Ngerketiit Lineage v. Ngerukebid Clan, 7 ROP Intrm. 38 (1998)

NGERKETIIT LINEAGE, represented by FRANCISCO ARMALUUK, EUSEBIO RECHUCHER,
Appellants,

v.

NGERUKEBID CLAN, Represented by Chief Remeliik BECHESERRAK TMILCHOL, HEIRS OF NGERIBONGEL RECHULD, Represented by MARIA RECHULD, GEORGE NGIRARSAOL, JEFF NGIRARSAOL, HILDE BROADBENT, HEIDI EMERY, GEORGIANA PERSONOUS, LORA DWARTE, ERNEST NGIRARSAOL, RAFAELA SUMANG, VIOLA SUMANG, NAOMI SUMANG, ISABELLA SUMANG, SAM MASANG, SABINO ANASTACIO, and ALAN SEID,
Appellees.

CIVIL APPEAL NO. 9-96
Civil Action Nos. 108-94 and 121-94

Supreme Court, Appellate Division
Republic of Palau

Argued: November 20, 1997
Final Briefs Submitted: February 16, 1998
Decided: April 1, 1998

Counsel for Appellant:
Ngerketiit Lineage - Douglas F. Cushnie, Esq.
Eusebio Rechucher - Carlos Salii, Esq.

Counsel for Appellees:
Ngerukebid Clan - Johnson Toribiong, Esq.
Heirs of Ngeribongel Rechuld - J. Roman Bedor, T.C.
George Ngirarsaol et al. - Kevin N. Kirk, Esq.
Rafaela Sumang et al. - Yukiwo P. Dengokl, Esq.
Sam Masang and Sabino Anastacio - Moses Y. Uludong, T.C.
Alan Seid - Mark Doran, Esq.

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

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MICHELSEN, Justice:

I. BACKGROUND

Efforts to clear title to a parcel of land known as Ngerielb began over forty years ago in 1957, and continue here on appeal from a 1996 judgment in a quiet title action. The land has now been subject to a determination of ownership by the Palau District Land Office in 1958, a determination of ownership by the Land Commission in 1987, an appeal from that determination resolved in 1990, and now this current action. In this round of litigation, [1] the major task of the Trial Division was to decide which previous determinations would be treated as conclusive, as well as to analyze the significance of a 1977 deed from Armaluuk Kloteraol to Ngerukebid Clan concerning some of the land at issue in this case. We affirm in part and reverse in part.

An appeal regarding this parcel was before this court eight years ago in *Kloteraol v. Ulengchong*, 2 ROP Intrm. 145 (1990). A quotation from that opinion will help set the stage here.

> In 1986, the Palau Land ⊥39 Commission, for reasons not apparent from the record, held public hearings on land the title to which had been previously adjudicated in 1958, in Determination of Ownership and Release No. 162. As a result of these hearings, in October, 1987, the Land Commission issued a new Determination of Ownership, which found ownership of at least some of the land to be different than that found in 1958.
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> Kloteraol [representing Ngerketiit Lineage] moved in the Trial Division for summary judgment, arguing that ownership of Lot No. 1870 (and apparently all the other lots, as well) had been previously decided on July 8, 1958, more than thirty years before. In the 1958 decision (which the trial judge specifically found had been made after notice and an opportunity to be heard), the Palau District Land Title Officer issued Determination of Ownership and Release No. 162, in which the Ngerketiit Lineage was declared to be the owner of the land in question. The Trial Division found that no evidence had been presented to show that the 1958 decision of the Land Title Officer had ever been appealed and, further that a May 29, 1973 judgment in another civil case, No. 461, "strongly suggest[ed] that it was not."

Id. at 146-47. The Court affirmed the Trial Division's grant of summary judgment to Kloteraol on behalf of Ngerketiit Lineage, noting three reasons why the Trial Division was correct to give the 1958 determination preclusive effect. First, the applicable statute, 35 PNC §930(b), required the Land Commission to treat the District Land Title Office determinations as binding. The failure of the Land Commission to comply with this applicable statutory provision was error. Second, the Land Commission also should have recognized Land Management Regulation No. l,

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[1] The present appeal arises out of two consolidated cases. The first, Civil Action No. 108-94, was filed by Dirraingeaol Tewid against Ngerketiit Lineage in March 1994. Ngerukebid Clan filed the second action, Civil Action No. 121-94, in April 1994.

