

In re Mesei, 16 RC

In re: determination of ownership of real property described as Worksheet Lot 085E01-1, formerly Tochi Daicho 1649 called *Mesei* consisting of about 245 tsubo and listed under Ngiraibai, located in Ngkeklau County of Ngaraard State



**ISAAC STEPHANUS,
ANGELINA KUAL,
FRIDA KUAL,**

Claimants.

LC/E 08-0636

Land Court
Republic of Palau

Heard: Thursday, May 21, 2009
Appearances: Isaac Stephanus
Decided: June 10, 2009

BEFORE: C. QUAY POLLOI, Senior Judge.

INTRODUCTION

The lot in this matter is currently described as Worksheet Lot 085 E 01-1, located in Ngkeklau County of Ngaraard State. This worksheet lot represents former Tochi Daicho lot 1649 called *Mesei*. As monumented, worksheet lot 085 E 01-1 exists within a much larger parcel described as cadastral lot 085 E 01 which is a lot the ownership of which was determined by the Land Commission in 1982. The lot is now registered and a certificate has issued naming others as owners. Although the actual situation is clearly depicted on the large worksheet map for this case as well as the reduced mini-map contained in the claim file, the Court has devised the simplified diagram to the right in order to illustrate the situation at the outset.¹ The smaller lot depicts the lot being claimed and it exists within the larger lot that is owned by others. The illustration should place into better context the discussion that follows. The claimants to the lot are Isaac Stephanus, Angelina Kual, and Frida Kual, children of the p.339 Tochi Daicho owner, Ngiraibai. For the reasons set forth below, these claims are **DISMISSED**.

PROCEDURAL HISTORY

¹Cadastral Lot 085 E 01 is actually many, many times larger than the smaller lot being claimed here, worksheet lots 085 E 01-1.

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In 1991 Isaac Stephanus filed an application for Land Registration with the Land Claims Hearing Office (“LCHO”) for Tochi Daicho lot 1649. Stephanus claimed the land on the grounds that he is the “blood son” of Ngiraibai, the listed owner in the Tochi Daicho. In 1999, Angelina Kual filed a claim for this same land with the Land Court, the statutory successor to the LCHO. On June 17, 2005, the Bureau of Lands & Surveys (“BLS”), notified the public that those interested in filing claims for Tochi Daicho Lot 1649 – and other listed lots – must do so between July 2 and August 1, 2005. Thereafter, the claims would be monumented between August 2 and August 16, 2005, according to the public notice by BLS. On July 25, 2005, Frida Kual filed a claim for Tochi Daicho lot 1649 with BLS. With the assistance of BLS Land Registration Officer Larry Tochi, Frida Kual monumented the lot on August 4, 2005.

The file containing notices, claims, maps and other records was finally submitted by BLS and accepted by the Land Court on March 31, 2008. The claims were referred to mediation and on November 24, 2008, the claimants entered into a “Settlement Agreement and Stipulation for Entry of Judgment” whereby “[a]ll claimants agree to put the property on their names as, Ngiraibai children: Isaac Stephanus, Angelina Kual, Frida Kual.” The settlement agreement was filed with the Land Court on December 8, 2008. A registration hearing was scheduled for and held on Thursday, May 21, 2009 at 9:00 a.m. Mr. Isaac Stephanus attended the hearing.

At the hearing, the Court noted that the mini-map in the file showed that the lot as monumented appeared well-within a much larger parcel of property that is already registered. After hearing Mr. Stephanus, the Court invited him to submit by Thursday, June 28, 2009 any written supplemental briefs on the issue of their claim *vis-a-vis* the larger registered land. The hearing completed and the deadline for written submissions having expired without submissions, the Court now issues this Decision and Order.

