

Tebelak v. Rdialul, 13 ROP 150 (2006)
ANITA TEBELAK¹ and BLAU SKEBONG,
Appellants,

v.

GAINY RDIALUL and GHUNDI RDIALUL,
Appellees.

CIVIL APPEAL NO. 04-001
Civil Action No. 01-362

Supreme Court, Appellate Division
Republic of Palau

Decided: August 4, 2006²

1151

Counsel for Appellants: J. Roman Bedor

Counsel for Appellees: Mark Doran

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;
LOURDES F. MATERNE, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable KATHLEEN M. SALII,
Associate Justice, presiding.

PER CURIAM:

This appeal arises from a trial court decision in favor of the plaintiffs, who were seeking ejection of defendant Joselito Tebelak from land in Ngeremlengui State. Blau Skebong intervened in the action and filed a counterclaim, in which he sought a court order declaring his ownership in the land. For the following reasons, the trial court's judgment is affirmed.³

¹ Anita Tebelak filed a motion to substitute for her deceased brother, Joselito Tebelak. Appellants opposed the motion, arguing that there was no factual or legal basis for the substitution. ROP Rule of Appellate Procedure 43 permits substitution of a personal representative for the deceased party. The term "personal representative" generally indicates the executor or administrator of the decedent's estate. Although a substituting individual should file an explicit statement of his or her relationship with the deceased, the Court shall grant the motion to substitute in light of the minimal impact it has with respect to our decision.

² The court has concluded that oral argument would not materially assist in the resolution of this appeal. ROP R. App. P. 34(a).

³ The Court notes that Appellants filed a motion to dismiss the appeal, arguing that Anita Tebelak failed to file an opening brief. An opening brief was filed on October 31, 2005, by counsel for both Appellants. The brief does not indicate that it presents only the arguments of Appellant Blau Skebong, and the argument does not appear to be limited to any specific interest. In fact, the brief seeks remand as a remedy. Therefore, the Court will treat the opening brief as a unified argument for both Appellants.

BACKGROUND

Appellees Gainy and Ghundi Rdialul filed suit to eject the late Joselito Tebelak and anyone else residing on land known as *Ngersosol*. Appellees based their claim on Certificates of Title issued in their name on September 18, 2001. The certificates identify *Ngersosol* as Cadastral Lot Nos. 021 K 01, 021 K 02, and 021 K 03 and as Tochi Daicho Lots 98 and 99. The total land area of these three lots, as identified on the certificates, is 8,286 square meters. At trial, Tebelak claimed ownership of the land on which he lived through his father, Tebelak Oingerang. Blau Skebong intervened in the action and claimed ownership through his father, Otang.

Otang is listed as the owner of Lots 98 and 99 in the Tochi Daicho, but he died in the 1960s. On May 4, 1976, Tebelak Oingerang filed a Land Acquisition Record form, in which he claimed ownership of *Ngersosol*. The next year, however, Oingerang filed an Application for Registration of Land Parcel, in which he claimed *Ngersosol* for Remengesau Brans. The Ngeremlengui Land Registration Team conducted a hearing on **L152** ownership of the land on July 19, 1978. Only two people testified at the hearing. A summary of the hearing and determination signed by three Land Commissioners on March 28, 1979, indicates that Isebong Ngiratoruu testified that the property should be in the name of her son, Brans. She testified that she was using the land when Otang was still alive, and that he gave her the land. She also testified that she was a “promised brother” to Otang’s son Mesiwet, and as a result, her son effectively became a grandchild of Otang. Another summary of the hearing signed by the chairman and a member of the registration team indicates that Oingerang, who is also a son of Ngiratoruu, testified that he filed a claim to *Ngersosol* on behalf of Brans. Oingerang’s testimony supports Ngiratoruu’s statements, as he also commented as to Ngiratoruu’s use of the land while Otang was alive and her quasi-familial relationship with Otang.

The Ngeremlengui Land Registration Team found “that the land *Ngersosol* shown on the map as Cadastral Plat No. 72 (72-6025) Area: 8,286 sq. meters, also shown in the Tochi Daicho record for Ngaremlengui [sic] Municipality, Palau District, as T.D. Lot Nos. 98 & 99, identified as an individual property of Otang, surveyed during the land survey conducted by the Japanese government within the years from 1938-1941, to be an individual property of Remengesau Brans forever.” A Determination of Ownership was issued by the Palau District Land Commission on February 19, 1980, but a Certificate of Title was not issued immediately following the determination.

In 1986, Brans requested a Certificate of Title for *Ngersosol*. Senior Land Commissioner Ichiro Dingilius responded to Brans’ request. Dingilius reaffirmed that Brans was the “sole owner” but the Land Commission could not issue a certificate until other property on the survey map had been defined. Prior to the issuance of a certificate, Brans conveyed his interest in *Ngersosol* to Abby Rdialul on January 16, 1992, via warranty deed.

