Uchellas v. Etpison, 5 ROP Intrm. 86 (1995)
NGIRATUMERANG UCHELLAS,
Appellant,

v.

NGIRTKEL ETPISON, et al.,
Appellees.

CIVIL APPEAL NO. 17-88
Civil Action No. 374-87

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: March 30, 1995

Counsel for Appellant: J. Roman Bedor

Counsel for Appellees: Moses Y. Uludong

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

MILLER, Justice:

Ngiratumerang Uchellas brought this action in ejectment and trespass claiming ownership of Tochi Daicho Lot Nos. 146 and 155, located in Ngatpang State. Following a trial, the trial court rejected Uchellas' claims on the basis of laches and res judicata. We affirm, but on different reasoning.

The two lots at issue are listed in the Tochi Daicho as the property of Uchellas' father. In May 1955, Ngatpang Municipality filed a claim for the land known as Ngerdubech which, it is now conceded, includes the two lots. In December 1959, the Palau District Land Title Officer awarded Ngerdubech to Ngatpang in Determination of Ownership and Release No. 126. So far as the record reveals, no appeal was ever filed from that Determination.

In 1980, Uchellas filed a claim for Lot 155 with the Palau Land Commission. Although a hearing was apparently commenced in 1982 on that claim and on claims to other lands within the same ⊥87 area, it was subsequently terminated when the Land Commission concluded it was bound by Determination No. 126.

In late 1987, after learning that a Japanese shrine had been constructed on Lot 146, Uchellas commenced this action. Appellees responded by filing a motion to dismiss which argued that the ownership of the lands at issue had previously been adjudicated by the District

Land Title Officer, and that Ngatpang State, as a successor to Ngatpang Municipality, was the owner of the property. The trial court denied that motion finding that it was unclear from the face of Determination No. 126 whether the land awarded included the lands at issue here.

The case proceeded to trial, after which the trial court entered judgment for appellees. As to Lot 146, the court found that Uchellas was barred by laches from claiming the land. As to Lot 155, the court found that Uchellas was barred because of his failure to appeal the adverse adjudication of the Land Commission in 1982. Following a motion for reconsideration which raised the question whether the Land Commission determination had been properly promulgated, the trial court found that Uchellas' claim to Lot 155 was also barred by laches.

We affirm the trial court's judgment, but believe that we need look no further than Determination No. 126 to do so. We have never squarely addressed whether a determination of the Palau District Land Title Officer is conclusive as against persons who were not themselves parties to the proceedings or any appeal therefrom. In *Rurcherudel v. Airai State* , 1 ROP Intrm. 620, 623 (1989), we found that the Land Commission had properly treated a prior land title officer determination as res Judicata and adopted it as its own. In that case, however, we noted that the appellant had been "a party to the proceedings before the District Land Title Officer and that she did not appeal his decision." 1 ROP Intrm. at 624.

In *Kloteraol v. Ulengchong* , 2 ROP Intrm. 145 (1990), we upheld a trial court judgment reversing the Land Commission for failing to give preclusive effect to a prior decision of the Land Title Officer. There again, however, it is unclear from the opinion whether the losing parties had participated in the earlier proceedings.[1]

⊥88 We now hold explicitly that, absent a showing that the Land Title Officer failed to proceed in accordance with then-applicable regulations concerning public and private notice of hearings, his determinations shall be deemed conclusive as against all persons, whether or not a party to the proceedings before him.[2]

The proceedings before the Land Title Officer were authorized by Land Management Regulation No. 1, which provided among other things for public and private notice of all hearings conducted thereunder. Section 6 of the regulation provided:

> "Both public and private notice shall be given of all hearings. Each notice shall contain a statement of time and place of the hearing, a brief but clear description of the land or lands to be considered, the names of the owners of record (if any),

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[1] The trial judge's finding, noted by the Appellate Division, that the earlier determination "had been made after notice and an opportunity to be heard", 2 ROP Intrm. at 147, suggests that they were not parties.

[2] We confine our holding to those circumstances where a party other than the Trust Territory was determined to be the owner. Where the Trust Territory prevailed, the determination, or aspects thereof, may be subject to challenge and re-examination in light of the constitutional and statutory provisions for the return of public lands. See Palau Const., Art. XIII, Sec. 10; 35 PNC 1104(b).