FINDINGS OF FACTS

Based on the preponderance of the evidence adduced at the hearing, those within the claim file, and from the Land Court records judicially noticed ², and the reasonable inferences to be derived therefrom, the Court makes the following findings of facts:

1. The lot at issue is described as Worksheet Lot 085E01-1, formerly Tochi Daicho 1649 listed under Ngiraibai called *Mesei* consisting of 245 tsubos, more or less, located in Ngkeklau County of Ngaraard State;

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2. Isaac Stephanus and Angelina Kual, now deceased, are children of Ngiraibai while Frida Kual is a daughter of Angelina Kual and granddaughter of Ngiraibai;
3. Isaac Stephanus filed his claim to Tochi Daicho Lot 1649 with the Land Claims Hearing

²“The Land Court may take judicial notice, at a party’s request or on its own initiative, of facts not reasonably subject to dispute and which are either (1) generally known within the territorial jurisdiction of the Land Court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Rule 5, Land Court Rules of Procedure.

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Office on June 20, 1991 stating that he is the “blood son” of Ngiraibai;

4. Angelina Kual filed her claim to Tochi Daicho Lot 1649 with the Land Court on February 18, 1999;
5. On June 17, 2005, BLS notified the public that those interested in filing claims for Tochi Daicho Lot 1649 and other listed lots must do so between July 2 and August 1, 2005, and thereafter, the claims would be monumented between August 2 and August 16, 2005;
6. Frida S. Kual filed her claim to Tochi Daicho Lot 1649 with the Bureau of Lands and Surveys on July 25, 2005;
7. With the assistance of BLS Land Registration Officer Larry Tochi, Frida Kual and Isaac Stephanus monumented the lot on August 4, 2005;
8. The lot as monumented was surveyed by BLS and depicted as worksheet lot 085E01-1 in a computer generated worksheet map number 2005 E 003 dated August 2005;
9. The lot as monumented falls within a larger parcel of real property now registered as Cadastral Lot 085 E 01 consisting of 96,983 square meters;
10. Cadastral Lot 085 E 01 depicts former Tochi Daicho lots 1645, 1646, and 1647 that were consolidated into one lot and monumented on or about August 25, 1975;
11. Tochi Daicho lot 1645 consists of 8,718³ tsubos or 28,819 square meters while Tochi Daicho Lot 1646 consists of 2,745 tsubos or 9,074 square meters, and Tochi Daicho lot 1647 consists of 804 tsubos or 2,657 square meters for a combined total of 40,552 square meters;⁴
12. Cadastral Lot 085 E 01 with its size of 96,983 square meters exceeds the size of Tochi Daicho lots 1645, 646, and 1647 by 56,431 square meters;
13. Tochi Daicho lots 1645, 1646, and 1647 were listed under Ngiramedelmang;
14. Isaac Stephanus was a Land Commission field recorder at the 1975 monumentation of Ngiramedelmang’s lots, and Malsol Ngiramedelmang, a p.341 stepson of Ngiramedelmang Ngertuu, was the person showing the markers because Ngiramedelmang was an elder geriatric confined to his home;
15. Isaac Stephanus’ recalled that at the 1975 monumentation, Malsol Ngiramedelmang claimed that the boundaries for Ngiramedelmang’s lands extended from the inland markers all the way to the shoreline;

³The Court takes judicial notice of these tsubo sizes from the copy of the Ngaraard Tochi Daicho in the custody of the Land Court Registrar.

⁴The square meter sizes are calculated using the following formula: Tsubo x 3.305778 = square meters. The Court takes judicial notice of said formula provided by the National Surveyor for case numbers SP/F 09-007, 008, & 009.

