

Diaz v. Children of Merep, 11 ROP 28 (2003)
ALFONSO DIAZ,
Appellant,

v.

CHILDREN OF MEREP,
Appellees.

CIVIL APPEAL NO. 02-039
LC/B 01-523

Supreme Court, Appellate Division
Republic of Palau

Decided: October 21, 2003¹

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

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 SENIOR, Land Court Judge, presiding.

MILLER, Justice:

BACKGROUND

This appeal concerns land called Tlaor or Traor, a parcel in Ngermid that was recorded in the Tochi Daicho as Lot 180, and denominated as Cadastral Lot No. 011-B-09 (“the land”). Etpison, who died on January 27, 1983, was listed in the Tochi Daicho as the individual owner. Etpison died intestate and no eldecheduch was held. Etpison’s sister Dirrengitong was the mother of Ngirboketereng Merep (“Merep”), father of Appellee Lyn Merep (“Lyn”), and Yaisang Ngirchorachel (“Yaisang”), maternal grandmother and adopted mother of Appellant Alfonso Diaz. The Land Court ruled that the land was owned by the children of Merep and Yaisang. Diaz appeals and contends that the Land Court erred when it determined that Merep’s children were heirs of Etpison.

¹The Appellant 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).

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ANALYSIS

Diaz makes two arguments on appeal. First, Diaz asserts that Etpison's desire that Yaisang inherit the land should have been recognized as a devise of the land by way of a kind of customary oral will. Second, he contends that it was improper for the Land Court to have awarded co-ownership in the land to the Merep family line as heirs of Etpison because the only basis of their claim was an alleged conveyance that the court found did not transfer individual ownership of the land to Merep. Neither of Appellant's arguments have merit and, therefore, we affirm.

If Etpison had executed a will, the Land Court would have been bound to follow its dictates. *See* 25 PNC § 301(a); 39 PNC § 403(b); *see also Ysaol v. Eriu Family*, 9 ROP 146, 148 (2002). Diaz contends that Etpison's expressed desires about who should take the land at his death should operate as a customary will. He bases his argument on three Trust Territory cases that are distinguishable because they concern the disposition of property of decedents who died before the passage of Palau District Code **130** § 801. Palau's oral will² statute dictates that individually owned fee simple lands can be conveyed by oral will only where the devise was sworn to "in the presence of three witnesses not taking under the will before the Clerk of Courts." PDC § 801(b) (1980) (now codified at 39 PNC § 403(b)). Diaz does not argue on appeal that the Land Court awarded the land to Lyn in the face of an oral will that comported with statutory requirements. Thus, even if Etpison did make statements about the disposition of his lands, those expressions did not effect a legally valid devise of his property.

In the absence of a valid will, a court looks next to the intestacy statute in force at the time of the decedent's death. *See Ngirchokebai v. Reklai*, 8 ROP Intrm. 151, 152 (2000). The Land Court did not address the intestacy statute, but its omission was harmless because no section of the statute applied on the facts of this case.³ Thus, *Delbirt v. Ruluked*, 10 ROP 41, 43 (2003), directs the court to determine who are the proper customary heirs of decedent. This is precisely what the Land Court did.

Diaz argues however, that it was improper for the Land Court to award ownership to Lyn as an heir because her claim was not based on being an heir of Etpison. The Land Court stated that "[Lyn] claims the land through her father Ngirboketereng Merep because her father told her that this property was given to him by his aunties. Lyn Merep testified that her father also claimed this land because it is listed in the Tochi Daicho in the name of Etpisong and Etpisong is Ngirboketereng's maternal uncle." (Land Court Adjudication and Determination at 5.) At the hearing, Lyn testified: "I am claiming this land as a follow up of my father's claim, Ngirboketereng Merep. My father Ngirboketereng had claimed this land. This land is listed in the Daicho in the name of Etpison. Etpison is the maternal uncle of my father Ngirboketereng."

²Palau also permits nuncupative wills, *see* 25 PNC § 107, but these "may dispose of personal property only." 25 PNC § 107(b)

³Because Etpison died in 1983, the statute in force was Palau District Code § 801. Subsection (c) does not apply because there was no evidence that Etpison was a bona fide purchaser nor did any child of Etpison make a claim to the land. Subsection 801(d) also does not apply as there was no evidence presented below that an appropriate lineage desired that the land be disposed of in a certain manner.

(Tr. at 48.)

The claim forms filed over the years in this case indicate that there were indeed two bases for Merep's claim. First, in a claim form dated November 29, 1988, Merep described the origin of his interest as coming from his mother's brother. Second, in a claim form dated September 4, 1991, Merep stated that he had a document that evidenced a conveyance of the land to him. By the time of the Land Court proceedings, Merep had died and Lyn pursued his claim on behalf of Merep's children. Her claim form, dated September 6, 2001, is vague as to the basis of her claim stating only that the land had been her father's and was to belong to all of his children after his death.

Although the bulk of Lyn's testimony concerned the purported conveyance of the property to her father by his aunts after Etpison's death and a discussion of what occurred at Merep's eldecheduch, the Land Court's ultimate rejection of Lyn's claim on those grounds does not invalidate the separate ground on which she claimed the land. In fact, Diaz also presented a completely contradictory claim that was rejected by the **L31** Land Court.⁴ Both claimants having presented conflicting alternative claims, we can see no basis for the Land Court to have favored Diaz's claims over Merep's, and no error in it having given both a share of the property.

CONCLUSION

For the reasons stated above, the determination of the Land Court is affirmed. However, as has been our practice, we remand to the Land Court with the direction that it determine precisely who are the "Children of Merep." See *Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 152-53 2003).

⁴Diaz was awarded part ownership of the land on the basis of it having come through Dirrengitong, Yaisang's mother and the sister of Etpison. However, Ulang Tengoll, Diaz's natural mother, testified that the land was Yaisang's property and that she had received it from her father, who obviously bore no relationship to Etpison.