Balang v. Sengebau, 4 ROP Intrm. 31 (1993)
TOYOMI BALANG, et al.,
Defendants/Appellants,

v.

HIROE SINGEBAU, et al.,
Plaintiffs/Appellees.

CIVIL APPEAL NO. 36-91
Civil Action No. 17-79

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: November 30, 1993

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: John K. Rechucher

Counsel for Intervenor: Moses Uludong, T.C.

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; and JANET H. WEEKS, Part-Time Associate Justice

PER CURIAM:

Appellants Toyomi Balang et al. are appealing the October 3, 1991 order, as amended in three subsequent orders, of the Trial Division which distributed war claims proceeds to members of the Ngerulkong Lineage of Peleliu State. The subject of the controversy between the parties is two awards for damages totaling $190,345 made by the Micronesian Claims Commission in 1976 to Toyomi Balang as representative of the lineage. The award was made pursuant to the United States Micronesian Claims Act of 1971 for damage to trees, crops, and land on Peleliu Island during the Second World War. For the reasons set forth below, we vacate the order of the court.

⊥32 BACKGROUND

Plaintiffs/Appellees initiated this lawsuit in 1979 to recover their share of the 1976 war claims award. The Trial Division's original order was entered in 1984 and appealed in *Sengebau v. Balang*, 1 ROP Intrm. 695 (1989). The Appellate Division remanded the case to the trial court with instructions that the strong and senior lineage members meet and agree on a fair and equitable distribution plan for the money. If the lineage could not agree on a plan, the trial court was instructed to distribute the money "in a fair and equitable manner." *Id.* at 700.

The lineage could not reach the desired agreement, and the trial court ordered that the remaining $152,883.66 be distributed in equal shares to all lineage families, with deductions made for those who had received previous payments. The grandparents or next of kin were directed to divide the family share ($9,351.98) equally among all members of the family. The court noted that Toyomi Balang had commingled the awards made for the Ngerulkong Lineage with the award made to the Ucheliou Clan in a related case, and that Balang had already distributed more than half of the combined funds to members and non-members of the lineage.

The funds have now been disbursed pursuant to the court's order. The present appeal challenges the propriety of that order.

DISCUSSION

Before we turn our attention to the substance of this appeal, we will first address a procedural issue that appellees raised for ⊥33 the first time during oral argument. The case at issue in this appeal, Civil Action No. 17-79, was once consolidated with a related case, Civil Action No. 18-79. Appellants mistakenly listed the latter rather than the former number in their Notice of Appeal. Appellees argue that this defect prohibits this Court from reaching the merits of this case. We are unpersuaded by such a technical argument because the text of the Notice of Appeal, as well as the Appellants' Opening Brief, make it abundantly clear that it was the October 3, 1991 Order in Civil Action No. 17-79 that was the subject of this appeal. We also note that this very same mistake occurred in other submissions in the proceedings below. Appellees did not file a brief in this appeal and at no time brought the mistake to this Court's attention. Appellants' Notice of Appeal was timely, and so the error was not of jurisdictional proportion. Under these circumstances, we do not deem the faulty case number in the Notice to warrant dismissal of this appeal.

The first of appellants' two arguments is that the court had no authority to grant a judgment of a monetary award to parties not named in the lawsuit. This contention is disingenuous. In the previous appeal the Appellate Division ordered the Trial Division to disburse the money to the members of the lineage, not just the parties, if the strong senior members were unable to agree.

Appellants' next contention brings us to the heart of this appeal. They argue that the court erred in issuing its judgment without providing them with a hearing, and that the court, in effect, foreclosed them from presenting evidence as to the ⊥34 membership in the lineage and the relevant factors in determining a fair and equitable distribution of the award.

The court refused to grant appellants' request for a hearing on the grounds that it was untimely. Having reviewed the chronology of relevant events, we cannot agree:

(1) September 19, 1989. The Appellate Division issued its decision in the first appeal. The lineage was ordered to meet within sixty days to determine a distribution plan, and the parties were given ninety days to petition the court for a hearing.

(2) October 3, 1989. Appellants petitioned the Appellate Division for a rehearing.

(3) December 13, 1989. The petition for rehearing was denied.

(4) January 17, 1990. The trial court extended the sixty- day period for the parties to meet until January 29, 1990, on the grounds that the petition for rehearing had tolled the running of the original period.

(5) January 29, 1990. Appellants filed a petition for a hearing.

(6) November 21, 1990. Appellants renewed their request for a hearing.

(7) January 23, 1991. The trial court denied the petition.

It is clear from the foregoing sequence that the court considered the petition for rehearing to have tolled the sixty-day period for a meeting but not to have tolled the ninety-day period to request a hearing. We see no basis for such a distinction. Since appellants' petition fell within the tolled ⊥35 sixty-day period, a fortiori it fell within what should have been the tolled ninety-day period.

The need for a hearing should have been readily apparent to the trial court. The appellants, appellees, and intervenors all submitted separate lists of lineage membership and divergent proposals for a fair and equitable distribution. The court decided to amalgamate the lists and to consider as members everyone listed on any of the three lists. We cannot see the logic of this approach. Except as previously determined by this Court, appellants were entitled to contest the lineage membership of the names listed by appellees and intervenors, and vice versa.

Moreover, all parties were entitled to a hearing on the merits of their proposals to distribute the funds. We are not ruling that equal distribution is unfair and inequitable as a matter of law, nor are we retreating from our comments in the earlier appeal regarding the role of customary law in distributing war claims. We are merely stating that the parties should be afforded an evidentiary hearing to attempt to establish the relevant considerations for devising a fair and equitable plan.

CONCLUSION AND ORDER

The court did not err in considering lineage members who were not parties to this lawsuit as eligible to share in the distribution award. The court did err, however, in refusing to grant appellants' request for a hearing on the issues of lineage membership and the factors to be considered in devising a fair and ⊥36 equitable distribution scheme. We therefore VACATE the order and REMAND the case to the Trial Division to conduct a hearing into these matters.