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16. Ngirngemiusech Tengadik, for Morisong Lineage, filed an application for land registration with the Land Commission on May 7, 1980 for Tochi Daicho lots 1645, 1646, and 1647;
17. On March 25, 1982, Ngiramedelmang filed a claim to Tochi Daicho lots 1645, 1646, and 1647 and on the same date, formal hearing number 46 took place at 7:10 a.m. by the Ngaraard Land Registration Team at the home of Ngiramedelmang who was then 90 years old;
18. At the hearing, Ngiramedelmang testified that he disputed the claim of Ngirngemiusech whereby he seeks to register the property under Morisong Lineage because the lands are listed in the Tochi Daicho under his name, Ngiramedelmang, and he is still living so he claims them;
19. Ngiramedelmang further testified that the lands belonged to the village of Ngkeklau but at some point in the past, persons from Peleliu came to Ngkeklau and it was decided by the villagers of Ngkeklau that those from Peleliu who remained would own designated village lands and Ngertuu, who was Ngiramedelmang's father, came from Peleliu and was one of those who remained and that is why the lands became his;
20. Ngiramedelmang further confirmed to the registration team that he is the same Ngiramedelmang who is listed as the Tochi Daicho owner;
21. On April 2, 1982, the Land Registration Team ⁵ issued an adjudication in favor of Ngiramedelmang Ngertuu, which adjudication was approved by the Palau District Land Commission on October 20, 1982 and then on October 28, 1982, the Commission issued a determination of ownership naming Ngiramedelmang Ngertuu as the owner;
22. A certificate of title certifying that Ngiramedelmang Ngertuu was the owner did not issue until June 2004 when the Land Court issued said certificate;
23. Ngiramedelmang Ngertuu passed away at some earlier point because a probate action was filed in year 2000 in Civil Action No. 00-182;
24. By a judgment in the probate action entered by the Supreme Court Trial Division on February 9, 2005, the land p.342 was awarded to Morisong Lineage;
25. Pursuant to the probate judgment, the Land Court issued a new certificate of title in July 2005 certifying that Morisong Lineage is the owner and such is the present status of cadastral lot 085 E 01.

DISCUSSION

The facts found present the Court with a difficult overarching issue: what happens when

⁵Ironically, one of the four members of the registration team was Isaac Stephanus, a claimant in the present case.

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claimants claim land that, after monumentation, is found to be within a parcel of land that has already been awarded to someone else? In the present case, this gives rise to two sub-issues. The first is whether the Land Court has jurisdiction over a new claim to an already registered land.⁶ The second issue is, if the Land Court has jurisdiction, whether a new claim to an already registered land is valid under the land registration program. If the Land Court has jurisdiction and if the claims are legally valid then this Court can proceed to the merits.

(1) Whether the Land Court has jurisdiction to adjudicate new claims that were monumented within an already registered land?

“Jurisdiction” is broadly defined as “A court’s power to decide a case or issue a decree.” *Black’s Law Dictionary* 8th Ed. at 867. If a case or issue is beyond a court’s jurisdiction, the court cannot consider its merits. In Palau, the primary source of a court’s power or jurisdiction is the Constitution. Article X, Section 1 vests judicial power in the Judiciary. Palau Const. Art. X. §1 (“The judicial power of Palau shall be vested in a unified judiciary, consisting of a Supreme Court, a National Court, and such inferior courts of limited jurisdiction as may be established by law.”). Article X, Section 5 further expounds on the extent of this judicial power by providing that, “the judicial power shall extend to all matters in law or equity.” Palau Const. Art. X. §5.

The Land Court is one of the inferior courts established by law, namely RPPL 4-43. Meanwhile, the Land Court’s limited jurisdiction is codified at 4 PNC §208 which provides that, “The Land Court shall have concurrent original jurisdiction with the Supreme Court over all civil cases involving the adjudication of title to land or any interest therein (other than the right to immediate possession).”⁷ Because this is a civil p.343 case involving the adjudication of title to land – albeit already registered land – this Court holds that it has jurisdiction over this matter per 4 PNC §208.

The Court’s jurisdiction in this case is not limited by 35 PNC §1310(b). This statute provides that, except as to public land claims:

the Land Court shall not hear claims or disputes as to right or title to land between

⁶The claimants did not raise the jurisdiction issue but a court has the power and duty to examine and determine whether it has jurisdiction over the matter presented to it. *Roman Tmetuchl Family Trust v. Ordomele Hamlet*, 11 ROP 158 (2004).

