

*Estate of Masang v. Marsil*, 13 ROP 171 (2006)  
**ESTATE OF MASANG,**  
**Appellant,**

v.

**WILHELM MARSIL,**  
**Appellee.**

CIVIL APPEAL NO. 05-020  
LC/B 04-52 through 04-55

Supreme Court, Appellate Division  
Republic of Palau

Decided: August 24, 2006<sup>1</sup>

Counsel for Appellant: Mark Doran

Counsel for Appellee: Raynold B. Oilouch

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice.

Appeal from the Land Court, the Honorable ROSE MARY SKEBONG, Associate Judge, presiding.

PER CURIAM:

### **BACKGROUND**

This appeal follows the Land Court's adjudication of competing claims of ownership of land located in Ngerkesoaol Hamlet, Koror State, identified as worksheet lots 182-034, 182-035, 182-527, and 182-528, and listed as Tochi Daicho Lot Number 665-part ("Lot 665"). The record below provides the following facts. On May 20, 1974, Masang Marsil ("Masang") supplied information to the Palau District Land Commission that his father, Marsil, was listed in the Tochi Daicho as the individual owner of Lot 665 and that he had inherited the land from his father. This information was recorded by a Field Recorder on a form titled Land Acquisition Record.

On September 15, 1988, Francisca D. Rrull <sup>2</sup> filed an Application for Land Registration with the Land Claims Hearing Office claiming Lot 665. On May 3, 1994, Wilhelm Marsil also

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<sup>1</sup> The parties to this appeal filed a Joint Motion to Waive Oral Argument. The motion was granted by Order dated August 1, 2006, as the Court concluded that oral argument would not materially assist in the resolution of this appeal. *See* ROP R. App. P. 34(a).

<sup>2</sup> Francisca D. Rrull gave power of attorney to Appellee Wilhelm Marsil who represented Francisca's claim before the Land Court.

*Estate of Masang v. Marsil*, 13 ROP 171 (2006)

filed an Application for Land Registration with the Land Claims Hearing Office claiming Lot 665 as the son of Marsil, the individual owner listed in the Tochi Daicho.<sup>3</sup> Then, on August 19, 2003, the § 1172 Bureau of Lands and Surveys issued a Notice of Monumentation, which was signed by Appellee Wilhelm Marsil as the Acting Director of the Bureau of Lands and Surveys, describing the area to be monumented and providing a November 24, 2003, deadline for filing claims to the land.

After a failed attempt at mediation, it was determined that the matter would be settled before the Land Court. Upon motion by Wilhelm Marsil, the Land Court dismissed the Estate of Masang as a claimant because it found that neither George Masang nor Sam Masang had timely filed a claim on behalf of the Estate of Masang, thereby forfeiting any claim to Lot 665 and leaving Wilhelm Marsil as the sole claimant. Based solely on the conclusion that Wilhelm Marsil's claim was uncontested, the Land Court held Wilhelm Marsil to be the individual fee simple owner of Lot 665. The Estate of Masang, through Sam Masang, filed the instant appeal arguing that the Land Court erred in declining to treat the 1974 Land Acquisition Record as a timely claim by Masang and further asserting that the Notice of Monumentation as to the disputed land was deficient for several reasons. Although we hold that the Land Court did not err in finding Appellant's claim forfeited, the Land Court should have made a determination as to whether the evidence supported Appellee's claim of ownership as opposed to basing its determination of ownership solely on Appellant's claim forfeiture.

#### STANDARD OF REVIEW

Land Court findings of fact are reviewed under a clearly erroneous standard. *Aribuk v. Rebluud*, 11 ROP 224, 225 (2004) (citing *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998)). Under this standard, if the Land Court's findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite and firm conviction that an error has been made. *Id.* (citing *Kerradel v. Besebes*, 8 ROP Intrm. 104, 105 (2000)).

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<sup>3</sup> Neither George Masang nor Sam Masang have ever filed an Application for Land Registration with the Land Claims Hearing Office. Indeed, on August 22, 1994, following the death of Masang and during the distribution of his estate, Sam Masang and Wilhelm Marsil stipulated that Lot 665 would be given to Wilhelm Marsil in consideration of the distribution of other disputed lots. *See In re the Estate of Andres Masang Marsil*, Civ. Action No. 509-93 (Tr. Div. Aug. 22, 1994). This stipulation was accepted by the Trial Division of the Supreme Court of Palau by Order dated August 23, 1994. *Id.*

*Estate of Masang v. Marsil*, 13 ROP 171 (2006)  
**ANALYSIS**

Appellant first argues that the 1974 Land Acquisition Record indicating that Masang owned Lot 665 was a claim as envisioned by the Trust Territory Code and should have been treated as such by the Land Court in considering whether the Estate of Masang had timely filed a claim in accordance with 35 PNC § 1309(a). Appellant continues that even if the Land Court properly refused to treat the Land Acquisition Record as a claim, the Land Court erred in finding that Wilhelm Marsil (“Wilhelm”) and Francisca Rrull (“Francisca”) had filed timely claims for purposes of satisfying 35 PNC § 1309(a) because they had not filed a claim following the issuance of the Notice of Monumentation.

