

**NGETECHEDONG CLAN and OTEOT
LINEAGE,
Appellants,**

v.

**DONALD HARUO,
Appellee.**

CIVIL APPEAL NOS. 11-008 & 11-009
Case No. LC/B 10-0018

Supreme Court, Appellate Division
Republic of Palau

Decided: June 21, 2012

**[1] Land Commission/LCHO/Land
Court: Mediation**

Despite the substantial degree of discretion codified in the statute, the timing of a party’s intervention in a dispute is not grounds for bypassing mediation.

[2] Appeal and Error: Preserving Issues

Arguments not raised in the court below are waived and cannot be argued for the first time on appeal.

[3] Appeal and Error: Harmless Error

The Appellate Division will not reverse a lower court decision due to an error where that error is harmless.

[4] Appeal and Error: Harmless Error

Harmless errors are those that do not affect the substantial rights of a party and that do not prejudice a particular party’s case.

Counsel for Appellants: J. Uduch Sengebau Senior
Counsel for Appellee: Oldiais Ngiraikelau

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

Appeal from the Land Court, the Honorable Ronald Rdechor, Associate Judge, presiding.

PER CURIAM:

Appellants Ngetchedong Clan and Oteot Lineage charge that the Land Court failed to follow compulsory procedural rules before it awarded disputed land to Appellee Donald Haruo in its February 21, 2011, ruling. Chiefly, Appellants argue that the Land Court failed to direct all competing claims to mediation before adjudication, and failed to join all known claimants to this action before issuing its decision. We affirm the Land Court’s decision.¹

BACKGROUND

The genesis of this dispute lies in overlapping Tochi Daicho lots. In 2005, pursuant to a public notice posted by the Bureau of Lands and Surveys (BLS), Haruo claimed and monumented Tochi Daicho Lots 1123, 1124, and 1130. These Tochi Daicho lots were monumented as Worksheet Lots 05B002-028, 05B002-029, 05B002-029A,

¹ Pursuant to ROP Rule of Appellate Procedure 34(a), we find this case appropriate for submission without oral argument.

05B002-030, 05B002-129, and 05B002-136.² In 2007, in litigation concerning Tochi Daicho Lot 1133 to which Haruo was not a party, then-Senior Land Court Judge J. Uduch Sengebau Senior issued a determination of ownership awarding Lots -129 and -136 to Hatsuichi Ngerichomlei and Ngeribkal Clan, respectively. One month later, Haruo learned of Senior Judge Senior's determination and filed a motion to set it aside based upon his earlier monumentations. Senior Judge Senior granted the motion, after which the case was reassigned first to Judge Ingereklii and then to Judge Rdechor.

In early 2010, the Land Court set forth to discover and untangle the competing interests. Because this litigation began as an action regarding Tochi Daicho Lot 1133—and not Tochi Daicho Lots 1123, 1124, and 1130—the Land Court was concerned that some interested parties had not been properly notified of the ongoing litigation. Indeed, as discussed below, neither Appellant was aware of the case at that point. In turn, on February 12, 2010, the Land Court ordered BLS to perform several tasks: (1) determine whether it had provided public notice of monumentation to Tochi Daicho Lots 1123, 1124, and 1130 and, if so, determine whether Haruo was the only claimant; (2) transmit any other claims to those lots, if they existed, to the Land Court; and (3) if those lots were not previously subjected to the notice and monumentation process, issue public notice

² Where possible, for the remainder of this Opinion, the Court will refer to the land in question by the last three digits of its Worksheet Lot Number. Appellants' claims are confined to Lots -028, -129 and -136. Ownership of Lots -029, -029A, and -030 is uncontested.

and receive claims for those lots in accordance with statutory requirements.

On April 21, 2010, at a status conference, BLS represented that no other individuals or groups claimed Tochi Daicho Lots 1123, 1124, and 1130, and that Haruo's claims were uncontested. Shortly thereafter, however, BLS notified the Land Court that, despite its earlier representations, there was in fact at least one other claim that BLS had located in its office. Consequently, the Land Court published notice of a new hearing to be held in May 2010. Either via BLS or the Land Court's efforts, both Appellants eventually received notice of this litigation, though they had not previously engaged in it.

