

Kloteraeol v. Ulengchong, 2 ROP Intrm. 145 (1990)
ARMALUUK KLOTERAOL,
Appellee,

v.

HUAN ULENGCHONG, et al.,
Appellants,

v.

BECHESERRAK TMILCHOL,
Intervenor.

CIVIL APPEAL NO. 3-89
Civil Action Nos. 390-87 and 868-88
(Consolidated)

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: August 8, 1990

Counsel for Appellee: Douglas F. Cushnie

Counsel for Appellants: Carlos H. Salii

Counsel for Intervenor: Moses Uludong, T.C.

BEFORE: MAMORU NAKAMURA, Chief Justice; ARTHUR NGIRAKLSONG, Associate Justice; ALEX R. MUNSON,¹ Associate Justice.

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MUNSON, Associate Justice:

Procedural History

Civil Actions 390-87 and 868-88 were consolidated in the Trial Division and remain consolidated for purposes of this appeal. Civil Action No. 390-87 was resolved by a grant of summary judgment to plaintiff-appellee Armaluuk Kloteraol, and Civil Action No. 868-88 was dismissed. Both rulings were contained in a decision rendered by the Trial Division and filed on January 30, 1989.

Appellants' motion for reconsideration was decided adversely to them on February 9,

¹The Honorable Alex R. Munson, Chief Judge, United States District Court for the Northern Mariana Islands, sitting by designation.

1989.

Notice of appeal was filed March 2, 1989.

Facts

Civil Action No. 390-87

This Trial Division proceeding involved an appeal by Armaluuk Kloteraol from a determination of the Palau Land Commission, said determination rendered October 6, 1987.²

In 1986, the Palau Land Commission, for reasons not apparent from the record, held public hearings on land the title to which ¶147 had been previously adjudicated in 1958, in Determination of Ownership and Release No. 162. As a result of these hearings, in October, 1987, the Land Commission issued a new Determination of Ownership, which found ownership of at least some of the land to be different than that found in 1958.

Kloteraol moved in the Trial Division for summary judgment, arguing that ownership of Lot No. 1870 (and apparently all the other lots, as well) had been previously decided on July 8, 1958, more than thirty years before. In the 1958 decision (which the trial judge specifically found had been made after notice and an opportunity to be heard), the Palau District Land Title Officer issued Determination of Ownership and Release No. 162, in which the Ngerketiit Lineage was declared to be the owner of the land in question. The Trial Division found that no evidence had been presented to show that the 1958 decision of the Land Title Officer had ever been appealed and, further, that a May 29, 1973, judgment in another civil case, No. 461, “strongly suggest[ed] that it was not.”

Civil Action No. 868-88

In this proceeding, appellant Huan Ulengchong sought a writ of mandamus from the Trial Division to compel the Senior Land Claims Officer to issue certificates of title to certain lots, in conformance with the October, 1987, determination of the Palau ¶148 Land Commission (see above). The Trial Division dismissed, holding that the Determinations of Ownership issued by the Land Commission were null and void since they were issued in violation of 35 PNC § 930(b). This statute prohibits redetermination of

"any matter already decided between the same parties (or those under whom the present parties claim) by a court. The . . . Commission . . . shall accept such prior determinations as binding on such parties without further evidence than the judgment or determination of ownership."

Intervenor

² Kloteraol apparently appeals the determination only insofar as it involves ownership of Lot No. 1870, although the full determination seems to have involved Lot Nos. 1863 through 1878, inclusive.

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The role of the intervenor is unclear because his counsel failed to file a brief until little more than an hour before the hearing scheduled at 2:00 p.m.³ Because of this gross and unexplained violation of court rules, the Court of necessity relied on the Trial Division's finding that intervenor's "rights are not affected by this decision. They remain exactly as they were on December 2, 1977, when he and Plaintiff Kloteraol executed the Deed of Transfer."

¶149 Issue

1. Did the Trial Division err by giving preclusive effect to the 1958 decision of the Palau District Land Title Officer?

Analysis

Appellants believe the panel should focus solely on the 1987 decision of the Land Commission and that both the Trial Division and the Appellate Division should defer completely to this later decision, and entirely ignore the 1958 decision. However, prior to the hearing⁴, appellants offered no law, facts, or compelling **¶150** equitable reasons to support reversal of the Trial Division's finding that the issue of ownership of the lot or lots in question was authoritatively resolved more than thirty years ago, and that no appeal was ever taken. Appellants failed to provide the Appellate Division with cites to the record to support any of the factual allegations they made in their brief. And, from their brief it simply was not possible to piece together the exact nature of their arguments. The analysis employed by the Trial Division is reasonable and will be sustained, so that a measure of finality will be injected into this protracted dispute.

³ More, counsel for intervenor immediately left the Courthouse area, so he was unavailable to answer any questions the Court may have wished to put to him.

⁴ The Court has undertaken an independent analysis of the facts first raised by appellants at oral argument and finds that nothing raised by appellants merits a change in the decision above. Appellants belatedly directed the Court's attention to three prior lawsuits:

Civil Action No. 217. This 1961 lawsuit appears to have involved the same 36.5 acres as the instant matter. However, it was dismissed November 17, 1961, when the parties "reached a good settlement over the land involved" The terms of this 1961 settlement are nowhere specified. The Court is unable to base any decision on so enigmatic a dismissal.

Civil Action No. 461. This 1970 lawsuit involved only the access road to the Continental (now Nikko) Hotel, as is made clear from the judgment dated May 29, 1973. It has no bearing on the instant matter.

Civil Action No. 44-76. This 1976 lawsuit also involved the land which was the subject of Determination of Ownership and Release No. 162. This lawsuit, too, was dismissed because the "plaintiff and defendant had resolved their differences." Once again, the dismissal (this time with prejudice) contains no further exegesis which would enable this Court to consider whether or not a different outcome would be warranted.

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In upholding the 1958 decision and granting summary judgment in favor of Kloteraol, the trial judge relied on two well-established precepts. First, he cited Regulation No. 1, Section 13, of the Office of Land Management, which states:

Unless and until the decision of the District Land Title Officer is reversed or modified by the High Court, the legal interests of persons designated as owners shall be as shown on the determination of ownership.

See, also, Kaud Rurcherudel v. Airai State , 1 ROP Intrm. 620 (App. Div. 1989), for further discussion.

Second, the trial court gave the former decision preclusive effect, citing *Gibbons v. Owang Lineage* , 5 TTR 103, 107 (App. Div. 1970), for the proposition that a decision not appealed from is like a judgment between the parties.

Given the record before the Court, and the failure of ¶151 appellants to support their arguments, the decision of the Trial Division is AFFIRMED.