Luii v. Meriang Clan, 4 ROP Intrm. 354 (Tr. Div. 1994)

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

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

v.

MERIANG CLAN,
Appellee.

CIVIL ACTION NOS. 210-90; 227-90; 242-90 & 275-90

Supreme Court, Trial Division
Republic of Palau

Order
Decided: June 16, 1994

Counsel for N. Luii: William L. Ridpath
Counsel for E. Arbedul: Moses Y. Uludong
Counsel for KSPLA: Antonio L. Cortes
Counsel for Idid Clan: Carlos H. Salii
Counsel for Meriang Clan: Johnson Toribiong

PETER T. HOFFMAN, Justice:

This is an appeal from a Land Claims Hearing Office (LCHO) determination made on April 26, 1990 returning certain public lands to Appellee Meriang Clan. The LCHO found that the Meriang Clan had been the owner of lands known as Meriang and Desakel which have been denominated for purposes of this litigation as Claim No. 90, [1] that part of these lands were taken by the Japanese Government in ⊥355 1915 and the remainder in 1924, that the lands were taken without payment of adequate compensation, and that the lands are public lands. The LCHO returned ownership of Claim No. 90 to the Meriang Clan pursuant to the constitutional and

[1] There is some controversy as to the names of the individual parcels included within Claim No. 90, a controversy that need not be resolved on this appeal. According to the testimony of Baules Sechelong, Meriang Clan claims lands known as Meriang, Desakel, Ngerbalasis, Ngerbeseng, Ngerudesull, Btelulachangratobed, Didrangmatel and Ngitibad, but whether all of these lands are included within Claim No. 90 is unclear. Other witnesses identified other lands as being within Claim No. 90.

statutory mandates of the Palau Constitution, Art. XIII, Sec. 10[2] and 35 PNC §1104(b).[3]

The origins of the LCHO proceedings are found in a claim filed in 1955 by Baules Sechelong on behalf of the Meriang Clan. The claim was filed with the Palau District Land Office for the return of certain lands previously owned by the Japanese Government and then in the possession of the Trust Territory of the Pacific Islands. The claim was designated as Claim No. 90. The District Land Title Officer, D.W. LeGoullon, found that the land had been taken by the Japanese Government without payment of compensation except for damage to the plants and trees and for moving houses off the area. Because of the governing law at the time, title to the land was confirmed in the Trust Territory of the Pacific Islands.

⊥356 The District Land Title Officer's decision was confirmed on appeal by the Trial Division of the High Court in *Ngirameriyang v. Trust Territory of the Pacific Islands* , Civil Action No. 105 (September 4, 1958; unpublished opinion) (hereinafter "Civil Action No. 105"). The court's specific findings relevant to this appeal are as follows:

> "The land in question consisting of two parcels known as Meriang and Desakel, are located in the hospital area of Koror and contain together approximately 557, 566 square feet. Prior to Japanese times they were owned by the clan Meriang which had improved the land with dwellings, plants and trees. In 1915 the Tract Desakel was taken by the Japanese Navy for a housing area, without the clan's consent and without payment of compensation. The remaining parcel was taken by the Japanese Government in 1924 for construction of a radio tower. The clan received 1,000 Yen for removing their dwelling and for damages to their plants and trees, but no compensation was paid for the land. Part of the land Desakel is now occupied by the Koror Hospital installations. No attempt was made to obtain restoration of the land until the filing of claims with the District Land Title Officer, on April 11, 1955."

The present proceeding before the LCHO was confined to the area at issue in the original Claim No. 90.

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[2] Art. XIII, Sec. 10 states:

"The national government shall, within five (5) years of the effective date of this Constitution, provide for the return to the original owners or their heirs of any land which became part of the public lands as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration."

[3] The pertinent portion of 35 PNC §1104(b) states:

"The land Claims Hearing Office shall award ownership of any public land, or land claimed as public land, to any citizen or citizens of the Republic of Palau who prove that such land became part of the public lands, or became claimed as part of the public lands, as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation, and that prior to such acquisition such land was owned by such citizen or citizens or that such citizen or citizens are the proper heirs to such land."

Appellants have presented a myriad of arguments as to why the LCHO's decision should be set aside.[4] Many arguments are presented by more than one appellant while others are unique to a particular appellant. Rather than analyze the arguments on an appellant-by-appellant basis, a process that would involve much repetition, the ⊥357 court will address the arguments and only deal with the claims of particular appellants where necessary.

LCHO'S ADOPTION OF FACTS FROM CIVIL ACTION NO. 105

Nona Luii, on behalf of Kerkur Clan, Palau Public Lands Authority (PPLA), and the Koror State Public Land Authority (KSPLA) argue that the LCHO gave improper res judicata effect to the findings in Civil Action No. 105 that the Meriang Clan was the owner of the disputed property prior to its taking by the Japanese Government. There are several reasons why this argument is not tenable.

