

*Pedro v. Carlos*, 9 ROP 101 (2002)  
**BENJAMIN PEDRO,**  
**Appellant,**

v.

**MARIANO CARLOS,**  
**Appellee.**

CIVIL APPEAL NO. 01-35  
LC/T 01-57

Supreme Court, Appellate Division  
Republic of Palau

Argued: March 29, 2002  
Decided: April 29, 2002

[1] **Constitutional Law:** Due Process

Due Process requires notice and an opportunity to be heard.

[2] **Constitutional Law:** Due Process

The person attacking a Land Court determination by alleging lack of due process bears the burden of demonstrating the constitutional violation.

[3] **Appeal and Error:** Record

Because this Court cannot review the Land Court's alleged violations of due process without a transcript, the absence of that transcript in the appellate record negates the Court's ability to decide the issue.

[4] **Appeal and Error:** Record

The Appellate Division cannot consider new evidence, but is confined to the record below.

Counsel for Appellant: David J. Kirschenheiter

Counsel for Appellee: Pro Se

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

Appeal from the Land Court, the Honorable FRANCISCO J. KEPTOT, Associate Judge, presiding.

SALII, Justice:

Benjamin Pedro appeals the Land Court's determination that he failed to file a timely claim for land in Sonsorol State – described on the Bureau of Lands and Surveys Cadastral Worksheet No. 00-T001 as Lot No. T-317 and part of a larger parcel of land commonly known as Fatomale – arguing that the Land Court denied his due process rights during the ownership hearing. In the alternative, he requests that, in the event that this Court concludes there is insufficient evidence in the record to review his appeal, we remand the case for an evidentiary hearing on whether he filed a timely claim. Because Pedro failed to provide us with a transcript of the Land Court hearing at issue, we cannot discern any error in the Land Court proceedings and affirm the determination of ownership. Furthermore, the after-the-fact supplementation of the record is an unacceptable substitute for a trial transcript, which easily could have filled the gaps in the record on appeal. Thus, we also deny the motion to remand the case for an evidentiary hearing.

In September 1998, the Land Court issued a notice of hearings, to take place on January 5-11, 1999, to determine the ownership of a number of plots of land in Sonsorol State. The notice explained that any person who had not yet filed a claim but had **L102** an interest in or claim to the described land, “must file a written claim with the Land Court no later than 60 days prior to” the hearings that were set for January. According to the calendar attached to the notice, the hearing regarding ownership of Fatomale was set for January 8, 1999, and thus the deadline for filing any additional claim to the property was set for November 10, 1998. At this point, although Pedro had filed several claims to other pieces of land, according to the calendar only Mariano Carlos had filed a claim to Fatomale. A second notice of hearings was posted after the deadline for filing claims on the lands closed on November 12, 1998. Only Carlos's written claim for Fatomale can be found in that Land Court record, and again, the calendar attached to the notice indicates that Carlos was the sole timely claimant for the land.

The hearings regarding the Sonsorol lands were postponed, however, until after the Bureau of Lands and Surveys (“BLS”) had surveyed certain properties. Notably, in the February 9, 2001 notice resetting the hearing regarding Fatomale to April 10, 2001, both Pedro and Carlos were listed as claimants for the small section of Fatomale that the BLS had designated during the survey as Lot No. T-317. The record further indicates that on February 14, 2001, Pedro received notice of the April 10 hearing regarding the ownership of Lot No. T-317. The hearing was held on the rescheduled date, and the Land Court concluded that Carlos owned Lot No. T-317. With respect to Pedro's alleged claim to the land, the Land Court explained that “Benjamin Pedro . . . appeared in this proceedings trying to include himself in this claim. The court found out that Benjamin Pedro did not have any claim to this particular land matter in this court.” Pedro now appeals.

[1, 2] Pedro's main contention on appeal is that the Land Court denied him due process when it refused to hear his claim to Lot No. T-317, which, he explains, he filed as part of a claim for an adjacent portion of land.<sup>1</sup> Due process requires notice and an opportunity to be heard. *Ngerketiit*

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<sup>1</sup>During this appeal Pedro filed both an appellate brief and a document entitled “Motion to Remand to

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*Lineage v. Seid*, 8 ROP Intrm. 44, 47 (1999). Nevertheless, the person attacking a Land Court determination by alleging lack of due process bears the burden of demonstrating the constitutional violation. *Uchellas v. Etpison*, 5 ROP Intrm. 86, 89 (1995).

[3] In this case, meaningful appellate review of Pedro's due process argument is not possible because Pedro failed to include the pertinent part of the transcript of the hearing in the record on appeal. Indeed, at oral argument, Pedro's attorney conceded that he had not reviewed the tape which was recorded at the hearing. Without the transcript or counsel's informed representation of the events at the hearing, we see no reason to question how the Land Court treated the plaintiff. Specifically, this Court has no way of knowing whether Pedro offered to introduce evidence that he filed a claim for Lot No. T-317, much less whether the Land Court denied him an opportunity to proffer evidence that he had filed a written claim for the land. Furthermore, Rule 10(b) of the ROP Rules of Appellate Procedure – which, pursuant to 35 PNC § 1312, is applicable to appeals to the Appellate Division from Land **1103** Court determinations – requires that, “any party desiring to raise an issue on appeal depending on the whole or any part of the testimony or evidence adduced [at trial] shall request . . . that a transcript be made of such testimony and evidence.” ROP R. App. Pro. 10(b). Because this Court cannot review the Land Court's actions without a transcript, the absence of that transcript in the appellate record negates this Court's ability to decide the issue. *See Nobuo v. Ngiraked*, 8 ROP Intrm. 226, 227 (2000) (case affirmed when appellant did not provide section of trial transcript which was “necessary . . . to ensure review”). And as it is Pedro's burden to demonstrate a due process violation, by not providing a record of the proceedings below, he failed to meet that burden.

If Pedro had shown a due process violation, then it would have been an appropriate remedy to remand this matter to the Land Court for an evidentiary hearing. Having failed to make such a showing, however, we reject his request to remand for an evidentiary hearing, and refuse to allow him an extra opportunity to supplement an inadequate record that could have been completed easily if he had ordered the transcript.

[4] Finally, we note that on appeal both parties submitted new materials and arguments not presented to the Land Court,<sup>2</sup> despite the well-established principle that the Appellate Division cannot consider new evidence, but is confined to the record below. *See* ROP R. App. Pro. 10(a). The parties to this appeal ignored this principle, and we accordingly order that the submissions not presented to the Land Court be struck from the record on appeal.

For the foregoing reasons, the Land Court's decision is affirmed.

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Allow a [sic] Evidentiary Hearing to Determine Validity of Appellant's Claims or for Full Hearing on Appellant's Claim.” In response, Carlos filed both a brief and a separate response to Pedro's “Motion to Remand.” For purposes of this appeal, however, we have treated the motion, the response, and the attachments not as motions distinct from the briefs, but as part of them.

<sup>2</sup>Pedro submitted his affidavit, and Carlos offered two affidavits, a map presumably demonstrating the results of the BLS's land survey of the relevant region in Sonsorol, and a land ownership claim filed by Pedro for BLS Lot No. T-318 (the lot next to Lot No. T-317) which was filed seven days after the Land Court's hearing for Lot No. T-317.