TECHERENG BAULES for ONGEROOL CLAN, Plaintiff

v.

JOHN O. NGIRAKED, Palau District Land Management Officer, and DELBIRT RULUKED, Defendants

Civil Action No. 445

Trial Division of the High Court

Palau District

February 20, 1974

Appeal from land title officer's determination of ownership. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held there was no denial of due process at hearing below.

1. **Constitutional Law—Public Trial and Confrontation of Witnesses**

   Where record showed appellant was present and testified at hearing before Land Title Officer, that her testimony was reduced to writing, which appellant signed under oath, that many additional witnesses gave statements similarly made and that notice of the hearing was given by posting in Palauan and English, there was no denial of due process, even though there was no cross-examination.

2. **Appeal and Error—Findings and Conclusions**

   In an appeal on the record, the court will not disturb the findings below unless there is manifest error.

Assessor:	FRANCISCO MOREI, *Acting Presiding Judge, District Court*
Interpreter:	AMADOR D. NGIRKELAU
Counsel for Plaintiff:	ROMAN TMETUCHL
Counsel for Defendant RULUKED:	KALEB UDUI
Counsel for Defendant Land Management Officer:	BEN OITERONG

TURNER, *Associate Justice*

This was an appeal from the determination in favor of defendant (appellee) Delbirt Ruluked made by the Land Title Officer after extensive hearing on July 15, 1969. The Determination of Ownership and Release No. 204 held that the land known as Bkulngriil, more fully described as "a tract of land located in Ngeremlengui Municipality, outlined in red on Palau Division of Land Management drawing designated 'Delbirt R. Ruluked Claim No. 204,' consisting of land area of 1,034,450.67 square feet, more or less" is individually owned by the defendant-appellee Delbirt Ruluked.

The appeal was filed July 24, 1969, by plaintiff as representative of the Ongerool Lineage and recited five grounds for appeal, none of which appear to have any substance. Although five grounds were listed they encompassed only two separate reasons for appeal.

[1] The first of these was that the hearing was not in accord with due process of law in that "an open hearing with all parties present" was not held. The record shows appellant was present and testified, that her testimony was reduced to writing and that she signed it under oath. The record further shows statements similarly made from many additional witnesses. The record also shows notice of the hearing was given by personal service upon appellant

and others and also was given by posting in English and Palauan.

Although appellant did not specify in what respect, other than an "open hearing," there was a failure of due process, her then counsel, the former public defender for the Palau District, filed a memorandum alleging denial of due process because there was no cross-examination of witnesses.

Section 7 of Land Management Regulation No. 1 provides that the Land Title Officer when conducting a hearing shall be guided by but need not conform to the usual rules of evidence. Also the regulation provides that all evidence shall be considered which shall enable the Land Title Officer to reach a just decision.

The hearing for the present appeal was not an adverse proceeding. The sole issue was whether the government or the claimant Delbirt Ruluked held title. There was clearly no occasion for cross-examination of witnesses nor was cross-examination required by the rules for land management hearing. The record shows the Land Title Officer conducted a full, extensive and fair hearing, made a careful written record of the proceedings, that the appellant and claimant were aware of everything that transpired. The Court must hold there was not denial of either procedural or substantive due process.

[2] The other ground for appeal recited was that the determination of the Land Title Officer was not in accord with the evidence. This appeal, being on the record, is therefor similar to other appeals in that the appellate court will not disturb the trial, or as in this case the hearing, findings unless there is manifest error. There have been many decisions of this Court and the Appellate Division to this effect. *Arriola v. Arriola*, 4 T.T.R. 486. *Kalo v. Karapaun*, 5 T.T.R. 536. *Ngiralois v. Trust Territory*, 3 T.T.R. 637.

The only thing in the record is that the testimony of appellant is contrary to the evidence submitted by the appellee. As between the two we are bound to accept the testimony accepted by the Land Title Officer. We also note with more than passing interest the statement of the Land Title Officer in his report to the hearing file dated July 15, 1969, that:—

> ". . . Techereng stated in a hearing before the Land Title Officer that she rather lose the land altogether to the government than see Delbirt Ruluked get it under any circumstances."

It is indeed regretful that a sister should express such feelings about her brother as is found in this case.

Normally, the parties on appeal from a land title determination agree to submit to hearing record for review and do not offer new or additional evidence. This procedure is illustrated by the Judgment found in Volume 1 of the Trust Territory Reports in Judgments on appeal decided in 1958 and 1959. For example, *Rusasech v. Trust Territory*, 1 T.T.R. 472.

In the present case a pretrial conference was held and an order issued "That if the parties do not request in writing on or before November 3, 1969, that the Court hear additional evidence, the determination and judgment shall be upon the record submitted to the court." Thereafter, November 10, 1969, the appellant asked for a continuance and leave "to submit evidence in open court contravening the findings of the District Land Management Officer with respect to the identity of the Releasee only . . . ." What was meant by the "identity" of the appellee is not clear. The evidence showed that the land in question originally belonged to Ngerutechei Lineage, not the Ongerool Lineage represented by appellant. Olkeriil received the land from the lineage as *ulsiungel* (meaning for services rendered to an ill and incapacitated person) from the principal title bearer of the lineage. Olkeriil was the

maternal uncle of appellee and passed the land on to him through appellee's father, Ruluked.

Regardless of appellant's desire to challenge appellee's identity she failed to produce further evidence or otherwise appear in the case after the 1969 demand, except for a hearing on appellee's motion to dismiss the appeal. The motion was withdrawn and the court ordered a hearing on the merits.

January 29, 1974, the Court notified counsel for both appellant and appellee, both of whom were in Saipan in attendance upon the session of the Congress of Micronesia, that hearing would be held on appellee's motion to dismiss the appeal for want of prosecution. February 13, 1974, the Clerk of Courts sent written notice to both parties (return of service upon appellant is contained in the file) that trial would be held February 19, 1974.

At the time set for hearing on the motion to dismiss and for trial the appellant and her counsel did not appear. Appellant's counsel had returned to Palau over the weekend but had returned to Saipan the day before the hearing.

Counsel for appellee, who also came from Saipan, appeared together with appellee and his witnesses. Counsel for the former land title officer also appeared with witnesses and moved for dismissal of the appeal for want of prosecution.

Rather than grant the motion to dismiss for want of prosecution, even though it appears to be justified, the Court believes the failure of the appellant to appear should be treated as a waiver of an opportunity to present new or additional testimony and submission of the case upon the land title office record.

An examination of the record convinces the Court that none of the grounds listed for the appeal are supported by the record and are as a matter of law without merit. It is, therefor,

Ordered, adjudged and decreed:—

That the Determination of Ownership and Release No. 204 of the Palau District Land Title Officer to Delbirt Ruluked as his individual land, the land known as Bkulngriil located in Ngeremlengui Municipality as depicted by Division of Land Management drawing No. 4015/69, be and the same is affirmed.