

Tmarsel v. Ngerdelang Lineage, 10 ROP 13 (2002)
RIKEL TMARSEL,
Appellant,

v.

NGERDELANG LINEAGE,
Appellee.

CIVIL APPEAL NO. 01-65
LC/F 01-146

Supreme Court, Appellate Division
Republic of Palau

Argued: October 3, 2002
Decided: November 11, 2002

Counsel for Appellant: Raynold B. Oilouch

Counsel for Appellee: Yukiwo P. Dengokl

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

Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Associate Judge, presiding.

¶14

PER CURIAM:

This appeal concerns whether Ngerdelang Lineage, the Appellee herein, was a claimant properly before the Land Court. The Land Court determined that Ngerdelang Lineage owned a property commonly known as Emeraech, which is also identified as Bureau of Lands & Surveys Worksheet Lot Nos. 01F 02-012 and 01F 02-008. Appellant argues that the Lineage's claim had, in effect, been withdrawn at the beginning of the Land Court hearing. Because Ngerdelang Lineage did not withdraw its claim to the property at issue, we affirm the Land Court's determination.

BACKGROUND

Appellant Rikel Tmarsel and her sister, Melii Temaël, filed a joint claim for the disputed property in December 1996, asserting that it was the property of the children of Kib. In August 2000, they filed an alternative claim, this time representing that the lots belonged to Ngerdelang Lineage. Several others who are not parties to this appeal, namely, Tobed Saikemal, Sinsak Kib, and Francis Kib, also filed timely claims. At the September 2001 hearing, the following colloquy ensued between attorney Raynold Oilouch and the Land Court:

Tmarsel v. Ngerdelang Lineage, 10 ROP 13 (2002)

Mr. Oilouch: I am representing Rikel Tmarsel and the claims of Kib's family, including the children of the deceased children of Kib. I think they have consolidated the claims of Francis Kib, Rikel Tmarsel, and Melii who is now deceased.

The Court: Okay.

Mr. Oilouch: And if there is a claim by . . . Remengesau Sinsak Kib, then they should be all be consolidated now.

The Court: Okay. So consolidated are the claims of Rikel Tmarsel, Melii Temaël, Sinsak Kib, and Francis Kib who I think had represented, uh, have all been consolidated into Kib's family.

Mr. Oilouch: That's correct.

Following that exchange, several witnesses were called by the claimants. Maria Saikemal testified that her mother, Tobed, was claiming individual ownership of the disputed property as an heir to Ngirchoilang. She also asserted that the Tochi Daicho, which listed Ngerdelang Lineage as the owner of the disputed property, was incorrect.

Tmarsel testified that the Tochi Daicho correctly listed Ngerdelang Lineage as the owner of the disputed property. She also asserted that she was a strong member of Ngerdelang Lineage and that she wished to transfer the land and register it as the property of the children of Kib. The Land Court inquired whether she knew of other members of Ngerdelang Lineage. She replied, "we have those relatives who have connections to the clan or whatever, but the lineage of Ngerdelang Lineage consisted of my mother and father with Ngirchoilang, only two of them remained with no sisters nor children of their sisters or anybody else." She added that Tobed Saikemal had been "cut off" from the Lineage.

The Land Court found that Tobed Saikemal was the daughter of Ngirchoilang, that Tmarsel was the daughter of Kib, that Kib **L15** was a member of the Ngerdelang Lineage, and that Ngerdelang Lineage had the strongest claim to the disputed property because it was listed as the owner in the Tochi Daicho. The Land Court rejected Tmarsel's attempt to transfer the property from Ngerdelang Lineage to the children of Kib as part of the proceeding, and awarded the property to Ngerdelang Lineage based on the evidence presented. Tmarsel filed a motion to reconsider, asserting that Ngerdelang Lineage had never been a claimant for the disputed property. The Land Court denied the motion, pointing to the August 2000 claim that had been filed on behalf of Ngerdelang Lineage. Tmarsel then filed a supplemental memorandum contending that Ngerdelang Lineage was not a claimant in light of Tmarsel's desire to consolidate her claims with the claims on behalf of Kib. The Land Court disagreed, concluding that Ngerdelang Lineage was a claimant based on Tmarsel's own testimony that she claimed the land as a strong member of the Lineage.

DISCUSSION

Tmarsel v. Ngerdelang Lineage, 10 ROP 13 (2002)

Tmarsel contends on appeal that Ngerdelang Lineage was not a claimant before the Land Court because she did not press the Lineage's claim. As we noted above, Tmarsel herself filed the claim on behalf of Ngerdelang Lineage in August 2000. Under the circumstances presented here, we find no error in the Land Court's conclusion that this claim had not been withdrawn. The comments of Tmarsel's counsel at the hearing cannot be construed as a withdrawal of the Lineage's claim. Indeed, Tmarsel expressly acknowledged later in the hearing that she claimed the property as a strong member of Ngerdelang Lineage and wished to transfer it to the children of Kib. Moreover, allowing Tmarsel to withdraw the Lineage's claim on the day of the hearing would have prejudiced other members of the Lineage who could have assumed that Lineage rights, and hence their rights, were being represented.

To the extent that Tmarsel's testimony could be deemed to be a request for the Land Court to transfer the property from Ngerdelang Lineage to the children of Kib in the course of the hearing, we believe the Land Court correctly denied her request. First, an oral transfer would not have satisfied the statute of frauds. *See* 39 PNC § 501. Further, the Land Court was properly reluctant to determine the membership of the Lineage, and to assess Tmarsel's claimed authority to transfer the property, at this hearing. *See* LC Reg. 24(B) (setting forth procedures for transfers of clan or lineage land). The Land Registration Program is a method for determining land ownership, not a mechanism for conveying property.

CONCLUSION

Because the Land Court did not clearly err in finding that Ngerdelang Lineage was a claimant, we affirm the Land Court's Determination of Ownership.