a written will, nor have three witnesses come forward to testify to the contents of such a will. There is on record a sworn statement by Ocheraol Melaitau, Eusevio's sister, that she discussed several properties, including Iwek, with Eusevio and "agreed to the disposition of the above properties in the event of his death". However, that statement, even accepted as true, does not constitute a will within the meaning of section 102(b) nor within the meaning 25 PNC 107, which sets forth the requirements of nuncupative or oral wills generally. ⊥388 Accordingly, the Court concludes that 39 PNC 102(b) is not relevant here.

> 39 PNC 102(c) provides:
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> In the absence of instruments and statements provided for in subsection (b) above, lands held in fee simple, which were acquired by the owner as a bona fide purchaser for value, shall, upon the death of the owner, be inherited by the owner's oldest legitimate living male child of sound mind, natural or adopted, or if male heirs are lacking, the oldest legitimate living female child of sound mind, natural or adopted, of the marriage during which such lands were acquired; in the absence of any issue such lands shall be disposed of in accordance with subsection (d) hereof.

While section 102(c) was based on section 801(c) of the Palau District Code, on which the LCHO apparently relied, it was altered by the Palau Legislature in one significant respect. Where 801(c) applied to any lands held in fee simple (in the absence of a will), 102(c) applies only to such lands "which were acquired by the owner as a bona fide purchaser for value". That amendment is critical here: 801(c) would have justified without further inquiry the award of Iwek to Hideo, who is indisputably Eusevio's "oldest living male child". However, for 102(c) to be applicable there must be a finding that Eusevio was "a bona fide purchaser for value" of the land in question. The Court is unable to make such a finding.[1]

⊥389 Seeking the benefit of section 102(c), Hideo advances several arguments. First, he points out that, notwithstanding their assertions, appellants offered no evidence that Eusevio was not a bona fide purchaser for value, and asserts that he could have acquired the land in that fashion either as ulsiungel or by payment for it. It is plainly true as a legal matter that Eusevio could have acquired the land as a bona fide purchaser for value. *Cf. Ngiradilubch v. Nabeyama* , Civil Appeal No. 30-90 (Feb. 20, 1992) (holding that the concept of notice of defective title exists in Palau and rejecting trial court's conclusion that 39 PNC 102(c) could never be applied to past Palauan land transactions). It also appears to be true that appellants did not establish below how Eusevio Termeteet acquired the land in question.

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[1] Appellants also contend that 102(c) does not apply because the land was acquired prior to the marriage of Eusevio and Hideo's mother. The Court is doubtful about both the factual and legal basis for this contention. However, given the Court's ruling that the bona fide purchaser requirement has not been met and that 102(c) is inapplicable in any event, the Court does not need to resolve this issue.

The problem for appellee, however, is that there was and is no evidence from either side as to how that land was acquired. Whatever the purpose of the legislature in limiting the effect of section 102(c) to lands acquired by bona fide purchasers for value, *see* pp. 7-8 *infra*, its intent to impose that limitation is clear. Without any evidence to justify a finding that Eusevio Termeteet was such a purchaser, the Court cannot conclude that section 102(c) applies in these circumstances, and cannot uphold the award to Hideo on that basis.

Hideo tries to bridge that gap in evidence by arguing next that the Court should rely on the fact that Eusevio Termeteet was registered in the Tochi Daicho as the individual owner of Iwek. According to him, with the presumption of ⊥390 correctness accorded listings in the Tochi Daicho comes a presumption of "full ownership". He contends, further, that the presumption of "full ownership" should include a presumption that the land was acquired as a bona fide purchaser for value. The Court is not persuaded that it should make this additional leap.

The Tochi Daicho presumption is not at issue in this case: It is undisputed that Eusevio Termeteet was throughout his life the individual owner of Iwek; the only question now presented is to whom that land should belong after his death. Appellee's argument seems to rest on the premise that the operation of section 102(c) limits an owner's rights to transfer land to his children, and thus is in conflict with the presumption of "full ownership" that the Tochi Daicho presumption implies. But that premise is faulty; even without the additional presumption that he was a bona fide purchaser, Eusevio Termeteet enjoyed full ownership rights in the land in question -- he could have sold the land to his son (or anyone else), given it to him as a gift, or left it to him in a will. Thus, even accepting appellee's contention that Tochi Daicho registration implies "full ownership", and even given that notion full effect, there is no reason to presume further that any individual owner listed in the Tochi Daicho was also a bona fide purchaser for value for purposes of section 102(c).

