

Ngirasibong v. Adelbai, 4 ROP Intrm. 95 (1993)
TULIK BILAMANG NGIRASIBONG,
Appellant,

v.

ROSE ADELBAI,
Appellee.

CIVIL APPEAL NO. 13-91
Civil Action No. 91-86

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: December 17, 1993

Counsel for Appellants: Yukiwo P. Dengokl

Counsel for Appellee: John K. Rechucher

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

MILLER, Justice:

This case involves a disputed boundary between two tracts of land in Ngermid Hamlet of Koror State. The Trial Division confirmed Appellee Rose Adelbai's claim on the basis of a prior agreement between the parties. We affirm the judgment.

BACKGROUND

Appellee Rose Adelbai commenced this action in 1986 by filing an ejectment suit against Otei Ngirasibong, and upon Otei's death Appellant Tulik Bilamang Ngirasibong (hereafter "Tulik") was substituted as a named party. Adelbai claimed that Otei built a house that encroached upon her land, known as Melaiketau. Tulik claimed that the house sits upon land, known as Tab, that belongs **196** to the Badureang Clan, of which Tulik is the chief male title holder.

The trial court upheld Adelbai's position that Melaiketau consists of a triangular lot (1,513 square meters) to the northeast of Tab (5,593 square meters). Tulik contends that Tab consists of 7,106 square meters, in effect subsuming Melaiketau. It is undisputed that Melaiketau is owned by Adelbai, and Tab by the clan.

This case has a complex procedural history. In 1972 the Badureang Clan filed a claim for

Ngirasibong v. Adelbai, 4 ROP Intrm. 95 (1993)

Tab with the Palau District Land Commission. Boundary markers were set by a member of the clan in the presence of other clan members, Adelbai, and a Land Commission officer. The markers followed the Japanese monuments which had been used to compile the Tochi Daicho.

In 1977 Adelbai and representatives of the clan met in a formal hearing before the Land Commission and reached an agreement as to the boundary between Melaiketau and Tab. The Land Commissioner requested the Office of Lands and Surveys to survey the boundary of the two lots. Lands and Surveys mistakenly followed the boundary as originally claimed by the clan, not the boundary agreed to by the parties. Unaware of the error, the Land Commission issued a certificate of title in 1979 to the clan for Tab, with its size listed as 7,106 square meters. The Land Commission later learned of its mistake and requested Lands and Surveys to resurvey the land to reflect the boundary that had been agreed to by the parties. In 1981 the Senior Land Commissioner [L97](#) cancelled the certificate of title, and in 1983 the Land Commission issued a new certificate of title for Tab, now consisting of 5,593 square meters. A certificate was issued in 1987 for Melaiketau, consisting of 1,513 square meters, or exactly the difference in area between the first and second surveys of Tab.

DISCUSSION

I. The Boundary Agreement

Tulik denies that he ever agreed to the boundary change and argues that any such agreement could not have been effective without the consent of the strong and senior members of the clan. These claims are without merit.

The Appellate Division will not overturn a trial court finding of fact unless it is clearly erroneous, and we give due regard to the opportunity of the trial court to judge the credibility of the witnesses. ROP Civ. Pro. 52(a). *Usui v. Nishizono*, 1 ROP Intrm. 358, 360 (1987). Otherwise stated, the trial court's factual findings may not be set aside "if reasonable evidence exists in support of the Trial Court's findings and in the absence of manifest error." *Silmai v. Magistrate of Ngardmau Municipality*, 1 ROP Intrm. 181, 183 (1984)

There is ample evidence to uphold the trial court's finding that the parties had come to an agreement regarding the boundary at the Land Claims Office in 1977. The record contains a map showing the agreed boundary, signed by Adelbai and clan representatives Dingelius Merep Tulik and Ebil Tulik Yaeko Yaesang. [L98](#) Adelbai and a witness named Tutoud provided testimony confirming the agreement. Dingelius Merep Tulik at first denied the agreement, but upon redirect examination admitted he had signed it. It is true that appellant Tulik denied agreeing to the boundary change, but the trial court found him not to be a credible witness. Moreover, Tutoud testified that Tulik had been present when the agreement was reached and that he understood the agreement because the Land Commission representative clearly explained the significance of the boundary.

Tulik attacks the boundary agreement on the ground that there was no "meeting of the minds." He argues that he does not know how to read maps and therefore his signature on the

Ngirasibong v. Adelbai, 4 ROP Intrm. 95 (1993)

boundary agreement is meaningless. This contention is without merit. As this Court recently elucidated in *Kamiishi v. Han Pa Constr. Co.*, Civ. App. No. 23-90, slip op. at 3-4 (Nov. 30, 1993), the concept of a meeting of the minds is highly discredited in the law. In any event, the trial court's factual conclusion that the clan's representatives were told and understood the significance of the agreement is not clearly erroneous.

