Sowei Clan v. Sechedui Clan, 13 ROP 124 (2006)

SOWEI CLAN,
Appellant,

v.

SECHEDUI CLAN,
Appellee.

CIVIL APPEAL NO. 05-022
Civil Action No. 01-24

Supreme Court, Appellate Division
Republic of Palau

Decided: May 26, 2006[1]

Counsel for Appellant: Roman Bedor and Ernestine K. Rengiil

Counsel for Appellee: Johnson Toribiong and Salvador Remoket

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; JANET HEALY WEEKS, Part-Time Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

PER CURIAM:

This is an appeal of a Decision and Order of the Trial Division of the Supreme Court with Justice Larry W. Miller presiding. Appellant Sowei Clan [2] argues that the Court's decision to correct clerical errors in two quitclaim deeds constitutes alienation of land, which is improper without the consent of the senior strong members of the clan.

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[1] The parties agreed to waive oral argument in this case.

[2] It should be noted that both Sowei Clan and Sechedui Clan are represented in this case by two different factions with separate attorneys. Appellant David Haruo is the chief of Sowei Clan and he is being represented by trial counselor Roman Bedor. Another faction of Sowei Clan, which is led by Rukebai Obesong Ongiil, opposes this appeal and she is being represented by attorney Ernestine Rengiil. The two factions of the Sechedui Clan are represented by attorneys Johnson Toribiong and Salvador Remoket.

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BACKGROUND

This appeal concerns two tracts of land in Peleliu State. The traditional names for these lands are *Idelbong* and *Ngermidol*. In 1955, Ongklungel Iyechad filed a claim with the Land Office for *Idelbong* on behalf of Sechedui Clan. A corresponding map also indicates that his claim was for *Idelbong*. As a part of this claim, Ongklungel submitted a ⊥125 statement the following year that indicated that *Idelbong* belonged to the Sechedui Clan prior to Japanese occupation of Peleliu. This statement was also signed by several other rubaks (including Spesungel Renguul) who aver that the statement is "true to the best of [their] knowledge and belief." Land Title Officer D.W. LeGoullon determined that *Idelbong* formerly belonged to Sechedui Clan.

Similarly, Spesungel Renguul filed a claim with the Land Office for *Ngermidol* on behalf of Sowei Clan. The corresponding map indicates that his claim was for *Ngermidol*, and it reflects that *Ngermidol* is adjacent to *Idelbong*. Spesungel also submitted a statement claiming *Ngermidol* for Sowei Clan, and this statement was also approved by Ongklungel. Land Title Officer LeGoullon determined that *Ngermidol* belonged to Sowei Clan prior to Japanese occupation.

Although LeGoullon found that each piece of land was previously owned by a clan before the Japanese government obtained the land through eminent domain, he recommended that the land be released to the Trust Territory government. The Clans appealed initially, but they settled their cases prior to judgment. Pursuant to the settlement, the Clans would have a homestead on the land for five years, and at the end of that period, each would receive title to its land.

A Palau District Map from November 1961 identified *Idelbong* as Homestead Lot No. 166 and *Ngermidol* as Homestead Lot No. 167. In January 1962 (approximately three and a half years after the settlement of the cases) the Trust Territory gave quitclaim deeds to the two Clans. Notably however, the deed for Lot No. 167 (*Ngermidol*) was assigned to Sechedui Clan, and the deed for Lot No. 166 (*Idelbong*) was assigned to Sowei Clan. The deed assignments contradicted the claims, but no one challenged the deeds until recently.

In 2000, Chief Renguul Donald Haruo of Sowei Clan requested the Land Court to issue a Certificate of Title to the Clan for Homestead Lot 166. In support of his claim, Haruo argued that Sowei Clan had the deed for Lot 166, and he cited a case from the Appellate Division of this Court, which held that the Trust Territory quitclaim deeds were effective instruments of conveyance transferring title of homestead lots to the clans holding such deeds in *Etpison v. Sugiyama*, 8 ROP Intrm. 208 (2000).

