

*Renguul v. Elidechedong*, 11 ROP 11 (2003)

**KLEI RENGUUL,**  
**Appellant,**

v.

**AMANIA ELIDECHEONG,**  
**Appellee.**

CIVIL APPEAL NO. 01-048  
LC/E 00-41, 00-42, & 00-43

Supreme Court, Appellate Division  
Republic of Palau

Decided: October 13, 2003<sup>1</sup>

**¶12**

Counsel for Appellant: Moses Uludong, T.C.

Counsel for Appellee: Raynold B. Oilouch

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

Appeal from the Land Court, the Honorable FRANCISCO KEPTOT, Associate Judge, presiding.

MILLER, Justice:

### **BACKGROUND**

This appeal concerns Land Court determinations of ownership regarding Tochi Daicho Lot Nos. 1223, 1237, and 1251, Cadastral Lot Nos. E 010-004, E 010-002, and E 002-42, respectively. Both parties to this appeal testified. Appellant Klei Renguul, who had made claims for each of the subject properties, was authorized also to act on behalf of Toiu Wataru, and it is Wataru's claim that is being appealed with Appellant substituted for the now-deceased Wataru. For each of the lots, Wataru filed claims in which she stated that she was claiming the lots on behalf of herself and ten family members, including Appellant, in the form of a tenancy in common. The basis of her claim was that Rengelchad was given the lands by Bang Clan. Rengelchad was the mother of three adopted children: Ngirmekur, who was listed in the Tochi Daicho; Telael, mother of Wataru and Appellant; and Kubarii, mother of some of the other individuals on behalf of whom Wataru made her claim. At the hearing, Appellant testified that during the Japanese land survey the lands were registered in the name of Ngirmekur because he was Rengelchad's only male child, but that her mother's intent was that Ngirmekur was only to have been trustee of the land and that he was supposed to hold it for the benefit for all three

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<sup>1</sup>The parties have waived oral argument, and the Court has determined that oral argument would not materially assist in the resolution of this appeal. *See* ROP R. App. Pro. 34(a).

children.

Rosania Lee, who died before the Land Court hearing, filed a claim for the lots on behalf of herself and her sister, Appellee Amania Elidechedong, as the children of Ngirmekur. Appellee relied primarily on the Tochi Daicho listing of Ngirmekur as individual owner and testified that two conversations about the properties took place. The first occurred in 1976, at which time Appellee recounted that Ngirmekur had explained to Rosania which lots were his individual property and told her how he wished to the lands to be divided. A similar conversation occurred in 1978, between Appellee and Ngirmekur. Because Ngirmekur was unmarried when he died on January 4, 1979, an eldecheduch was not held and the properties were not distributed.

The Land Court ruled that Appellant failed to overcome the Tochi Daicho presumption and thus that the land had been Ngirmekur's individual property. The court then awarded the property to Appellee and her sister.

## ANALYSIS

Appellant raises five questions on appeal. First, she contends that the Land Court abused its discretion and violated Wataru's due process and equal protection rights by failing to grant a continuance of the hearing. Second, she asserts that the Land Court violated the due process right of Mike Ngirairiki by failing to provide for him or his representative to testify. Third, Appellant argues that the Land Court erred as a matter of **L13** law by applying 25 PNC § 301(b) instead of Palau District Code § 801(d) (codified as amended by P.L. 5-3s-2). Fourth, she claims that the Land Court committed a factual error when it held that no lineage claimed the property. Last, she contends that the Land Court erred because it did not elicit from the parties evidence of the responsible lineage and its desires as to the disposition of the property.

### A. Standards of Review

We review the Land Court's findings of fact for clear error. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). Conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). When factual matters are not in dispute, procedural due process is purely a question of law, and thus the Appellate Division reviews a claim of denial of due process *de novo*. *Elbelau v. Semdiu*, 5 ROP Intrm. 19, 21 (1994).

### B. Wataru's Due Process Claim

On July 14, 2000, Wataru's counsel J. Roman Bedor wrote a letter to Judge Keptot purportedly memorializing a telephone conversation held between them the previous day.<sup>2</sup> The content of the telephone call and letter was that Wataru, for reasons of ill health, and her witness, because of "unforeseen matters," would be unable to attend the hearing as scheduled on July 17, 2000. Judge Keptot responded to the letter on August 16, 2000. He informed Mr. Bedor that Wataru executed a power of attorney authorizing Appellant to present her claim and that the

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<sup>2</sup>For reasons unclear, neither Mr. Bedor's letter nor Judge Keptot's response were included in the Land Court records forwarded to this Court but rather were appended as exhibits to Appellant's opening brief.

