Elewel v. Oiterong, 6 ROP Intrm. 229 (1997)
KUNIWO ELEWEL,
Appellant,

v.

IBAU OITERONG,
Appellee.

CIVIL APPEAL NO. 22-96
Civil Action No. 203-95

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: September 19, 1997

Counsel for Appellant: Moses Uludong, T.C.

Counsel for Appellee: William Ridpath

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

MILLER, Justice:

This is an appeal from a trial court decision affirming the determination of the Land Claims Hearing Office. For the reasons stated below, we AFFIRM.

BACKGROUND

This case concerns a dispute over land known as *Ngerucheouch*, Tochi Daicho Lots Nos. 532 & 533, located in Ngerchemai Hamlet of Koror State. The Tochi Daicho records list Keremius as the owner of *Ngerucheouch*. Sometime in the early 1950's Keremius passed away without leaving any instructions as to who should inherit *Ngerucheouch*.[1] Nevertheless, shortly after Keremius died, Ibau Oiterong and her siblings assumed control of the land and built houses on it. These dwellings remain today.

⊥230 In 1995, the Land Claims Hearing Office (LCHO) conducted a hearing concerning *Ngerucheouch*. At the hearing, Oiterong claimed the land on behalf of the children of her grandmother, Rubekai. [2] Opposing this claim was Kuniwo Elewel, a nephew of Keremius.

[1] While the exact date of Keremius' death was never established, a review of the record shows that Keremius died sometime between 1950 and 1953.

[2] Oiterong claimed that the property was her grandmother Rubekai's, and that she had brought their relative Keremius to the property from Embolic to use the land while he bore the

Elewel asserted that Keremius had adopted him and that he should therefore inherit the land pursuant to Palau District Code § 801(c), which, as originally enacted, provided that, in the absence of a will, land held in fee simple would be inherited by the decedent's oldest male child, natural or adopted. The LCHO found that Keremius only treated Elewel as a nephew and that he never truly adopted him. Consequently, the LCHO found that PDC § 801(c) did not apply to Elewel.[3] It determined that the land belonged to "Ongalek ra Rubekai", the family of Rubekai.

On appeal to the trial court, Elewel claimed that the LCHO erroneously rejected his uncontradicted testimony that he had been adopted by Keremius. He also stated that the LCHO had interrupted his testimony numerous times and he was not able to present his case effectively. The trial court upheld the LCHO's factual finding as based on substantial evidence. Moreover, the trial court found that if Elewel wished to assert that he did not have a fair opportunity to present evidence, he should have presented the omitted evidence to the trial court, which he did not. Finally, the trial court found that Keremius died before the enactment of PDC § 801(c) and thus it did not help Elewel's case even if he were adopted.

Although the trial court then proceeded to question the legal reasoning underlying the LCHO's decision, it ultimately affirmed its determination that the land belonged to the children of Rubekai.

DISCUSSION

On appeal, the appellant attacks the procedures of both the trial court and the LCHO, the factual finding by the lower courts that Keremius did not adopt Elewel, an the findings by the trial ⊥231 court concerning inheritance of the land.[4]

I. THE LOWER COURTS' PROCEDURES

The appellant mounts a two-pronged attack on certain procedures employed by the LCHO and the trial court. Specifically, the appellant contends that the LCHO denied him the right to adequately present his case and that the trial court erroneously refused to grant him a trial de novo.[5] As noted above, the trial court rejected this argument because of Elewel's failure "to state on appeal what evidence [he] would have presented, if permitted to do so, and how this

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title of Iechaderchemai.

[3] The LCHO also found that Elewel's claim was "stale," as he had filed it in 1989, withdrew it in 1990, and then reinstated it.

[4] The appellant also argues that the LCHO improperly relied on the doctrines of adverse possession and laches. There is nothing in the record to suggest that these doctrines played a role in the trial court's decision; consequently, we will not discuss them. Likewise, since there appears to be no dispute that Keremius died before the enactment of PDC § 801, we agree with the trial court that it is inapplicable regardless of his relationship to Elewel.

[5] Elewel also claims that the LCHO improperly allowed Oiterong to alter her claim in the middle of the proceedings, thereby violating his right to notice. We find, based on a review of the briefs and oral argument below, that this argument was not presented to the trial court. We decline to address it here.

evidence would have affected the outcome of the case." Decision at 3-4 n.3.

