

*Roman Tmetuchl Family Trust v. Ordemel Hamlet*, 11 ROP 158 (2004)

**ROMAN TMETUCHL  
FAMILY TRUST,  
Appellant,**

v.

**ORDOMEL HAMLET, AIRAI STATE GOVERNMENT, and NGARA-IRRAI  
TRADITIONAL COUNCIL OF CHIEFS,  
Appellees.**

CIVIL APPEAL NO. 03-026  
LC/N 02-156

Supreme Court, Appellate Division  
Republic of Palau

Argued: March 22, 2004

Decided: June 8, 2004

Counsel for Appellant: Johnson Toribiong

Counsel for Appellees: John K. Rechucher

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;  
KATHLEEN M. SALII, Associate Justice.

Appeal from the Land Court, the Honorable RONALD RDECHOR, Associate Judge, presiding.

MILLER, Justice:

This case concerns ownership of property known as Bitkuu and Bkulangis, located on Ngerduais Island in Airai. On June 29, 1999, Roman Tmetuchl filed a claim for the properties with the Land Court.<sup>1</sup> Ordemel Hamlet also filed a claim for the properties. At a hearing on October 23, 2002, the attorney for Airai State and certain chiefs of the Ngara-Irrai Council of Chiefs appeared, arguing that his clients also had a claim to the disputed lands.

The Land Court found that Airai State's claim made the State a party and dismissed the case pursuant to Article X, Section 5 of the Constitution. RTFT appeals, arguing that, because Airai State failed to file its claim more than 60 days before the hearing as required by 35 PNC § 1308(a), it is not a true party to the case, leaving the Land Court free to determine the ownership of the lands.

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**ANALYSIS**

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<sup>1</sup>Mr. Tmetuchl has since passed away. His interest in the land is now represented by Appellant Roman Tmetuchl Family Trust ("RTFT").

## **I. Waiver**

Airai State first argues that we should not consider the issue raised by RTFT because it waived its objection to Airai State's inclusion in the case by failing to object when Airai State first announced its desire to be included in the case and by failing to obtain a ruling on the issue from the Land Court. We see no merit to these contentions.<sup>2</sup>

RTFT's counsel was the first to speak at the hearing before the Land Court. The court then called on counsel for Airai State—who had apparently arrived after the hearing had commenced—to explain his presence. After waiting for Airai State to make its argument for inclusion, RTFT objected:

Before we proceed, I want to clarify a basic procedural point. As I look at the claim of Marcellus Techur, he filed it on June 17, 2002. And the claim of Roman Tmetuchl was filed on June 29, 1999. The claim of Marcellus . . . shows that he's claiming it for Ordomeh hamlet . . . . So first of all, I would like to raise an objection to the claim of Airai State that [it] did not file its claim timely. The claim is between Ordomeh hamlet and Roman Tmetuchl. With that objection on record, I will represent our case.

RTFT then proceeded with its case.

Given this course of events, we see no waiver. RTFT made its objection clear to the trial court and—short of interrupting Airai State's counsel in the midst of his presentation to the court—it made its objection at the first opportunity to do so.<sup>3</sup> Allowing Airai to make its statement, then objecting, was a reasonable course to follow. Nor do we believe that RTFT was required to obtain a ruling on its objection from the court. To the contrary, having made its objection, it would have been inappropriate for RTFT to refuse to proceed with its case until the court had ruled upon it. We conclude therefore that RTFT did not waive its objection to Airai State's inclusion as a party to the case.

## **II. Jurisdiction**

Article X, Section 5 of the Constitution provides:

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<sup>2</sup>Although the State bases its argument on ROP R. Civ. P. 46, it does not explain how or why that rule is applicable to Land Court proceedings. In any event, we do not believe that application of that rule, which deems it "sufficient that a party . . . makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor," would lead to a different result here.

<sup>3</sup>Just before the close of its presentation, Airai offered into evidence, without objection from RTFT's counsel, a judgment awarding the lands at issue to Airai Municipality. That judgment, however, was the ultimate foundation for RTFT's claim as well, which was based on a subsequent deed from Airai State to Tmetuchl. We do not believe that RTFT was required to object to an unobjectionable piece of evidence in order to preserve the objection to Airai's inclusion in the case that it made almost immediately thereafter.