⁷What is intended by this limitation is not clear on the face of the statute and has not been addressed in the case law on the Land Court’s jurisdiction that this Court has reviewed. However, it may mean if land is occupied by a person who is not a claimant and the Land Court determines that the land is owned by someone else who claims the land, the Land Court cannot adjudicate the owner’s right to immediate possession *vis-a-vis* the present occupier. That is a matter better left for a different action in a different venue. This makes sense because if the present occupier is not a claimant or party in the case before the Land Court, his or her due process rights may be infringed upon if the Land Court ruled on an issue of immediate possession affecting the land occupant while he or she is not involved in the Land Court case. A good example of would be a lessee occupying a leasehold granted by a public lands authority but it is later determined that a private claimant owns the property and not the public lands authority. The new owner’s right to immediate possession versus the present occupier’s continued possession are matters beyond the land registration program administered by the Land Court.

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parties or their successors or assigns where such claim or dispute was finally determined by the Land Claims Hearing Office, the former Land Commission, or by a court of competent jurisdiction. The Land Court shall, for purposes of this chapter, accept such prior determinations as binding on such parties and their successors and assigns without further evidence than the judgment or determination of ownership.

35 PNC §1310(b). At first blush, this language could be read as a limitation on the Land Court's jurisdiction because it states that the Land Court "shall not hear" certain claims or disputes. Nevertheless, the Appellate Division of the Supreme Court has held that the foregoing "imposes no jurisdictional limitation [on the Land Court]." *Ngetpak Clan v. Keptot*, 9 ROP 99, 100 (2002). "Rather, such language merely requires that, in appropriate circumstances, preclusive⁸ effect be given to the prior determination." *Id.*

In sum, this Court holds that it has jurisdiction over claims to part of a larger, already registered land because 4 PNC §208 gives the Land Court broad, concurrent jurisdiction over all civil cases involving the adjudication of interest in land. Furthermore, the Land Court's jurisdiction in this matter is not limited by 35 PNC §1310(b) because that is a statutory version of the common law doctrine of *res judicata*.

(2) Whether claims for a Tochi Daicho lot number are valid under the land registration program if the lot, when monumented, is found to exist within a larger parcel that is already registered?

p.344 That this Court has jurisdiction over this matter does not necessarily mean that it can proceed to the merits. For land claims to be properly adjudicated and ownership duly registered, the Court must be satisfied that procedural requirements of the registration process were met – that the ownership claims before it are not irregular. This is because determinations made and titles issued based on irregular claims or procedures may appear to have clouds on them and can then be collaterally attacked. *See generally, Nakamura v. Isechal* 10 ROP 134 (2003) (holding that a person may collaterally attack a determination of ownership on the grounds that the statutory requirements were not complied with). As explained below, this Court concludes that the claims to worksheet lot 085 E 01-1 are invalid because of their irregularity and must then be dismissed.⁹

Isaac Stephanus filed his claim to Tochi Daicho Lot 1649 with the LCHO on June 20, 1991. The law applicable then required the LCHO to "proceed on a systematic basis to hold

⁸In other words, the statute is not a limitation on jurisdiction but a statutory version of the common law doctrine of *res judicata*, defined as "an affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been – but was not – raised in the first suit. The three essential elements are (1) an earlier decision on the issue; (2) a final judgment on the merits; and (3) involvement of the same parties, or parties in privity with the original parties." *Black's* at 1337.

⁹This result is akin to the Supreme Court Trial Division's authority to dismiss matters without necessarily reaching the merits given procedural infirmities. *See generally*, ROP Rules of Civ. Pro. 12(b).

