

Mengesebuuch v. Ngeremlengui State Gov't, 9 ROP 23 (2001)
ONGIDOBEL MENGESEBUUCH,
Appellant,

v.

NGEREMLENGUI STATE
GOVERNMENT,
Appellee.

CIVIL APPEAL NO. 00-08
LC/K 00-01

Supreme Court, Appellate Division
Republic of Palau

Argued: October 25, 2001
Decided: November 15, 2001

[1] **Land Commission/LCHO/Land Court:** Claimants

The Land Court cannot award a certificate of title to those who are not claimants of the land, but must choose among the claimants who appear before it.

[2] **Return of Public Lands:** Burden of Proof

If no public entity appears to defend its title, and a claimant for public lands fails to meet the burden of proof under 35 PNC § 1304(b), the land remains with its prior owner.

[3] **Land Commission/LCHO/Land Court:** Remand

Pursuant to Land Court Regulation 25, on remand of matters pending before the LCHO, the Land Court has the discretion to rely on the record or to allow the introduction of new evidence.

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: No appearance¹

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

MILLER, Justice:

¹Roman Bedor, who has appeared on behalf of Appellee in other matters, appeared at oral argument only to state on the record that he was not representing the Appellee in this action and to state that he had forwarded Appellant's opening brief to Appellee. Appellee filed no brief.

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Ongidobel Mengesebuuch (“Appellant” or “Mengesebuuch”) appeals from an order of the Land Court, subdividing land traditionally known as Ngesbechong in Ngchemesed Hamlet in Ngeremlengui State and granting a portion of that land to the Ngeremlengui State Government (“NSG”). For the reasons set forth below, we affirm the Land Court insofar as it adjudicated Mengesebuuch the owner in fee simple of Tochi Daicho (“TD”) Lot No. 899, a portion of the disputed land, and remand the matter in all other respects to the Land Court for further proceedings consistent with this opinion.

BACKGROUND

In August 1977, Mengesebuuch filed an Application for Registration of Land Parcel with Palau District Land Commission. His claim was for TD Lot No. 899, which he asserted was given to him by his father. This original claim shows that Appellant believed TD Lot No. 899 and the land traditionally known as Ngesbechong were synonymous and consisted of 213,809 square meters. The 1977 land boundary monumentation record shows **L24** a sketch of the disputed land as being 213,809 square meters in size and lists over a dozen witnesses to the setting of the boundary monuments.

In July 1983, a hearing was held before the Ngeremlengui Land Registration Team (the “Registration Team”) at which only the Appellant testified. Appellant’s testimony was that the disputed land, TD No. 899, also referred to as New Lot No. 91-6111, was 213,809 square meters; that his father owned the parcel of land; and that he was his father’s heir. The Registration Team found that TD Lot No. 899 was indeed the property of Mengesebuuch, but noted that the Tochi Daicho listed TD Lot No. 899 as containing only 999 tsubo.² The rest of the land that Appellant claimed became New Lot No. 91-6111B and in 1983 no determination of ownership was made to that portion of the disputed land.

In January 2000, this matter was brought to the Land Court for a final Determination of Ownership. The Land Court sent a letter to the Bureau of Lands and Surveys requesting “a team of surveyors be assigned to subdivide New Lot No. 91-6111 to reflect the decision made [by] the Ngeremlengui Land Registration Team.”

Thereafter, by an order setting a status conference, the Land Court stated that the Registration Team had determined that Appellant’s father owned “the land known as Ngesbechong, Tochi Daicho Lot No. 899”; that the land owned by Appellant’s father was 999 tsubo; and that Appellant’s father had indeed given the land to Appellant. Last, the Land Court noted that Appellant’s claim was that the land was 213,809 square meters, which converts to 64,673 tsubo, considerably more than what the Registration Team had allocated when it determined that Appellant owned only 999 tsubo. The Land Court found that the Registration Team had not issued a Determination of Ownership to Appellant because of the disparity between the size of Appellant’s claim and its size shown in the Tochi Daicho. *See* Land Court Order, dated February 1, 2000.

On February 29, 2000, the Land Court issued what is now the appealed order that reads

²One tsubo equals 3.3058 square meters.

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as follows:

At a status conference in this matter on February 23, 2000, Swenny Ongidobel appeared on behalf of Ongidobel Mengesebuuch. Ngerlemlengui State Public Lands Authority did not appear. Dave Madlutk, Land Registration Officer for Ngeremlengui State, reported to the court that on January 31, 2000, Swenny Ongidobel and Dr. Emalis Roberts, vice chairman of the Ngeremlengui State Public Lands Authority, met with Delmoro Caesar at the Bureau of Lands and Surveys. Delmoro Caesar, Cadastral Surveyor for the Bureau of Lands and Surveys, subdivided New Lot No. 96-6111 and designated 999 tsubo of the property as New Lot No. 91-6111A.