> the names of all claimants of record, and such other information as the District Land Title Officer determines to be necessary to give full notice of matters to be considered."

Section 6(a) further provided:

> "Public notice shall be given by posting in a public place at the District Administration headquarters, in the municipality in which the land is located, and, where practicable, on the land to be considered."

Section 10 of the regulation prescribed the form of the Land Title Officer's determinations which, like No. 126 here, declared specified lands to be "the property of" specified persons, and Section 13 made explicit that

> "[u]nless and until the decision of the District Land Title Officer is reversed or modified by the High Court, the legal interests of persons designated as owners shall be as shown on the determination of ownership. . . ."

Finally, Section 14 provided for an appeal by aggrieved parties:

⊥89 "Any person who has or claims an interest in the land concerned may appeal from a District Land Title Officer's determination of ownership to the Trial Division of the High Court at any time within one year from the date that the determination is filed in the office of the Clerk of Courts."

This broad language suggests that "any person" -- even someone who had not participated in the hearing conducted by the Land Title Officer -- could bring an appeal to challenge his determination.

Reading this regulation as a whole and Section 13 in particular, we believe it was intended to create a procedure in the nature of an in rem action, in which determinations arrived at in compliance therewith would be conclusive as against the world. [3] We leave open the possibility that a particular determination might be challenged because notice of the proceedings had not been provided in accordance with Regulation No. 1. However, given the age of these determinations and given the presumption that public officers follow the laws and regulations

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[3] We are aware of one Trust Territory court decision which reached an opposite conclusion, holding that land title officer determinations "in favor of a private party or parties are only binding upon those who are parties to the proceeding in which the determination is made and those claiming under or through such parties or property represented by them." *Ngerdelolek Village v. Ngerchol Village*, 2 TTR 398, 407 (Tr. Div. 1963). We do not find its reasoning persuasive, however, and we note that subsequent Trust Territory-era decisions that we have been able to locate take the opposite view in accordance with our holding. Compare, e.g., *Rudimch v. Chin*, 3 TTR 323, 328 (Tr. Div. 1967) (holding that rights of non-parties to title determination proceedings "were cut off by those proceedings and the determination"), cited with approval in *Lujana v. Clanry*, 8 TTR 441, 445 (App. Div. 1984).

that govern them, we will place the burden on a person attacking a prior determination to show any lack of due process that would render it invalid.[4]

No such showing was made here with respect to Determination No. 126. Although Uchellas' brief on appeal asserts that neither he nor his father was given notice of the land title proceedings, his brief contained no citation to the record, see ROP R. App. Proc. 28 (a) (7), and the Court has not found any testimony ⊥90 to that effect in its own review of the trial transcript. [5] Moreover, the question is not simply whether Uchellas received actual notice of the hearing, but whether there is any reason to doubt that the Land Title Officer complied with the public notice provision such that Uchellas could not be charged with constructive notice.

Uchellas calls our attention to Ngatpang State Public Law No. 7-86, which recites that the claim by Ngatpang Municipality that resulted in Determination No. 126 was made "with full expectation that upon its receipt of the title and ownership to such areas concerned, these lands would be opened up for registration and adjudication of claims by individuals, families, lineages, clans, or other entities, and title to the same issued to them." Id., Section 1. It is plain, however, that this lawsuit does not comply with the procedure established by the Ngatpang State Council to accomplish that result.

Uchellas also argues that we should take note of the constitutional provision regarding the return of public lands, see Article XIII, Section 10, in considering his appeal. However, he did not rely on that provision below.

For all of the reasons stated above, the judgment of the trial court is affirmed.

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[4] We have no occasion to decide whether the burden of proof should be the usual "preponderance of the evidence" standard or the higher "clear and convincing" standard that we use in considering challenges to Tochi Daicho listings.

[5] Uchellas' brief also asserts that notice was only provided to the Magistrate of Ngatpang Municipality. However, the exhibit attached to his brief which is apparently intended to support this proposition shows only that the Magistrate prepared Ngatpang's claim, but does not shed any light on what kind of notice was given.