

Brikul v. Rengechel and LCHO, 3 ROP Intrm. 195 (1992)
**NEGESKESUK CLAN, Represented
by RENGULBAI BRIKUL,
Appellant,**

v.

**OUKERDEU RENGEHEL AND LCHO
Appellees.**

CIVIL APPEAL NO. 31-91
Civil Action No. 296-91

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: October 10, 1992

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Rosemary Skebong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ROBERT A. HEFNER, Part-time Associate Justice; ALEX R. MUNSON, Part-time Associate Justice

PER CURIAM:

BACKGROUND

On March 5, 1991, the Land Claims Hearing Office (LCHO) issued an order holding that appellee Oukerdeu Rengechel is the heir of decedent Rengechel, and, therefore, was the owner of Lot Nos. 002 A 07; 00 A 12; 007 A 004; 005 A 39; and 016 A 16, all located in Meyuns Hamlet, Koror, Palau. No appeal of the LCHO decision was filed, but on July 26, 1991, appellant filed a complaint in the Trial Division of the Supreme Court seeking to set aside the LCHO decision on the ground that it lacked jurisdiction over probate matters.

The LCHO filed its Answer to the Complaint, and therein alleged that appellant had failed to timely appeal the LCHO decision which should bar his Complaint to the Trial Division. **¶196** The Court then, *sua sponte*, treated the Answer “as tantamount to a motion for summary judgment under ROP Civ. Pro. 56(b) and (c)”, and granted summary judgment in favor of defendants. The Court reasoned that plaintiff had failed to timely appeal pursuant to 35 PNC § 113 and therefore could not use a Complaint to the Trial Division to, in effect, revive its appeal.

Appellant has not addressed the procedural aspect of the trial court’s granting of summary judgment. Rather, it raised the following sole issue: Whether 35 PNC § 1116, which

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authorized the LCHO to determine the heirs or devisees of a person who had any land registered under the Palau Land Registration Act, is an unconstitutional delegation of judicial authority to an administrative agency.

The LCHO filed no opposition brief.

ANALYSIS

The recent case of *Otiwii v. Iyebukel Hamlet*, Civil Appeal No. 28-91 (September, 1992) is dispositive of this appeal. In *Otiwii*, appellant argued, among other things, that 35 PNC § 1101 *et seq.* is an unlawful delegation of judicial power to an administrative agency. The Court rejected this argument, holding: “The LCHO is an inferior court of limited jurisdiction created by law pursuant to Article X of the Palau Constitution.” It is, therefore not an unconstitutional delegation of judicial authority to an administrative agency. *Id.*

¶197 Pursuant to *Otiwii*, the jurisdiction of the LCHO is defined by 35 PNC § 1101 *et seq.*, the statutory scheme which created the LCHO. Under Section 1116 of 35 PNC the LCHO is granted jurisdiction to determine the heirs or devisees of a person who had land registered under the Palau Land Registration Act. The land at issue herein was so registered and the LCHO carried out its legislative mandate by determining the heirs of the decedent and issuing certificate of title accordingly.

Appellant conceded during oral argument that *Otiwii, supra*, dispositively holds that the LCHO is an inferior court of limited jurisdiction, but argued that: 1) Section 1116 of 35 PNC unconstitutionally delegates to the LCHO matters which are within the exclusive jurisdiction of the Supreme Court pursuant to Article X, Sec. 1 of the Palau Constitution; and 2) the Court should “limit” the application of Section 1116 since the LCHO is a court of “lesser dignity” than the Court of Common Pleas which is specifically precluded from entertaining land matters by 4 PNC § 206. Both arguments lack merit.

Article X, Sec. 1 states: “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.” (emphasis supplied). As an inferior court of limited jurisdiction, the LCHO is part of the unified judiciary and therefore not outside the scope of jurisdiction vested by Article X, Sec. 1.

Appellant cited no support for the proposition that the Court **¶198** of Common Pleas is “superior” to the LCHO and that the language of 4 PNC 206 precluding it from hearing land matters must be applied by the Court to limit the LCHO in the same manner. Instead, appellant argued that common sense dictates such a limitation because the requirements to sit as a judge on the Court of Common Pleas are more rigorous than those to be a member of the LCHO. The Court finds no Constitutional or statutory support for this argument and disagrees that it is a matter of common sense. It is consistent with the LCHO’s jurisdiction to hear land claims that it also determine the heirs or devisees of persons who had land registered under the Palau Land Registration Act: both require, among other things, determinations of genealogy, the strength of

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clan members and customary issues.

Because the LCHO had jurisdiction to reach its determination, appellant's avenue of appeal was to file an appeal pursuant to 35 PNC § 1116l. Its failure to do so demanded that the trial court grant judgment for appellee's. The decision of the trial court is, therefore, **AFFIRMED**.