Section 13. Pursuant to that regulation, the prior determination would be considered final and binding. Third, "a decision not appealed from is like a judgment between the parties." *Id.* at 150. Because the 1958 determination was not appealed, it was to be treated as final and binding, and the Land Commission could not redetermine the merits when the prior determination of ownership was entered into evidence. The Appellate Division concluded that the "analysis employed by the Trial Division is reasonable and will be sustained, so that a measure of finality will be injected into this protracted dispute." *Id.*

There was a third party before the Trial Division in Kloteraol. Ngerukebid Clan, represented by Becheserrak Tmilchol, intervened on the basis that the Clan should receive part of the property. The intervention was granted, even though neither Tmilchol nor Ngerukebid Clan had appeared in the hearings before the Land Commission, and even though the intervention motion was filed after the period for filing an appeal had expired.

Neither the Trial Division nor the Appellate Division granted Ngerukebid Clan ⊥40 any relief. At the trial level, the entry was "judgment for plaintiff." The Trial Division expressly stated Ngerukebid Clan's "rights are not affected by this decision." The Clan did not appeal. On appeal by Ulengchong, the Appellate Division noted that "[t]he role of the intervenor is unclear" because counsel for the Clan "failed to file a brief until little more than an hour before the hearing" and failed to appear at oral argument. *Kloteraol*, 2 ROP Intrm. at 148. The judgment in favor of Kloteraol representing Ngerketiit Lineage was upheld.

II. CLAIMS OF NGERKETIIT LINEAGE

If Ngerketiit Lineage won the appeal in 1990, how did it find itself on the losing end of a quiet title action years later? The reason is that when appealing the 1987 Land Commission decision, the Lineage pressed its appeal only against Huan Ulengchong, and the lots awarded to him. Aside from mentioning the other parties in the caption, the Lineage requested no affirmative relief against them. Since "a decision not appealed is like a judgment between the parties," *Kloteraol*, 2 ROP Intrm. at 150, the 1987 Land Commission determinations of ownership stand, except as amended regarding Ulengchong. Furthermore, as between the 1958 District Land Office determination of ownership, and the 1987 determination of ownership of the Land Commission, the later determination prevails. *See Secharmidal v. Techemding Clan*, 6 ROP Intrm. 245 (1997). In summary, the Lineage is stuck with the 1987 determinations, to the extent they were not reversed in *Kloteraol*.

The Lineage tries three tacks to suggest that the above approach is not the right one to take in this case. First, it argues that the Land Commission had no jurisdiction to determine title regarding land for which its predecessor, the Palau District Land Office, issued determinations. Second, it argues that proper notice of the hearing, and later of the result, was not given by the Land Commission. Third, it argues that the 1990 appeal encompassed all the parcels, involved all the parties, and consequently the holding in *Kloteraol* [i.e. that the Land Commission erred in not giving the 1958 determination preclusive effect] is binding against all the parties in that case. We address each argument in turn.

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a. JURISDICTION OF THE LAND COMMISSION

Appellant Ngerketiit Lineage has consistently maintained that the Land Commission had no jurisdiction to hear claims regarding parcels previously adjudicated by the predecessor Palau District Land Office. This argument was made before the Land Commission in 1987, and in all subsequent proceedings. However, we rejected that argument in *Secharmidal*, 6 ROP Intrm. 245, and reaffirm our holding here.

The Land Commission was "authorized and empowered, subject to the provisions of this chapter, to determine the ownership of land in the Republic . . . ." 35 PNC §901. [Emphasis added.][2] We see no ⊥41 justification for creating an exception. The language in 35 PNC § 930(b) provided that during its proceedings the Land Commission "shall accept such prior determinations [by the District Land Office] as binding on such parties without further evidence than the judgment or determination of ownership." This provision is a clear indication that lands previously determined would also be part of the new registration process. If such lands were outside the Commission's jurisdiction, there would be no need to provide that the Commission accept the earlier determinations "without further evidence."

