

West v. Ongalk Ra Iyong, 16 ROP 141 (2009)

**SIZUE WEST,
Appellant**

v.

**ONGALK RA IYONG, NGARCHELONG GOVERNOR, NGARCHELONG STATE
GOVERNMENT,
Appellees.**

CIVIL APPEAL NO. 08-040
LC/F 00-529 (on remand)

Supreme Court, Appellate Division
Republic of Palau

Decided: March 31, 2009¹

Counsel for Appellant: Johnson Toribiong, J. Roman Bedor

Counsel for Ongalk ra Iyong: Raynold B. Oilouch

Counsel for Ngarchelong State Government and Governor Brownly Salvador: Pro se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Land Court, the Honorable OLDIAIS NGIRAIKELAU, Part-Time Judge, presiding.

PER CURIAM:

In this appeal, Appellant argues that the land court erred by not following the Appellate Division's instructions on remand. For reasons set forth below, we find that the land court did not err, and we **AFFIRM** the land court's Decision on Remand.

BACKGROUND

This matter arose out of a dispute over the ownership of the land upon which the Ngarchelong State Office building sits. In 1999, Appellant sued the Governor and State of Ngarchelong, arguing that one of the state's buildings was located on Tochi Daicho Lot 1112 and that this lot was owned by Appellant's father, Imetengel. During the course of litigation, however, the trial court learned that Ongalek ra Iyong ("Iyong") was previously awarded land that might include the site of the office building. To complicate matters, Tochi Daicho Lot 1112 p.142 had not yet been surveyed. As a result, the trial court decided that it could not make any

¹None of the parties requested oral argument pursuant to ROP R. App. P. 34(a).

West v. Ongalk Ra Iyong, 16 ROP 141 (2009)

rulings until the land court determined whether the building site was owned by Appellant's family, Iyong, or someone else. The trial court directed the land court to finalize its work and award certificates of title for the area in question.

The trial court's order led to the initiation of a new land court case. The three judge-panel² worked off of a portion of Worksheet No. 2001 F 001 and divided the area in question into parcels labeled A, B, C, D, and E. Appellant claimed parcels A, B, C, and D as part of Tochi Daicho Lot 1112. Iyong claimed parcels A and B.

The land court found that Iyong owned parcels A and B and that Ngarchelong State Government owned parcels C, D, and E.³ The land court also found that wherever Tochi Daicho Lot 1112 might be, it was not comprised of parcels A, B, C, D, or E. Going one step further, the land court found that Tochi Daicho Lot 1112 was not located within two larger lots labeled 14-1134 and 14-1137.

Appellant appealed the land court's decision. Appellant first argued that the land court erred in finding that Tochi Daicho Lot 1112 was not comprised of or otherwise within parcels A, B, C, and D. Second, Appellant maintained that it was not enough for the land court to say where Tochi Daicho Lot 1112 was not. According to Appellant, the trial court's directive required the land court to say where Lot 1112 *was*.

The Appellate Division rejected both arguments and affirmed the land court. *West v. Ongalek ra Iyong*, Civ. Appeal No. 06-022, at 4 (Nov. 19, 2007). The court held that there was more than enough evidence to support the land court's factual findings. *Id.* at 5. In addition, the court held that the trial division lacked the authority to remand matters to the land court, and, in any event, the trial court's directive did not require the land court to establish the boundaries of Tochi Daicho Lot 1112. *Id.* at 9-10. Rather, the trial court's instructions were for the land court to complete the survey of the area in question, and this the land court did, as the area in question involved parcels A, B, C, and D. *Id.*

Although the Appellate Division affirmed the land court's decision in all respects, it remanded the case "for the limited purpose of delineating the boundaries of Tochi Daicho Lot 1112 and issuing a certificate of title for that land as well." *West v. Ongalek ra Iyong*, Civ. Appeal No. 06-022, at 10-11 (Nov. 19, 2007). The Appellate Division stated that a limited remand would serve "the interest[s] of judicial economy" but did not otherwise explain why a remand was necessary. *Id.* at 11.