Anticipating this conclusion, appellee suggests that the "bona fide purchaser" limitation is unconstitutional as an infringement of due process rights and as an "unreasonable ⊥391 classification of owners". As a matter of due process, appellee's argument again rests on the faulty premise that 102(c) imposes a "limitation on the rights of ownership". But again that is mistaken. Section 102(c) (and 102(d)) is, after all, an intestacy statute that applies (by definition) only "[i]n the absence of instruments and statements" expressing a deceased owner's intentions. It imposes no limitation on the land owner's right to choose how his land will be distributed upon his death, but comes into operation only when he has made no such choice.

By the same token, appellee's right of inheritance to the extent it exists surely extends no further than the right to receive properties devised to him by his father. Once it is found, as here, that no such devise has been made, appellee's rights are at an end. Appellee has no right to the enactment of intestacy laws that will favor him in any or all circumstances.

Finally, as a matter of equal protection (which the Court understands appellee to be invoking in asserting an "unreasonable classification"), the question simply is whether ⊥392 the differing treatment accorded lands acquired as bona fide purchases and those acquired in some

other way has any rational basis. [2] Although the Court has been unable to find any formal statement of legislative purpose, a rational basis is nevertheless apparent from an examination of the statute itself. The consequence of the inapplicability of section 102(c) is that control of the land in question will go to the ⊥393 deceased owner's lineage pursuant to section 102(d). The distinction drawn in 102(c) thus has the effect that, absent a will, land purchased by the landowner will remain in his immediate family, while land otherwise obtained -- presumably, given Palau's history, land granted by his clan or lineage -- will revert to the lineage after his death. This is a rational distinction, though of course not the only choice the legislature could have made. Indeed, the legislature could rationally and without constitutional difficulty have made 102(c) absolute and eliminated lineage control entirely, [3] or it could have eliminated 102(c) and subjected all land not otherwise disposed of to lineage control. Its decision to choose a middle ground and to make the distinction drawn in section 102(c) is surely equally rational and not in any way at odds with Palau's Constitution.

All of the foregoing leads the Court to conclude that to determine the ownership of Iwek it must apply section 102(d):

> If the owner of fee simple land dies without issue and no will has been made in accordance with this section or the laws of the Republic or if such lands were acquired by means other than as a bona fide purchaser for value, then the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or ⊥394 adoption and which was actively and primarily responsible for the deceased prior to his death. Such desires of the immediate maternal or paternal lineage with

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[2] The declaration that "Every person shall be equal under the law and shall be entitled to equal protection", Palau Constitution, Art. IV, Section 5, plainly does not forbid the legislature from making policy choices and passing laws that may benefit one person over another if it acts reasonably and does not discriminate on the basis of any of the suspect classifications contained in the next sentence of that section. There is nothing suspect in distinguishing between "bona fide purchasers" and "no-bona fide purchasers". Moreover, the list of suspect classifications explicitly does not apply to "matters concerning intestate succession". Thus, the only criterion for constitutionality here is reasonableness. *See Campbell v. California*, 200 U.S. 87, 95 (1906) ("[The Equal Protection Clause of the United States Constitution] does not deprive a state of the power to regulate and burden the right to inherit, but at the most can only be held to restrain such an exercise of power as would exclude the conception of judgment and discretion, and which would be so obviously arbitrary as to be beyond the pale of governmental authority."); *see generally City of New Orleans v. Duke*, 427 U.S. 297, 303 (1976) ("Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions . . . . , our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest.").

[3] This appeared to be the trend in the case law before the enactment of section 801, section 102's predecessor. *E.g., Ngirumerang v. Watanabe*, 7 T.T.R. 260, 262 (App. Div. 1975) (citing cases): "It has been repeatedly held that in Palau individual ownership of land means just that -- individual ownership -- and that the lineage of a decedent who owned property individually had no reversionary interest in or control over such property."

> respect to the disposition of the land in question shall be registered with the Clerk of Courts pursuant to subsection (a) of this section.

The Court's task is easier said than done, for the goal of divining "the desires" of Eusevio Termeteet's appropriate lineage moves the Court from matters of law to matters of Palauan custom. Accordingly, with the parties' consent, [4] the Court has turned for assistance to Senior Judge Moses Mekoll of the Court of Common Pleas, a recognized expert on such matters.

