

*Ngiratereked v. Joseph*, 4 ROP Intrm. 80 (1993)  
**BRENGIEI NGIRATEREKED,**  
**Appellant,**

v.

**VICTOR JOSEPH,**  
**Appellee.**

CIVIL APPEAL NO. 3-92  
Civil Action No. 9-91

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: December 17, 1993

Counsel for Appellant: J. Roman Bedor, T.C.

Counsel for Appellee: Yukiwo P. Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice.

BEATTIE, Justice:

This appeal concerns two lots in Ngarchelong State known as Ingos<sup>1</sup> and Ngermenganged<sup>2</sup>. The Land Claims Hearing Office determined that Ingos was the individual property of Appellee Victor Joseph (“Joseph”) and that Ngermenganged was owned by the Erbai Family, with Joseph as administrator. The trial division affirmed and Appellant Brengiei Ngiratereked (“Ngiratereked”) appealed the trial division’s decision to this court. We reverse.

### BACKGROUND

Ngiratereked and Joseph are members of the Ngermenganged **L81** Lineage. Ngiratereked and Erbai were children of Ibedul. Joseph is the natural son of Erbai and was adopted by another member of the lineage. The Tochi Daicho lists Ingos as the individual property of Erbai, and Ngermenganged as the property of Ngermenganged Lineage with Erbai as trustee. Erbai died in 1984.

### INGOS

Ingos is listed in the Tochi Daicho as the individual property of Erbai. Joseph contends

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<sup>1</sup> Tochi Daicho Lot No. 798 and Cadastral Lot No. 005 F 09.

<sup>2</sup> Tochi Daicho Lot No. 802 and Cadastral Lot No. 004 F 14.

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that Erbai gave Ingos to him before he died. He also contends in the alternative that Erbai left Ingos to him by means of an oral will. Ngiratereked contends that there was never an inter vivos transfer of the property and that any attempted transfer was void because it was not by written instrument as required by the statute of frauds. Accordingly, she contends that at Erbai's death Ingos should have passed according to the descent and distribution scheme set forth in 39 PNC 102(d)<sup>3</sup>.

The LCHO found that Erbai had given a power of attorney to Joseph, to "discuss and determine the disposition of" his properties. Since Joseph wanted the property awarded to himself, the LCHO determined that he owned Ingos because he had the authority under the power of attorney to direct that the property be awarded to himself. The problem with that conclusion is that a power of attorney terminates upon the death of the grantor. **182** 3 Am. Jur. 2d Agency § 55. Therefore, at the time of the LCHO hearing Joseph had no authority over Ingos under the power of attorney.

The trial division based its decision on the mistaken assumption that the LCHO found that Erbai had given Ingos to Joseph before he died. Reviewing that "finding" on a clearly erroneous standard, the trial court affirmed. The trial division erred in arriving at its decision by purporting to adopt an LCHO finding of fact that was never made by the LCHO. The LCHO did not find that Erbai gave Ingos to Joseph during his lifetime. Although the trial division was free to make its own finding independent of the LCHO findings if supported by the evidence in the record, it did not do so in this case. Instead it attempted to adopt a finding that was never made. The trial division's judgment is not based on by findings of the LCHO or by the trial division's own independent findings of facts. Accordingly, this case must be remanded for the making of such findings.

#### NGERMENGANGED

This property is listed in the Tochi Daicho as owned by Ngermenganged Lineage with Erbai as trustee. Joseph claimed the property on behalf of the Erbai family. Ngiratereked claimed it on behalf of Ngermenganged Lineage. The LCHO awarded the property to Erbai Family with Joseph as administrator, finding that he had the power of attorney to direct its disposition, just as with Ingos. As earlier stated, however, the power of attorney had **183** already terminated by the time of the LCHO proceedings.

The trial division found that the Ngermenganged Lineage had "become extinct" and that Joseph was made administrator for the family under the power of attorney. The un-controverted evidence, however, is that the Ngermenganged Lineage is not extinct. Its members include Appellant, Appellee, and Appellant's children. It was clearly erroneous for the trial division to find that the Ngermenganged Lineage had become extinct.

#### TRIAL COURT'S STANDARD OF REVIEW

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<sup>3</sup> The trial court held that 39 PNC 102(d) applies only where the decedent dies without issue. That was a mistake of law. The statute also applies where decedent acquires the land "other than as a bona fide purchaser for value".

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The trial division reviewed the LCHO findings of fact, such as they were, <sup>4</sup> using the clearly erroneous standard. It erred in using that standard. *Silmai v. Rechucher*, Civ. App. No. 34-91 (1993). The trial division may review the facts de novo. It has the discretion to adopt the LCHO findings in whole or in part and/or may make its own new findings as long as there is evidence in the LCHO record to support its findings. Further, it can take additional evidence, as long as it affords all parties an opportunity to be heard, or hold a complete new trial to determine ownership.

CONCLUSION

With respect to Ingos, we reverse the trial division and **L84** remand for further proceedings not inconsistent with this opinion. With respect to Ngermenganged, we reverse the trial division and remand with instructions that it enter judgment declaring Ngermenganged Lineage to be the owner. The lineage may determine the administrator on its own in accordance with custom.

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<sup>4</sup> The findings of the LCHO were sparse and inadequate. Although the trial division can review the record and make findings, the LCHO should make separate findings of fact sufficient to support its determination of ownership. *See* 35 PNC 1112.