Ngiracheluolou v. Baules, 8 ROP Intrm. 293 (2001)

JOSEPH NGIRACHELUOLOU,
Appellant,

v.

TECHERENG BAULES,
Appellee.

CIVIL APPEAL NO. 00-17
Land Court D.O. No. 12-218

Supreme Court, Appellate Division
Republic of Palau

Argued: March 22, 2001
Decided: March 27, 2001

Counsel for Appellant: Raynold B. Oilouch

Counsel for Appellee: Johnson Toribiong

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

MICHELSEN, Justice:

Joseph Ngiracheluolou,[1] as successor in interest to the late Isaac Ngiracheluolou, appeals the decision of the Land Court to issue a determination of ownership to Techereng Baules for land known as "Ngerbechedesau," which is located in Koror State.[2] This property was subject to adjudication by a Land Registration Team in 1980. The Team concluded that Techereng Baules was the owner of the parcel as individual land, but boundary disputes indefinitely delayed the issuance of a determination of ownership. The matter was transferred to the Land Court as a pending matter, when that court was established.

Land Court Regulation No. 25 provides that:

> [a]ll cases and matters pending before the Land Claims Hearing Office as of March 5, 1996, shall be transferred to the Land Court for further proceedings. Hearings on these pending cases and matters may be *de novo,* or on the record

[1] Appellant captioned this case listing the "Estate of Isaac Ngiracheluolou" as appellant. However, no Estate has been opened. Joseph Ngiracheluolou claims as the heir of Isaac, has filed his appeal on that theory, and is the real party in interest. We therefore have reworded the caption accordingly.

[2] The land in question is now numbered Lot No. K-167, as shown on the Bureau of Lands and Survey worksheet No. SK-537/78, also known as Tochi Daicho lots 148, 149, and 150.

> where a hearing was concluded, depending on the completeness of the files and at the discretion of the Senior Land Court Judge or his designee.

In this case the Land Court reviewed the file, determined that all the claimants had been heard, and concluded "that a determination of ownership for this land may be issued based on the record of the hearing, the adjudication made by the Koror Land Registration Team, and documents in the file."

Appellant's first argument is that the Land Court's review of the record was clearly erroneous, in that Appellee never filed a claim. However, Appellee's husband, Baules Sechelong filled out a claim form, and it stated that his wife, Techereng Baules, was claiming ownership as her individual land. Hence, the record reflects a timely filed claim.

⊥294 Appellant also asserts that "there is no record whatsoever showing that Appellee was present during the [Registration Team] hearing" and "no records indicating that Appellee ever testified during the . . . hearing." This is a puzzling statement since Appellant quotes directly from the adjudication itself which, in rough translation, states:

> Claimant appeared before formal hearing no. 30 and identified herself as Techereng Sechelong, aged 64 years, being a housewife, born in Koror, and resides in Ngerbechedesau, Koror, and stated that it [the land] is a property of Ngiracheluolou; and Lucy Orukem, Isaac Ngiracheluolou and Milong Lineage signed a Deed of Transfer, giving it [the land] to me because there was a reason. It is shown in [2] TTR page 392 and 397 [3] that Hideos Orrukem became indebted to WCT[C] and I paid off his debts so they signed the paper and gave it to me in exchange for my money and which was recorded at the Clerk of Courts of May 14, 1964, so the clerk shall take this paper containing signatures to be Exhibit B.

Hence, the Land Court was not clearly erroneous when it stated that "Techereng B. Sechelong . . . appeared at the hearing and gave testimony regarding ownership of the land."

More generally, Appellant contends that the records from 1980 are inadequate and possibly fragmented, and the Land Court abused its discretion when it did not hold a *de novo* hearing. The objection is that possibly the full summary of Isaac's testimony is not in the file. However, granting a *de novo* hearing will not improve the record, since Isaac is now deceased. We believe the Land Court was well within its discretion to rule on the Adjudication of the Registration Team. It was that team that heard the testimony of Isaac, Techereng, and the other witnesses first-hand. We doubt that a new hearing now, with all of the critical witnesses either deceased or elderly, will improve the fact-finding process.

Appellant further suggests that the existing records show that the Land Registration Team made erroneous findings of fact. We disagree. The Tochi Daicho listing for the parcels is in the

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[3] *Western Carolines Trading Company v. Orrukem*, 2 TTR 392 (Tr. Div. 1963) (judgment of $6,257.20 entered in favor of plaintiff company against store manager for shortages in merchandise).

name of Ngiracheluolou. Isaac claimed the property during the 1980 hearing as the son of Ngiracheluolou. His aunt, Lusii Orrukem, opposed his claim and claimed ownership as sister of Ngiracheluolou. Techereng's competing claim was that in 1964 the property was deeded to her in exchange for the land she gave to WCTC to satisfy the judgment of their relative Hideos Orrukem. The deed was duly recorded. The Land Registration Team rejected both testimony of Isaac and Lusii, both of whom sought to explain away the deed, and the signatures. During that hearing, Isaac acknowledged his signature on the deed, but argued other technicalities, none of which were of any substance. The issue of credibility was determined by the Registration Team, and we find no clearly erroneous decisions by either the Registration Team or the Land Court.

⊥295 Appellant also argues that the twenty year period between the Registration Team Adjudication and the Land Court Determination constitutes a denial of due process and necessitates a new hearing, relying upon *Klai Clan v. Bedechal Clan,* 2 ROP Intrm. 84 (1990). However, "in *Klai Clan,* delay was only one of several reasons why the appellate court ordered the trial court to conduct a new trial." *Elbelau v. Semdiu,* 5 ROP Intrm. 19, 21 (1994). The court in *Klai Clan* held that a party who appeals an LCHO determination pursuant to 35 PNC § 1127 (now repealed) has a right to have the trial court consider holding a trial *de novo*. Therefore, the Appellate Division reversed the trial court's ruling that it lacked jurisdiction to hold a new trial. The Appellate Division also said that since the trial court believed there "were severe deficiencies in the record," that the "determination [was, about some issues], clearly contrary to the evidence," and that the LCHO delay in issuing the determination "would seems to be a denial of due process," then the trial court should have held a trial *de novo,* pursuant to 35 PNC § 1127. *Klai Clan*, 2 ROP Intrm. at 88. Here, we believe that it was not an abuse of discretion to decline to hear the matter *de novo,* in the absence of factors other than delay.

The decision of the Land Court is therefore affirmed.