

Rehuher v. Ngiratiobech, 4 ROP Intrm. 85 (1993)

VICTOR O. REHUHER,
Appellant,

v.

MOKISANG NGIRATIOBECH,
Appellee.

CIVIL APPEAL NO. 42-91
Civil Action No. 396-90

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: December 17, 1993

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: David Kirschenheiter

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

MILLER, Justice:

Victor Rehuher appeals the judgment of the Trial Division, which affirmed the decision of the Land Claims Hearing Office (LCHO) awarding land known as Blas in Dims Hamlet, Kayangel State, to Appellee Mokisang Ngiratiobech.¹ The LCHO found that Blas was the generic name for an area encompassing Tochi Daicho Lot Nos. 317, 320, 321, 325, and 326, which the LCHO had consolidated into Cadastral Lot No. 2G-164. We affirm the judgment of the Trial Division.

186 BACKGROUND

The two parties each claimed the land in question--Rehuher by inheritance from his father Rehuher Tarimel, and Ngiratiobech by purchase from the same Tarimel in 1965 or earlier. The Tochi Daicho lists Rehuher (Tarimel) as the individual owner. The relevant evidence, adduced at the LCHO hearing from the testimony of the two parties and a third adverse claimant, Victoria Ngiraremiang, is as follows:

Ngiratiobech testified that he paid \$600 to Tarimel for the property at least twenty-five

¹ Mr. Rehuher died before oral argument of this appeal. We proceed to the merits on the basis of his counsel's oral motion, which we hereby grant, to substitute his heirs as appellants herein.

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years ago, and has been living on the land ever since that time. At the time of the sale, Tarimel showed him the eight monuments that enclose the land known as Blas. No mention was made of Tochi Daicho lot numbers at the time of the sale, but the five lots all fall within Blas. Years later Ngiratiobech paid Tarimel's sister Rebai another \$400 because she claimed that \$600 was insufficient and she was the one with authority in the family.

Rehuher testified to his belief that Blas only referred to Tochi Daicho Lot No. 320. He admitted, however, that he does not know the generic name of the other lots and that he has not seen the monuments on the land.

The third claimant, Victoria Ngiraremiang, the grand-daughter of Tarimel's sister Ibiochel, testified that Blas consisted of the five Tochi Daicho numbers.

DISCUSSION

Appellant does not dispute Ngiratiobech's purchase of Blas, L87 nor does he argue that the boundaries around Cadastral Lot No. 2G-164 are not coterminous with the perimeter of the combined Tochi Daicho lots. Rather, he argues that the LCHO had a statutory duty to survey each of the Tochi Daicho lots separately before adjudicating title to Cadastral Lot No. 2G-164.

We reject this argument for two reasons. First, at the LCHO hearing in this matter, one of the hearing officers explained that a survey of the individual lots would only be undertaken in the event that they were found to have different owners. Appellant concurred in this procedure, thus waiving his current objection to the LCHO's action.

Second, we believe that the procedure followed by the LCHO was entirely appropriate in the circumstances at hand. Appellant's argument to the contrary is based on his interpretation of 35 PNC § 1108, which provides in pertinent part:

§ 1108. Survey and establishment of boundaries in designated registration areas.

Upon the designation of a registration area, the Senior Land Claims Hearing Officer shall notify the Chief of Lands and Surveys of such designation. The Chief of Lands and Surveys shall as soon as practicable, assign a team or teams of land surveyors to perform an accurate survey to be made of the exterior bounds of the area and thereafter to cause such surveys to be made of the claim and place such markers within the area. . . .

Appellant focuses on the words "accurate survey" and interprets them to require a survey which is designed to identify the existing Tochi Daicho lots. No authority is cited for this interpretation, which is belied by the immediately ensuing language: "to be made of the exterior bounds of the area." Given that Ngiratiobech claimed and was found to be the owner of all five lots, there was L88 and is no logical reason to survey anything other than the perimeter of the property.

In any event, a resurvey of the individual lots would serve no purpose unless there were

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some reason to doubt the LCHO's determination, adopted by the court below, that Blas includes all five lots, rather than just Tochi Daicho Lot No. 320. But as appellant apparently concedes, that finding was not clearly erroneous and therefore must be upheld. ROP Civ. Pro. 52(a); *Silmai v. Rechucher*, Civil Appeal No. 34-91, slip op. at 3 (Dec. 9, 1993); *Usui v. Nishizono*, 1 ROP Intrm. 358, 360 (1987).

CONCLUSION

Having been presented with claims for all five Tochi Daicho lots and having determined that Ngiratiobech was the owner of all of them, the LCHO had no statutory duty to survey them individually. The judgment of the Trial Division is AFFIRMED.