

Tengoll v. Tbang Clan, 11 ROP 61 (2004)
MERII TENGOLL,
Appellant,

v.

TBANG CLAN,
Appellee.

CIVIL APPEAL NO. 03-031
LC/B 99-151, 99-153, 99-154, 99-155,
99-156, 99-157, 99-169, & 99-170

Supreme Court, Appellate Division
Republic of Palau

Decided: February 9, 2004¹

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Counsel for Appellant: Mark P. Doran

Counsel for Appellee: Raynold B. Oilouch

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

Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Senior Judge, presiding.

PER CURIAM:

This appeal concerns the Land Court's reversal of its original determination to conclude on remand that Tbang Clan, not Merii Tengoll, owned Cadastral Lot No. B00-038, the land at issue in this case. Tengoll argues that the Land Court did not have the authority on remand to reverse its earlier **¶63** decision as to the ownership of Lot No. B00-038. Instead, Tengoll contends that the Land Court was limited to providing an explanation for its previous decision to award the land to her. Because we agree with Tbang Clan that the Land Court had the authority to reverse its original determination of ownership under our general mandate, we affirm the Land Court's second determination of ownership awarding Lot No. B00-038 to Tbang Clan.

BACKGROUND

The Land Court held a hearing for several lots located in Iyebukel Hamlet, Koror State, including the lot at issue in this case, in August and September of 2000. In the Land Court's first adjudication and determination, issued on March 30, 2001, lots were awarded to Tengoll, Tbang Clan, KSPLA, and Catholic Mission. Tengoll was awarded land known as Ngertecherang and

¹The 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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identified as Tochi Daicho Lot Nos. 769, 770, 771, and 772, and Cadastral Lot Nos. B00-041, B00-038, B00-037, B00-036, B00-035, B00-034, and B00-033.² The Land Court issued a determination of ownership for Lot No. B00-038, the land at issue in this appeal, to Merii Tengoll.

Both Tengoll and Tbang Clan appealed the Land Court's first adjudication and the underlying determinations of ownership. On October 11, 2002, we issued an opinion affirming most of the determinations of ownership, but remanding the case back to the Land Court for further proceedings as to other lots, including Lot No. B00-038. Specifically, we stated:

As to B00-038, however, there is insufficient fact-finding to permit review. The Land Court awarded this parcel to Tengoll, apparently on the ground that it lay within the property listed in the Tochi Daicho (lot numbers 769-772) as belonging to her predecessor in interest, Mad. But on Court exhibit 1, a marked up copy of Cadastral Worksheet B00-006, the lot looks to fall within T.D. lot number 773, which the Land Court awarded to Tbang Clan. As we cannot discern how the Land Court reached the conclusion it did, we cannot conduct appellate review on this point. Remand is therefore necessary.

Tbang Clan v. KSPLA, 10 ROP 1, 3-4 (2002). We concluded by stating that the matter was remanded to the Land Court "for further proceedings concerning Cadastral worksheet lot numbers . . . B00-038." *Id.* at 4.

Pursuant to our opinion, the Land Court issued its second adjudication and determination on April 30, 2003, making additional findings of fact, setting forth its reasoning, and issuing new determinations of ownership as to the remaining lots. The Land Court noted that the claimants agreed that Court Exhibit 1, Worksheet Map No. 00-B-006, as marked, was a fair and accurate depiction of the location of their claims. As a result, the Land Court concluded that the map itself constituted convincing and credible evidence of the location and boundaries of the Tochi Daicho lot numbers at issue. The Land Court made a factual finding based on Worksheet Map No. 00-B-006 that Lot No. 164 B00-038 was part of a larger area of property outlined on the map and identified as Tochi Daicho Lot No. 773. Further, the Land Court found that Tochi Daicho Lot No. 773 is registered in the Tochi Daicho as the property of Tbang Clan. The Land Court also relied on the testimony of Sechelung Anatanio Kikuo because the court found his specific and detailed testimony that Lot No. B00-038 was part of Tochi Daicho Lot No. 773 to be more credible than Tengoll's testimony that the lot was part of Ngertecherang. In the determination that is relevant to this appeal, the Land Court reversed its previous decision in favor of Tengoll and instead awarded ownership of Lot No. B00-038 to Tbang Clan. Tengoll appeals this second adjudication and determination of ownership.

DISCUSSION

The central issue in the instant appeal is whether the Land Court had the authority on

²The Land Court later amended its findings and conclusions to award Lot No. B00-041 to Tbang Clan on the ground that this parcel actually lay within the boundaries of Tochi Daicho Lot No. 773.

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remand to reverse its earlier determination of ownership in favor of Tengoll. Tengoll argues that the Land Court was limited by our mandate to providing an explanation of its previous decision. Our opinion stated that remand was necessary due to our inability to “discern how the Land Court reached the conclusion it did.” *Tbang Clan*, 10 ROP at 3. Based on this language, Tengoll contends that the Land Court was not authorized to reverse its determination, but was only authorized to clarify its reasons for awarding the land to her. In response, Tbang Clan distinguishes the general and broad mandate in the instant case from the clear and specific mandates in previous Appellate Division cases to support its argument that the Land Court acted well within its authority to re-evaluate its earlier decision and enter a new determination of ownership. *See Alik v. Ueki*, 6 ROP Intrm. 148, 150-51 (1997); *Heirs of Drairoro v. Yangilmau*, 9 ROP 131, 133 (2002).