This is not an anomalous result. The Land Commission statute established a cadastral system for all land in Palau; all lands needed to be registered. Because District Land Office determinations in the 1950's were made without the benefit of professional surveys, it follows that not all potential issues regarding those parcels could have been definitively resolved during the earlier proceedings. Also, subsequent land transactions, written and oral, needed to be confirmed or challenged. [3] However, with respect to issues and parties before the District Land Office, the Land Commission was obligated to apply the principles of res judicata. We therefore conclude the Land Commission had jurisdiction, even though a District Land Office determination had been previously made.

b. THE NOTICE REQUIREMENTS

The Lineage also has some objections regarding notice. It argues that, although it had

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[2] Ngerketiit Lineage argues that the Land Claims Hearing Office statute applies: "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." 35 PNC §1110(c) [Emphasis added]. However, the LCHO was not certified as functioning until December 1987, after these hearings were held and the determinations were issued. *See Ulengchong v. LCHO*, 6 ROP Intrm. 174,176 n.2 (1997). Thus, 35 PNC § 1110(c) does not apply to this case. In any event, we have recently found that section to have the same effect as 930(b). *See Ngatpang State v. Amboi*, 7 ROP Intrm.12, 15 (1998) ("The LCHO had jurisdiction to hear cases even if prior determinations of ownership had been issued by predecessor government agencies. However, pursuant to § 1110(c), if a party introduced evidence of a prior determination of ownership, the prior determination was binding on the parties and the LCHO.")

[3] Oral conveyances of lands were not proscribed until the enactment of the Statute of Frauds in 1976. *Andreas v. Masami*, 5 ROP Intrm. 205 (1996).

actual notice of the proceedings, and actual notice of the resulting Land Commission determinations, official notice as required by the statute was not effected.[4]

It is argued that notice to Francisco Armaluuk is not notice to the Lineage. Francisco Armaluuk, the son of Kloteraol, is a Trial Counselor. He represented the Lineage before the Land Commission and also before the Trial Division, where the Lineage was additionally assisted by Attorney Udui. The subsequent 1990 appeal was handled by Attorney Cushnie. Any objections regarding the form of notice, and service, were waived by counsel, either by not raising them at the Trial Division level, or by not raising the issue in the 1990 appeal.

c. SCOPE OF THE 1990 APPEAL.

The Lineage argues that its 1990 appeal was "of all re-determinations made within D.O. 162 . . . ." Appellant's Opening Brief at 33. Appellees counter that the notice of appeal did not name their lot numbers and ⊥42 they further point out there are questions as to whether they were served. We can bypass these procedural objections because assuming the facts most favorably to the Appellants (i.e., that there were no defects in serving the notice of appeal and that the appeal was not limited to its claims against Ulengchong), the Lineage cannot prevail against the other parties to the 1987 Land Commission determination.

Like the Trial Division judgment examined in *Secharmidal*, the *Kloteraol* judgment does not provide enough information to know what the judgment embraced. An examination of the contents of the case file is therefore required.

After filing its appeal, the Lineage moved for summary judgment, but only against Ulengchong. This motion was granted, and the resulting order simply said "judgment for Plaintiff." This judgment "can only be construed to be a judgment concerning the motions of record before the Court." *Secharmidal*, 6 ROP Intrm. at 251. The motion before the Court was against Ulengchong. No requests for affirmative relief were made against any other party. The matter was thereupon appealed by Ulengchong, and the Lineage treated the matter as a final judgment. The judgment was sustained on appeal. *Kloteraol*, 2 ROP Intrm. at 150. We conclude the Lineage's judgment is only against Ulengchong.

Returning to the case at hand, we agree with the Trial Division that with the exception of the lots awarded to the Lineage in the 1990 appeal, the 1987 Land Commission determinations are conclusive and cannot be relitigated.[5]

III. CLAIMS OF NGERUKEBID CLAN

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[4] A related argument was that only certain lands within D.O. 162 were noticed for hearing. We do not agree. A fair reading of the notice would construe it to be notice that all of D.O. 162 was noticed for hearing.

[5] Ngerketiit Lineage also challenges one of the 1987 determinations of ownership on the basis that Kloteraol's signature on a deed was a fraud. The existence of the document alleged to be fraudulent was known before the Land Commission hearings commenced. Failure to raise this argument during the first appeal is a waiver of that argument.

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In this quiet title action, Ngerukebid Clan claimed that most of D.O. 162 was its land. The Trial Division awarded it seven specific lots. Although the Trial Division was apparently under the misimpression that Ngerukebid Clan filed a claim with the Land Commission in 1987, [6] it is clear that the Clan did not. In its post-argument brief, the Clan concedes this point.

