

*In re Ngirausui*, 5 ROP Intrm. 339 (Tr. Div. 1996)  
**IN THE MATTER OF THE ESTATE OF  
GREGORIO NGIRAUSUI,  
Decedent.**

CIVIL ACTION NO. 400-94

Supreme Court, Trial Division  
Republic of Palau

Order

Decided: January 30, 1996

Counsel for Executrix : David F. Shadel  
Counsel for Claimant E. Ngirausui : Martin Wolff

PETER T. HOFFMAN, Justice:

The court has before it several motions for summary judgment raising various issues concerning the validity of the decedent's will and the right of the objectors to claim against the will. Each of these motions will be discussed in turn.

**Objectors' First Motion for Partial Summary Judgment, Filed September 26, 1995**

Erica Yobech Ngirausui, Peter Wilson Ngirausui, Jamie Ngirausui, Gwyn Ngirausui and Camella Ngirausui (the Objectors) have brought a first motion for partial summary judgment asserting that the decedent's will is invalid because the testator did not sign the will before one of the purported witnesses, Modesta Rubasch. The Objectors further claim that the will is invalid to devise land since the will was not attested before the Clerk of Courts nor did the decedent give a sworn statement before the Clerk of Courts in the presence of three witnesses.

**¶340** The legal question raised by the motion is what are the requirements in Palau for the witnessing of wills devising land. The Objectors rely on 39 PNC § 102(b) for resolving this issue. That statutory provision states:

Lands held in fee simple by an individual may be devised by such individual by written will attested before and deposited with the Clerk of Courts, or by a sworn oral or written statement as to the contents of the will by the devisor in the presence of three witnesses not taking under the will before the Clerk of Courts.

The Administrator, on the other hand, points to 25 PNC § 105 which requires the execution of a will to be "by the signature of the testator and of at least two witnesses . . . ."

If 25 PNC § 105 is controlling, then only two witnesses must sign the will. On the other hand, no specific number of witnesses are necessary under 39 PNC § 102(b), but the will must be

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attested before the Clerk of Courts or the testator must give a sworn statement before the Clerk of Courts in the presence of three witnesses. The Administrator does not claim to have satisfied the requirements of 39 PNC § 102(b), but only those of 25 PNC § 105. Therefore, if 39 PNC § 102(b) controls the devise of land in Palau, summary judgment should be granted in favor of the Objectors.

Title 1, Chapter 25 of the Palau National Code governs the making of wills. In particular, 25 PNC § 102 states that:

Any person of sound mind 18 years of age or older may make a will in accordance with the provisions of this chapter, but such will may only dispose of property which at the time of death the testator has a right to dispose of without the consent of any other person or official.

Section 102 of Title 25, by its plain meaning, covers the disposition of land. By contrast, § 107, authorizing nuncupative wills, is limited to the disposition of personal property. There would be no need to confine § 107 to personal property unless the OEK intended § 102 to cover the disposition of all property, including realty. *See Souwelian v. Kadarina*, 5 T.T.R. 14, 20 (Tr. Div. 1970).

Nevertheless, accepting that 25 PNC § 102 authorizes the devise of real property, the question remains of what effect should be given to 39 PNC § 102(b). Does the latter section impose an additional requirement on wills made pursuant to 25 PNC § 102 when **§ 1341** the will devises land or do 39 PNC § 102(b) and 25 PNC § 102 create alternative methods for devising realty.

Chapter 1 of Title 25 and 39 PNC § 102 have different origins; the former originates in 13 T.T.C. ch. 1 while 39 PNC § 102(b) is descended from § 801 of the Palau District Code. Both became part of the Palau National Code on the same date.<sup>1</sup> Therefore, the analysis of how each statute is to be construed is not furthered by looking to the sources of the statutes nor the dates of adoption.

The canon of statutory construction most applicable to this situation is that canon stating "[s]tatutes for the same subject, although in apparent conflict, are construed to be in harmony if reasonably possible."<sup>2</sup> 2A Norman Singer, *Statutes and Statutory Construction*, § 51.02 at 453 (1984 rev. ed.). It is logical to assume that if the OEK intended for 39 PNC § 102(b) to impose a further or additional requirement on the making of wills disposing of real property, such a provision would have been included within Title 1 of Chapter 25. The OEK did not do so. The

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<sup>1</sup> The effective date of both sections was August 14, 1985. RPPL 2-3.

<sup>2</sup> The two statutes at issue have the same subject, but different objects. "It has been held that where the same subject is treated in several acts having different objects the statutes are not in pari materia." 2A N. Singer, *Statutes and Statutory Construction*, at 468. The object of 25 PNC title 1 is the creation of a system for disposing of property by will. On the other hand, the object of 39 PNC title 1 is the creation of a system of coordinates and methods for transferring real property.

