

*Etpison v. Skilang*, 16 ROP 191 (2009)  
**SHALLUM ETPISON & ELILAI CLAN,**  
**Appellants,**

v.

**ERNIE SKILANG,**  
**Appellee.**

CIVIL APPEAL NO. 08-010  
LC/M 07-423

Supreme Court, Appellate Division  
Republic of Palau

Argued: June 4, 2009  
Decided: July 1, 2009

Counsel for Etpison: Moses Uludong

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Counsel for Elilai Clan: J. Uduch Sengebau Senior

Counsel for Skilang: Oldiais Ngirakelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEXANDRA F. FOSTER, Associate Justice; LOURDES F. MATERNE, Associate Justice.

Appeal from the Land Court, the Honorable SALVADOR INGEREKLII, presiding.

PER CURIAM:

### **BACKGROUND**

This is an appeal of a land court determination of ownership, made by the Honorable Salvador IngereklII on February 6, 2008. The Land Court determined that Lot No. 1237 M 37, a piece of land known as Ouballong in Aimeliik State, belongs to Ernie Skilang (“Appellee” or “Skilang”). The court determined that the only valid, timely claim for this property was filed by Skilang Rechebong. In so determining, the Land Court found that claimants Elilai Clan and Bachiei Joseph never properly filed their claims and claimant Shallum Etpison (“Etpison”) filed a valid claim, but for a different piece of land, Lot. No. 130-10057. Accordingly, the court treated Skilang’s claim as uncontested. Etpison and Elilai Clan each appealed the Land Court’s decision.

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**DISCUSSION**

**A. Etpison Claim**

Etpison contests the Land Court's ruling on the ground that he was not properly served with notice of the hearing, so the subsequent rejection of his claims violated his right to due process. Three months after the determination of ownership was issued, Etpison filed a motion to reschedule the hearing, which was denied. Appellee's App'x D. In the Order denying Etpison's motion, dated May 28, 2008, the Land Court stated that "court records show that the notice setting the new hearing date was served to Ms. Karen Etpison on November 04, 2007 at 11:46 p.m. at the NECO building." *Id.* at ¶ 2. The Land Court also stated that, although no one appeared before it on Etpison's behalf, the Court determined from the records before it that Etpison's claim was for Lot No. 130-10057, not Lot No. 127 M 37, the subject of the hearing.

Etpison appeals on the sole issue that service was never made. In support of his claim, he has attached an affidavit, signed by Karen Etpison, swearing that she did not receive anything from the Land Court at 11:46 p.m. on November 4 and that she does not work late enough to be at the NECO building at 11:46 p.m. Etpison Attach. C.

Upon examination of the Proof of Service and the Land Court's Order, it is clear that there was an incorrect transcription by the Land Court. The Proof of Service relevant to this case indicates that Karen Etpison was served with notice of the January 15 hearing at 1:46 p.m. on November 14, 2007. Ms. Etpison's printed name and signature are on the form, as are the signatures of the other party's representatives, indicating receipt of service. This document was filed with the Land Court on November 15, 2007. The Land Court's statement that service **p.193** took place November 4 at 11:46 p.m., as opposed to November 14 at 1:46 p.m. was clearly a mistake.

At oral argument, Etpison conceded that service had been made to Karen Etpison, but argued that such service was improper. Etpison asserts that because service was improper, his failure to appear at the hearing should not be held against him and he is entitled to an opportunity to prove that his claim was for Oubalong, not another piece of land, as the Land Court found.

*1. Standard of Review*

The Land Court's determination that service to Karen Etpison was not procedurally deficient is a legal question and is thus reviewed *de novo* by this Court. *Estate of Asanuma v. Blailes*, 13 ROP 84, 86 (2006).

*2. Analysis of Due Process Claim*

"[T]he person attacking a Land Court determination by alleging lack of due process bears the burden of demonstrating the constitutional violation." *Pedro v. Carlos*, 9 ROP 101, 102 (2002). Etpison has failed to make this showing; he has not even alleged that he did not receive actual notice of the hearing. He asserts only that the service on Karen Etpison at the NECO

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Building was improper.

In this case, there are at least two documented instances prior to November 2007 in which service for Shallum Etpison was made on Karen Etpison at the NECO building. Etpison now argues that such service was improper because it was not made at his abode, to his specified agent, or at his place of business; he states that his office is not at the NECO building, but at NECO Marine, in Malakal.

By failing to object to this method of service on the two prior instances, Etpison has waived any objections he may have. Additionally, he has not shown that such service was ineffective or that he ever provided the court with an address where he would prefer to be served. Litigants bear the responsibility of notifying the court where they want to be served and making any objections in a timely way. *See Malsol v. Ngiratechekii*, 7 ROP Intrm. 70, 72 (1998) (if a litigant does not provide the court with his address, the burden is on the litigant, and not the court, to monitor the status of the case).

Etpison has not shown that he is entitled to another opportunity to establish his claim for Ouballong. Accordingly, his appeal is DENIED.