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hearings and make determinations with respect to the ownership of all *lands* within the Republic *not yet registered*.” RPPL 2-18 §4(a), as amended by RPPL 2-24, §4, (emphasis added). The law quoted above mandates the determination of ownership of *lands* not yet registered, not Tochi Daicho lot numbers not yet registered. Since the land that was monumented as depicting Tochi Daicho lot number 1649 falls within an already registered land, the LCHO then and the Land Court now is not mandated to hold a hearing and determine ownership of this already registered land, or a part thereof.

As for Angelina Kual, she filed her claim to Tochi Daicho lot number 1649 with the Land Court on February 18, 1999. This time the law required the Land Court to “proceed on a systematic basis to hold hearings and make determinations with respect to the ownership of all land within the Republic.” 35 PNC §1304(a), as amended by RPPL 5-22, §2. Unlike the previous legislation regarding the LCHO, this newer law did not maintain the qualification that all lands was limited to those “not yet registered”. It would seem then that the Land Court could hold hearings and make determinations of all lands including those that have been previously registered. However, for several reasons, this Court concludes that in deleting the qualifying phrase “not yet registered” the OEK did not intend to reopen claims to already registered lands. First, the broad language above appears to be later qualified by 35 PNC §1307(a), as amended by RPPL 5-22, which states that the Land Court shall hold a monumentation and mediation session “unless the boundaries of the property at issue have already been resolved and monumented.” In other words, do not repeat monumentation and mediation sessions for the same property if it was done before.

Second, if the OEK truly intended to reopen all lands for registration anew then it could have said so explicitly instead of just omitting a phrase without clearly stating what it intended by such deletion. Third, reopening registered lands is contrary to the explicit intent of the law to complete the land registration process as soon as possible. Fourth, re-adjudicating already registered land is not only unfair to those who followed the rules at earlier times and were awarded their lands, it may deprive them of their vested property rights in violation of their constitutional due process rights because they are not parties to these proceedings. Finally, the claimants here are not without a remedy because they may challenge the prior determination by filing a proper action against the proper parties in the proper venue. For the foregoing reasons, the claim of Angelina Kual is invalid to the extent that she claims an already registered land. p.345

Finally, as to Frida S. Kual, she filed her claim to Tochi Daicho Lot 1649 with the Bureau of Lands and Surveys on July 25, 2005. Two years earlier, RPPL 6-31 was passed and mandated BLS to “create a schedule for monumenting all parcels of *unmonumented land* within the Republic.” 35 PNC §1309(a), as amended by RPPL 6-31 (emphasis added). Indeed, the Appellate Division has further clarified in *Etpison v. Tmetbab Clan*, 14 ROP 39 (2006) that the notification requirements imposed on the Bureau of Lands & Surveys, “apply only to unmonumented parcels of land.” *Id.* at 43. Accordingly, the claim of Frida S. Kual is invalid since she claims part of an already monumented, adjudicated, and registered land that BLS was not supposed to issue notices for and conduct monumentations within.

The result reached here is not an anomaly. Indeed, the issue of new claims for or into

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already registered lands is a matter that the Appellate Division has recently addressed. In *Ideson Sumang v. Skibang Lineage*, Civil Appeal No. 07-057 (Slip Op. 2008), claimant Sumang appealed a Land Court decision in which the Land Court refused to determine ownership in his favor. Sumang claimed that the basis of his claim, Tochi Daicho Lot 199, corresponds to cadastral lot number 008 B 43. The Land Court, however, noted that cadastral lot number 008 B 43 is an already registered parcel with a certificate issued naming Skibang Lineage as the owner. Sumang requested that the Land Court invalidate the certificate and award him ownership of the cadastral lot. The Land Court refused to do so. In affirming the Land Court, the Appellate Division stated, “As the Land Court correctly recognized, ‘the law clearly bars monumentation of a parcel of land the boundaries of which has been previously monumented and resolved. Logically, a claim to register a parcel of land that has already been registered is an invalid claim.’” *Id.* at pg. 4. For these reasons as well, the claims in this case are invalid and must be dismissed.