Tulik's argument that the boundary agreement violates the Palauan customary rule that land may not be alienated without the consent of the strong and senior members is similarly without merit. The agreement was not an alienation of clan land but rather the clarification of the boundary between Tab and Melaiketau. The boundary agreement did not cede Melaiketau to Adelbai; rather Adelbai's ownership was established in a separate proceeding. See **199** *Mowai Ngiraibab v. Adelbai and Palau Land Commission*, Civil Action No. 94-83 (Tr. Div. Nov. 20, 1985), appeal dismissed, 2 ROP Intrm. 111 (1990). Moreover, the top three title-holders in the clan--Tulik Bilamang, Dingelius Merep Tulik, and Ebil Tulik Yaeko Yaisang--all represented the clan in the Land Commission hearings, and any other members were entitled to be heard. 67 TTC § 112.

II. The First Certificate of Title

Tulik argues that the issuance of his first certificate of title constituted a final adjudication by the Land Commission, which thereupon lost its authority to issue a second certificate. He also challenges the authority of the senior commissioner to cancel the first certificate in light of the statute (67 TTC § 116) requiring the concurrence of at least two members of the Land Commission. Tulik's third contention is that the Commission violated his due process rights by withdrawing the first certificate and issuing a second without giving him notice and an opportunity to be heard.

We agree that the general rule is that certificates of title must be considered final. The governing statute at the time provided that "[s]uch certificate of title shall be conclusive upon all persons who have had notice of the proceedings and all those claiming under them and shall be prima facie evidence of ownership as therein stated against the world. . ." 67 TTC § 117(a). The statute permitted certificates of ownership to be issued only upon the conclusion of any appeal from the Land Commission's **1100** determination of ownership. *Id.* We note that the same procedure has been carried over to the Commission's successor, the Land Claims Hearing Office. 35 PNC § 1114(a). These statutes are consistent with the important public policy favoring the final adjudication of land titles to promote certainty and to preclude endless litigation.

Mindful of the general rule, we nevertheless believe it inapplicable to the facts presented. The parties stipulated as to the disputed boundary. The Land Commission, through no fault of either party, relied on an erroneous survey that did not reflect the stipulated boundary. The second certificate thus served merely to carry out what been agreed to by the parties to the proceeding. Moreover, there was no subsequent conveyance nor any other action taken in reliance on the first certificate. We hold that under these peculiar--and, we hope, unique--circumstances the Commission had the authority to withdraw the erroneous certificate and issue a correct one.

Tulik also contends that the senior land commissioner had no authority to cancel the clan's first certificate of title without the concurrence of at least one more commissioner. The statute he relies on, 67 TTC §116, was entitled: "Concurrence of majority present required for decision by commission." It becomes clear from reading an ensuing statute, however, that Section 116 only required such concurrence for the initial adjudication of a land claim, and by no means prohibits the senior commissioner from acting unilaterally in regard to certificates of title once they **L101** have been issued by the full Commission. Section 119, subsection 1, authorized the senior commissioner to note subsequent transfers or encumbrances on the certificate of title, and subsection 2 authorized the senior commissioner to cancel a certificate of title upon the death of the registered owner. It is therefore clear that the senior commissioner had the authority to cancel certificates in some circumstances. We therefore hold that he did not exceed his statutory authority by unilaterally cancelling the first certificate of title.

Tulik's third contention is that the Commission violated his due process rights by not giving him notice and an opportunity to be heard before correcting the certificate of title. We agree that it was error for the Commission to deny Tulik the opportunity to be heard before issuing the second certificate. Nevertheless, we hold that the Commission's failure to provide Tulik with notice and a right to be heard was cured by the opportunity he was subsequently afforded to challenge that certificate before the Trial Division. In essence, the proceedings below afforded him a trial de novo on the correctness of the Commission's action.

III. Discrepancies Regarding Other Lots

Tulik argues that the trial court committed error in another regard by failing to consider evidence as to discrepancies in neighboring lot numbers and land areas. Even if such discrepancies do exist, however, they have no bearing on the two tracts of land in the present dispute. Having established the size and location **L102** of Melaiketau, the court's inquiry was at an end. It had no further obligation to consider evidence not relevant to its determination.

CONCLUSION

The court's finding that the parties had reached an agreement regarding the disputed boundary is amply supported by the record and is thus not clearly erroneous. While certificates of title must generally be considered final adjudications, the Land Commission had the authority to withdraw its original certificate of title in this case because it contravened the agreement of the parties and because there was no subsequent action taken in reliance upon it. The court did not err by failing to consider evidence regarding neighboring tracts because it was irrelevant to this dispute. The judgment of the Trial Division is accordingly AFFIRMED.