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hearing proceeded as scheduled. Although Mr. Bedor did not explicitly state in his letter that he would attend the hearing despite the absence of his client, the fair inference from his suggestion that “we should set the new hearing date on Monday when everyone shows up” is that he was going to attend.

Procedural due process requires that each claimant be granted notice and an opportunity to be heard. *Ngerketiit Lineage v. Seid*, 8 ROP Intrm. 44, 47 (1999). Notice is not at issue here. What is at issue is whether Wataru was denied a meaningful opportunity to be heard. We do not believe that she was so denied. The most pertinent fact on this matter was the power of attorney signed by Wataru. Appellant appeared and testified on behalf of herself, Wataru, and others. Moreover, Appellant’s assertions that Wataru’s counsel was denied the opportunity to represent her because the Land Court failed to continue the hearing are contradicted by Mr. Bedor’s own statement that he would attend the hearing.

### **C. Mike Ngirairiki’s Due Process Claim**

Little discussion is needed to resolve the second question posed by Appellant. Ngirairiki died before the hearing was held, and no one came forward to represent his claims. Regardless of whether the Land Court committed error, Appellant has no standing to assert this claim. *See Estate of Ngiratechekii v. Otiwii*, 9 ROP 112, 115-16 (2002) (finding no prejudice to Appellant where he had full opportunity to present his claim regardless of lack of notice to other potential claimants).

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### **D. Appellant’s Challenges Based on the Intestacy Statute**

Appellant’s last three challenges to the Land Court’s decision concern its application of the intestacy statute.<sup>3</sup> None of the arguments provides a reason to reverse the decision below.

Appellant argues that the Land Court applied the incorrect version of the intestacy statute. The Land Court recognized that it was required to apply the intestacy law in effect at the time of decedent’s death. Because Ngirmekur died in 1979, the court should have applied PDC § 801(d). Accordingly, the Land Court erred when it applied 25 PNC § 301(b). Such error was harmless, however, because § 801(d) and § 301(b) are identical.

Appellant next contends that the Land Court erred when it stated that no lineage claimed the property. We see no error. First, Appellant’s only evidence on this purely factual point was a response to a query from the court about whether the eleven people Appellant represented, which included herself and Wataru, were the ones in whose names the land would be recorded as owners if they prevailed. Appellant responded, “Yes, that lineage.” (I Tr. 20-21.) That single

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<sup>3</sup>Appellee believes that any error with regard to the statute is immaterial because the Land Court found that Ngirmekur orally conveyed the properties to his daughters during his life. Although we disagree with Appellee’s contention that the Land Court found an oral conveyance, it is of little concern because we find that the Land Court committed no reversible error in regard to the intestacy statute.

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response was contained within an exchange that reveals that the claim was brought by and for a number of individuals. Specifically, the Land Court referred to the interest claimed as a common tenancy. Such characterization corresponds with Wataru's Application for Land Registration, in which she listed the interest claimed as "tenancy in common" of the eleven listed persons. Tenancies in common are a species of individual ownership, not communal ownership. Second, the Land Court preceded its comment that no lineage claimed the land with an invocation of the intestacy statute. Thus, we read the Land Court's statement as a conclusion that neither party suggested that its claim was in accordance with "the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death." PDC § 801(d). Our review of the record reveals that Appellant employed the word "lineage" only in regard to her already rejected claim that the group she represented were heirs through their mothers. Neither claimant introduced evidence that a lineage acted on the land within the meaning of § 801(d), and thus the Land Court committed no error.

Finally, Appellant asks this Court to reverse because of what she views as the failure on the Land Court's part to elicit the facts necessary to correctly apply § 801(d). The sole basis for her claim, however, was the alleged inaccuracy of the Tochi Daicho. The Land Court found, and Appellant does not contest, that she failed to produce clear and convincing evidence to overcome the presumption of correctness of the Tochi Daicho listing. For Appellant to have prevailed on her claim, therefore, she would have had to present some other theory of ownership, such as being a direct heir of Ngirmekur. Appellant failed to present such a theory, and the Land Court was under no obligation to elicit facts from her and build ¶15 the case for her. The Land Court was therefore correct to deny her claim once it determined that she had not overcome the Tochi Daicho presumption. *See Rengiil v. Otong Clan*, 9 ROP 61, 62 (2002).

### CONCLUSION

For the reasons set forth above, we affirm.