Nonetheless, the Clan has two related arguments why it should be awarded lots within the former D.O. 162. Its first argument is that, as of 1957, it was understood among those who were knowledgeable that the whole of Ngerielb was owned by Ngerukebid Clan, save for what the Clan calls the "Ngerketiit Lineage house site." [7] In spite of this purported understanding, the Clan asserts it arranged with Armaluuk Kloteraol that he ⊥43 would misrepresent to the Land Title Officer that Ngerielb was actually owned by Ngerketiit Lineage. The Clan explains that this fiction was adopted because it was felt that Kloteraol could influence the outcome of the case due to his friendship with a key employee of the District Land Office. When the determination of ownership was issued in the name of Ngerketiit Lineage, however, the Clan alleges Kloteraol did not uphold his part of the deal to convey the land to the Clan. Notwithstanding this noncompliance, the Clan did nothing for a generation, and there matters sat for years. The trial justice questioned Becheserrak Tmilchol, the Clan's witness, about this long delay but he did not have an answer. *See* Trial transcript vol. 3 at 126-27. The Trial Division believed that the Clan could have brought an action for the imposition of a constructive trust if the action had been filed within the applicable statute of limitations.

The second, related, argument of the Clan is that Kloteraol documented the earlier arrangement, and effected it, by delivering a deed to the Clan in 1977. However, in that deed the basis for the conveyance is not clear, the authority to convey lineage land is not recited, and the boundaries are not specified. Whatever problems there are with the document, it was ten years old at the time of the 1987 Land Commission hearings concerning D.O. 162 and the Clan did not present the deed in those proceedings. Regardless of the Clan's nonparticipation, the Determinations of Ownership issued in 1987 are just as binding upon Ngerukebid Clan as they are on Ngerketiit Lineage. *See Secharmidal*, 6 ROP Intrm. 245; *Bilamang v Oit* , 4 ROP Intrm. 23 (1991).

It also follows that by failing to file a claim with the Land Commission, the Clan had no right to appeal the decision, nor to intervene in the appeal. *Ulochong v. LCHO* , 6 ROP Intrm. 174 (1997). However, Ngerketiit Lineage did not make this argument in the earlier *Kloteraol* case, or in the trial court during this round of litigation, or before this Court, either in the opening briefs or during oral argument. It first appears in briefs we requested after oral argument was held.

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[6] *See* Trial Division opinion at pages 10-12.

[7] We note the Clan's assertions here are inconsistent with the claims of the late Smaserui Ngirataoch, who held the title Uodelchad, senior female title of Ngerukebid Clan. She maintained that the land was her father's individual land, and that he transferred it to her before 1938. *Ngirataoch v. Ulengchong*, Civil Action No. 461 (Tr. Div. 1973). We take judicial notice of this case, cited by Ngerukebid Clan.

This Court has made clear that arguments made for the first time on appeal are considered waived. *Badureang Clan v. Ngirchorachel*, 6 ROP Intrm. 225 (1997); *In the Matter of Dengokl*, 6 ROP Intrm. 142 (1997); *Sugiyama v. Ngirausui*, 4 ROP Intrm. 177 (1994); *Brel v. Ngiraidong*, 3 ROP Intrm. 107 (1992); *Sungino v. Palau Evangelical Church*, 3 ROP Intrm. 72 (1992); *Udui v. Temol*, 2 ROP Intrm. 251 (1991). In exceptional circumstances, it is appropriate to relax this stricture. *Tell v. Rengiil*, 4 ROP Intrm. 224 (1994); *Nakatani v. Nishizono*, 2 ROP Intrm. 7 (1990); *see also Calvo v. Aquon*, 829 F.2d 845 (9th Cir. 1987).

We have considered the arguments of the parties in the final briefs we requested. Upon due consideration, we conclude the rule limiting parties to the issues they raised before the Trial Division should apply here. The importance of the rule, particularly in land litigation, is evident. In order to bring stability to land titles and finality to disputes, parties to litigation are obligated to make all of their arguments, and raise all of their objections, in one proceeding. To permit arguments and objections to be held in reserve for the next round of litigation leads to what we are faced with in this case; a rehearing of the merits of a matter that should have come to an end eight years ago.

We therefore proceed to the Lineage's preserved argument that the transfer did not have the consent of all senior strong members. ⊥44 No evidence of such approval was introduced at trial. In fact, the Clan did not argue that Kloteraol had secured the assent of the Lineage's strong members. Trial Division opinion at 5. Despite the fact that strong member approval is required before any lineage land is alienated,[8] the Trial Division found the deed to be valid. According to the Trial Division, the Lineage had been holding the Clan's lands as a trustee pursuant to the agreement reached between Kloteraol and the Clan in the 1950's. Therefore, the trust imposed a legal obligation on Kloteraol to return the land and he did not need strong member approval to take action required of him by the trust.