As the case progressed in Land Court, it was noted that the two lots appeared to have erroneously switched on the final cadastral plat completed by the Bureau of Land and Surveys. Despite "the general consensus" that Sechedui Clan owned *Idelbong* and Sowei Clan owned *Ngermidol*, a question was raised as to whether the Land Court had the authority to make the corrections and issue certificates of title. Matters were further complicated by the fact that 90

individuals claimed smaller parcels of land within Lots 166 and 167. For these reasons, the Land Court referred the case to the Supreme Court for final and conclusive disposition on January 19, 2001.

On July 19, 2001, Attorney Ernestine Rengiil filed a motion on behalf of Obesong Ongiil and Sowei Clan to correct the deeds to reflect that Sechedui Clan owns Lot 166 and Sowei Clan owns Lot 167. Attorney Johnson Toribiong filed papers on behalf of Sechedui Clan supporting this motion. No one filed a response, and the Court granted the motion on September 5, 2001. It commented that "[t]he documents attached to the motion demonstrate that in all proceedings leading up to the issuance of the quitclaim deeds, Sowei Clan ⊥126 had claimed the land known as *Ngermidol*, . . . and that Sechedui Clan had claimed the land know as *Idelbong*."

Over the next several years, the Court supervised and Land Court personnel assisted in the processing and monumentation of claims, which was complete by April 2005. On April 28, 2005, the Court issued an order returning the case to the Land Court. It reasoned that it had accomplished its purpose of straightening out the clerical errors of the deeds and creating a definitive worksheet map that shows the location of the homestead lots and the monumented claims of competing claimants within those lots.

On May 2, Appellant's Attorney Bedor filed a motion to set aside the 2001 order correcting the clerical error on the deeds and to set aside the order transferring the case back to Land Court. The motion included no legal analysis, but was brought under Rule of Civil Procedure 60(b)(6). Bedor attached a stipulation signed by Moses Uludong and Johnson Toribiong (attorneys for Sechedui Clan) that indicates their approval to set aside the 2001 order "due to a misunderstanding by several members of the Sowei clan (represented by J. Roman Bedor) regarding the switch of the two lots."

The Court held a brief motion hearing, at which Appellant Donald Haruo testified that the Sowei Clan owned the waterfront homestead lot (*Idelbong*). He based his testimony on the decisions in *Simeon v. Spesungel*, Civ. Action No. 300, and *Lansang v. Ngirarikel*, Civil Action No. 111-76. In reference to these cases the trial court stated, "As both cases were between third parties and Sowei, neither is binding on the current dispute between Sowei and Sechedui. Moreover, to the extent the court in these cases were aware of or gave effect to the homestead deed as originally issued, they merely reflected the state of affairs as of that time; they do not show that the homestead deed was right."

In denying the motion to set aside the prior orders on June 3, 2005, the Court found that no new evidence warranted returning the deeds to their original form. Although a map dated August 28, 1956, identifies the seaside land (*Idelbong*) as the Sowei Clan Homestead, that evidence was insufficient to change the 2001 order, which was supported by several pieces of evidence.

The appeal presently before this Court concerns two orders: the 2001 order switching the deeds and the 2005 order denying the Rule 60(b)(6) motion. In his brief, Appellant argues that the court's orders are the equivalent of alienation of clan land, which this Court has previously

determined requires the consent of the senior strong members of the clan. To support his position, Appellant cites *Ngiradilubch v. Nabeyama* , 3 ROP Intrm. 101 (1992); *Thomas v. Trust Territory*, 8 TTR 40 (1979); and *Beans v. Mesechebal*, 8 TTR 107 (1980).

ANALYSIS

Prior to addressing the merits of this claim, the Court must consider whether it has jurisdiction to hear the appeal regardless of whether the parties raised that issue.[3] *See Williams v. Chater*, 87 F.3d 702, 704 (5th Cir. ⊥127 1996)("Although the possible lack of jurisdiction as to the denial of the Rule 60(b) motion has not been raised by the parties, we are obligated to examine the basis for our jurisdiction, *sua sponte* , if necessary."); 4 Am. Jur. 2d *Appellate Review* § 76 (1995). Typically, "appeals are permitted only from final decisions or judgments," and this rule is a jurisdictional requirement. *Id.* § 85.

An order is final and ripe for appeal when it "terminates the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Id*. § 87. Because Appellant is challenging both the 2001 order switching the deeds and the 2005 order denying the Rule 60(b)(6) motion, the Court must determine whether the orders are final.

