

Masang v. Ngirmang, 9 ROP 215 (2002)
SAM YOYO MASANG,
Appellant/Cross-Appellee,

v.

GABRIELA NGIRMANG,
Appellee/Cross-Appellant.

CIVIL APPEAL NO. 99-14
Civil Action Nos. 235-90 & 241-90

Supreme Court, Appellate Division
Republic of Palau

Decided: September 27, 2002

[1] **Public Lands Authorities; Return of Public Lands: Burden of Proof**

In cases involving the return of public lands, the burden of proof is placed on the claimant, not the public lands authority, and the public lands authority's failure to introduce evidence, or even to appear at trial, does not alter or lessen that burden.

[2] **Public Lands Authorities**

Until all elements of a claim to public lands are proven, title to the land remains vested in the public lands authority and the authority's title to the land cannot be lost by abandonment.

[3] **Public Lands Authorities; Return of Public Lands: Burden of Proof**

The court does not "award" title to a public lands authority as part of return-of-public-lands proceedings; instead, title remains vested with the public lands authority and if the claimants to the land fail to prove their assertions, the court simply disallows their claim.

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[4] **Return of Public Lands: Elements of Proof**

The trial court must determine whether a claimant to public land is the "proper heir" of the decedent pursuant to 35 PNC § 1304(b).

[5] **Civil Procedure: Res Judicata; Judgments: Finality**

To apply the doctrine of *res judicata*, a court must find that the issue before it has been determined in a prior case between the same parties.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; R. BARRIE MICHELSEN, Associate Justice; DANIEL N. CADRA, Associate Justice Pro Tem.

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The parties to this appeal have filed a joint petition for rehearing, asking the court to reconsider one issue: whether the Koror State Public Lands Authority (KSPLA or “the Authority”) should be allowed to participate in the proceedings on remand. The petition is denied.

Pertinent Facts

In the first phase of the trial on this matter, the Trial Division found that the Japanese Government had obtained the property claimed here – Ngerias – by force or inadequate consideration. The trial court subsequently entered partial judgment against KSPLA on that issue. KSPLA then moved to vacate that judgment, arguing that “there remains the possibility that another person, clan, or lineage who did not file a claim . . . by January 1, 1989, or who is otherwise barred from claiming these lands by law, was the proper heir to Salii.” The trial court agreed, vacated the judgment, and noted that KSPLA “is declared to be permitted to participate in the second phase of trial regarding which claimant (or intervenor) should be considered Salii’s heir.”

In November 1997, KSPLA stipulated that partial judgment could be re-entered against KSPLA, and that it should be “dismissed from participation” in the second phase of the trial regarding who is the proper heir to receive Ngerias. The court so ordered. The next month, KSPLA filed a notice of appeal concerning the first phase, but later withdrew it.

Analysis

Petitioners’ first argument is that KSPLA “dismissed itself from the case,” and that they “relied” on the dismissal. Such reliance was misplaced. KSPLA only stipulated that it could be “dismissed from participation in the second phase of this Trial.” This phraseology is not standard language so its exact meaning may be debated, but clearly it is not a stipulation of dismissal as a party. KSPLA obviously did not interpret it that way, because it filed an appeal the next month concerning the first phase of the trial.

[1, 2] We also reject Petitioner’s suggestion that KSPLA’s decision not to participate in the second phase of the trial should estop the Authority from asserting title, or be deemed a disclaimer of title. In return-of-public-lands cases, the burden of proof is placed upon the claimant, not the Authority. 35 PNC § 1304(b). The failure of the KSPLA to introduce evidence, or even to appear at trial, does not alter or lessen that burden. Until all elements of such a claim are proven, title remains with the Authority. We therefore fail to see how KSPLA’s non-appearance can operate either as an estoppel or a disclaimer of title. We also reject the characterization of L217 the proceedings below as showing an “abandonment” or waiver of KSPLA’s title to Ngerias. The Authority’s title to land cannot be lost by abandonment. See *PPLA v. Salvador*, 8 ROP Intrm. 73, 76 (1999).

[3] The Petitioners’ objection to the possibility that the property will be “awarded” to KSPLA if KSPLA participates on remand highlights their misapprehension regarding § 1304(b).

