

Ngermechesong Lineage v. Children of Oiph, 11 ROP 196 (2004)
NGERMECHESONG LINEAGE,
Appellant,

v.

CHILDREN OF TEOCHO OIPH,¹
Appellees.

CIVIL APPEAL NO. 03-015
LC/P 02-260

Supreme Court, Appellate Division
Republic of Palau

Argued: May 31, 2004
Decided: July 14, 2004

Counsel for Appellant: J. Roman Bedor, T.C.

Counsel for Appellees: No appearance

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
R. BARRIE MICHELSEN, Associate Justice.

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

MILLER, Justice:

The appeal concerns a parcel of land in Ngchesar known as Ngermechesong, Tochi Daicho Lot No. 255, Worksheet Lot No. 103 P 64. Three parties submitted claims for Ngermechesong: Appellant Ngermechesong Lineage, which argues that it historically was the owner, as evidenced by the Tochi Daicho L197 listing, and that it never transferred the land; Appellees, who claim Ngermechesong Lineage conveyed the land to them at the eldecheduch of their father; and Merraoch Soilokel, whose daughter dropped her claim after Soilokel passed away.

At the Land Court hearing on February 3, 2003, Malsol Ngirabad, who filed the claim on behalf of Ngermechesong Lineage, failed to appear and did not provide an explanation for his absence.² Thirty minutes into the hearing, the Land Court concluded that Ngermechesong Lineage had abandoned its claim. The Land Court later issued a Determination of Ownership in

¹The Land Court issued a Determination of Ownership in favor of the children of Teocho Oiph. As we have emphasized, the Land Court must identify precisely who the owners are upon issuing determinations of ownership. *See Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 152-53 (2003).

²Ngermechesong Lineage's brief explains that Ngirabad "got the date of the hearing mixed up and did not show up at the hearing but showed up some days later after the hearing."

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favor of Appellees. Ngermechesong Lineage filed a timely appeal, claiming that the evidence was not sufficient to support a finding that Ngermechesong Lineage conveyed the land to Appellees and that any purported conveyance is void because it was not in writing.³

Although no statute or court rule specifically addresses the consequences of a failure to appear at a hearing, 35 PNC § 1311 requires the Land Court to issue a determination of ownership within 20 business days following the conclusion of a hearing and to provide each party with a copy of “the proceedings summary, findings of facts, and determination(s) made.” See also Land Court R.P. 15 (requiring that the Land Court “issue a determination of ownership, based on findings of facts and conclusions of law, within twenty (20) business days after conclusion of a hearing”). That statute suggests that, rather than declaring that a party that has failed to appear has abandoned its claim, the Land Court should allow all appearing parties to present evidence, then make a determination of ownership based on the findings of facts and conclusions of law that follow from that evidence.

To be sure, the failure to appear can be fatal to a party’s case. For example, a party challenging a Tochi Daicho listing must present clear and convincing evidence that the listing is wrong. *Olngebang Lineage v. ROP*, 8 ROP Intrm. 197, 198 (2000); *Andres v. Desbedang Lineage*, 8 ROP Intrm. 134, 134 (2000). Thus, a party challenging a Tochi Daicho listing who failed to appear at a hearing could not meet its evidentiary burden. On the other hand, a party listed in the Tochi Daicho who filed a claim could prevail even if it failed to appear at the hearing if the parties who appeared did not present sufficient evidence to rebut the presumption of the Tochi Daicho listing.

In this case, Appellees did not challenge the Tochi Daicho listing, but claimed that Ngermechesong Lineage gave the land to them at their father’s eldechoduch. The Land Court made no finding on that question, but based its award of the land to Appellees solely on its determination “that Malsol must have abandoned his claim.” **L198** Rather than declaring that Appellant had abandoned its claim, the Land Court should have allowed Appellees to present their case⁴ and then determined whether the evidence supported their claim. Therefore, we remand this case for further proceedings. The Land Court may issue a determination of ownership based on the evidence it heard at the initial hearing, or it can hold a new hearing in which both sides can present additional evidence. See *Tengadik v. Bitlaol*, 8 ROP Intrm. 204, 206 (2000).

³There is a preliminary question whether a party that has filed a claim but failed to appear at the hearing has the right to appeal. Pursuant to 35 PNC § 1312, “[a] determination of ownership by the Land Court shall be subject to appeal by any party aggrieved thereby directly to the Appellate Division of the Supreme Court.” See also Land Court R.P.16 (“Any claimant aggrieved by a Land Court determination of ownership may appeal such determination directly to the Appellate Division of the Supreme Court within thirty (30) days of service of the determination.”). As a party aggrieved by the determination, Ngermechesong Lineage had the right to appeal.

⁴It is not clear from the record whether the Land Court cut short Appellees’ case because it thought Ngermechesong Lineage had abandoned its claim. The Land Court should have instructed Appellees to present their case just as they would have if Ngermechesong Lineage had appeared, then ruled based on the evidence presented.