Appellees have had, and have taken, the opportunity to respond, and accordingly, no further response is needed. The motion to dismiss is denied.

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On September 14, 1992, Abby Rdialul requested the Land Claims Hearing Office issue a Certificate of Title for the land to be issued in the name of his sons, Appellees Gainy and Ghundi Rdialul. Although the LCHO did not issue a certificate, it issued a Determination of Ownership on September 25, 1992, in the name of Appellees. Senior Land Court Judge Tmewang Rengulbai also drafted a memorandum regarding this land on June 8, 1997. Rengulbai indicated that the property map had not yet been finalized, and therefore, the Land Court could not issue a Certificate of Title. In lieu of the certificate, the Land Court issued another Determination of Ownership to Appellees on July 11, 1997, without holding a public hearing. Certificates of Title were eventually issued to Appellees on September 25, 2001.

Appellees filed this lawsuit to eject anyone residing on this land and to receive back rent for prior usage of the land. Defendant Joselito Tebelak argued that he was living on Tochi Daicho Lot No. 137, instead of Lot Nos. 98 and 99. He also maintained that the Certificates of Title were not binding because the certificates were not issued as a result of a hearing coupled with a determination. Blau Skebong intervened in the action and claimed that he was the owner of *Ngersosol*. He argued that he received his interest in the land after his father Otang passed away.

In its decision, the trial court first noted that the identification of land owners in the Tochi Daicho is presumed to be correct, L153 and that a party disputing this listing must rebut the presumption with clear and convincing evidence. It also stated that a certificate of title is *prima facie* evidence of ownership and is conclusive on all persons who have notice of the proceedings. The court then declared that “[b]ecause Plaintiffs claim through the Tochi Daicho, Defendants have the heavy burden of disputing the Tochi Daicho listing.”

The court rejected each of Tebelak’s arguments. First, it found that Tebelak failed to present sufficient evidence to support his contention that he lived on Lot No. 137. Second, it denied his claim that his father, Oingerang, claimed *Ngersosol* for himself in the 1970s. This argument was not supported by the Land Commission hearing summaries. Third, it rejected the claim that the Land Commission’s failure to serve Oingerang with the 1980 Determination of Ownership resulted in the Certificates of Title being non-conclusive. The court stated that the failure to serve Oingerang with a notice of the determination was harmless because Oingerang’s testimony supported the decision to award the land to Brans.

The court also rejected Skebong’s claims. He argued that he instructed Oingerang to file claims for Lot Nos. 98, 99, and 137 on Skebong’s behalf, and when he learned that Oingerang did not file claims on his behalf the Land Court informed him he would have to file a case in the Supreme Court in order for the judiciary to review his claim. The trial court found that Skebong waived his claim to Lot Nos. 98 and 99 because he was aware of another person’s claim to the land in 1976, but he failed to file his own claim. The court noted that Skebong learned of the determination in 1993, but he failed to initiate any action until intervening in this case in 2002.

Additionally, Skebong challenged the 1980 determination of ownership based on the area of the land. Skebong claimed that the Land Commission erroneously included Lot No. 137 in Lot Nos. 98 and 99. The Tochi Daicho lists Lot Nos. 98 and 99 to include 999 tsubos, which is

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the equivalent of 3,302 square meters. This area is significantly smaller than the 8,286 square meters awarded in the determination. The trial court rejected Skebong's argument based on the records from the hearing. The documents identify *Ngersosol* as lot number 72-6025, which consisted of 8,286 square meters.

Appellants present three issues on appeal. First, they claim that the trial court erred in finding that the Appellees claimed their interest through the Tochi Daicho listing. Couched within this argument, Appellants also claim that the Certificate of Title is not binding because it was not issued based on a hearing coupled with a determination of ownership in favor of the Appellees. Second, they contend that the determination of ownership should not have awarded Brans with more than the 3,302 square meters listed in the Tochi Daicho. Finally, Appellants argue that the 1980 determination of ownership is not entitled to presumptive weight because it was not served on Oingerang.

ANALYSIS

Appellants first argue that the trial court erred in finding that the Appellees claimed their interest through the Tochi Daicho listing. They contend that Appellees were not basing their claim on the Tochi Daicho listing, and therefore, the court should not have required the Appellants to rebut the presumption of accuracy with clear and convincing evidence.

