Etpison v. Tmetbab Clan, 14 ROP 39 (2006)
SHALLUM ETPISON,
Appellant,

v.

TMETBAB CLAN,
Appellee.

CIVIL APPEAL NO. 05-026
LC/B 04-112, LC/B 04-113, LC/B 04-114 & LC/B 04-115

Supreme Court, Appellate Division
Republic of Palau

Argued: November 13, 2006
Decided: November 30, 2006
⊥40
Counsel for Appellant: John K. Rechucher

Counsel for Appellee: Yukiwo P. Dengokl

BEFORE: LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice; and LOURDES F. MATERNE, Associate Justice.

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

MATERNE, Justice:

Shallum Etpison ("Appellant") appeals from the Land Court's June 30, 2005, adjudication and determination of ownership of land identified as Ngais, located in Ngerkesoaol Hamlet, Koror State. The Land Court found that Shallum Etpison owns Ngais, which comprises approximately 624 square meters of Tochi Daicho Lot No. 459. The remainder of Tochi Daicho Lot No. 459, also in contention at the Land Court hearing, was awarded to Tmetbab Clan ("Appellee"). Appellant Etpison claims that the failure of the Bureau of Lands and Surveys to give him either notice of monumentation or the opportunity to monument his claim resulted in an erroneous assessment of the area of Ngais, an issue which he raised before the Land Court. We affirm the Land Court's determination.

BACKGROUND

In 1962, Ngiratkel Etpison purchased a plot of land known as Ngais. The contract for the sale of land described the purchased area as encompassing 909 tsubos, or approximately 3,006.06 square meters. Tochi Daicho Lot 459, in which Ngais is located, has been certified by the Bureau of Lands and Surveys to contain 725 tsubos, approximately 2,397.5 square meters, but there is no Tochi Daicho map of the area. In 1974, Iked Etpison, Ngiratkel's father, marked

the purchased land, with Itpik Martin and Shiobo, two members of Tmetbab Clan. Based on records from this process, Worksheet 04-B-001 was drawn up, demarcating an area of approximately 624 square meters for Etpison. In 1992, Ngiratkel Etpison filed an "Application for Land Registration" for Ngais with the Land Claims Hearing Office, but, in 1997, Ngiratkel Etpison passed away. Shallum Etpison, as his heir, succeeded to Ngiratkel Etpison's claim.

In determining the ownership of Tochi Daicho Lot 459, the Land Court awarded parts of Lot 459 to Tmetbab Clan and a different section of Lot 459 to Shallum Etpison. Tmetbab Clan received two determinations of ownership for the land commonly known as Iweaol, specifically Worksheet Lots 182-013 and 182-014, issued as Determinations of Ownership 12-376 and 12-377, while Shallum Etpison was awarded Determination of Ownership 12-375 for Worksheet Lot 182-509, the parcel that Iked Etpison had previously monumented at an area of roughly 624 square meters.

Before the Land Court, Appellant Etpison contended that he was denied both the notice of monumentation and the opportunity to monument his claim in 2003. The land registration officers at the hearing admitted ⊥41 not serving notice to the Appellant. However, the Land Court refused to allow the Appellant to re-monument his claim, finding that the Bureau of Land and Surveys did not err by failing to give Etpison notice because the land registration officer serving notice did not possess "personal knowledge" of Appellant's claim to the property, notwithstanding his father's registration of this claim in 1992.

STANDARD OF REVIEW

The Land Court's conclusions of law are reviewed *de novo*. *Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 151 (2003). The Land Court's factual findings are reviewed under the clearly erroneous standard. Under this standard, findings will not be set aside as long as they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion.

DISCUSSION

The Notice of Appeal filed by Appellant Etpison mentions only the determination of ownership granting land to him, but fails to designate his appeal from the two determinations of ownership given to Tmetbab Clan. Maintaining that statutory provisions require determinations of ownership to become final shortly after the expiration of time for the appeal, Appellee Tmetbab Clan argues that Appellant's failure to specify his appeal from Determinations of Ownership 12-376 and 12-377 invalidates Appellant's appeal because granting any of Appellant's arguments would disturb the finality of the two determinations awarded to Tmetbab Clan. As Appellant contends that the Land Court erred in deciding the size of his land, any increase of his lands would necessarily diminish the size of the lands covered by Determinations 12-376 and 12-377.

We agree with Appellee's contention that Determinations 12-376 and 12-377 should have been included in the notice of appeal, but this issue is nevertheless controlled by the rules of

appellate procedure. Both 35 PNC §1313 and Rule 16 of the Land Court Rules of Procedure authorize the ROP Rules of Appellate Procedure to govern appeals from the Land Court. Rule 3(a) of the ROP Rules of Appellate Procedure states, in relevant part:

> Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Appellate Division deems appropriate, which may include dismissal of the appeal.

This language gives the Court significant discretion to handle incomplete appeals. Such discretion includes, but does not require the exercise of, the authority to dismiss incomplete appeals. Moreover, Rule 3(c) of the ROP Rules of Appellate Procedure requires that:

> The notice of appeal shall specify the party or parties taking the appeal and shall designate the judgment, order or part thereof appealed from. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

This rule indicates that appeals should not be dismissed for informality of form.
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In the present case, Appellant's Notice of Appeal enumerates both the Land Court case numbers and the Worksheet Lots being challenged. Notice was served upon Appellee's counsel and counsel for the other parties involved in the initial consolidated Land Court hearing. While the Notice fails to specify directly its challenge of Determinations 12-376 and 12-377, it does state that the appeal is addressed towards that part of the decision "where the Court found and adjudged that Appellant owned . . . only 624 square meters . . . ."