Contrary to appellants' contention, the LCHO did not accord res judicata effect to Civil Action No. 105, nor was the decision given preclusive effect under 35 PNC §1110(c).[5] Although the LCHO adopted the findings made in Civil Action No. 105, there is nothing in the LCHO Adjudication and Determination to suggest that the LCHO ⊥358 considered the decision and the findings of fact contained therein to be anything more than evidence.

Several witnesses testified before the LCHO that the findings made in Civil Action No. 105 are fatally defective because many of the potential claimants were unaware or confused by the procedures to be followed in presenting their claims before the Palau District Land Office. The court accepts this contention, but doing so only goes to the weight to be accorded the findings made in Civil Action No. 105 and is not a reason for totally disregarding its conclusions.

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[4] During the argument on this appeal, the Appellant Esebei Arbedul, who claimed that a portion of land belonging to him overlapped with the area contained in Claim No. 90, entered into a stipulation with the Appellee regarding the boundaries of the two areas. This stipulation has not yet been filed with the court, but should be before the final decision is rendered in this appeal.

[5] The pertinent portion of this section states:

"The Land Claims Hearing Office shall not hear claims or disputes as to right or title to land between parties or their successors or assigns where such claim or dispute has already been finally determined by the former Land Commission or by a court of competent jurisdiction. A land claims hearing officer shall . . . accept such prior determinations as binding on such parties without further evidence than the judgment or determination of ownership."

The application of res judicata to claims for public lands is prohibited by the provisions of Article XIII, Section 10 of the Palau Constitution and 35 PNC §1104(b). See *Iyar v. Palau Land Claims Hearing Office*, Civil Action No. 1073-88. (Unpublished opinion) The court understands the parties to be more correctly arguing that the LCHO utilized the decision in Civil Action No. 105 as collateral estoppel on the issues of ownership and the adequacy of the compensation for the taking. Since the findings regarding ownership and compensation were not necessary to the decision in Civil Action No. 105, the LCHO was correct in not giving collateral estoppel effect to the findings of fact.

There is no denying that the decision is highly probative on the issues before the LCHO and was so considered by that court. The claim was made and the evidence was heard at a time when those who had knowledge of the ownership of the land and the taking by the Japanese were still alive and when memories were presumably fresher than they are today. The hearing resulted in a determination that the land was owned by Meriang Clan. While this determination is not res judicata as to any of the parties today, it is, nonetheless, highly probative on the issues of ownership of the land prior to taking by the Japanese Government and the compensation paid.

THE WEIGHT OF THE EVIDENCE

The overriding theme presented in appellants' briefs and oral arguments is that the LCHO erred in believing the testimony of certain witnesses and in disbelieving the testimony of others with each appellant arguing for a different set of witnesses in whose ⊥359 veracity the LCHO should have placed its trust. In effect, appellants are asking this court to substitute its own judgment about the credibility of the witnesses for those of the LCHO panel members. This the Court refuses to do.

Under the holding of *Ngiratereked v. Joseph*, Civil Action No. 3-92 (Dec. 17, 1993), the trial court, in deciding an appeal from an LCHO determination, may review the facts de novo and make new findings of fact, or the court may in its discretion adopt the LCHO findings in whole or in part. There is no reason to suppose that this court would bring any more insight or perspicacity to the task of evaluating the evidence presented before the LCHO than did the LCHO panel members. Indeed, if the comparison is between this court relying on the transcript and the LCHO's opportunity to observe and listen to the witnesses, there can be no doubt that the LCHO was in the superior position to evaluate the veracity of the witnesses. Even if this court were to conduct a trial de novo, the fact finding advantage would continue to remain with the LCHO given that the original hearing occurred over four years ago and many of the witnesses were then of an advanced age and, according to statements made during oral argument, several are now deceased.

As an example of the sort of credibility assessment this court is being requested to make, large portions of appellants' briefs and oral arguments were devoted to pointing out factual discrepancies in the testimony given by Baules Sechelong and conflicts between his testimony and the record in Civil Action No. 105. From this, appellants argue that neither Sechelong's ⊥360 testimony nor the findings made in Civil Action No. 105 are worthy of belief. On the opposite side of the ledger, Sechelong provided explanations during his testimony for most of these discrepancies. Whether the LCHO should have credited appellants' witnesses and the inferences to be drawn from their testimony or the testimony of Sechelong is uniquely a matter of assessing credibility and the weight to be accorded the evidence. The LCHO apparently found the testimony of appellee and its witnesses to be the more credible and this court sees no compelling reason to second guess the LCHO on this determination.

