

Rusiang Lineage v. Techemang, 12 ROP 7 (2004)
RUSIANG LINEAGE and DECHOL LINEAGE,
Appellants,

v.

CAROLINA TECHEMANG,
Appellee.

CIVIL APPEAL NO. 03-25
LC/P 02-542

Supreme Court, Appellate Division
Republic of Palau

Argued: September 23, 2004
Decided: October 5, 2004

The Land Court can, and must, choose among the claimants who appear before it and cannot choose someone who did not, even though his or her claim might be theoretically more sound.

Counsel for Rusiang Lineage: Moses Uludong

Counsel for Dechol Lineage: Ernestine K. Rengiil

Counsel for Appellee: No appearance

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

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Appeal from the Land Court, the Honorable JOHNSON TORIBIONG, Part-time Judge, presiding.

PER CURIAM:

Appellants Rusiang Lineage and Dechol Lineage filed this appeal challenging the determination of ownership of the Land Court. For the reasons set forth below, we reverse the determination of the Land Court and remand for further proceedings.

BACKGROUND

This matter involves the ownership of the land known as Ngercheang in Ngchesar State, designated as Cadastral Lot No. 010 P 18 (hereinafter “contested property” or “property”). The Tochi Daicho lists the property as belonging individually to Techemang, who died intestate on or about August 16, 1964. Pursuant to the Land Claims Reorganization Act of 1996, 35 PNC § 1301 *et seq.* (“the Act”), several parties filed claims for the property. Techemang’s daughter,

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Yosie Techemang Ongalibang (“Yosie”) filed a claim on behalf of herself and her older sister Carolina Techemang (“Carolina”), who resides in the United States of America. Carolina never filed an individual claim to the property and has not made a personal appearance in this matter. Itpik Benjamin and Louisa Sumang filed claims on behalf of Rusiang Lineage and Dechol Lineage, respectively.

Prior to a hearing on the merits of the various claims, Yosie formally withdrew her claim. The Land Court held a hearing to ascertain the motivation behind Yosie’s withdrawal. Following the hearing the court noted that Yosie abandoned her claim because she believed that after the ownership rights were determined, her father’s relatives would give her the property. After hearing the arguments of the remaining parties, the Land Court awarded the property to Carolina. In doing so, the Land Court looked to the law governing intestate succession at the time of Techemang’s demise. At that time, § 801 of the Palau District Code provided that if the owner of land in fee simple died intestate, the decedent’s real property would pass to the oldest surviving son. In the absence of a male heir, the decedent’s real property would pass to the oldest surviving daughter. Because Techemang had no surviving male heirs, the Land Court determined that Carolina, Techemang’s oldest surviving daughter, inherited the property.

Both Rusiang Lineage and Dechol Lineage appeal the determination of the Land Court, asserting that the Land Court erred in granting the property to Carolina because, at the time of the hearing, she had not filed a written claim as required by the Act as well as Land Court regulations.

ANALYSIS

39 PNC § 1308 provides, in pertinent part:

. . . All claims shall be filed with the Land Court no later than 60 days prior to the date set for the hearing. Any claim not timely filed shall be forfeited.

Both the deadline for filing claims and the consequences of failing to meet that deadline are incorporated into Land Court Regulations 10, 11, and 12.¹ In this case, Carolina never **19** filed a claim, and the only claim which referred to her was withdrawn on January 28, 2002. At the time

¹Land Court Regulation 10 provides, in pertinent part:

Any person or group of persons who claim ownership of land not yet registered must file a written claim in a claim form prescribed by the Land Court . . .

Land Court Regulation 11 provides, in pertinent part:

All claims to private lands must be filed with the Land Court no later than 60 days prior to the date set for hearing of the land claimed.

Land Court Regulation 12 provides:

Any claim which is not timely filed shall be forfeited.

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the hearing regarding the contested property commenced on May 24, 2002, the children of Techemang had no claims pending before the Land Court. Therefore, by withdrawing their claim, the children of Techemang waived any right to the contested property in these proceedings.

This Court has previously noted the effect of this provision of the Act. In *Ngirchokebai v. Reklai*, 8 ROP Intrm. 151, 152 (2000), this Court stated that “[h]eirs to property who fail to claim the property waive their right to it.” Moreover, we have addressed a situation similar to the case at bar in *Ngirumerang v. Tellames*, 8 ROP Intrm. 230 (2000). In *Ngirumerang*, appellant argued that the Land Court erred in not awarding certain lands to a decedent’s son pursuant to § 801 of the Palau District Code. Although this Court acknowledged that the decedent’s son could have claimed the land under § 801, we noted that he failed to file a claim for the property. We proceeded to state that the “Land Court can, and must, choose among the claimants who appear before it and cannot [choose] someone who did not, even though his or her claim might be theoretically more sound.” *Id.* at 231. Because the children of Techemang’s claims were not before the Land Court at the time of the hearing, the contested property should have been awarded to one of the claimants with an active claim.

From the circumstances surrounding the Land Court’s investigation into the motivation behind Yosie’s withdrawal of her claim, it may be surmised that the court had reservations about Yosie’s ability to fairly and impartially represent the ownership rights of her sister. However, Yosie’s ability to represent Carolina boils down to one essential inquiry: whether Yosie was a proper agent of Carolina. If Yosie was an agent of Carolina, then she had the authority to withdraw the claim on Carolina’s behalf. If Yosie was not an agent of Carolina, then she did not have the authority to file a claim on Carolina’s behalf in the first instance. Under either scenario, the fact remains that the Land Court did not have Carolina’s claim before it at the time of the hearing. Accordingly, the Land Court erred in granting the contested property to a party who failed to file a claim.

CONCLUSION

For the foregoing reasons, we reverse the determination of the Land Court and remand the case for further proceedings consistent with this opinion.