

*Senior v. Masami*, 16 ROP 196 (2009)  
**HAMBRET SENIOR,**  
**Appellant,**

v.

**BRENGIEI MASAMI,**  
**Appellee.**

CIVIL APPEAL NO. 08-037  
LC/M 00-84

Supreme Court, Appellate Division  
Republic of Palau

Decided: July 2, 2009

Counsel for Appellant: J. Uduch Sengebau Senior

Counsel for Appellee: Moses Y. Uludong

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

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

PER CURIAM:

This case is an appeal of an Order, issued by the Land Court on May 30, 2008, denying a motion for a *de novo* hearing.<sup>1</sup>

### **BACKGROUND**

The parties in this case were claimants in the Land Court adjudication of Lot No. 144 M 48. The decision, rendered July 14, 2000, by Associate Judge Francisco Keptot, divided the Lot between Appellant Hambret Senior (“Senior”) and Appellee Brengiei Masami (“Masami”). Due to intervening circumstances, the determinations of ownership pursuant to that decision were not issued until February 23, 2004. The determinations of ownership, issued by Associate Judge Rose Mary Skebong, identified Lot Nos. 144 M 48A, 144 M 48B, and 024 M 08 as “land known as *Uchularorou or Melekei*, ” and the fee simple property of Brengiei Masami. Also, the determination identified Lot 144 M 48C as the property of Hambret Senior.

Both parties appealed this determination, filing Civil Appeal No. 04-008. However,

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<sup>1</sup>Pursuant to Rule 34(a) of the Rules of Appellate Procedure for the Courts of the Republic of Palau, Appellant’s request for oral argument is denied.

*Senior v. Masami*, 16 ROP 196 (2009)

neither party filed an opening brief, instead reaching a stipulation that the boundaries of the lots awarded by the Land Court were drawn arbitrarily and the case should be remanded back **p.197** to the Land Court for further proceedings to remedy that situation. Stipulation dated April 27, 2005. The parties requested that the Court remand to the Land Court to reconsider monumentation or survey of the land and to allow them to present further evidence on the boundaries of their claims. *Id.* Also, the parties stipulated that the name “Melekei,” used to identify three of the lots in the determination of ownership, is a piece of land unconnected to any of the lots at issue. Stipulation dated April 27, 2005. *Id.*

In response to this stipulation, Judge Miller of the Supreme Court remanded the case so the Land Court could request a new monumentation and survey of the lands, with the parties present to give input. Order dated April 28, 2005. As to the parties’ request to present further evidence on the boundaries of their claim, the Supreme Court left that possibility to the discretion of the Land Court. *Id.*

Pursuant to that order and the remand to Land Court, a new survey of the land was made in 2005, with no changes to the boundaries of the land. Both parties moved for a new hearing and the Land Court denied the request. Order dated May 30, 2008. The parties then sought to reopen the previous appeal to obtain review of the Land Court’s denial. Joint Motion for leave to file opening briefs dated June 26, 2008. Because the prior appeal has been disposed of by order of this Court on April 28, 2005, the parties were required to file a new appeal if they sought review.

The current notice of appeal was filed July 1, 2008. In contrast to the previous appeal, in which Masami was both Appellant and Cross-Appellee and Senior was Appellee and Cross-Appellant, the current appeal was filed only by Senior. Masami, identified as Appellee, chose not to file any responsive papers. Accordingly, the only pleading filed is Senior’s opening brief.

## **DISCUSSION**

Appellant describes his request for a new hearing as an opportunity to present new evidence. However, the record indicates that he also sought a new hearing to challenge Judge Keptot’s finding that Masami, rather than Appellant, owns the majority of the land at issue.

### **A. Order on Appeal**

The Land Court denied the Motion for a new hearing. Judge Skebong noted that the parties were seeking to remedy alleged errors of fact and law in Judge Keptot’s adjudication and determination, the kind of review that should be addressed to the Appellate Division. Having already issued a decision on this case, the Land Court determined “[w]hatever the inherent authority of the Land Court to reconsider previous decisions, there is no basis to do so here.” Order dated May 30, 2008 at 3.

The Land Court noted that it has the discretion to hear new evidence as to boundaries but declined to do so. The parties have had two opportunities to participate in the demarcation of the

boundaries. During the most recent opportunity, the parties verified the markers from the first survey, resulting in the same boundary lines being drawn. The Land Court determined that the parties had not shown that the presentation of new evidence was justified. The p.198 court denied the Motion for a new hearing and determined that the boundaries lines would stay as marked in the original determination.

## **B. Appellant's Argument**

Appellant claims that, in denying the Motion for a new hearing, the Land Court abused its discretion. Specifically, he asserts that "because the circumstances of the case clearly show that Associate Judge Keptot misapprehended the evidence and there is a need to correct a clear error in Judge Keptot's decision in order to prevent manifest injustice to the parties," Judge Skebong's refusal to grant a hearing *de novo* constitutes an abuse of discretion. Opening Brief at 10.

## **C. Analysis**

The Land Court has inherent authority to reconsider its own decisions, but that authority is limited to situations in which "there is an intervening change in the law, a discovery of new evidence that was previously unavailable, or a need to correct clear error or prevent manifest injustice due to the court's misapprehension of the facts, a party's position, or the controlling law." *Shmull v. Ngirirs Clan*, 11 ROP 198, 202 (2004); *see also Masang v. Ngerkesouaol Hamlet*, 13 ROP 51, 53 n.3 (2006). A court's decision to exercise its inherent authority is within its discretion; such a decision will only be reversed if that discretion is shown to have been abused. *See* 13 ROP at 54.

Appellant asserts Judge Keptot's decision misapprehended the evidence and reached the wrong conclusion and because of these alleged mistakes, Judge Skebong had an obligation to hold a new hearing. This argument misunderstands the nature of discretion: the authority to reconsider a previous decision is not an obligation to do so. The Order denying Appellant's motion for rehearing explains that Appellant has had sufficient opportunity to present his claims to the Land Court and that the errors Appellant asserts are best heard as an appeal before the Appellate Division. Order dated May 30, 2008 at 3. Judge Skebong exercised her discretion and did so in a reasoned and proper way. Appellant has failed to demonstrate that the refusal to hold a hearing *de novo* was an abuse of discretion.

## **CONCLUSION**

For the foregoing reasons, the Land Court Order denying Appellant's Motion for a hearing *de novo* is **AFFIRMED**.