Perhaps the most substantial competing claim to the land is made by the Kerkur Clan. Several witnesses testified on behalf of the Clan stating that the land known as Meriang was

confined to a very small portion of Claim No. 90, but Kerkur Clan members owned and occupied nearly all of the rest of the area before the taking by the Japanese. As noted by the LCHO, the Kerkur claim is "almost convincing."

The previously presented analysis concerning the weight to be given the evidence is equally applicable to the Kerkur Clan witnesses. But even if this court were inclined to substitute its judgment for that of the LCHO concerning the validity of the Kerkur Clan claim, it would still arrive at the same conclusion.

The main witness in support of the Kerkur claim was Nona Luii. She based her knowledge about the Kerkur claim primarily on what her mother, Ebil Mlechei, holder of the Dirrakerkur title within the Clan, had told her. The Kerkur Clan brief first attacks the ⊥361 LCHO's reliance on the findings made in Civil Action No. 105 because of the lack of knowledge on the part of potential claimants on how to initiate or participate in proceedings before the Palau District Land Office. Kerkur Clan also argues the notice given the public of the claim was misleading with respect to the area being claimed. Whatever validity these argument have with regards to the other claimants, they are considerably weakened with respect to the Kerkur claim.

The record demonstrates that Ebil Mlechei, the mother of Nona Luii, was in charge of clan lands at the time Claim No. 90 was originally filed. Ebil Mlechei filed a claim on behalf of Kerkur Clan, Claim No. 53, contemporaneously with the filing of Claim No. 90 by the Meriang Clan. Not only did the Kerkur Clan file claims during this period of time, but Ebil Mlechei was one of the attesting witnesses to Claim No. 90 and, according to the testimony of Baules Sechelong, she assisted in the monumentation of the claim. Baules, in turn, was listed as a witness for Claim No. 53. Claim No. 53 and Claim No. 90 are adjacent to each other. It is clear that the title holder within Kerkur Clan who was responsible for its lands was fully aware of the filing of Claim No. 90 and actively supported it.

KSPLA also argues that payments made by the Japanese Government were not for damages to crops and for removing houses, as found by the LCHO, but were in fact payments for the purchase of the land. Therefore one of the necessary elements of 35 PNC ⊥362 §1104(c)[6] has not been established. The brief then concludes that the amount of the payments made is consistent only with the purchase of the land.

While KSPLA's arguments are plausible, they are based on inferences from the evidence. The same evidence supports other equally or more plausible inferences. The LCHO, with its opportunity to observe the witnesses and hear the testimony, rejected the inference proposed by KSPLA and accept other competing inferences.

In conclusion, appellants urge this court to give them a second opportunity to persuade a fact-finder of the correctness of their positions. Instead, this court chooses to rely on the LCHO's findings of fact.

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[6] Public lands shall be returned to their previous owners only if acquired by a previous occupying power of their nationals through "force, coercion, fraud, or without just compensation or adequate consideration . . . ." 35 PNC §1104(b) (emphasis added).

SUFFICIENCY OF EVIDENCE TO SUPPORT THE DETERMINATION

PPLA and KSPLA assert that the Meriang Clan failed to carry its burden of production on each of the necessary elements under 35 PNC §1104(b). This is not true. As previously noted, the findings made in Civil Action No. 105 are highly probative on the elements of §1104(b). Moreover, appellee's evidence in support of its claim was not confined to the direct testimony of Baules Sechelong. He was extensively cross-examined and offered additional testimony throughout the course of the hearing. Without repeating the evidence presented, there was more than adequate ⊥363 support for the LCHO's conclusion.

KSPLA AS THE CURRENT TITLE HOLDER OF THE LANDS

PPLA contends that KSPLA is not the current title holder of the land in question. Given the outcome of this appeal, it is unnecessary for the court to resolve this dispute and it declines to do so.

UNCOMPENSATED TAKING OF PUBLIC LANDS

KSPLA in its initial brief, written by different counsel than those currently representing the agency, argues that 35 PNC §1104(b) creates an unconstitutional taking of public property without just compensation. Since §1104(b) implements Article XIII, Section 10 of the Palau Constitution, and since KSPLA traces its title to an uncompensated taking of the property by the Japanese Government, the court rejects this argument.

CONCLUSION

For the foregoing reasons, the LCHO Adjudication and Determination is AFFIRMED. The issue of ownership of the government buildings located on Claim No. 90 was previously bifurcated from the issue of ownership of the land. A status conference is scheduled for June 24, 1994 at 2:00 p.m. to set a briefing schedule for the remaining issues in the appeal.

Please note that this setting will not appear in the court calendar.