

Klai Clan v. Bedechal Clan, 2 ROP Intrm. 84 (1990)
KLAI CLAN, by NGETWAI EBILRAKLAI, Trustee,
Appellant,

v.

BEDECHAL CLAN, by Baules Sechelong, Trustee,
Appellee.

CIVIL APPEAL NO. 7-89
Civil Action No. 164-84

Supreme Court, Appellate Division
Republic of Palau

Opinion and order
Decided: June 23, 1990

Counsel for Appellant: David F. Shadel

Counsel for Appellee: Johnson Toribiong

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice;
ROBERT A. HEFNER, Associate Justice.

NAKAMURA, Chief Justice.

BACKGROUND

This is an appeal from the trial court's court's sua sponte order amending its judgment.

Several Determinations of Ownership were issued by the former Palau District Land Commission in 1984 from which appellant herein had appealed to the Trial Division for a trial de novo based on 67 TTC §115 and TTC R. of App. Pro. 15(c). Appellee did not file a Response Brief.

On December 5, 1988, the trial court issued its Decision and Order, vacating the Determinations of Ownership **185** and setting the matter for a status conference on January 6, 1989.

On February 6, 1989, the trial court vacated its January 9, 1989 Order and amended its December 5, 1988 Order, to remand the case to the Land Claims Hearing Office, which is the successor to the Palau District Land Commission, for further proceedings. The trial court promulgated these actions because it felt as the first stage appellate tribunal it should, after overturning a decision of the former Palau District Land Commission, remand the matter back to that agency's successor for adjudication. The trial court also believed it lacked authority to grant

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appellant a de novo hearing.

Appellant moved to have that decision amended, and the trial court denied the motion on May 25, 1989. On June 23, 1989, this Appeal was filed.

Appellant has made three claims. First, the clan says the trial court lacked authority to change its judgment which vacated the Palau District Land Commission's Determinations of Ownership sua sponte. Second, appellant argues that, by changing its judgment without notice to it or opportunity for a hearing, the trial court violated its procedural due process rights as set forth in Art. IV, § 6 of the Constitution. Third, it claims that it has the right under 35 PNC § 1127 to have the trial court consider using its discretion to grant a trial de novo of the issues, pursuant to 67 TTC § 115 and Rule 15(c) of the Trust Territory Appellate Rules. We agree with all of appellant's contentions.

¶86 Upon careful consideration, this Court REVERSES the trial court's decision to remand the case to the Land Claims Hearing Office, and REMANDS this case to the trial court for a de novo hearing.

DISCUSSION

The trial court lacked jurisdictional authority to change, sua sponte, its judgment vacating the Palau District Land Commission's Determinations. To do this the trial court would have had to comply with ROP R. Civ. Pro. 59(d), which states:

On Initiative of Court. Not later than ten (10) days after entry of judgment the court of its own initiative may order a new trial . . . After giving the parties notice and an opportunity to be heard

None of these conditions were met. The trial court did not have the jurisdiction to remand to another forum, the Land Claims Hearing Office, under these circumstances. See *Sebaklim v. Uehara*, Civil Appeal No. 2-86 (Aug. 17, 1989); *Kain v. Winslow Manufacturing Co.*, 736 F.2d 608-9 (10th Cir. 1984); *Sun-Tek Industries v. Kennedy Sky Lites*, 848 F.2d 179, 181 (D.C. 1988); *First State Bank and Trust v. Sand Springs State Bank*, 528 F.2d 350, 353 (10th Cir. 1976).

¶87 The appeal was filed in 1984, before the Palau National Code came into force,¹ and it was therefore under the rules of the Trust Territory Code. These rules should still apply in the treatment of this case. See *Wasisang v. Trust Territory*, 1 TTR 14, 15-16 (Pal. High Ct., Tr. Div. 1952). Furthermore, the adopters of the PNC specifically addressed the issue of pending cases and former law.

Pending cases and matters.

. . . The legal rights of the parties in any case or matter pending before the Palau District Land Commission and land registration teams . . . Shall in no way be

¹ Palau National Code (PNC) came into force on July 22, 1985.

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impaired by this chapter

35 PNC § 1127, formerly RPPL 2-18, § 27, as amended by RPPL 2-24 § 27, modified.

The legislative history of the adoption of the PNC, furthermore, notes:

Statement of intent.

This Act . . . is not intended to effect any substantive changes to the law currently applicable in the Republic.

RPPL No. 2-3, Third Regular Session, July 1985. See also *Koror State v. Brell. et al.*, Civil Action No. 149-88 (Tr. Div. 1988).

The law at the time this appeal was filed was 6 TTC § 355 (2):

Powers of courts on appeal or review.

(2) The findings of fact of the Trial Division of the high court in cases tried by it shall not be set aside by the appellate division of that court unless clearly erroneous, but in all other cases the appellate or reviewing court may review the facts as well as the law. (Emphasis added).

188 6 TTC § 355 (2) became 14 PNC § 604(b), with the addition of the words “or the Supreme Court”.

Since the original hearing of this matter was before the Palau District Land Commission, this matter falls under the category of “other cases,” per the above-cited statute, and facts may therefore be reviewed by the Trial Division outside of the “clearly erroneous” standard. This can, at the discretion of the reviewing trial court, amount to a de novo review. See also *Jose Cruz v. Alien Property Custodian of the Trust Territory of the Pacific Islands*, 8 TTR 281, 283 (Ponape, High Ct. App. Div. 1982); *Kingko Apap v. Cecilia Cabrera and Ipin Nogis*, 8 TTR 463, 464-5 (Truk High Ct., App. Div. 1985); *Truk Trading Co. v. Koro Paul*, 8 TTR 515, 516-518 (Truk, High Ct., App. Div. 1986).

In this particular case, there should be a de novo hearing before the trial court, which had jurisdiction to conduct the review, and which originally ordered a de novo review. The trial court found that there were “severe deficiencies in the record” from the Palau District Land Commission; that the “determination [was, about some issues], clearly contrary to the evidence,” and that the 5 ½ year delay in issuing the Determinations “would seem to be a denial of due process of law, if not offensive to the Constitution.” Trial Court Decision and Order, 2-3, Entered Dec. 05, 1988. For these reasons, as well as for reasons of judicial economy and finality, the trial court is hereby ordered to conduct a de novo hearing of this case.

189 This matter is, therefore, REVERSED and REMANDED to the trial court for further proceedings consistent with this opinion.