On May 27, 2010, the Land Court held a full hearing at which representatives of both Appellants appeared and testified to competing claims. This was the first time Appellants intervened, and they were not able to articulate precisely the borders of the lands they claimed. Accordingly, the Land Court adjourned the hearing and ordered BLS to provide further clarification. On June 7, 2010, BLS submitted a report to the Land Court indicating that Ngetchedong Clan, relying on Tochi Daicho Lot 1120, had properly claimed Worksheet Lot 028, while Oteot Lineage, relying on Tochi Daicho Lot 1125, had properly claimed Lots 129 and 136. Notably, while both Appellants were claiming worksheet lots originally claimed by Haruo, they were doing so by relying upon different Tochi Daicho lots. The confusion resulted from overlapping Tochi Daicho lots and disputed borders.

Three days later, with BLS's clarification in hand, the Land Court resumed

its hearing. Bernarda Usibata and Eugene Uehara testified on behalf of Ngetchedong Clan, and Christiana Joseph testified for Oteot Lineage. Before the hearing adjourned, the Land Court noted that while this litigation concerned Tochi Daicho Lots 1123, 1124, and 1130, Appellants' claims were staked in Tochi Daicho Lots 1120 and 1125. Those two lots, however, were also claimed by other individuals not before the court, and the Land Court discussed the possibility of joining them in the dispute and shepherding their claims through mediation. The Land Court then set a status conference to determine the nature of the additional claims to Tochi Daicho Lots 1120 and 1125 and whether they needed to be heard before deciding this case. Shortly after the hearing, BLS notified the Land Court of three additional claims to Tochi Daicho Lots 1125 and 1130.

In late October 2010, all outstanding issues preventing the Land Court from issuing a decision on the merits dissolved. The unrepresented claims to Tochi Daicho Lots 1125 and 1130 were withdrawn, and the Land Court found that Basilia Adelbai's claim on behalf of Oteot Lineage for Tochi Daicho Lot 1125 duplicated the efforts of others on behalf of Oteot Lineage and did not require the submission of additional evidence. Moreover, because the litigation was confined to Tochi Daicho Lots 1123, 1124, and 1130, the Land Court determined that it did not need to entertain all other claimants to Tochi Daicho Lot 1120.³ On February 21, 2011, the Land

Court issued its determination and awarded all six worksheet lots to Haruo, finding that his purchase of the three contested lots, Worksheet Lots -028, -129, and -136, from their prior owner was uncontested, and that his unchallenged construction of a hotel on the land was consistent with ownership in fee simple. The court found that Appellants' failure to object to Haruo's construction on land they allegedly owned was significant and, moreover, neither Appellant properly monumented its claim.

Ngetchedong Clan and Oteot Lineage appealed. They argue that the Land Court (1) deprived them of an opportunity to engage in mandatory mediation as required by law; (2) incorrectly assumed that certain claims of Oteot Lineage had been previously dismissed; (3) prematurely issued its decision before other alleged claimants had an opportunity to participate in the proceedings; and (4) improperly reprimanded Appellants, thereby depriving them of an opportunity to present their full case.

STANDARD OF REVIEW

We review findings of fact from the Land Court for clear error. *Tesei v. Belechal*, 7 ROP Intrm. 89, 89-90 (1998). Legal conclusions, including those regarding due process requirements, are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

ANALYSIS

Appellants' primary argument is that the Land Court denied them a measure of due process when it failed to require the parties to engage in mediation before adjudicating the

³ Rather, the Land Court adjudicated only Ngetchedong Clan's claim to Tochi Daicho Lot 1120 to the extent it may have included land mapped as Worksheet Lot -028. Thus, in the words of the Land Court, "this matter does not include Tochi Daichio [sic] Lot 1120."

case on its merits. Section 1308(a) of Palau National Code Title 35 was amended in 2008 to provide:

The Land Court shall, for all claims in which there remains a dispute regarding title or boundaries after the monumentation, schedule a mediation session within 25 days of receiving the file from the Bureau [of Lands and Surveys]. However, where there is reason to believe that claims may not likely be resolved at mediation or where mediation is apparently unnecessary, the Land Court may bypass mediation and schedule a hearing for disputed cases or enter a determination of ownership for undisputed cases.