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The Trial Division of the Supreme Court shall have original and exclusive jurisdiction over all matters affecting Ambassadors, other Public Ministers and Consuls, admiralty and maritime cases, and those matters in which the national government or state government is a party.

The Court first examined this provision in *KSPLA v. Diberdii Lineage*, 3 ROP Intrm. 305 (1993). In that case, the Court found that because the Koror State Public Lands Authority—and not Koror State itself—was the true party in interest, Article X, Section 5 did not affect the ability of the Land Claims Hearing Office to adjudicate the claims before it. *See id.* at 311 (holding that “the ‘original and exclusive jurisdiction’ clause of [Article X, Section 5] applies only to cases where the national government or state government is a real party in interest, that is, when it has a substantial interest in the subject matter, rather than merely a ‘nominal, formal or technical interest in the claim.’”).

More recently, this Court held that the Land Court does not have jurisdiction over a state government’s claim when it must reach the merits of the case in order to determine whether the state is a real party in interest. *See Ngatpang State v. Ngiradilubech*, 11 ROP 89, 91 (2004). In *Ngatpang State*, the Land Court had dismissed Ngatpang State as a party after concluding that Ngatpang State had waived its claims to the land at issue. Because the Land Court had jurisdiction over the remaining parties in the case, it proceeded to adjudicate the claims to the land. On appeal, this Court found that the Land Court lacked jurisdiction because it essentially needed to decide the case on its merits in order to determine whether Ngatpang State had waived its claims.

This case falls somewhere between *KSPLA* and *Ngatpang State*. Unlike *KSPLA*, because of the prior judgment in favor of Airai Municipality, *see supra* n.3, Airai State stands to be the real party in interest if it is a party to the case at all. And unlike *Ngatpang State*, the question of whether Airai State is a party to the case turns not on the merits of its claim to the land but on the preliminary question of whether it should be allowed to present that claim.

It is a well-established principle that “[a] court has the power and duty to examine and determine whether it has jurisdiction of a matter presented to it.” 20 Am. Jur. 2d *Courts* § 60 (1995); *e.g.*, *Carmichael v. Iowa State Highway Comm’n*, 156 N.W.2d 332, 340 (Iowa 1968) (“[E]very court has the inherent power to determine whether it has jurisdiction over the subject matter of the proceedings before it.”). That power includes the authority to resolve factual and legal disputes that bear on the question of jurisdiction. *See, e.g.*, *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000) (“Because a court must not act without subject-matter jurisdiction, it should hear evidence as necessary to determine the issue.”).<sup>4</sup>

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<sup>4</sup>*See generally* Restatement (Second) of Judgments § 11 cmt. c (1982): “Whether a court whose jurisdiction has been invoked has subject matter jurisdiction of the action is a legal question that may be raised by a party to the action or by the court itself. When the question is duly raised, the court has the authority to decide it. . . . Thus, a court has authority to determine its own authority, or as it is sometimes put, ‘jurisdiction to determine its jurisdiction.’”

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Applying that principle here, we **1161** believe that the Land Court could and should have ruled on RTFT's objection to Airai State's inclusion in the case. Because it did not do so, following our usual practice, *e.g.*, *Rechucher v. Ngirmeriil*, 9 ROP 206, 213 (2002), we will remand this matter to the Land Court to address this issue in the first instance.<sup>5</sup> If it concludes that RTFT's objection was well-founded, it should dismiss Airai State and proceed to the merits of the case. If, on the other hand, it determines that Airai had a right to present its claim, then the case must be dismissed.

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<sup>5</sup>In its written closing argument before the Land Court, Airai State offered three reasons why it should be allowed to proceed notwithstanding RTFT's contention that it failed to comply with 35 PNC § 1308(a). We leave those arguments to be addressed by the Land Court. We reject, however, Airai's apparent contention in this Court that, having once permitted Airai State to participate, any subsequent dismissal of its claim by the Land Court would violate its rights to due process and equal protection. The Land Court is free to uphold or dismiss Airai's claim in accordance with our discussion above.