

Anastacio v. Yoshida, 10 ROP 88 (2003)
UKONG ANASTACIO,
Appellant,

v.

LELENG YOSHIDA,
Appellee.

CIVIL APPEAL NO. 02-32
LC/F 01-260 and 01-263

Supreme Court, Appellate Division
Republic of Palau

Argued: March 26, 2003
Decided: April 11, 2003

Counsel for Appellant: Douglas Parkinson

Counsel for Appellee: No appearance

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 SENGEBAU SENIOR, Associate Judge, presiding.

PER CURIAM:

This appeal arises from a Determination of Ownership issued by the Land Court concerning Tochi Daicho Lots 1352 and 1356, known as Mesayang, in Ngebei Hamlet, Ngarchelong State.¹ The lots are listed in the Tochi Daicho under the name of Ikesiil, who died intestate in 1972. The Land Court awarded the lots to the “Children of Leleng Yoshida.” We affirm, but remand **189** to the Land Court to amend the determination and certificate of ownership to refer to the actual owners and not simply “Children of Leleng Yoshida.”

BACKGROUND

The Land Court held a determination-of-ownership hearing on April 29, 2002. Two claimants appeared: Francis Yoshida, in support of claims deriving from his mother, Leleng; and Ignacio and Romana Anastacio in support of claims deriving from Ukong Anastacio. Three witnesses were called.

Francis Yoshida testified in support of the claims of the children of Leleng. He explained

¹Cadastral Worksheet Lot Nos. 01F005-019 and 01F005-017.

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that his mother Leleng was the daughter of Ikesiil and Emau. Leleng died in 1995. Francis stated that his mother had informed him that an eldecheduch was held after the death of her father, Ikesiil, in 1972, but that the land Mesayang was not distributed. According to Francis, Leleng was called to the house of Tutii in 1988. Francis did not know how Tutii and Leleng were related, but evidence adduced later indicated that Tutii was Ikesiil's youngest brother. Tutii told Leleng that when the land claims took place, she could claim Mesayang.

Francis also presented the testimony of Ngirangeboi Emaurois. Emaurois testified that he was 76 years old, and that he had been married to Klang, the daughter of Ikesiil's sister Smerngong. It was his understanding that Leleng contributed the most during Ikesiil's eldecheduch and that she received Palauan money but no land. He also testified that he knew nothing of Tutii's alleged conversation with Leleng in 1988. According to Emaurois, Leleng had been given Mesayang by Emaurois's former wife Klang and her brother Ibelas, children of Ikesiil's sister Smerngong. Emaurois stated that when the land survey took place in Ngarchelong back in 1980, the siblings Ibelas and Klang filed claims for the properties of Ikesiil. In doing so, they discovered that Leleng had not been given any land or a taro patch, so they decided to give her Mesayang.

The last witness to testify was Osisang Tarkong. She testified in support of the opposing claimant, Ukong Anastacio, who is a sister of Ibelas and Klang and also the daughter of Smerngong. Tarkong testified that she was 53 years old and a resident of Ngaraard. Tarkong is Klang's biological daughter, but she was adopted by Smerngong. In other words, according to Tarkong, she, her biological mother Ukong, Ibelas, and Klang are all children of Smerngong, who is the sister of Ikesiil. Her testimony was that when Ikesiil was in the hospital just prior to his death, Smerngong went to visit him. She was later told that at the hospital Ikesiil said to Smerngong, "It's all up to you." According to Tarkong, that meant that Ikesiil's eldecheduch was up to Smerngong. Tarkong testified that she was there in 1972 when the people came together who were the strong ourrot and oktemaol of the house of Ngerdimau to settle matters for Ikesiil. At Ikesiil's eldecheduch, his adopted children were given land, money, and taro patches. She understood that Leleng was given the highly valuable piece of Palauan money, a delibachel, during Ikesiil's eldecheduch, which upset some of the mechas because it was precious and was supposed to go to other members. According to Tarkong, Leleng received the delibachel but no land. Tarkong stated that the properties of Ikesiil that had not been given out to his children were transferred to Smerngong, Ikesiil's only sister, with the agreement of the clan. Tarkong claimed that this agreement was recorded on cassette tapes she possessed but did not bring to the hearing.

190 The Land Court found that Ikesiil was the individual owner of Mesayang and that he died intestate in 1972. The court concluded that at the time of his death § 801(c) of the Palau District Code governed the distribution of an intestate decedent's individual property. Applying the statute, the court determined that Ikesiil's oldest male child, Ongino, inherited Mesayang. However, the Land Court noted that Ongino had withdrawn his claim. Observing that it must choose among the claimants before it, the court concluded that, as the oldest living female child, Leleng was the appropriate heir and that her children had inherited Mesayang from her. The Court issued a Determination of Ownership to the "Children of Leleng Yoshida." Anastacio appeals.

STANDARD OF REVIEW

The Appellate Division reviews a Land Court's findings of fact under a clearly erroneous standard and will reverse only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *Tesei v. Belechal*, 7 ROP Intrm. 89, 90 (1998); *Ramon v. Silang*, 8 ROP Intrm. 124, 125 (2000).