After the remand, the land court, Part-Time Judge Oldiais Ngiraikelau presiding, held a status conference. At this conference, Appellant "reiterated its position that Tochi Daicho 1112 p.143 corresponded to Lots A, B, C, and D as reflected on Worksheet Number 2001 F 001 and that it was not necessary to further delineate the boundaries of Tochi Daicho 1112." Decision on Remand 2-3 (July 11, 2008). In addition to the status conference, the land court held a hearing.

²At Judge Rdechok's request, the new land court case was heard by a panel consisting of Judge Rdechok, Judge Skebong, and Part-time Judge Oldiais Ngiraikelau.

³The Ngarchelong State Office was located on parcels B and C.

West v. Ongalk Ra Iyong, 16 ROP 141 (2009)

At the hearing, Appellant again maintained that Lot 1112 was the same as parcels A, B, C, and D.

The land court issued a Decision on Remand on July 11, 2008, but it did not delineate the boundaries of Tochi Daicho Lot 1112. Instead, the land court found that because Appellant continued to claim parcels that had already been awarded to Iyong and the Ngarchelong State Government, it was “utterly powerless to do anything else other than to report here what it has done in light of the appellate mandate.” Decision on Remand 3. It is this Decision on Remand that Appellant appeals.

DISCUSSION

Appellant argues that the land court violated the mandate rule by not delineating the boundaries of Tochi Daicho Lot 1112 and by not awarding Appellant a certificate of title. According to the mandate rule, “[i]f a matter is remanded with specific instructions, those instructions are not subject to interpretation and must be followed exactly to ensure that the lower court’s decision is in accord with the appellate court.” *Tengoll v. Tbang Clan*, 11 ROP 61, 64 (2004); *see also Heirs of Drairoro v. Yangilmau*, 9 ROP 131, 133 (2002) (“[A] trial court ‘is not free to deviate from the appellate court’s mandate.’”); 5 Am. Jur. 2d *Appellate Review* § 736 (2007). Given this rule, a land court decision deviating from an Appellate Division mandate would normally be met with swift and certain reversal on appeal.

Reversal is not justified in the present case, however, because the actions of Appellant made it impossible, practically speaking, for the land court to comply with the instructions on remand. Although the Appellate Division affirmed the land court’s finding that parcels A, B, C, and D were owned by Iyong and the Ngarchelong State Government, Appellant continued to claim these parcels on remand. At the status conference and hearing, the land court gave Appellant a chance to suggest a different location for Tochi Daicho Lot 1112. Appellant did not take advantage of this opportunity. In fact, Appellant’s persistence in the face of two court opinions to the contrary makes the Court wonder whether Appellant is more concerned with reopening the land court case and collecting damages from Ngarchelong State Government than it is with finding the actual location of Tochi Daicho Lot 1112.

Regardless, Appellant’s intransigence left the land court with three options on remand: (1) reverse its own prior, affirmed decision and award Appellant parcels A, B, C, and D; (2) award Appellant some other land on the basis of no evidence; or (3) do nothing and explain why. The first two options were not really options at all. Thus, it was not error for the land court to choose option three.

CONCLUSION

The land court’s Decision on Remand is **AFFIRMED**. That being said, nothing in this p.144 opinion should be construed as giving lower courts license to deviate from Appellate Division mandates. This case involves extraordinary circumstances, and extraordinary circumstances can give rise to exceptions to the mandate rule. *See* 5 Am. Jur. 2d *Appellate Review* § 742 (2007). On the other hand, the presence of extraordinary circumstances means that

West v. Ongalk Ra Iyong, 16 ROP 141 (2009)

this decision is necessarily limited to the present facts. Moreover, there is little likelihood that this situation will repeat itself in the future. The remand in this case was not based on lower court error but rather principles of judicial economy. Such discretionary remands are rare, and, because of cases like this, should become rarer.