Based on the findings of fact as stated in the record and the attached map of the property, the court shall issue a determination of ownership **L25** registering Ongidobel Mengesebuuch as owner of T.D. Lot. No. 899, New Lot No. 91-6111A, a land known as Ngesbechong, containing 3,302 sq. meters. The court shall also issue a determination of ownership registering the Ngeremlengui State Government as owner of New Lot No. 91-6111B, containing approximately 210,556 sq. meters. Ngeremlengui State Public Lands Authority shall serve as trustee.

Land Court Order, dated February 29, 2000.

The Land Court subsequently entered Determinations of Ownership 9-31 and 9-32 in conformity with the February 29, 2000 Order.

On April 14, 2000, Mengesebuuch filed a Notice of Appeal, challenging the Land Court's February 29, 2000 Order and the subsequent Determination of Ownership No. 9-32 that granted New Lot No. 91-6111B to the NSG. Appellee failed to respond.

On appeal, Mengesebuuch argues, among other things, that "since NSG was not a party, no determination of its legal ownership could be made, so the further determination that legal ownership should be separated from beneficial ownership was impossible." In the alternative, Appellant argues that even assuming proper jurisdiction, the Order was clearly erroneous because "there is no evidence in the record that NSG had an ownership interest in the disputed parcel."

DISCUSSION

[1-3] We have examined the scant record and fail to see in part how the Land Court reached its determination. While the record is relatively clear as to how a determination for New Lot No. 91-6111A was reached, there is no basis stated or record to review on how the determination of ownership for New Lot No. 91-6111B was established. The Land Court, and the Land Registration Team before it, appear to have been concerned that the Tochi Daicho listing for Lot No. 899 covered only a small portion of the larger area claimed by Appellant. We agree with Appellant, however, that “nothing in the record suggests that ownership of the Tochi Daicho parcel and ownership of the disputed parcel are mutually exclusive.” See *Dilubech Clan v. Ngeremlengui State Gov't*, 8 ROP Intrm. 106, 110 (2000) (party not precluded “from claiming title to previously unsurveyed land merely because it has been adjudged to own an adjacent parcel”). Here, notwithstanding the Tochi Daicho listing, it is clear from the 1977 monumentation that Appellant claimed the entire land as the property of his father. Notably, that monumentation was witnessed by over a dozen individuals, presumably owners of the neighboring lands, none of whom contested the boundaries. In any event, whatever the strength of Appellant’s claim, there is no evidence that NSG filed a claim to the remainder of the land in 1983 or at any time since.³ The Land Court cannot award a certificate of title to those not claimants of the L26 land, but must “choose among the claimants who appear before it.” *Ngirumerang v. Tellames*, 8 ROP Intrm. 230, 231 (2000).⁴ The award of Lot No. 91-6111B must therefore be vacated and the matter remanded to the Land Court for further proceedings. Because this was a matter that had been pending since 1983, it is within the discretion of the Land Court, under Land Court Regulation No. 25, to award the land based on the available record or to hold a new hearing.⁵

CONCLUSION

For the reasons stated in this opinion, we affirm only the Land Court’s determination awarding New Lot No. 91-6111A to Appellant. As to New Lot No. 91-6111B, the matter is remanded to the Land Court in other respects for further proceedings not inconsistent with this

³We are presuming on this record that there were no procedural defects with respect to notice to other parties. On remand the court is free to satisfy itself that there are no procedural errors, and may also consider whether other Tochi Daicho listings on maps support, or are inconsistent with, Appellant’s claims.

⁴An exception to this rule is the case where, although no public entity appears to defend its title, a claimant for public lands fails to meet his burden under 35 PNC § 1304(b), and the land simply remains with its prior owner. There is nothing in the record to suggest that the land in dispute here was, or should be, considered public land.

⁵Given this conclusion, we need not reach Appellant’s other grounds for appeal, which question both the Land Court’s jurisdiction over NSG, and the propriety of awarding it ownership with the Ngeremlengui State Public Lands Authority as trustee, rather than simply awarding it to NSPLA. We note, however, that the designation of a trustee in this instance was of questionable legitimacy, see *Elbelau v. Beouch*, 3 ROP Intrm. 328 (1993) (stating that the LCHO had “no statutory authority to designate a trustee” except for non-binding informational purposes), and unnecessary, since one of the purposes and responsibilities of public lands authorities is to “receive and hold title to public lands” in their own right. See 35 PNC §§ 210(b), 215(c).

opinion.

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