Although this Court does not have a rule comparable to Rule 41 of the Federal Rules of Appellate Procedure and therefore does not issue “mandates” *per se*, we have utilized the “mandate rule” recognized in United States federal courts. *See Alik*, 6 ROP Intrm. at 151. The mandate rule relied upon by Tengoll derives from the law of the case doctrine, and means that a lower court is not free to deviate from the appellate court’s mandate. *Id.* (quotations marks and citations omitted). A mandate is “[a]n order from an appellate court directing a lower court to take a specified action.” *Black’s Law Dictionary* 973 (7th ed. 1999). A mandate brings the proceedings in a case on appeal to a close and returns jurisdiction to the lower court, but the lower court is vested with jurisdiction only to the extent conferred by the dictates of the appellate court’s opinion and mandate. *See United States v. Campbell*, 168 F.3d 263, 265, 266 n.3 (6th Cir. 1999); *Caldwell v. Puget Sound Elec. Appren. & Train. Tr.*, 824 F.2d 765, 767 (9th Cir. 1987). If a matter is remanded with specific instructions, those instructions are not subject to interpretation and must be followed exactly to ensure that the lower court’s decision is in accord with the appellate court. *Litman v. Mass. Mut. Life Ins. Co.*, 825 F.2d 1506, 1511 (11th Cir. 1987) (en banc). Therefore, a lower court must strictly comply with the appellate court’s mandate on remand. *See Kumangai v. Isechal*, 3 ROP Intrm. 43, 45 (1991).

However, general mandates, such as the mandate issued in this case, are also permissible. *Campbell*, 168 F.3d at 265. A general mandate gives a lower court broad discretion in handling a case on remand because the mandate does not contain clear and specific instructions limiting what the lower court is authorized to do. *See id.* Instead, the lower court must attempt to implement the result contemplated by the 165 appellate court, using the appellate court’s opinion as an interpretive device to aid it in construing the mandate. *See In re Sanford Fork & Tool Co.*, 16 S. Ct. 291, 293 (1895). On remand, a lower court may generally consider and decide any matter left open by the appellate court, as long as that decision is not inconsistent with the appellate court’s opinion. *Caldwell*, 824 F.2d at 767; *Aldridge v. Lily-Tulip, Inc.*, 40 F.3d 1202, 1207-08 (11th Cir. 1994) (quoting *Piambino v. Bailey*, 757 F.2d 1112, 1119 (11th Cir. 1985)). For example, where an appellate court remands for further proceedings without limiting what those proceedings are to be, the lower court generally has the right to consider and rule on the entire case on remand. *Strauss v. Rivers*, 595 So. 2d 706, 709 (La. Ct. App. 1992). Further, after a remand for further proceedings, a lower court may correct an error in its original findings as to a matter not passed on by the appellate court, even without hearing new evidence. *Hulihee v. Heirs of Hueu*, 556 P.2d 920, 921 (Haw. 1976).

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Here, rather than giving specific direction to the Land Court, our mandate simply stated that, “[t]his matter is remanded to the Land Court for further proceedings concerning Cadastral worksheet lot numbers B00-032, B00-038 and B00-041.” *Tbang Clan*, 10 ROP at 4. There is no indication in the mandate as to what those further proceedings were to include. Under these circumstances, the Land Court was required to look to our opinion for guidance. In the opinion, we pointed out that Lot No. B00-038 appeared to fall within a Tochi Daicho lot claimed by Tbang Clan, and we stated that there was “insufficient fact-finding to permit review,” and “[a]s we cannot discern how the Land Court reached the conclusion it did, we cannot conduct appellate review [as to Lot No. B00-038].” *Id.* at 3-4. In another case where the the lack of specific factual findings made it impossible for us to review the Land Court’s determination of ownership, we remanded the case for additional factual findings and instructed the Land Court to issue a new determination of ownership “which may, *but need not*, reach the same result as the first Determination of Ownership.”³ *Matchiau v. Telungalek ra Klai*, 7 ROP Intrm. 177, 179-80 (1999) (emphasis added). Here, the skepticism reflected in our opinion regarding the award of Lot No. B00-038 to Tengoll, along with our inability to review the Land Court’s original determination, left the Land Court free to make new factual findings and reach any determination on remand that was supported by its new findings. *See Piambino*, 757 F.2d at 1119 (holding that trial court is free to address, as a matter of first impression on remand, those issues not disposed of on appeal). Therefore, the Land Court had the authority to reverse its determination of ownership on remand because we were unable to decide whether the original determination was correct on appeal.

The Land Court did nothing on remand to violate the mandate rule. Under our general mandate, the Land Court was free **166** to review, reconsider, and re-weigh the evidence and to issue a new adjudication and determination of ownership based on its new findings. Just as there was nothing in our opinion requiring the Land Court to reverse its earlier determination, there was nothing in the opinion requiring the Land Court to uphold its previous determination of ownership either. The Land Court simply conducted “further proceedings” in compliance with our general mandate. Finally, we find that the Land Court’s decision to award Lot No. B00-038 to Tbang Clan is supported by substantial evidence in the record and, therefore, is not clearly erroneous. *See Tesei v. Belechal*, 7 ROP Intrm. 89, 90 (1998).

CONCLUSION

For the foregoing reasons, the Land Court’s second adjudication and determination of ownership awarding the land in question to Tbang Clan is affirmed.

³In other cases where we have been unable to review a determination of ownership by the Land Court due to insufficient factual findings or a failure to explain the basis for the determination, we have vacated the determination of ownership and remanded the case to the Land Court for further proceedings. *See Tangadik v. Bitlaol*, 8 ROP Intrm. 204, 205-06 (2000); *Temael v. Beketaut*, 8 ROP Intrm. 101, 101 (2000). Even though we did not vacate the original determination of ownership in this case, our inability to review the determination, coupled with our direction to the Land Court to conduct further proceedings, authorized the Land Court to issue a new determination of ownership on remand.