

*Ngiradilubech v. Nabeyama*, 5 ROP Intrm. 117 (1995)  
**ABRAHAM NGIRADILUBECH**  
**Appellant,**

v.

**HIROMI NABEYAMA,**  
**Appellee.**

CIVIL APPEAL NO. 23-94  
Civil Action No. 514-89

Supreme Court, Appellate Division  
Republic of Palau

Opinion  
Decided: May 30, 1995

Counsel for Appellant: David J Kirschenheiter

Counsel for Appellee: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate Justice; PETER T. HOFFMAN, Associate Justice.

BEATTIE, Justice:

This matter, which was initially heard by the Land Claims Hearing Office (“LCHO”), is before the Court on Abraham Ngiradilubech's (“Ngiradilubech”) appeal from the trial court's Partial Judgment denying Ngiradilubech's claim that he should be awarded title to certain land previously owned by his deceased uncle. Ngiradilubech contends that he was adopted by his uncle and, as his uncle's oldest living male child, is the proper owner under 39 PNC § 102(c). Appellee Hiromi Nabeyama (“Nabeyama”) contends that this appeal should be dismissed for procedural errors, and that under Palauan custom Ngiradilubech was not the son of his uncle and thus does not fall within the scope of section 102(c). Nabeyama urges that ownership should be determined by 39 PNC § 102(d).<sup>1</sup> For the reasons stated below, we reverse and remand for the limited purpose of awarding the land to Ngiradilubech.

---

<sup>1</sup> Nabeyama contended below that a will was in place and thus 39 PNC § 102(b) applies to determine ownership. He does not appeal the trial court's judgment rejecting this contention and thus we do not address it here.

## I. FACTS

The material facts in this case are undisputed. Rubeang Ngiradilubech was the owner of certain land in Ngatpang State known as *Becheserrak*, more particularly described as Tochi Daicho Lot No. **1118** 3264.<sup>2</sup> On May 26, 1988, Rubeang Ngiradilubech (“Rubeang”) died. At the time of his death, Rubeang had three children, all of whom were adopted: Victoria Ngiraremiang, Mariar Ngiradilubech and Ngiradilubech. Ngiradilubech, the only male child, was the natural son of Rubeang's younger sister, Iterong. The other two adopted children were the natural children of Ngirur, who married Rubeang. Nabeyama is the natural daughter of Ochob who is the natural daughter of Derby. Derby, in turn, is the sister of Rubeang.

After conducting a hearing to identify the heirs of Rubeang, the LCHO determined that Nabeyama was the rightful heir to inherit the lots at issue here. The LCHO's determination was appealed to the trial court. The trial court entered an Order affirming the LCHO's determination on the ground that Rubeang Ngiradilubech was not a bona fide purchaser for value of the land thus the land would not pass by virtue of 39 PNC section 102(c). This conclusion was reversed by the Appellate Division and the matter was remanded. *Ngiradilubch v. Nabeyama*, 3 ROP Intrm. 101, 105-06 (1992).

On remand, the trial court, relying on the record of the LCHO proceedings, affirmed in part and reversed in part the LCHO's determination. The trial court found that, under Palauan custom, Ngiradilubech did not become the son of Rubeang by virtue of the adoption. The trial court held that this finding precluded application of section 102(c) of PNC Title 39 to award the land to Ngiradilubech. The trial court reversed the LCHO's award of the land to Nabeyama, ordering instead that ownership be determined by the lineage that took care of Rubeang at the time of his death. See 39 PNC § 102(d).

## II DISCUSSION

### A. Motion to Dismiss

We first turn our attention to Nabeyama's motion to dismiss this appeal. Nabeyama's motion is based on an earlier appeal by Ngiradilubech which was dismissed for his failure to timely file an opening brief. The notice of appeal which initiated the earlier appeal was filed on May 6, 1994, following the trial court's service of its Decision and Order on April 8, 1994. By July 5, 1994, Ngiradilubech had failed to file a brief and this panel dismissed the appeal pursuant to ROP R. App. Proc. 31(b). **1119** *Ngiradilubech v. Nabeyama*, Civ. App. No. 5-94 (July 5, 1995). We did not specify in the order whether the dismissal was with or without prejudice.

On September 6, 1994, after unsuccessful settlement discussions between the parties, the trial court entered its Partial Judgment with the explicit purpose of allowing the parties to appeal

---

<sup>2</sup> Rubeang Ngiradilubech was awarded ownership of *Becheserrak* after a series of proceedings culminating in a decision from this Court. *Ngiradilubch v. Timulch*, 1 ROP Intrm. 625 (1989). There is no dispute in this matter over the proper prior ownership of the land by Rubeang Ngiradilubech.

*Ngiradilubech v. Nabeyama*, 5 ROP Intrm. 117 (1995)

the earlier decision. Nabeyama contends that the failure of Ngiradilubech to perfect an appeal within 60 days from April 8, 1994, the date the Decision and Order was served, renders this Court without jurisdiction to hear the appeal now. Ngiradilubech counters that (1) the first appeal was not ripe because less than all the claims were resolved by the Decision and Order, thus it was not a final judgment and was unappealable absent a Rule 54(b) certification by the trial court judge, and (2) in discussions among the trial judge, Nabeyama and himself, it was agreed by all that the earlier appeal was not ripe and it was necessary for the trial judge to enter judgment before an appeal may be had.