Section 1309(a) provides in pertinent part that “[a]ll claims shall be filed with the Bureau *no later* than 30 days after the mailing of the notice [of monumentation and] . . . [a]ny claim not timely filed *shall be forfeited.*” 35 PNC § 1309(a) (emphasis added). In the instant matter, the Bureau of Lands and Surveys issued a Notice of Monumentation on August 19, 2003. The Notice specifically provided the following:

**¶173 Part VI. Claim Period**

Pursuant to 35 PNC Section 1309(a) & (c)(1), ***“All claims shall be filed with the Bureau no later than 30 days after the mailing of [this] notice. Any claim not timely filed shall be forfeited.”***

This notice shall be mailed on August 19, 2003 to October 24, 2003. Accordingly, the period for filing claims begins on November 3, 2003 and ends on November 24, 2003.

(emphasis in original). Rule 10 of the Rules and Regulations of the Land Court provides that “[a]ny 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.” *Id.* (emphasis added).

The Land Acquisition Record that Appellant urges the Court to treat as a claim satisfying the requirements of the Code was a form filled out in 1974 by an officer of the Palau District Land Commission and not by Masang himself. Beyond the Land Acquisition Record, Appellant did not present any evidence to the Land Court that Masang had taken any further steps to claim the disputed land or that the land was registered with the land commission as owned by Masang. Thus, as Appellant failed to demonstrate that Lot 665 was ever registered as owned by Masang, Appellant was required to file a written claim in accordance with Rule 10 of the Rules and Regulations of the Land Court or forfeit his claim as provided by 35 PNC § 1309(a). As no such written claim was filed by Masang or the representatives of his estate either before or after the Notice of Monumentation was issued, the Land Court did not err in finding that Masang’s claim to Lot 665 was forfeited. On the other hand, the evidence before the Land Court demonstrated that Wilhelm and Francisca filed written claims to Lot 665 in the form of Applications for Land Registration and filed their claims with the Land Claims Hearing Office on September 15, 1988 and May 3, 1994 respectively. The applications specifically provided that the applicants were

*Estate of Masang v. Marsil*, 13 ROP 171 (2006)

seeking to have Lot 665 registered and its ownership determined in accordance with the Palau National Code. As these written claims were already on file when the Notice of Monumentation was issued, Wilhelm and Francisca were not required to file additional claims in order to satisfy § 1309(a)'s provision that claims be filed “*no later* than 30 days after the mailing of the notice.” Thus, contrary to Appellant’s argument, the Land Court did not err by refusing to hold the claims of Wilhelm and Francisca forfeited.

Appellant next asserts that the Notice of Monumentation was defective because it did not comply with the requirements of 35 PNC § 1309. Appellant first argues that the Notice violated § 1309(b) as it improperly listed the property by the name Ngeruluong as opposed to Ngerudelong and did not reference a Tochi Daicho number. Next, Appellant complains that the Notice did not contain a date, time, or place for mediation, or a date for the Land Court hearing in violation of § 1309(c)(1). Finally, Appellant argues that the Notice improperly set the deadline for filing claims as the day before the scheduled monumentation was to begin when § 1309(c)(1) requires that claims be filed no later than 30 days prior to the date of monumentation. Appellant submits that these deficiencies in the Notice and discrepancies with the law caused such confusion that Appellant’s failure to file a claim should be L174 excused and should not have led to the forfeiture of his claim to Lot 665.

All of the deficiencies complained of by Appellant did not diminish the effectiveness of the Notice. First, although the Notice did not identify the land to be monumented by its Tochi Daicho number, the Notice provided the Hamlet name and a detailed description identifying the property to be monumented. In addition, the Notice listed the names of the parcels of land to be monumented including property known as *Ngeruluong*. Given the more than adequate identifying information provided in the Notice, Appellant’s complaint that the spelling of the name of the disputed land on the Notice differed from the spelling of *Ngerudelong* as written by a Field Officer on the 1974 Land Acquisition Record fails to demonstrate that the Notice was likely to cause confusion as to what land was to be monumented. Second, as Appellant participated in both the mediation process and the Land Court’s proceedings, it is clear that Appellant received notice of both the mediation and the Land Court hearing and his complaint that the Notice violated § 1309(c)(1) because it did not contain a date, time, or place for mediation or for a Land Court hearing does not warrant reversal of the Land Court’s determination that Appellant’s claim was forfeited.