35 PNC § 1308(a) (as amended by RPPL 7-54 (2008)).

Because Appellants intervened in this case well after it was initiated, the procedural posture did not allow for efficient mediation, and Appellants are correct that the Land Court failed to schedule a mediation session as required by law. This did not escape the Land Court's attention. Indeed, at the close of testimony, the Land Court remarked:

We've heard Donald Haruo's claim and have heard Benarda Usibata's claim and Oteot [L]ineage's claim. I am a little sad for this case because due to the fault of the work of the

Bureau of Land[s] and Surveys, Benarda's claim and Oteot [L]ineage's claims were not sent with Donald Haruo's claim to the Court. So during mediation there were no discussions, you did not have an opportunity, the [three] parties, to talk during mediation. . . . That is why your claims bypassed mediation and you are now before the Court. Now they have been heard, . . . it's time for closing arguments

[1] Thus, Appellants were not given the opportunity to mediate their disputes. Moreover, the Land Court's decision to forgo mediation was not based on a determination that the "claims may not likely be resolved at mediation or where mediation is apparently unnecessary." *See* 35 PNC § 1308(a) (as amended by RPPL 7-54). Rather, the decision was based on the fact that Appellants intervened after the preliminary stages of litigation in which mediation would have occurred. Despite the substantial degree of discretion codified in the statute, the timing of a party's intervention in a dispute is not grounds for bypassing mediation. As such, this was error.

[2-4] Nevertheless, Appellants' mandatory mediation argument fails for two reasons. First, they did not raise it in the Land Court. Arguments not raised in the court below are waived and cannot be argued for the first time on appeal. *Children of Merep v. Youlbeluu Lineage*, 12 ROP 25, 27 (2004); *Tulop v. Palau Election Comm'n*, 12 ROP 100, 106 (2005). Absent extraordinary circumstances

not present in this case, appellants cannot prevail on an argument not addressed first by the Land Court. *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 43 (1998). Second, Appellants' argument fails because the Land Court's error was harmless. "The Appellate Division will not reverse a lower court decision due to an error where that error is harmless." *Ngiraiwet v. Telungalek Ra Emadaob*, 16 ROP 163, 165 (2009). Harmless errors are those that do not affect the substantial rights of a party and that do not prejudice a particular party's case. *Id.* Here, Appellants were given the opportunity to work with BLS to untangle their competing claims. They were also accorded notice and a full hearing before the Land Court at which they were able to present witnesses, cross-examine adverse witnesses, and submit closing arguments. With Appellants' due process rights sufficiently vindicated, the extra step of preliminary mediation would not have provided any additional protection to Appellants' interests. Appellants, therefore, suffered no prejudice at the hands of the Land Court.

Appellants' second argument is that the Land Court erred when it ruled that Imetuker Towai, a member of the group representing Oteot Lineage, dismissed his claims to Tochi Daicho Lots 1123, 1124, and 1130 in an earlier estate matter. This argument fails for several reasons, not the least of which is that it is irrelevant. At the hearing, Christiana Joseph appeared on behalf of Oteot Lineage and testified that "[i]t is now very clear where [Tochi Daicho Lot] 1130 is, where 1125 is, where 1123 is, where 1124 is, but 1123 and 1124 and 1130 are the true properties of [Haruo] . . . 1125 is the only property of Oteot" (emphasis added.)

Thus, Oteot Lineage abandoned any claim it may have had to those lots at the hearing, and the effect of Imetuker Towai's earlier actions is inconsequential. Moreover, like Appellants' first argument, their second argument also fails because it was not raised before the Land Court.

Appellants' third claim is no more successful. In essence, they argue that the Land Court issued its determination without considering the claims of other interested parties, not represented here, to Tochi Daicho Lots 1120, 1125, 1130, and 1133. Appellants do not, however, suggest that the Land Court disregarded any of their claims; their argument is confined to the claims and alleged injuries of others. Appellants do not have standing to seek redress for the injuries of others. *See Rengechel v. Uchelkeiukl Clan*, 16 ROP 155, 159 (2009).

Finally, Appellants complain that, during a colloquy in which the Land Court instructed the parties and BLS to identify the lands at issue in this litigation, the Land Court "reprimanded" Appellants when it did not permit them to raise claims unrelated to those at issue in this litigation. We find no support for this contention in the record, and we find no legally operative consequence to the alleged reprimand even if there was one. Appellants' complaint is without merit.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the decision of the Land Court.