Appellants' claim has at all times rested on section 102(d). Pursuant to that section, appellants and three of their cousins filed a document declaring that the desire of the lineage was that a collection of lands held by Eusevio Termeteet (including Iwek) should be entrusted to Raymond Ulechong as trustee for the benefit of all of the descendants of Ngowakl, Eusevio's father.

By contrast, appellee relies on the sworn statement of Ocheraol Melaitau, the sole surviving sister of Eusevio, which directed that the land should go to Hideo, and which attributed that direction to directions given by Eusevio himself prior to his death.

The question, then, is to determine who speaks for the lineage. Do the wishes of Ocheraol Melaitau as the eldest ⊥395 sister of Eusevio prevail over the children of her deceased younger brothers and sisters? [5] The Court posed this question to Judge Mekoll, along with the following sub-issues:

1. Is it relevant or determinative that Eusevio's other siblings, including the parents of appellants, were all adopted out to other families?

2. Is it relevant or determinative that Ocheraol, if her statement is credited, was expressing the desires of Eusevio?

Judge Mekoll advised the Court that, as a general matter, the family's decision must prevail over an individual's decision's, responding to the sub-issues as follows:

1. No. It is not determinative that Eusevio's other siblings, including the parents of appellants, were all adopted out to other families. In Palau, most adoptions are by blood relations. For example, if one was adopted by a maternal aunt, he or she still has the same rights and privileges and responsibilities to the natural mother's family, lineage or clan.

2. No. It is not determinative that Ocheraol, if her statement is credited, was expressing the desires of Eusevio. Again, in Palauan custom, a deceased's ⊥396 eldecheduch is undertaken or managed by surviving relatives, not by wills.

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[4] At oral argument, counsel for both parties agreed to the Court's consultation with Judge Mekoll as long as the information sought and obtained was disclosed in the Court's decision.

[5] Although the LCHO did not address section 102(d) explicitly, it made findings that, pursuant to Palauan custom, Ocheraol was the stronger family member whose wishes would supersede those expressed by her nieces and nephews. *See* Findings of Fact Nos. 4, 8.

The Court is deeply appreciative of Judge Mekoll's assistance in narrowing the issue to be resolved. The Court finds, however, that on the current record, it still cannot determine how this dispute should be decided under 102(d). On the one hand, if, as appellee contends, Ocheraol's direction to have the land pass to Hideo was stated at Eusevio's eldecheduch without dissent, then the Court would still be inclined to honor that direction not because of her status as senior family member, but as a matter of family consensus. Appellee vigorously denies, however, that Iwek (and other properties in dispute) were discussed at the eldecheduch.

If, on the other hand, appellant is correct that these lands were not discussed, then the Court is uncertain whether there is any definitive statement of the lineage as a whole on which the Court can base its decision. On the current record, the majority of those who have spoken out support appellant. However, because appellants' position, on their own theory, was adopted not at the eldecheduch, but in the separate writing that they filed, the Court does not know whether there are other family members entitled to a say in the matter whose voices have not been heard.

Although the Court is reluctant to prolong this dispute, it asks the parties to consider the best way to resolve this matter. The Court has in mind two alternatives. First, it could held a trial de novo on the question of what took place ⊥397 at Eusevio's eldecheduch. Second, and the preferable course in the Court's view, it could ask the parties to convene a family meeting and see if they can achieve a consensus by traditional means (or, failing that, a majority) on the disposition of Iwek. If the latter course were to be taken, the Court would preserve each party's right to appeal from this and any subsequent decision of the Court.[6]

Counsel for both parties are directed to make brief (not more than 3 pages) submissions addressing these alternatives (or any other proposal they wish to suggest) within 30 days from the date of this decision, and should appear for a status conference on July 27, 1993, at 10:15 a.m. The

[6] For example, if Hideo were to agree to participate in a family meeting but find that a majority favored appellants' claim, he could nevertheless appeal this decision and pursue in the Appellate Division his argument that he was entitled to the land pursuant to 39 PNC 102(c).

parties, through their counsel, should consult with each other before making their submissions to see if any agreement -- whether on the immediate issue or on the larger dispute -- can be reached.

SO ORDERED.