

Ngermelkii Clan v. Remed, 5 ROP Intrm. 139 (1995)
NGERMELKII CLAN,
Appellant,

v.

ADELBAI REMED,
Appellee.

CIVIL APPEAL NO. 12-94
Civil Action No. 22-84

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: November 8, 1995

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Yukiwo P. Dengokl

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
and PETER T. HOFFMAN, Associate Justice.

HOFFMAN, Justice:

This appeal originated in a dispute over the ownership of a parcel of land known as Lot No. BL-325, located in Ngetkib Hamlet of Airai State. Both parties own land adjacent to BL-325 and both claim BL-325 is a part of their respective parcels. Following a hearing in 1983, the Airai Land Registration Team determined that BL-325 was property of the appellant, Ngermelkii Clan. The Palau Land Commission approved the Land Registration Team's determination and the appellee, Ngermengrang Lineage through its head Remed, appealed to the Trial Division of the Supreme Court.

On appeal to the Trial Division, Justice Robert Gibson conducted an evidentiary hearing and remanded the matter to the Land Commission for further proceedings. The Land Commission, however, did not make any further adjudication and the matter was referred back to the Trial Division. Justice Gibson then proceeded to appoint Moses Mokoll as a master with instructions to conduct a hearing and make a written report and recommendation to the court.

¶140 The master conducted two days of hearings and issued a report in which he concluded that the property belongs to the Ngermengrang Lineage. The trial judge, who, following the retirement of Justice Gibson was now Chief Justice Ngiraklsong, adopted the master's findings and recommendations and held that Lot No. BL-325 is the fee simple property of the appellee. Ngermelkii Clan has now appealed the trial court's decision to this Court.

The first contention urged by Ngermelkii Clan is that the trial judge erred in setting aside the Land Commission determination and conducting further proceedings. In support of this contention, the appellant makes two arguments. First, Ngermelkii Clan contends that the Land Commission's determination should be given the effect of a judicial judgment and should be set aside only if found to be clearly erroneous or lacking support by reasonable evidence. Second, the Clan urges that as a matter of law there was insufficient evidence to justify the trial judge setting aside the Land Commission's determination and conducting further proceedings.

While the "clearly erroneous" standard of review suggested by the appellant is correctly applied by this Court to some appeals from decisions of the Trial Division, *see Umedib v. Smau*, 4 ROP Intrm. 257, 258 (1994); ROP R.Civ.P. 52(a), it has never been held applicable to appeals from the Land Commission to the Trial Division. Instead, the issue of the degree of deference to be paid by the Trial Division to Land Commission decisions was put to rest in the case of *Klai Clan v. Bedechal Clan*, 2 ROP Intrm. 84 (1990).¹ There this Court stated that the factual findings of the Land Commission "may . . . be reviewed by the Trial Division outside of the 'clearly erroneous' standard. This can, at the discretion of the reviewing trial court, amount to a *de novo* review." *Id.* at 88. The rationale for such a standard is ably set forth in the *Klai Clan* decision and will not be repeated here.

There is nothing in the record to suggest that in this instance the trial judge abused his discretion by setting aside the Land Commission's determination. Indeed, Justice Gibson in his findings pointed to a number of flaws in the integrity and accuracy of the Land Commission proceedings including that a member of the ¶141 Airai State Registration Team with an interest in the land at issue had improperly participated in the hearings and had directed that certain map boundaries be drawn to favor Ngermelkii Clan. In short, there was ample justification for Justice Gibson's actions in setting aside the Land Commission determination.

Ngermelkii Clan also contends that the trial judge committed reversible error in adopting the master's report. In making this argument, the Clan points to two purported errors. First, the appellant claims that because the master's report was filed beyond the time allowed in the Trial Division's order, the master lacked jurisdiction to issue the report and the trial judge thus erred in considering it. Second, the Clan argues that the master's report disregarded the law governing conflicting land boundaries and therefore the report's findings and recommendations should not have been adopted by the trial judge.²

The issue of what effect is to be given to a tardy master's report is one of first impression in this jurisdiction. We are convinced, however, that such matters should be entrusted to the sound discretion of the trial judge. The practical effect of the trial judge adopting the master's

¹ The appeal in this matter was filed on February 9, 1984 during the time in which the Trust Territory Code determined the procedure for appeals.

² The appellant at oral argument raised a constitutional challenge to the trial judge's appointment of a master. This challenge was not raised in the Trial Division and therefore is waived. *Sugiyama v. Ngirausui*, 4 ROP Intrm. 177, 179 (1994); *Koror State Government v. ROP*, 3 ROP Intrm. 314, 322 (1993); *see generally Tell v. Renguil*, 4 ROP Intrm. 224, 225-26 (1994).

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findings and recommendations was a *de facto* continuance of the date by which the report was to be submitted. The trial court unquestionably had the discretionary power to continue the date by which the master's report must be filed, ROP R.Civ.P. 6(b), and there is no reason why that power could not be exercised in this instance. Although it would have been preferable for the trial judge to state explicitly that he was granting a continuance of the time in which to file the master's report, his failure to do so is harmless error at worst.

Ngermelkii Clan's contention that the master's report was inconsistent with the law concerning land boundaries must be rejected as well. The gist of the appellant's argument is not that the master failed to apply correctly any applicable rule of law, but that the master chose to believe the testimony of some witnesses and not to credit others.

¶142 The appellant had ample opportunity to present evidence before the master and to dispute the appellee's evidence. The trial judge also afforded the parties a hearing in which to challenge the master's report and recommendation. Following that hearing, the trial judge found that the master "has fairly and accurately assessed the claims of the parties and has correctly determined that Ngermengrang Lineage owns BL-325."

Upon adoption, the master's report becomes the trial judge's findings of fact. ROP R. Civ. P. 52(a). While the Trial Division may exercise its discretion in reviewing appeals from Land Commission determinations, this court reviews the Trial Division's factual findings under the "clearly erroneous" standard. *See Diberdii Lineage v. Iyar*, 5 ROP Intrm. 61, 62 (1995). "Under this standard of review, we must accept the trial court's findings of fact unless we are left with a definite and firm conviction that a mistake has been committed." *Umedib v. Smau, supra* at 258-59. There is ample evidence in the record to support the Trial Division's decision. We therefore affirm the judgment of the Trial Division.