DISCUSSION

Anastacio's first claim of error is that the Land Court erred in failing to determine whether Ikesiil orally transferred the land to Smerngong. Anastacio asserts that Ikesiil transferred ownership of Mesayang to Smerngong before his death. This claim is based on Tarkong's testimony that her mother, Smerngong, told her that while she was at the hospital visiting Ikesiil prior to his death, he told Smerngong, "It's all up to you." However, it does not appear that even Tarkong thought that Ikesiil intended an oral transfer of Mesayang to Smerngong. Rather, Tarkong testified that she understood Ikesiil's statement to mean that "it's up to what my mother [Smerngong] wanted to do at [Ikesiil's] eldecheduch." This testimony does not provide a basis for finding that an inter-vivos transfer of ownership of Mesayang occurred.

Anastacio's second claim of error is that the Land Court erred in finding that the land was not discussed or distributed at Ikesiil's eldecheduch. In determining who shall inherit a decedent's property, the intestacy statute in effect at the time of the decedent's death applies. *Mokoll v. Ngirbedul*, 8 ROP Intrm. 114 (2000). The version of § 801(c) of the Palau District Code in effect at the time of Ikesiil's death in 1972 provides in relevant part that, absent a will or other statement of testamentary intent, "lands held in fee simple by an individual shall, upon the death of the owner, be inherited by the owner's oldest living male child of sound mind, natural or adopted, or, if male heirs are lacking, the oldest living female child of sound mind, natural or adopted." See *Wally v. Sukrad*, 6 ROP Intrm. 38, 39 (1996).

Anastacio does not contest the fact that Ikesiil died without a will or that Mesayang was Ikesiil's individual property held in fee simple. Anastacio also acknowledged at oral argument that the legislative intent of § 801 was to displace custom. See *Wasisang v. Remeskang*, 5 ROP Intrm. 201, 203 (1996). Pursuant to § 801(c), Ikesiil's oldest male child, Ongino, inherited the land upon Ikesiil's death intestate. However, Ongino withdrew his claim to this property prior to the determination of ownership hearing. As a result of the withdrawal of his claim, the Land Court concluded, correctly, that Leleng inherited the property as the next heir in line pursuant to § 801(c). See *Ngirumerang v. Tmakeung*, 8 ROP Intrm. 230, 231 (2000) 191 (holding that the Land Court must choose from among the claimants who appear before it).

Anastacio contended for the first time at oral argument that Ongino acquiesced in a transfer of Mesayang to Smerngong during an alleged "second phase" of Ikesiil's eldecheduch. According to Anastacio, the evidentiary support for this alleged second phase is contained on cassette tapes in Tarkong's possession which she chose not to bring to the determination of

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ownership hearing. We will not reverse and remand on the basis of evidence that the Appellant failed to take the opportunity to present to the lower court. “In order to bring stability to land titles and finality to disputes, parties to litigation are obligated to make all of their arguments, and raise all of their objections in one proceeding.” *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 43 (1998). Any other rule would be unfair to those claimants who came to the Land Court hearing prepared, and who prevailed.

Anastacio’s final claim of error is that the Land Court does not have jurisdiction to make determinations of descent under the intestacy statute. The legislative grant of jurisdiction to the Land Court is contained in 35 PNC § 1304. *PPLA v. Salvador*, 8 ROP Intrm. 73, 76 (1999). Section 1304(a) provides that the Land Court “shall proceed on a systematic basis to hold hearings and make determinations with respect to the ownership of all land within the Republic.” Anastacio does not argue that a determination of succession under the intestacy statute is not a determination of ownership, but rather that pursuant to 35 PNC § 1315 the authority to determine descent has been given solely to the Trial Division. We disagree.

Section 1315(b) provides in relevant part:

When an owner of any interest in land dies without having devised the land by will, the person(s) claiming to be heir(s) entitled thereto may submit the owner’s duplicate certificate, issued to the intestate, to the Trial Division. Upon determination by the Trial Division of the proper intestate succession, the Trial Division shall direct the Land Court to cancel the intestate’s duplicate certificate and the original certificate bound in the permanent register, and to issue a new certificate(s) and duplicate certificate(s) in favor of the proper heirs.

As is clear from the above language, this statute provides the procedure for intestate transfers of ownership concerning parcels of land for which a certificate of title has already issued. As for lands for which no certificate has been issued, the Land Court remains empowered to make determinations of intestate succession as part of its authority to issue the original certificates of title.

CONCLUSION

We affirm the Land Court’s conclusion that Leleng succeeded to the land pursuant to the intestacy statute. However, we remand to the Land Court to amend the Determination of Ownership to refer to the actual owners of the land by their individual names and not simply as “Children of LelengYoshida” so that a certificate of title can issue. *Cf. Heirs of Drairoro v. Dalton*, 7 ROP Intrm. 162, 168 (1999).