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more persuasive explanation for the existence of the two provisions is that the OEK intended to create two separate methods for devising real property, one under Chapter 25, Title 1 and one under 39 PNC § 102(b).

This conclusion is strengthened by examining the language of 39 PNC § 102(b). That section uses the phrase "Lands held in fee simple by an individual *may be* devised by such individual . . . ." (emphasis added) If this section were intended to provide a limitation on the devising of land pursuant to 25 PNC § 102, one might expect to find language to the effect that "Lands held in fee simple by an individual *may only* be devised by such individual . . . ." Without such language, it is reasonable to conclude that the OEK did not intend for 39 PNC § 102(b) to be a limitation on the power of a testator to devise land pursuant to 25 PNC § 102.

**¶342** Whether the will at issue satisfies the requirement of 25 PNC § 105 raises a genuine issue of material fact. The Objectors have presented an affidavit signed by Modesta Rubasch stating that she did not see the decedent sign the will and that she was not present in the room when the will was signed. She claims she was given the document to sign and did so without reading it and without anyone explaining that it was the decedent's will. Finally, she asserts that the decedent never informed her that he had signed the will or that it was his will.

The court has before it the decedent's will, as an attachment to the petition in this matter, with Modesta Rubasch's signature below the following statement:

I, Modesta Rubasch, was present in front of Gregorio Ngirausui and another witness when he signed this Will of his, so we signed as his witnesses.

(Translated from Palauan to English)

In addition, the Administrator has offered the affidavit of Rosemary Skebong, attorney for the decedent, which states that the will was executed by the decedent in the presence of Modesta Rubasch and another witness.

Modesta Rubasch's signature and statement on the will as well as Ms. Skebong's affidavit are sufficient to raise a genuine issue of material fact regarding the validity of the will under 25 PNC § 105. Therefore, the Objectors' first motion for partial summary judgment is DENIED.

### **Objectors' Second Motion for Partial Summary Judgment, Filed on September 26, 1995**

The Objectors, who are the same individuals bringing the first motion for partial summary judgment, urge in their second motion for summary judgment that the common law of dower and children's share applies in the Republic of Palau. Again this contention must be rejected.

Two statutory provisions directly address the right of persons to devise their lands free of any claim by their spouses or offspring. First, 39 PNC § 102 states:

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Land now held in fee simple or hereafter acquired by individuals may be transferred, devised, sold or otherwise disposed of at such time and in such manner as the owner alone may desire, regardless of established **¶343** local custom which may control the disposition or inheritance of land through matrilineal lineages or clans.

25 PNC § 102, quoted above with respect to the Objectors' first motion for partial summary judgment, gives individuals the right to dispose of their property by will.

There is nothing in the language of either statute expressing an intent for the common law to control the devising of real property. Where the legislature has spoken clearly and unambiguously on a subject, "such a statute speaks for itself and any attempt to make it clearer is a vain labor and tends only to obscurity." 73 Am. Jur.2d *Statutes* § 194 at 392 (1974). Moreover,

Where a statute is clearly designed as a substitute for the common law, such purpose should be given effect. Further, a statute will be deemed to abrogate the common law where its provisions are so inconsistent with and repugnant to the common law that both cannot be in force.

*Id.* § 185 at 385.

While the general rule in the United States is that statutes in derogation of the common law are to be given strict construction, *see* 3 C. Dallas Sands, *Statutes and Statutory Construction*, § 61.06 at 61 (4th ed.), such a rule should have no application in Palau where statutory and customary law take precedence over the common law. 1 PNC § 301, 302 & 303. Because the OEK has spoken directly to the issue of what property may be devised by will, that command must be given effect.

In conclusion, the Objectors' second motion for partial summary judgment is DENIED.

### **Executrix's Motion for Partial Summary Judgment, Filed on October 23, 1995**

The Executrix or Administrator has moved for partial summary judgment on a number of separate grounds. Given the disposition of these motions, the only ones of importance at this time are the motions contending that 1) the decedent was mentally competent when he executed his June 26, 1992 will, 2) the will was validly witnessed and attested to, and 3) the will is governed by 25 PNC Title 1. The latter two contentions have been resolved.

The remaining issue is whether the decedent was mentally competent when he executed the will at issue in this proceeding. **¶344** The Executrix has submitted the affidavits of Dr. Victor Yano, the decedent's physician at the time of his death, and Rosemary Skebong, the decedent's attorney, both of which are to the effect that the decedent was mentally competent at or about the time his will was executed. The Objectors have not offered any opposition to the Executrix's contention. Therefore, there is no genuine issue of material fact regarding the decedent's competency at the time his will was executed. Partial summary judgment is

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GRANTED finding the decedent competent at the time of the execution of his will herein.

A status conference will be held on February 8, 1996 at 1:00 p.m., in chambers, to set a trial date on the remaining issue in this proceeding.

SO ORDERED.