LUJANA, PHILLIP JITIAM and JIBAJ RIKLON,
Plaintiffs-Appellants
v.
CLANRY and AJNER, Defendants-Appellees

Civil Action No. 366

Appellate Division of the High Court

Marshall Islands District

January 25, 1984

Appeal from a judgment of the trial court in an action to determine *alab* rights to certain *watos*. The Appellate Division of the High Court, Miyamoto, Associate Justice, held that where trial court stated in its judgment that, based on the case of *Loeak v. Loeak*, 8 T.T.R. 163 (App. Div. 1980), it had to "go beyond the evidence", this was not a correct interpretation of the *Loeak* case, but actions taken by trial court pursuant to this proposition were nonetheless proper, and therefore trial court judgment was affirmed.

1. Courts—Judicial Notice

In land ownership dispute, where highly relevant Determinations of Ownership of the District Land Title Officer could have been judicially noticed, or introduced as exhibits, based on the holding of *Loeak v. Loeak*, 8 T.T.R. 163 (App. Div. 1980), court should have insured that inexperienced counsel was not prevented by ignorance or inadvertence from

introducing such important evidence. (7 TTC § 51; Rules of Evidence, Rule 201)

2. Courts—Judicial Notice

In land ownership dispute, trial court could properly take judicial notice of an Order of Dismissal entered in a related civil action. (Rules of Evidence, Rule 201)

3. Evidence—Documents

In land ownership dispute, consideration by the trial court of an Order of Dismissal in a related civil action was not improper, where such Order of Dismissal was relevant to the case.

Counsel for Appellants: BENJAMIN M. ABRAMS, ESQ.

Counsel for Appellees: HERMIOS KIBIN

Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate Justice*, and HEFNER*, *Associate Justice*

MIYAMOTO, *Associate Justice*

This is an appeal from a judgment of the trial court in an action for declaratory relief to determine *alab* rights to certain *watos* located on Ebeye Island, Kwajalein Atoll, Marshall Islands. These *watos* are Toblike, Lojokomlak, Eokojaja, Loioen, Baten, and Jebalur.

The appellants contend that the trial court erred in reaching the judgment by going beyond the evidence presented in court.

The trial court had held in the judgment:

Although the plaintiffs had the burden of proving their right to injunctive relief and declaratory judgment by a "preponderance" of the evidence, they did not maintain this burden. Both sides presented a number of witnesses maintaining their respective *alab* rights and a designation of who owned those *alab* rights. *The Court must not only consider this evidence but again finds it necessary under equity jurisdiction to in fact go beyond that evidence presented in court in order to properly do justice to the parties and the people involved in this case.* This is not the first time the Court

---

* Chief Judge, Commonwealth Trial Court, Northern Mariana Islands, designated as Temporary Justice by Secretary of Interior.

has done this, and in fact, the leading case in the Trust Territory wherein the Court did in fact look beyond the strict confines of the courtroom is the case of *Loeak v. Loeak*, Civil Appeal No. 269, decided December 3, 1980, wherein in fact plaintiff's counsel in this case was also one of the counsel of record. (Emphasis added.)

The *Loeak* case was an action for declaratory relief to determine who succeeded to the rights of *Iroij Lablab.* This court has examined carefully the opinion rendered by the Appellate Court, and can find no authority for the trial court's assertion that that case permitted a court to go beyond the evidence presented to do justice to the parties. The authorities cited in the *Loeak* case, *viz.*, *Gaamew v. You*, 2 T.T.R. 98 (Tr. Div. 1959) and *Loton v. Langrin*, 5 T.T.R. 358 (App. Div. 1971) support the proposition that when a party proceeds in court without counsel or with inexperienced counsel, the court should see that the party is not prevented by ignorance or inadvertence from introducing important evidence readily available to him. Thus, the *Loeak* case is not the authority for the proposition that a court may "go beyond that evidence presented in court."

Further, there is no indication in the judgment nor in the briefs filed as to what evidence the court considered when it did "in fact look beyond the confines of the courtroom." But in reading the transcript, it becomes evident that the counsel for defendants-appellees had difficulty in convincing the trial court to take judicial notice of six Determinations of Ownership[1] of the District Land Title Officer for the Marshall Islands who declared Lebje the *alab* of the *watos* involved in this case, or in laying a proper foundation to have these land title Determinations received into evidence. The appellees' counsel also was unable to lay a foundation for the introduction of Exhibit No. 4

[1] 59-K-1, 59-K-2, 59-K-3, 59-K-4, 59-K-9, 59-K-10, all dated February 28, 1959, and filed with the Clerk of Courts of the Marshall Islands on March 6, 1959.

which is mentioned but not identified in the transcript or in the Pre-Trial Order.

This is clearly an instance when the court's holding in the *Loeak* case could have been applied because the inexperience of defendants-appellees' counsel prevented him from introducing important evidence available to him.

Be that as it may, the land title Determinations could have been judicially noticed by the trial court. These documents were filed in the Clerk of Courts' office. These were the kind of facts "not subject to reasonable dispute because these facts were known in the territorial jurisdiction of the trial court" and were "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." And the court could have done this "whether requested or not." See Rule 201, High Court Rules of Evidence.

[1] If counsel desired the introduction of the land title Determinations as exhibits, 7 TTC § 51 provided:

> **§ 51. Official records.**—Books or records of account or minutes of proceedings of any department or agency of the United States of America or of the Trust Territory, or of any predecessor thereof, shall be admissible to prove the act, transaction, or occurrence as a memorandum of which the same were made or kept. *Copies* or transcripts *(authenticated by the official having custody thereof) of any books, records, papers or documents of any department* or agency of the United States of America or *of the Trust Territory,* or of any predecessor thereof, *shall be admitted in evidence equally with the originals thereof.* (Emphasis added.)

Therefore, these land title Determinations could have been received by the court as evidence when authenticated by the Clerk of Courts and, based on *Loeak*, the court should have given the defendants-appellees' counsel opportunity to produce the Clerk of Courts for this purpose.

[2] If the court's holding of going "beyond the evidence" refers to the Order of Dismissal entered in Civil Action No. 320, *Jibaj Riklon v. Lebje*, the action taken by the trial

court was not improper. The trial court could have taken judicial notice of the acts and proceedings of this court in a prior proceeding because these are verifiable facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Rule 201, Trust Territory Rules of Evidence. Further, not only was the Order of Dismissal attached as an exhibit to defendants-appellees' memorandum supporting the motion for summary judgment but the Order of Dismissal was considered by the court at the pre-trial conference.

[3] But was the consideration by the court of the Order of Dismissal in Civil Action No. 320 improper apart from the questions of judicial notice or introduction as exhibits? We think not. The Order of Dismissal arose out of a pre-trial conference in which the court found that the Determination of Ownership No. 59-K-9, dated February 28, 1959, an official Trust Territory document which lists Lebje as *alab* of Baten *wato*, Ebeye Island, was never appealed and that the "present action cannot be substituted for the appeal provided for in Office of Land Management Regulation No. 1."

In this respect, the court held, in *Rudimch v. Chin*, 3 T.T.R. 323, at 328:

> Office of Land Management Regulation No. 1, under which the title determination was made, is "an express written enactment" providing for title determinations under certain circumstances. When such determination has become final, it must prevail over any claims or interests thereafter asserted which are founded upon land custom existing prior to the determination.

In view of the foregoing, the judgment of the trial court is AFFIRMED.