This Court is mindful that Cadastral Lot 085 E 01 exceeds to a large extent the sizes of the three Tochi Daicho lots that it is supposed to represent – an excess of over fifty-six thousand square meters. This perhaps explains why other people’s claims, such as those in this case and in others¹⁰, have been subsumed by this larger registered lot. It also means that if the artificial boundaries and lots created on the worksheet map were translated into actual field boundaries and lots, especially those claimed lots that straddle the boundaries of cadastral lot 085 E 01, then taro patches would be sliced into odd shapes and sizes – in other words, what is on p.346 paper leads to absurdity when translated into real life. ¹¹¹ Although the Court has a duty to prevent manifest injustice, it also has a duty to afford persons due process of law. To summarily vacate the award to Ngiramedelmang and his successor in interest, Morisong Lineage, without affording them an opportunity to be heard may also manifest injustice – assuming the Land Court has the authority to summarily vacate certificates of title.

Furthermore, although the Land Court has broad jurisdiction regarding the determination of land titles as has been explained above, the Land Court is actually limited to two responsibilities: (1) to administer the land registration program and (2) to adjudicate the return of public lands per the Palau Constitution. 35 PNC §1304(a) & (b); *Airai State Pub. Lands Auth. v. Seventh Day Adventist Mission*, 12 ROP 38, 40 (2004) (highlighting the Land Court’s two responsibilities). Because of its specific responsibilities and different circumstances, the Land Court is not in the best position to bring into its proceedings persons who are not named claimants under the registration program. Specifically, Ngiramedelmang and Morisong Lineage, the current owner of the larger cadastral lot 085 E 01, are not claimants in the present matter while the Land Court has no procedural rules for third-party interventions or the joinder of necessary parties like those found in the ROP Rules of Civil Procedure applicable to the proceedings in the Trial Division of the Supreme Court. Accordingly, the circumstances of this

¹⁰See, LC/E 08-0634, LC/E 08-0635, LC/E 08-0650, LC/E 08-0651, LC/E 08-0652, & LC/E 08-0656 (cases dismissed because of new claims monumented into registered cadastral lot 085 E 01).

¹¹¹ This does not mean that the legislature intended these absurd results because the OEK is presumed to intend rational results of the legislation it implements. See generally, *Rengulbai v. Solang*, 4 ROP Intrm. 68 (1993). The absurdities, however, likely result from erroneous interpretation and/or application of the legislation by those registering claims and conducting monumentations.

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case – on its merits and its procedural stance – is such that it is more appropriate for a venue other than the Land Court.¹²

In sum, this Court holds that Tochi Daicho lot numbers monumented in already registered lands result in irregular and invalid claims. Such a result warrants dismissal because the Bureau of Lands & Surveys is legally required to process unmonumented lands, not unmonumented Tochi Daicho lot numbers. Furthermore, any dispute between the registered owner and the claimants whose claims are dismissed by the Land Court is better left for other fora.

¹²Before a court assesses the merits of the claims, it would have to first find that claimants have proven that the registered ownership of Ngiramedelmang and later Morisong is invalid. This is because, a certificate of title “shall be conclusive upon all persons so long as notice was given as provided in Section 1309.” 35 PNC §1314(b). Thus, absent a showing that, in processing Ngiramedelmang Ngertuu’s claim, the Land Commission failed to proceed in accordance with then-applicable regulations concerning notice, its determination should be deemed conclusive as against all persons, whether or not a party in the earlier case. *See generally, Uchellas v. Etipison*, 5 ROP Intrm. 86 (1995). Claimants can make that showing in another venue where Morisong Lineage – the current owner of cadastral lot 085 E 01 and not a party to the present matter – can and should have a say in the matter.

p.347 CONCLUSION

For the foregoing reasons, it is the **DECISION AND ORDER** of this Court that the claims to worksheet lot 085 E 01-1 must be and are hereby **DISMISSED**. This is a final order.