We reject Nabeyama's contention that the Decision and Order was appealable as a final judgment. The Decision and Order resolved only Ngiradilubech's claim of ownership under 39 PNC § 102(c). It did not resolve his claim to ownership under 39 PNC § 102(d). That remained before the trial court to be determined. Accordingly, it was not a final judgment. *Gibbons v. Palau*, 1 ROP Intrm. 547MM, 547PP-QQ (1988).

Furthermore, it is clear that the Decision and Order did not constitute a certification under Rule 54(b). Nothing in the Decision and Order could be construed as "an express determination that there is no just reason for delay" and "an express direction for the entry of judgment" as is required under Rule 54(b). *Wolff v. Sugiyama*, 5 ROP Intrm. 10, 11 (1994). That the trial court did not intend its Decision and Order to constitute a Rule 54(b) certification was made unquestionable when it later entered the Partial Judgment which clearly did invoke Rule 54(b) to certify the dismissed claim for appeal.

Ngiradilubech had no opportunity to perfect his appeal until the trial court issued the Partial Judgment. Accordingly, he is not precluded now from pursuing that appeal. That the first appeal was dismissed on other grounds does not mean that the appeal was ripe for review.

#### B. Section 102(c)

We now turn to the merits of the appeal. We will not disturb the trial court's finding of fact unless it is clearly erroneous. *Rebluud v. Fumio*, 5 ROP Intrm. 55, 57 (1995). Conclusions of law, such as statutory interpretation, however, are **L120** reviewed *de novo*. *Braun v. INS*, 992 F.2d 1016, 1018 (9th Cir. 1993).

Ngiradilubech contends that the land should be awarded to him by operation of 39 PNC § 102(c). That section provides:

In the absence of instruments and statements provided for in subsection (b) above, lands held in fee simple, which were acquired by the owner as a bona fide purchaser for value, shall, upon the death of the owner, be inherited by the owner's oldest legitimate living male child of sound mind, natural or adopted, or if male heirs are lacking the oldest legitimate living female child of sound mind, natural or adopted, of the marriage during which such lands were acquired; in the absence of any issue such lands shall be disposed of in accordance with subsection (d) hereof.

*Ngiradilubech v. Nabeyama*, 5 ROP Intrm. 117 (1995)

Nabeyama testified before the LCHO that Ngiradilubech was adopted to be Rubeang's child and that Rubeang had three children: Victoria, Mariar and Ngiradilubech. Victoria also testified that Ngiradilubech was adopted to be the child of Rubeang. Ngiradilubech, too, testified that he was an adopted child of Rubeang.

Ironically, although in their testimony both parties to this case agreed that Ngiradilubech was an adopted child of Rubeang, Ngiradilubech's expert witness testified that under Palauan custom Ngiradilubech could not consider Rubeang to be his father. The expert opined that under Palauan custom, when a male adopts his sister's son as his child, the child's status within the clan is that the child is still the nephew of the adopting male and the child cannot refer to the adopting male as father.<sup>3</sup>

Although the trial court recognized that Rubeang did adopt Ngiradilubech, it concluded that, because Rubeang would not be considered to be Ngiradilubech's father under Palauan custom, Ngiradilubech was not Rubeang's adopted child for purposes of section 102(c). The problem with that conclusion is that, no matter how Rubeang's adopted child may be viewed under Palauan custom, section 102(c) displaces custom. *See Arbedul v. Mokoll*, 4 ROP Intrm. 189, 193 n.3 (1994) (predecessor to § 102(c) “plainly intended to displace custom.”). The plain and unambiguous language of section 102(c) requires only that Ngiradilubech be Rubeang's oldest legitimate living male child of sound mind, adopted or **L121** natural. We conclude that the statute's plain meaning renders the trial court's interpretation erroneous as a matter of law.

Nabeyama also urges that Ngiradilubech was not “adopted” within the meaning of the statute. Although Nabeyama concedes that Ngiradilubech was adopted under Palauan custom, he argues that because under Palauan custom the type of adoption here does not result in a father-son relationship, it falls outside the scope of the statute. We assume, however, that in electing to use the term “adopted” without qualification or limitation, the OEK understood and intended to incorporate within the scope of the section the various types of adoptions of children recognized by Palauan custom, including the type of adoption at issue here.

Under the undisputed facts, and the clear and unambiguous language of section 102(c) of Title 39 PNC, we conclude that Ngiradilubech is the proper heir to inherit from Rubeang the land at issue here. Accordingly, we REVERSE the trial court's Partial Judgment and REMAND to the trial court with the limited instruction to enter judgment in favor of Ngiradilubech.

---

<sup>3</sup> The expert did not state what purpose would be served by such an adoption if the relationship between the adopting male and child remained the same after the adoption.