¶154 This Court agrees that the trial court should not have relied on the presumption of accuracy of the Tochi Daicho. Each of the three parties—Plaintiffs, Defendant, and Intervenor—claimed the land based on ties to Otang, the listed owner of *Ngersosol*. Appellees claimed title to the land based on a warranty deed from Brans to their father. Brans was declared the owner of the land by the Land Commission, which based its decision, in part, on testimony that revealed Brans's mother Ngiratoruu was a "promised brother" of Otang's son. The testimony at that hearing also indicates that Tebelak was also a son of Ngiratoruu. Skebong is the biological son of Skebong Otang, and was adopted by Otang, his grandfather. When no claimants are listed as owners of land in the Tochi Daicho and each have claims based on relations to the listed owner, the Tochi Daicho presumption provides no basis to distinguish among the parties.

Nevertheless, the Tochi Daicho presumption is not necessary after a certificate of title has been issued based on evidence presented at a hearing before the Land Court, Land Claims Hearing Office, or Land Commission so long as notice for the hearing was provided and due process was afforded to all interested individuals. A certificate of title serves as the point of finality in land ownership determinations. Thus, once a court of competent jurisdiction has considered all of the evidence, determines ownership, and issues a Certificate of Title, the Tochi Daicho presumption is no longer needed.

Appellants offer two arguments that attempt to avoid the preclusive effect of the Certificates of Title. Citing *Emaudiong v. Arbedul*, 5 ROP Intrm. 31, 35 (1994), Appellants first argue that the Certificates of Title were not issued in conjunction with a hearing and determination by the Land Court, and therefore, the certificates are not binding. The holding of *Emaudiong*, however, is inapplicable to this case. In *Emaudiong*, the certificate of title had been

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issued without notice or opportunity for objection based upon a purported transfer from the clan that had originally been awarded the land. The appellant there contended that the subsequent land transfer had not been approved by all senior strong members of the clan. Here, Appellants have no basis to challenge the deed from Remengsau Brans to Appellees' father, but they seek to undo the original determination in his favor. That determination, however, was issued after a notice and a hearing. Thus, unless the Appellants' due process rights were violated, the Certificates of Title are entitled to conclusive weight.⁴

Appellants also argue that the Certificates of Title are not conclusive because a notice of the 1980 determination was not issued to Oingerang. After the Land Commission made its determination, it was required to serve a notice of the determination on "all parties shown by the preliminary inquiry to be interested." 67 TTC § 110. This requirement ensures parties who are adversely affected by the decision have the opportunity to appeal. Appellants' argument implies that Oingerang was an interested party and that the Land Commission's failure to provide Oingerang with notice nullifies the 1980 determination of ownership, on which the Certificates of Title are based. L155

This Court has held that an "interested party" under 67 TTC § 110 is "a person . . . who has actually filed a claim and whose claim the land registration team concluded merited an evidentiary hearing." *Nakamura v. Isechal*, 10 ROP 134, 138 (2003). Individuals who have not filed claims are not entitled to service of notice of the determination. *See Secharmidal v. Techemding*, 6 ROP Intrm. 245, 249 (1997). Oingerang filed a Land Acquisition Record claiming the land in 1976. He also filed the Application for Registration of Land Parcel on August 2, 1977, but he submitted this application in support of Brans's claim. The two summaries of the hearing support that he was claiming the land on behalf of Brans, and they indicate that no other claimant challenged ownership of the property. Thus, Oingerang did not need to be noticed of the determination because he would not have any reason to appeal the decision. Accordingly, this Court agrees with the trial court that the Land Commission's failure to serve Oingerang with a copy of the determination of ownership was harmless.

Finally, Appellants argue that the determination of ownership should not have awarded Brans with more than the 3,302 square meters listed in the Tochi Daicho. The Daicho lists Lot No. 98 having an area of 435 tsubos and Lot No. 99 having an area of 564 tsubos. Thus, the total for both lots is 999 tsubos or 3,302 square meters. This is less than half of the land area awarded to Brans, as indicated on the summary of the 1979 hearing and the Certificates of Title issued to Appellees.

As the trial court found, however, "the records for Formal Hearing No. 18 show that the Registration Team had a worksheet map for Plat 009 K00, which identified *Ngersosol* as worksheet map lot no. 72-6025, consisting of 8286 square meters." Given this finding, the size of the land to be awarded, like its ownership, was agreed to by Oingerang at the time of the

⁴ "[A] person may collaterally attack a determination of ownership rendered by the Land Commission on the grounds that statutory or constitutional procedural requirements were not complied with, but that person has the burden of proving non-compliance by clear and convincing evidence." *Nakamura v. Isechal*, 10 ROP 134, 136 (2003)(citing *Ucherremasech v. Wong*, 5 ROP Intrm. 142, 147 (1995)).

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hearing, and is not subject to collateral attack by his son some twenty-five years later.

CONCLUSION

For the reasons discussed above, Appellants have presented no valid grounds to collaterally attack the 1980 determination of ownership, and thus, the Certificates of Title issued from the determination is conclusive. Accordingly, the trial court's judgment is AFFIRMED.