Appellee Tmetbab Clan was appropriately alerted to the existence and nature of the appeal and Appellant's failure to designate the specific numerical title of the challenged determination of ownership does not vitiate this appeal. All of the determinations of ownership in question were decided as part of a single decision handed down by the Land Court and, as required under ROP Rules of App. Proc. Rule 3(c), this appeal specified the party taking the appeal and the judgment appealed.

We therefore turn to Appellant's argument that the Land Court erred in failing to afford him an opportunity to monument the land. Though we disagree with the Land Court's reasoning, we agree that no further monumentation was required. In denying Appellant's request, the Land Court relied upon 35 PNC §1309(b)(3)(A) (Supp. 4), which states,

> notice containing a description of the claim and the date, time and place of the monumentation shall be given . . . by serving notice upon all persons personally known to the Registration Officer to claim an interest in the land by: service in the same manner as a civil summons; or . . . .

The Land Court determined that the Land Registration Officer, Chamberlain Ngiralmau, did not have the requisite "personal knowledge" of Appellant's claim, despite the registration filed by

Ngiratkel Etpison with the Land Claims Hearing Office in 1992.

Using the definition of personal knowledge found in Black's Law Dictionary, the Land Court defined personal knowledge as "knowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said." This understanding of knowledge, however, differs significantly from other more comprehensive interpretations. 58 Am. Jur. 2d *Notice* §12 explains:

> Means of knowledge and knowledge itself are, in legal effect, the same thing where there is enough to give rise to a duty to inquire, failing which a party has notice of information he or she should have obtained by inquiry. Knowledge that one has, or should have under the circumstances, is imputed to him or her. . . . If one omits to inquire, that person is then chargeable with all the facts which, by proper inquiry, he or she might have ascertained.

As an officer of the Bureau of Land and Surveys, Officer Ngiralmau had the duty to inquire as to whether any claims had been submitted regarding the property to be monumented. Evidence at trial was adduced to show that a brief review of the files ⊥43 regarding this property would have revealed that Ngiratkel Etpison had submitted a claim. In light of Officer Ngiralmau's failure to make a reasonable inquiry, the knowledge should be imputed to him.

The definition of "imputed knowledge" in Black's Law Dictionary further underscores the necessity that one acting in the capacity of a government official, such as Officer Ngiralmau, should take reasonable steps to familiarize himself with all records related to the claim. Imputed knowledge is "Knowledge attributed to a given person, esp. because of the person's legal responsibility for another's conduct <the principal's imputed knowledge of its agent's dealings.>" In this case, Officer Ngiralmau was acting as an agent of the Bureau of Lands and Survey. As such, the entire Bureau was put on notice of Etpison's claim to the land in 1992 when Etpison filed the registration. Even though only one Land Registration Officer may have personally received an applicant's registration, knowledge of that registration, easily accessible in the Bureau's files, will be imputed to all of its Land Registration Officers.

Although the Land Court erred in its interpretation of the personal knowledge requirement, no grounds exist for a reversal in this case since the relevant statutes requiring notice of monumentation proceedings apply only to those lands that have not yet been monumented. 35 PNC § 1307 (a) (Supp. 4) states that a monumentation should be scheduled "unless the boundaries of the property at issue have already been resolved and monumented," and 35 PNC § 1309 (a) (Supp. 4) states that the Bureau shall "create a schedule for monumenting all parcels of unmonumented land." Both of these statutes indicate that the notification requirements apply only to unmonumented parcels of land. Once a monumentation has occurred, these statutes do not require further notice to issue regarding future monumentations.

The issue of whether a monumentation occurred is a question of fact. In the present case, the Land Court made a factual finding that, "Ngiratkel's father Iked Etpison monumented the land Ngais on March 22, 1974." Appellant Etpison argues that his grandfather, Iked, erred in

monumenting the purchased land and that he should not be bound to the markings made by his grandfather more than 30 years ago. Appellees, for their part, argue that Iked Etpison's actions constitute the monumentation required by law and Appellant should be held to those boundaries.

On factual matters, the Land Court is reviewed using the clearly erroneous standard. Monumentation is a process analogous to testimony; during this process, claimants "testify" in the field as to the land that they believe belongs to them. Such actions may have differing levels of veracity, but the Land Court is best poised to make those types of credibility determinations. In this case, the Land Court made a reasonable factual conclusion in deciding that Iked's actions constituted his monumentation of the land called Ngais. The Land Court received evidence from the Appellant tending to show that more area was included in the Ngais parcel, but the Court also received evidence from Land Registration officials supporting the view the Court ultimately adopted. Appellant Etpison, although he had ample opportunity during the Land Court hearing, failed to offer any evidence demonstrating the proposed boundaries of his claimed territory, relying instead on his assertions that his claim was simply larger than the lot on the proposed worksheet. As with our previous holding in ⊥44 *Sumang v. Baiei*, 8 ROP Intrm. 186 (2000), we find that challenges to lot boundaries, as issues of fact, should be raised and resolved at the level of monumentation or hearing.

CONCLUSION

Although the Land Court erred in its interpretation of the personal knowledge language of 35 PNC §1309(b)(3)(A) (Supp. 4), Appellant was not entitled to additional notice because the land had already been monumented The issue of whether a monumentation occurred requires a factual determination and the Land Court's finding that Ngais was monumented in 1974 is not clearly erroneous. For these reasons, we affirm the Land Court's Adjudication and Determination of Ownership.