Appellant’s final assertion as to the allegedly defective Notice, is that it improperly set the deadline for filing claims.<sup>4</sup> Although this argument does not warrant reversal of the Land Court’s determination that Appellant forfeited his claim, the dates provided for filing claims and for monumentation do not fully comply with the deadlines provided for in § 1309(a), § 1309(c)

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<sup>4</sup> Appellant also complains that the Palauan version did not provide the specific deadline date for filing claims that was provided in the English version. Although a specific deadline date was included in the English version, Section 1309(c) merely requires that Notices of Monumentation contain the information that “all claimants must file their claims with the Bureau not later than 30 days prior to the date of the monumentation” in both Palauan and English. As both the Palauan and English versions of the Notice provided this information, the fact that the English version of the Notice provided more information than was required by law does not make the Palauan version deficient for not containing the same information.

*Estate of Masang v. Marsil*, 13 ROP 171 (2006)

(1), and § 1307(a). The relevant times are as follows: (1) section 1309(a) provides that all claims are to be filed with the Bureau of Lands and Surveys within 30 days of the Notice of Monumentation being mailed; (2) section 1309(c)(1) states that all claimants must file their claims with the Bureau at least 30 days before the date of monumentation; and (3) section 1307(a) provides in pertinent part that the Bureau of Lands and Surveys should not schedule a monumentation until 15 days after the period for filing a claim has ended. Thus, as the Notice herein was mailed from August 19, 2003 through October 24, 2003, claimants had until November 24, 2003 to file their written claims in compliance with § 1309(a). This date was correctly provided as the deadline for filing a claim in the instant Notice; however, the last day for filing a claim in compliance with § 1309(c)(1) was November 16, 2003, or at least 30 days before the last day of the scheduled monumentation. Accordingly, Appellant is correct that there is some discrepancy in the law and the filing deadline provided for in the Notice but Appellant admits that no written claim was filed on behalf of the Estate of Masang in an attempt to comply with either the Notice or **1175** the Palau National Code.<sup>5</sup> Moreover, the Notice provided the name of the nearest Registration Officers and their telephone number, and further stated that claimants could receive assistance in preparing a written claim without charge thereby providing an easy means for Appellant to clear up any confusion resulting from the Notice or the law. Therefore, Appellant has failed to demonstrate that the Land Court's determination that Appellant had forfeited his claim was clearly error in light of his failure to attempt compliance with either the Notice or the Code. Finally, contrary to Appellant's argument, the monumentation complied with the provision in § 1307(a), which requires the Bureau to wait 15 days after the end of the claim filing period, or in the instant action until December 9, 2003, to schedule the monumentation because, although the monumentation began before this date, it continued until December 15, 2003.

Appellant also challenges the Land Court's determination that his claim was forfeited because Appellee was not only a claimant to the disputed property but was also the Acting Director of the Bureau of Lands and Surveys and signor of the Notice of Monumentation. Appellant argues that Appellee should not be allowed to take advantage of the alleged deficiencies in the Notice particularly given his role in issuing the Notice. As discussed above, Appellant's arguments as to the deficiencies in the Notice are either entirely meritless or insufficient to lead to the conclusion that Appellant was improperly denied notice of the written claim filing requirement. As the Land Court correctly concluded, it was entirely Appellant's failure to file a claim and not any impropriety on Appellee's part that resulted in Appellant forfeiting his claim. Accordingly, this argument does not warrant reversing the Land Court's finding that Appellant forfeited his claim.

Finally, Appellant argues that the Land Court should not have determined Appellee to be the owner of the disputed land without first holding an evidentiary hearing. As this Court held in *Ngermechesong Lineage v. Children of Teocho Oiph*, 11 ROP 196, 197-98 (2004), a Land Court determination of ownership should not be based solely on a finding that all other interested parties had forfeited or abandoned their claims. Rather, the Land Court should allow the

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<sup>5</sup> This would be an entirely different case had Appellant attempted to comply with the Notice by filing a claim prior to the November 24, 2003, filing deadline provided therein but was deemed to have forfeited his claim for failure to comply with § 1309(c)(1) by failing to file a claim before November 16, 2003.

*Estate of Masang v. Marsil*, 13 ROP 171 (2006)

remaining claimant to present his case and make a determination as to whether the evidence presented supported that claim. *Id.* Here, the Land Court's finding that Appellee is the owner of Lot 665 was based entirely on the fact that his claim was unchallenged. Therefore, although we hold that the Land Court did not err in finding Appellee's claim uncontested, we remand this case to the Land Court with instructions to make a determination as to the validity of Appellee's claim of ownership. We leave it to the Land Court to determine whether there is sufficient evidence in the record to make such a determination or whether it is necessary to hold a hearing at which both sides may present evidence.