Rebelkuul v. Techur, 5 ROP Intrm. 79 (1995)

LIEB REBELKUUL,
Appellant,

v.

SETSKO TECHUR, representing:
EMILIANO REBULKUUL ANGEL,
Appellees.

CIVIL APPEAL NO. 9-94
Civil Action No. 510-90

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: March 23, 1995

Counsel for Appellant: J. Roman Bedor
⊥80
Counsel for Appellees: Carlos H. Salii

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

HOFFMAN, Justice:

In 1974, Rebelkuul Orukei, the landowner listed in the Tochi Daicho, filed an application for registration with the Palau District Land Commission for land known as Ngurusukl in Ngermelech Hamlet, Melekeok State.[1] Although Orukei's application was approved by the Palau District Land Commission on September 5, 1975, a determination of ownership was not issued until February 15, 1990, after Orukei had passed away. A new hearing was held by the Land Claims Hearing Office (LCHO) on September 10, 1990 which then determined that Emiliano Rebelkuul Angel, Orukei's son adopted during his second marriage, became the owner of the land following Orukei's death. Lieb Rebelkuul, a son adopted during Orukei's first marriage, has appealed from that determination. Rebelkuul argues that the LCHO erred in failing to give testamentary effect to Orukei's statement in his application for registration that Rebelkuul would inherit the land upon Orukei's death.

The application for land registration form used by the Palau District Land Commission at the time Orukei filed his application contained a question in English and Palauan asking "When applicant dies, the land will be inherited by:" followed by a blank where the applicant could fill in the name of his or her potential heir. The only question presented on appeal to this court is

[1] Ngurusukl is more particularly described as cadastral parcels 016 C 02, 088 C 10, and 088 C 08.

whether an applicant's response to the quoted question should be treated by the LCHO as a testamentary devise in determining the ownership of land.

Testamentary devises in Palau are cloaked with several important procedural safeguards. For example, executed wills must be acknowledged by the testator as the testator's will and the testator's signature must be witnessed by at least two individuals. 25 PNC § 105. See also 39 PNC § 102(b). Testamentary devises also may be subsequently revoked or modified. See 79 Am. Jur.2d Wills §§ 500 & 674 (1975). None of these safeguards applied to the completion of a Palau District Land Commission registration application form. There is no requirement that when an applicant completed such a form he or she be cognizant that the form may ultimately work to pass the land upon the applicant's death. ⊥81 Similarly, the applicant's signature was required to be acknowledged, but there was no provision for any further witnesses. Finally, there was no procedure by which an applicant may later amend the name of the person to receive the land upon the applicant's death.

While the Palau District Land Commission was authorized to prescribe rules and regulations, 67 TTC § 102, there was nothing in the Land Registration Chapter of the Trust Territory Code, 67 TTC § 101 et seq., indicating an intent to have the registration application form serve as a testamentary instrument nor has the Appellant directed the court's attention to any Land Commission regulation evincing such intent. Indeed, Chapter 1, Title 13 of the Trust Territory Code specifically provided for the making of customary, holographic, nuncupative and executed wills, but no reference was made to devising land through completion of a registration application form. Finally, no evidence was presented either before the LCHO or the trial court that Orukei intended the form to be a testamentary instrument or had any understanding that the form would serve to pass title to the land upon his death.

The trial court correctly determined that a statement of intended heirship on a land registration application form is not the equivalent of a will and does not have any testamentary force. The decision of the trial court is AFFIRMED.