

*Sungino v. Palau Evangelical Church*, 3 ROP Intrm. 72 (1992)  
**IN THE MATTER OF THE APPEAL  
FROM THE LAND CLAIMS HEARING OFFICE,**

**FRANCISCO BABUL SUNGINO,  
Appellant,**

v.

**PALAU EVANGELICAL CHURCH,  
Appellee.**

CIVIL APPEAL NO. 8-91  
Civil Action No. 14-90

Supreme Court, Appellate Division  
Republic of Palau

Appellate opinion  
Decided: February 20, 1992

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Kevin N. Kirk

BEFORE: LOREN A. SUTTON, Associate Justice; ROBERT A. HEFNER, Associate Justice;  
and ALEX R. MUNSON, Associate Justice

PER CURIAM:

#### BACKGROUND

This appeal concerns the ownership of Tochi Daicho Lot No. 1150 which consists of 725 tsubo and is a portion of land known as Idelei located in Ngaraard. In order to determine this appeal it is necessary to refer to *Ocheraol Dirraiwetechong, et al. v. Blaluk*, (1959) (unreported), which was litigation involving the ownership of a portion of Lot No. 1150.

The plaintiffs in *Ocheraol*, were three sisters who claimed that Lot 1150 was their individual property. They asserted that the land had belonged to their paternal uncle Babul, but that he had **L73** given it to them in 1952 after a meeting following the death of their father, Ngirakesau. The defendant, Blaluk, claimed that the property was once controlled by Babul, but that in 1948 he was given a portion of the land by Babul.

In its Pre-trial Order, the *Ocheraol* court listed the following as “important questions on which evidence is to be submitted” at trial: “a) Did Babul and others give the land in dispute to Blaluk in 1948?; and b) What disposition did Babul make or try to make of the land in dispute

*Sungino v. Palau Evangelical Church*, 3 ROP Intrm. 72 (1992)

after Ngirakesau's death in about 1952?" The Pre-trial Order listed Babul as one of plaintiffs' witnesses, but no transcript of his testimony is available and he is deceased.

The court's final judgment held that the portion of Lot No. 1150 claimed by Blaluk was his individual property. The Judgment made no reference to the determination of what disposition Babul made, or tried to make, of the land in 1952, and stated nothing about what title, if any, the plaintiffs held for the remainder of Lot No. 1150 not owned by Blaluk. There was no appeal from this Judgment.

The Palau Evangelical Church subsequently obtained Blaluk's title to the portion of Lot No. 1150 that was awarded to him in *Ocheraol*, and it also obtained title to the remaining portion of Lot 1150 that was allegedly owned by the plaintiffs in *Ocheraol*. From 1960 until the present, the land has been the site of Palau Evangelical Church buildings.

In 1990, the Church filed an action to quiet title to Lot 1150 ¶174 with the Land Claims Hearing Office (LCHO). Appellant herein was an adverse claimant asserting that he owns Lot No. 1150 by virtue of a warranty deed executed by his adopted father Babul in 1977. The LCHO held that pursuant to 35 PNC 1110(c) it was precluded from trying the ownership of lands "already adjudicated" and consequently did not determine ownership regarding land that was awarded to Blaluk in *Ocheraol*. As to the remaining portion of Lot No. 1150, the LCHO held that it had been given to Ocheraol Dirraiwetechong, Murako and Rosa and that they in turn sold it to the Palau Evangelical Church. It is clear from the Summary and Adjudication that the LCHO reached its decision regarding the sisters' portion based on testimony presented, evidence received and its findings of fact, and not on res judicata.

Francisco appealed the LCHO determination to the trial division asserting that the LCHO erred by holding that the decision in *Ocheraol* was res judicata. Francisco also argued that if the LCHO decision was based upon res judicata, the LCHO had no jurisdiction to adjudicate the portion of Lot No. 1150 that he contends was awarded to Ocheraol Dirraiwetechong, Murako and Rosa.

On January 22, 1991, the trial court issued its decision holding that "the LCHO was correct in determining that it could not re-adjudicate ownership of the 400 tsubo adjudged to belong to Blaluk in Civil Action No. 94." (Decision of trial court, Jan. 22, 1991, p.3). The court then went on to hold:

"As to the remaining 325 tsubo of Tochi Daicho Lot No. 1150, the judgment in Civil Action No. 94 provides clear and convincing evidence to overcome the Tochi Daicho's presumption of accuracy. *Ngiradilubech v. Timulch*, 1 ROP ¶175 Intrm. 625, 629 (App. Div. May, 1989). The testimony of Bells Olikong regarding the grant of a use right rather than a transfer of fee simple ownership was apparently not accepted by the LCHO. In view of the other evidence, especially Babul's position in Civil Action No. 94, it cannot be said that the LCHO's contrary finding was 'clearly erroneous.' *Riumd v. Tanaka*, 1 ROP Intrm. 597, 601 (App. Div. April, 1989). The Court finds, therefore, no basis to overturn

*Sungino v. Palau Evangelical Church*, 3 ROP Intrm. 72 (1992)  
the LCHO's determination as to Tochi Daicho Lot No. 1150."

Francisco has appealed the decision of the trial court, but on narrower grounds of error than asserted on appeal to the trial court. Francisco now concedes that the decision in *Ocheraol* is res judicata as to the portion of Lot No. 1150 held to be owned by Blaluk. (Appellant's Opening Brief, pp. 11, 16). However, he alleges that the trial court erred by holding that *Ocheraol* is res judicata as to the portion of Lot No. 1150 originally claimed by the *Ocheraol* plaintiffs.

#### ANALYSIS

Francisco's entire brief is devoted to the argument that the trial court erred by holding that the decision in *Ocheraol* was re judicata as to the portion of Lot No. 1150 not awarded to Blaluk. The problem with this argument and assignment of error is that it does not address the grounds upon which the trial court based its decision to affirm the LCHO determination.

Nowhere in Francisco's brief does he argue that the trial court erred by: 1) holding that the decision in *Ocheraol* rebutted the presumption that the listing of Babul as the owner in the Tochi Daicho was accurate; or 2) holding that the LCHO's determination based upon the testimony of Bells Olikong, the position taken by **176** Babul in *Ocheraol*, and other evidence was clearly erroneous. In short, Francisco failed to assign error to the basis of the trial court's decision which constitutes waiver and is fatal to his appeal. *Udui v. Temol*, Civ. App. No. 12-89, p. 4 (May 8, 1991) (When an issue is not assigned error or argued and briefed it is waived).

Finally, Francisco's argument that the LCHO did not have jurisdiction to re-adjudicate the portion of Lot No. 1150 originally claimed by the *Ocheraol* plaintiffs is without merit. We agree with Francisco's position that the sisters' title was not fully adjudicated in *Ocheraol*. Consequently, 35 PNC sec. 1110(c) did not deprive the LCHO of jurisdiction.

The decision of the trial court affirming the decision of the LCHO is AFFIRMED.