The 2001 order, which merely changed the names of the owners on two deeds, did not terminate litigation on the merits of this case. These deeds will play significant roles in determining ownership of the smaller parcels of land in Land Court, and therefore, the 2001 order did not conclude the matters before the Trial Court. Thus, the order—by itself—is not ripe for appeal.

The impact of the Rule 60(b)(6) order on the current proceedings is not so clear. On one hand, after the trial court ruled on the motion, no other issues remained before the trial court. On the other hand, the determination proceedings that were at the heart of the action were still continuing in Land Court.

Most American legal authorities provide a blanket statement that orders denying motions under Rule 60(b)(6), which is the foundation for ROP R. Civ. P. 60(b)(6), are directly appealable.[4] The rationale for this general principle relates to the purpose of Rule 60(b).

> It is a method of reopening a case. The Advisory Committee's notes say that the Rule was devised to give the district court a power of revisitation it had lacked. A court always had the power to modify earlier orders in a pending case. Therefore, "final" in Rule 60(b) must modify "order, or proceeding" as well as "judgment." Otherwise, the Rule creates a power of modification redundant with the ordinary power to conduct pending proceedings and rethink earlier orders.

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[3] This is not inconsistent with our decision in *Nakatani v. Nishizono* , 2 ROP Intrm. 7 (1990), which stated that "[t]he scope of appellate review is *generally* limited to matters complained of or points raised in the appeal." *Id.* at 12 (emphasis added). Jurisdiction is one exception to that general rule.

[4] Because ROP R. Civ. P. 60 is derived from the Federal Rules, it is appropriate to look to the United States authorities for guidance. *Sadang v. Ongesii*, 10 ROP 100, 102 n.2 (2003).

> A moment's thought shows why Rule 60(b) must be limited to review of orders that are independently "final decisions" . . . . A party should not get immediate review of an order for discovery, or one denying summary judgment and setting the case for trial, just by filing a Rule 60(b) motion to set aside the order and then appealing the denial of this motion.

Kapco Mfg. Co. v. C & O Enter. , 773 F.2d ⊥128 151, 154 (7th Cir. 1985). Thus, if a Rule 60(b) motion is properly made (meaning specifically that it is a motion to relieve a party from a *final* judgment, order, or proceeding), an order denying that motion is final for the purposes of the ability to appeal that order.

Based on this general rule, this Court is inclined to rule that it has jurisdiction over this appeal. Unlike the 2001 order, the Rule 60(b) order effectively ended any further litigation in the Trial Division. For that reason, we find that it was a final order and can be appealed to this Court.

Moving to the merits of the appeal, we first note that we review the denial of a Rule 60(b)(6) motion for an abuse of discretion. *See Ngerketiit Lineage v. Ngirarsaol* , 8 ROP Intrm. 126, 127 (2000). This court need not review the merits of the underlying judgment, but only consider whether the trial court abused its discretion in finding that Appellant failed to demonstrate a reason justifying relief from the operation of the judgment. *See Melekeok State Gov't v. Basilius*, 9 ROP 136, 138 (2002).

Appellant argues that the Court's 2001 order was the equivalent of alienation of clan land, which this Court has previously determined requires the consent of the senior strong members of the clan.[5] Although it is not explicitly stated in this fashion, Appellant contends that this is a reason justifying relief from the order under Rule 60(b)(6).

It is well established in Palauan customs that the senior strong members must consent before land may be transferred out of a clan. *See Obak v. Bandarii*, 7 ROP Intrm. 254, 255 (Tr. Div. 1998). Nevertheless, as earlier stated, the Court's 2001 order correcting the clerical error is not a land transfer. It merely reflected the intent of the Land District Office. Thus, the consent of the senior strong members is not required, and Appellant's argument fails.

CONCLUSION

For the reasons discussed above, we affirm the decision of the trial court.

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[5] The Court notes that it does not appear that this issue was raised before the trial court. On numerous occasions we have stated the general rule that an issue not raised in the trial court is waived and may not be raised on appeal. *See, e.g.*, *Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004). Nevertheless, Appellant's failure to assert the consent issue at the trial level was not raised by Appellee, and generally, we limit the scope of our review to those matters raised in the briefs. *See Nakatani v. Nishizono*, 2 ROP Intrm. 7, 12 (1990).