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The Court does not “award” title to a public lands authority as part of return-of-public-lands proceedings. In fact, these claimants do not dispute that title is presently held by KSPLA. Rather, they asserted below that Ngerias is public land because it was acquired by the government by force or inadequate consideration. They further claimed that they are the proper heirs of the original owner, and that they timely filed § 1304(b) claims. If these claimants fail to prove any of these assertions, the Trial Division will not award title to KSPLA, but simply disallow their claim. Similarly, keeping in mind that title remains vested with the Authority unless a claimant proves all the necessary elements required by § 1304(b), this case does not involve KSPLA “taking the land.” The issue for the Trial Division is whether either the heirs of Masang Marcil, or Gabriela Ngirmang are entitled to have title to the land transferred to them.

We also note that the Petitioners’ current reference to the property as “their land” is inconsistent with their firm insistence throughout the case that the other Petitioner has no right, title, or interest in the property. Indeed, it was the Trial Division’s decision that Ngerias was jointly “their land” that triggered both parties to appeal and vigorously dispute the claims of the other.

[4] The Petitioners also argue that KSPLA’s decision not to appear at the second phase of the trial in effect waived that part of the burden of proof that requires the claimants to show that he or she is the “proper heir” to the land. We question whether KSPLA, on its own and without legislative approval, can waive a requirement of § 1304(b). Nevertheless, we must ask what standard a court should utilize to choose among the alleged successors in interest if the “proper heir” requirement of § 1304(b) is eliminated. The trial court’s original decision to jointly vest title with both claimants was unacceptable to them. We hold that the trial court is constrained by the language of the statute, and must determine whether either claimant is the “proper heir” of Salii.

[5] Petitioners stress that the claims of KSPLA are not interwoven with their claims, but even if the claims are interconnected, KSPLA should not participate in the remanded proceedings. They direct our attention to *Federated Department Stores, Inc. v. Moittie*, 101 S. Ct. 2424 (1981). The case is inapposite. There, the United States Supreme Court held that *res judicata* principles applied to parties who had adverse judgments entered against them, even if other parties appealed similar adverse judgments in other cases and prevailed. In other words, parties in one case cannot benefit from some other litigant’s successful appeal in another case, on the basis that if they had appealed their case they too would have won. The present appeal, however, concerns only one case, and “[t]o apply the doctrine of *res judicata*, a court must find, *inter alia*, that the issue before it has been determined in a prior case between the same parties.” *Sers v. Ucherbuuch*, 1 ROP Intrm. 595 (1989). Petitioners’ references to *res judicata*, therefore, miss the mark.

Petitioners reliance upon *Torres v. Oakland Scavenger Co.*, 108 S. Ct. 2405 1218 (1988) is equally off track. In *Torres*, the U.S. Supreme Court held that “a notice of appeal that omitted the name of a particular appellant, through a clerical error, was ineffective to take an appeal for that party.” *Becker v. Montgomery*, 121 S. Ct. 1801, 1806-07 (2001) (stating the holding in

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Torres). In this case, KSPLA did not appeal, and has not been considered an appellant.¹ The only appellants are the Petitioners, both of whom failed in the Trial Division to meet their burden of demonstrating that they are the “proper heirs” to the land. Accordingly, this Court is required to remand for further proceedings.

In closing, we note a pragmatic consideration. Without KSPLA as an active participant, the case will not be a full adversarial proceeding. Although the Petitioners are adverse to each other in the sense that both want the property to the exclusion of the other, neither party has an interest in providing evidence that Salii had adopted or natural children, because such proof would be equally effective at defeating both claims. Only KSPLA has the necessary adverse interest to provide such evidence (to the extent it exists), at which point these parties may challenge it. The trial court, having been fully appraised of the available proof, may thereafter rule on this issue.

¹Because KSPLA did not appeal this second phase, and the court has not considered any issues raised by KSPLA in this appeal, Petitioners’ discussion concerning Rules 3 and 4 of the ROP Rules of Appellate Procedure, and the obligation of appellants to comply with those rules, are not pertinent to this discussion.