

Elbelau v. Semdiu, 5 ROP Intrm. 19 (1994)
OKETOL ELBELAU
Appellant,

v.

TOMIKO SEMDIU, KYOKO UNGILBESUL,
KYOMI SUMANG, and NAMIKO DELMEL,
Appellees.

CIVIL APPEAL NO. 6-94
Civil Action No. 168-92

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: December 6, 1994

Counsel for Appellant: J. Roman Bedor

Counsel for Appellees: David J. Kirschenheiter

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

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PER CURIAM:

This appeal concerns land known as Uchelbeluu located in Melekeok State. The Land Commission awarded Uchelbeluu to appellees following a hearing in 1985, but the Land Claims Hearing Office (LCHO) did not issue a determination of ownership until 1992. On appeal to the trial division, the court found the land was registered in the Tochi Daicho in the individual name of Sumang, and that the land was given to Sumang's children at his eldecheduch. The trial court thus affirmed the LCHO's determination of ownership. Because the trial court's decision is not clearly erroneous, and because the delay did not prejudice the appellant, this Court AFFIRMS.

FACTS

On December 10, 1985, the Land Commission held a hearing to determine ownership of Uchelbeluu, more particularly described as Tochi Daicho Lot No. 295, New Lot No. 021 C 09 on Map 021 C 00. Rejecting Oketol Elbelau's claim of ownership, the Commission found the land was registered in the Tochi Daicho as land individually owned by Sumang, and that it was given at Sumang's eldecheduch to his children as tenants-in-common. For unknown reasons the LCHO did not issue the determination of ownership until almost 6-1/2 years later, on March 30, 1992.

Elbelau appealed the LCHO's determination, but the only record of proceedings was that contained in the Commission's Summary and Adjudication. Because Elbelau objected to this

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incomplete record, the trial court allowed him to submit "an affidavit setting forth facts which . . . were part of his testimony before the Land Commission but not (or inaccurately) included in the Summary and Adjudication." The trial court also allowed him to "go beyond what he said before the Land Commission," provided he identified this additional testimony and explained why it could not have been given originally. Upon this expanded record, the trial court affirmed the award to Sumang's children, Tomiko Semdiu, Kyoko Ungilbesul, Namiko Delmel, and Kyomi Sumang, as tenants-in-common.

DISCUSSION

In this appeal we consider the 6-1/2 year delay in issuing the determination of ownership, the presumption of correctness attached to the Tochi Daicho listing in the individual name of Sumang, and the determination that the property passed to Sumang's children at his eldecheduch.

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A. Delay

The first issue is whether a 6-1/2 year delay in issuing a determination of ownership denied due process of law to the non-prevailing party. Where factual issues are not in dispute, the denial of due process is a pure question of law that this Court reviews de novo. See *Simlai v. Rechucher*, Civ. App. No. 34-91, slip op. at 3 n.1 (Dec. 9, 1993). Here it is undisputed that the LCHO issued the determination of ownership 6-1/2 years after the Land Commission rendered its Summary and Adjudication. In one previous case, the Appellate Division ordered the trial court to conduct a de novo hearing due to the Land Commission's 5-1/2 year delay in issuing its adjudication, severe deficiencies in the record, determinations contrary to the evidence, and considerations of judicial economy and finality. *Klai Clan v. Bedechel Clan*, 2 ROP Intrm. 84, 88 (1990).

Although appellant relies heavily on the 5-1/2 year delay in *Klai Clan*, delay was only one of several reasons why the appellate court ordered the trial court to conduct a new trial. A party may not claim a de novo trial as a matter of right. *Otiwii v. Iyebukel Hamlet*, Civ. App. No. 28-91, slip op. at 11-12 (Sept. 14, 1992). Here, appellant did not show any prejudice by the delay. The trial court allowed appellant to supplement the record with affidavits and to present any missing testimony. Under these circumstances we find no denial of due process from the delay.

B. Tochi Daicho Listing

The second issue is whether appellant overcame the presumption of correctness as to a Tochi Daicho listing in Melekeok State. Except for the states of Peleliu and Anguar, the identification of land owners listed in the Tochi Daicho is presumed to be correct and the burden is on the party contesting a Tochi Daicho listing to show by clear and convincing evidence that it is wrong. *Ngiradilubch v. Timulch*, 1 ROP Intrm. 625, 629 (1989). Where the listing in the Tochi Daicho is for individual ownership, the evidence of error must be particularly clear and convincing. *Espangel v. Tirso*, 2 ROP Intrm. 315, 318 (1991).

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Here the land was registered in the individual name of Sumang. Appellant presented secondary authority that suggested that a copy of the Tochi Daicho for Melekeok State may have been altered. The trial court found no evidence, however, that the individual listing for Sumang had been altered. The trial court thus found that the appellant did not overcome the presumption that Sumang was the individual owner of the property as registered in the Tochi Daicho. There is ample support in the record for the 122 trial court's finding that the Tochi Daicho's presumption of accuracy was not rebutted.

C. Disposition of the Land to Sumang's Children

The final issue is whether the trial court correctly concluded that the land was given to appellees at the eldecheduch of their father. Appellant argues that the land was given to appellees after Sumang's eldecheduch, not during it.

Because Sumang died before the statutory succession law had entered into effect, and because that law did not apply retroactively, see *Kubarii v. Olkeriil*, Civ. App. No. 7-91, slip op. at 3 (Aug. 14, 1991), the trial court found it appropriate to rely on Sumang's eldecheduch to decide ownership. The trial court found the "contention that the land here was awarded after the eldecheduch is contrary to the weight of evidence in the record. Significantly, both appellee Tomiko Semdiu and Boisek Ngiraingas, called as a witness for appellant, testified that, as in *Kubarii*, Uchelbeluu was awarded to appellees during the eldecheduch."

If the trial court's factual findings are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, those findings will not be set aside unless this Court is left with a definite conviction that a mistake has been committed. *Idechiil v. Uludong*, 5 ROP Intrm. 15, 16 (1994). We find that the trial court's determination that the land was given to appellees at the eldecheduch is not clearly erroneous. Although the Land Commission's findings may be to the contrary and say, in their English translation, that the land was given after the eldecheduch, the trial court was not bound by those findings. The trial court had the power to adopt findings in whole or in part, or to make new findings as long as there was evidence in the record to support those findings. *Ngiratereked v. Joseph*, Civ. App. No. 3-92, slip op. at 4 (Dec. 17, 1993). The record here supports the trial court's findings.

CONCLUSION

The trial court's determinations that the property was registered in the Tochi Daicho in the individual name of Sumang, and that the property was given to his children at his eldecheduch, are not clearly erroneous. The LCHO's delay in issuing this determination is condemnable, but it did not deny procedural or substantive due process to the appellant. The trial court's decision is AFFIRMED.