We have reviewed the transcript of the LCHO proceedings. Although the commissioners actively questioned Elewel during his testimony, we see no indication that there was additional information that he wished to provide but was denied the opportunity to present. Nor is there any basis for the contention that he was prevented from calling as a witness his sister, Tibkang. Apart from a single instance in which he apparently turned to his sister to ask a question in the middle of his own testimony, appellant never asked to call her as a witness nor was he denied the right to do so.[6]

As far as the trial court is concerned, we will not disturb a ⊥232 decision to deny a motion for trial de novo absent a showing that the Trial Division abused its discretion. Where a party contends that the record before the LCHO is for some reason incomplete, "[i]t is not unreasonable to first require him to make a reasonable effort to supplement the record with an agreed statement of facts or some offer of proof concerning the missing testimony unless it would be impractical under the circumstances of the case." *KSPLA v. Meriang Clan* , Civil Appeal No. 3-95 (November 15, 1996), slip op. at 9. There is no basis for a finding of impracticality here. In addition, having found that Elewel was not prevented from presenting his sister's testimony at the initial hearing, it is sufficient to note that "the discretion to grant a trial de novo need not be exercised merely because an appellant believes that a better case can be presented if granted a second opportunity." *Arbedul v. Mokoll* , 4 ROP Intrm. 189, 191 (1994). We find no abuse of discretion.

II. FACTUAL FINDINGS OF THE LOWER COURTS

A primary component of the appellant's claim to *Ngercheouch* is that Keremius adopted him as his son. The appellant testified to that effect, but offered no other evidence to support this assertion. The LCHO did not believe this testimony and the trial court affirmed this factual finding. The appellant asserts that this finding was in error, as his testimony was uncontradicted by any other evidence.

As the trial court correctly pointed out, however, while a finder of fact may not arbitrarily disregard testimony, it is not bound to accept even uncontradicted testimony, especially where, as here, the witness has an interest in the outcome of the case. *See* 81 Am. Jur. 2d *Witnesses* § 1033 (1992). Moreover, having reviewed the record itself, the trial court concluded that "[t]he LCHO was correct in finding that no adoption was proven." Decision at 3-4. "If the trial court's account of the evidence is plausible in light of the record viewed in its entirety, the appellate court may not reverse it." *Arbedul*, 4 ROP Intrm. at 196. We conclude that this factual determination was not clearly erroneous.

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[6] Read in context, the statement by one commissioner — "Never mind Tibkang. Just what you know" — was an appropriate direction that appellant answer a question put to him on the basis of his own knowledge and not seek assistance from someone who, at that point, was an unsworn member of the audience. We do not read into that admonition a direction or ruling that Elewel would not be permitted to call Tibkang as a witness in her own right.

III. TRIAL COURT'S LEGAL ANALYSIS

Finally, the appellant takes issue with the trial court's legal findings concerning who should inherit the property in this instance. The trial court found that it is Palauan custom for the "lineage or close relatives" of a decedent to dispose of his land at his eldecheduch. The trial court further found that although *Ngerucheouch* was not discussed at that time, the subsequent ⊥233 occupation of the property by the appellee's family was a de facto disposition that should be honored by the court as if the land had been given out at the eldecheduch.

We have not arrived at a single rule to govern cases -- like this one -- in which a decedent passed away prior to the enactment of PDC § 801. Where there is evidence that an eldecheduch has been held, *e.g., Remengesau v. Sato* , 4 ROP Intrm. 230 (1994); *Kubarii v. Olkeriil* , 3 ROP Intrm. 39 (1991), or some other "meeting of a deceased's person's relatives where the decedent's properties are discussed", *Lakobong v. Anastacio* , Civil Appeal Nos. 12-96, 14-96 (June 12, 1997), slip op. at 4, we have upheld determinations awarding lands in accordance therewith. Where the evidence shows that no eldecheduch was held, on the other hand, we have upheld a determination, following certain Trust Territory decisions, that, under custom, a decedent's land passes to his children. *Ruluked v. Skilang*, Civil Appeal No. 36-95 (June 10, 1997).

Neither line of authority provides a definitive answer here. Since, based on the factual finding affirmed above, neither appellant nor appellee was a child of Keremius, the Trust Territory cases are of little assistance. On the other hand, while there is evidence that an eldecheduch was held for Keremius, it appears that *Ngerucheouch* was not specifically discussed at that time.

In these circumstances, we believe that the trial court's resolution was a reasonable one that is fairly based on the record before it. While possession of land is not always an indication of ownership, we believe it a fair inference that occupation of the land by appellee's family following Keremius' death and for the past thirty or more years is indicative of a tacit or *de facto* disposition of the land to them. Particularly where the only other claimant never claimed that the land was given out to him and never lived on the land, and was found to have exercised no control over the land,[7] we have no basis to overturn the decision of the trial ⊥234 court.

CONCLUSION

For all of the reasons stated above, the decision of the trial court is AFFIRMED.

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[7] The trial court noted: "Although the Appellant claims to have given [Appellee's relatives] permission to build the house, the LCHO apparently found this testimony to be less than credible" Decision at 5. Given Elewel's inconsistency on this point, this finding was not clearly erroneous. *See* LCHO Transcript at 6:

"Q: When did you know that these houses are built on this land?
A: I don't know. I was a seaman and when I returned, the houses are already there."