Neither the Trust Territory High Court nor this Court has recognized any exception to the rule requiring senior strong member approval to alienate clan land, and we see no reason to do so now. The Lineage held the land at issue in fee simple by virtue of D.O. 162 and Kloteraol had a responsibility to secure the approval of the strong members of the Lineage before transferring it. This requirement would have been well known by the senior strong members of Ngerukebid Clan when they purportedly entered into the deal with Kloteraol. Even if the Lineage was obligated to return the land to the Clan, that did not authorize Kloteraol to act on his own. The Trial Division finding that Kloteraol failed to secure strong member approval means the 1977 deed cannot be given effect.

Another argument accepted by the Trial Division was that the strong members of the Lineage are deemed to have consented to the deed by not challenging it until 1994. We are not persuaded. The Lineage challenged it the first time the Clan offered it as evidence. The Lineage can hardly be faulted for not objecting during the 1987 Land Commission proceedings. The

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[8] "It is also widely known that it is Palauan custom that the consent of the senior strong members of [a] Lineage . . . is necessary to alienate Lineage land." *Ngiradilubech v. Nabeyama*, 3 ROP Intrm. 101, 105 (1992) (*citing Gibbons v. Bismark*, 1 TTR 372 (1958)); *see also Ngiraloi v. Faustino*, 6 ROP Intrm. 259, 260 (1997).

Clan did not file a claim at that time.

There is a point where, because of the passage of time since a transfer, and in light of evidence that lineage members were aware of it - - either directly or through the open and obvious use of the property by the transferee - - the court may assume that the proper consent was given. *E.g, Thomas v. Trust Territory*, 8 TTR 40 (1979) (examining 1909 German Administration transfer). That is not this case. Here it was found there was no consent, and objection was raised in the first proceeding that the deed was offered as evidence. There is no evidence that the objecting lineage members had knowledge of the 1977 deed, nor that Ngerukebid Clan had made use of the land in the intervening years. We therefore reverse the award of property to Ngerukebid Clan.

IV. CLAIMS OF APPELLANT RECHUCHER

In September 1990, Ngerketiit Lineage conveyed by quitclaim deed part of D.O. 162 to Appellant Rechucher.[9] The Trial Division identified, and we accept the fact-finding, that the deed described the following lots: 015 B 01, 015 B 02, 015 B 03, 016 B 05, 016 B 06, ⊥45 016 B 07, and 016 B 08.[10] However, the Trial Division awarded Rechucher only 016 B 08 because it concluded that at the time of the 1990 conveyance, only that lot was owned by the Lineage.

We agree that with respect to the first three lots listed, the Lineage (and therefore Rechucher) is bound by the adverse Land Commission determinations, and therefore deny the appeal. However, since we are reversing the Trial Division's award of Lots 016 B 05, 016 B 06, and 016 B 07 to Ngerukebid Clan, these lots were the property of Ngerketiit Lineage in 1990, and therefore were properly conveyed as part of the quitclaim deed.

V. CONCLUSION

The Trial Division is affirmed in part and reversed in part. The fact-finding regarding boundaries and owners of lots 014 B 01, 015 B 01, 015 B 02, 015 B 03, 015 B 05A, 016 B 08, 016 B 09, 016 B 10, 016 B 11 (Tract No. 403126), 016 B 12, 016 B 13, 016 B 14, 016 B 15, 016 B 16, 016 B 22, 016 B 23, and Tract No. 40426, are hereby affirmed.

The Trial Division is also affirmed regarding its fact-finding of boundaries with respect to lots 016 B 02, 016 B 03, 016 B 04, 016 B 05, 016 B 06, 016 B 07 and 016 B 24. The Trial Division is hereby reversed in its judgment awarding this second set of lots to Ngerukebid Clan. This matter is remanded to the Trial Division for the purpose of entering judgment in favor of Appellant Rechucher with respect to 016 B 05, 016 B 06, and 016 B 07, and judgment in favor of Ngerketiit Lineage with respect to lots 016 B 02, 016 B 03, 016 B 04, and 016 B 24, in addition to the lots awarded to them in the original judgment.

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[9] The Lineage represented at oral argument that all senior strong members assented to the conveyance.

[10] These lot references are to Cadastral Plots 014 B 00, 015 B 00, and 16 B 00.