## **B. Elilai Clan Claim**

The Elilai Clan argues that the Land Court erred in finding that the Clan did not have a valid claim to the property. The Land Court determined that Elilai Clan had never filed a proper claim and that its inclusion in the determination of ownership was based on the Land Acquisition Record, rather than on a valid claim. The Land Court noted that Elilai Clan submitted a claim form, signed by Wilhelm Rengiil and dated 9/1/88, but found that the form had never been filed. Feb. 6 Order at 2, n.1. In further support of its claim, Elilai Clan submitted a document compiled February 7, 1989, by the Land Claims Hearing Office, which lists Rengiil's claim for land called "Oubatong," filed September 1, 1988, among the public land claims filed in Aimeliik State. The Clan also pointed to documents in the Land Court's file showing that p.194 the Clan was listed as a claimant by the Land Court Hearing Office during the monumentation and hearing process and several form "Land Records Obtained Through Preliminary Inquiry," one of which identifies Elilai Clan as a claimant as of 1991. The Land Court dismissed this evidence, stating that "none of these documents convinced the Court that Elilai clan had filed a timely claim for Lot No. 127 M 37." For that reason, the Land Court decided that Elilai Clan's claim would not be considered and Appellee's claim was uncontested.

### *1. Standard of Review*

The Appellate Division reviews "the Land Court's findings of fact for clear error and its legal conclusions *de novo*." *Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 151 (2003) (italics added). Under the clearly erroneous standard, "if findings of fact 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." *Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 168 (2006).

2. *Analysis*

The Land Court determined that the Elilai Clan's claim for the land Ouballong was not filed properly and the remaining documents were not sufficient to establish a claim. The Land Court based this determination on *Estate of Masang v. Marsil*, 13 ROP 171 (2006). At the hearing, the Land Court explained to the baffled representative of Elilai Clan that *Masang* requires the Land Court to dismiss any assertions of ownership that were not filed by the claimants personally after the monumentation took place. Tr. of Jan. 16 Hearing at 4-6.

When the Clan representative complained to the judge that they had relied upon the Land Registration Officer ("LRO") to tell them what they needed to do and were unaware that the steps they had taken were insufficient, the court acknowledged that "it's bad" and stated that there are other cases in which he had been forced to dismiss claims in which claimants had relied upon the land acquisition record, instead of personally filing a claim. *Id.* at 7. In describing the policy of only allowing personally submitted claims, the Land Court stated:

[T]hat's the...position of the Court regarding those Land Acquisition Record, and therefore the Court must adhere to it. I would...say that whenever you found that it was...a hearing for this, perhaps you should have inquired from Borman [the LRO]... "do they have our claim? ...[S]ometime ago it was possible for the Land Acquisition Record to be regarded as ...claim, but when it was issued that decision of the, uh, Appellate Division, word came to all of us that, "no, those are, you follow this and nothing else.

*Id.* at 9. The Land Court then explained that this rule was mandatory, "[u]nless there is a further issued...order by the Court to say that it's once again permissible for the Land Acquisition Record to be considered as [a] claim." *Id.* at 10. p.195

The Land Court's conclusion that *Masang* requires dismissal of claims based on a Land Acquisition Record is incorrect. *Masang* was an appeal of a Land Court Determination of ownership. As part of the Determination, the Land Court found that one of the claimants, Masang, had not properly filed a claim, having submitted only a form filled out by a Palau District Land Commissioner Officer in 1974. Masang had not shown that any other steps were taken to establish a claim to the land. The Land Court determined that, on these facts, the Land Acquisition Record was not sufficient to constitute a filed "written claim, in accordance with Rule 10 of the Rules and Regulations of the Land Court." 13 ROP at 173.

This Court ruled that the Land Court did not err in making this determination. It did not rule that only claims personally filled out and filed could qualify as claims under the act; nor did this Court mandate a very strict interpretation of the Land Court Rules. Rather than dictating strict filing requirements to the Land Court, *Masang* validates the Land Court's use of discretion.

Applying *Masang* to the case currently before the Court, the Land Court was not obliged to dismiss Elilai Clan as claimants. The *Masang* Opinion treats the determination of whether a

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claim was filed as a factual determination. The Land Court should look at relevant factors, such as the claimant's personal efforts to claim or register the land, the claimant's belief that a claim was filed, the claimant's communication with the Land Claims Hearing Office, and others, to gauge whether a claim was filed. This rule is not intended to exclude claimants who attempted to follow the Regulations or, conversely, to make the claim filing requirements so flexible that they are meaningless; instead, it gives the Land Court the flexibility to evaluate the validity of a claim on a case-by-case basis.

Because the Land Court based its decision to exclude Elilai Clan's claim on an erroneous interpretation of *Masang*, this case must be remanded so the Land Court can reexamine if Elilai Clan has a valid claim for Ouballong.

### CONCLUSION

Appellant Etpison's appeal is hereby **DENIED**. Appellant Elilai Clan's appeal is **GRANTED**. The Land Court Determination of Ownership in favor of Ernie Skilang is hereby **VACATED** and the case is **REMANDED** for the purpose of reexamining Elilai Clan's claim in light of this Opinion.