

Uchellas v. Etpison, 5 ROP Intrm. 94 (1995)
NGIRATUMERANG UCHELLAS,
Appellant,

v.

NGIRATKEL ETPISON, et al.,
Appellees.

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

Supreme Court, Appellate Division
Republic of Palau

Opinion on petition for rehearing
Decided: April 20, 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:

Appellant Ngiratumerang Uchellas has filed a petition for rehearing asking that we reconsider our prior opinion in this case. *Uchellas v. Etpison*, 5 ROP Intrm. 86 (1995). The basis for our prior decision, although argued by appellees before the trial court, was not the basis on which the trial court decided the case, nor was it raised in the appellate briefs or on oral argument. Accordingly, we believe it appropriate to comment briefly on the arguments raised in appellant's petition.

With a single exception, none of the cases relied upon by appellant are inconsistent with our initial holding. In particular, *Techur v. Tutii*, 2 ROP Intrm. 122 (1990), holds only that a person (there, a clan) not party to an ejectment action is not thereafter barred from claiming title to the land in a subsequent action. Unlike an action in ejectment, which "is a purely possessory action", 2 ROP Intrm. at 128, the land title proceedings which we found dispositive were designed to provide a binding determination of ownership. See 5 ROP Intrm. at 88, quoting Land Management Regulation No. 1, § 13.

Ngerdelolek Village v. Ngerchol Village, 2 TTR 398, 407 (Tr. Div. 1963), on the other hand, is inconsistent with our holding. But as we have already noted, 5 ROP Intrm. at 89 n.3, we find that decision neither persuasive nor consistent with the prevailing view adopted by later Trust Territory courts.

Uchellas v. Etpison, 5 ROP Intrm. 94 (1995)

Appellant devotes a substantial portion of his brief to the argument that the Trust Territory government betrayed its role 195 as trustee in taking away his land and giving it to Ngatpang Municipality. We disagree. The decision of the Land Title Officer did not take away Uchellas' land, but rather gave back land then claimed by the Trust Territory to the local government formed by the people of Ngatpang. Moreover, at least as recited in the Ngatpang State law quoted in our initial opinion, 5 ROP Intrm. at 90, the claim by the Municipality was made with the intention of returning the land back to its original owners. That that goal has not come to fruition in Uchellas' case results, in large part, from his choice to forego the claims procedure enacted by Ngatpang State in favor of this action for damages. While Uchellas remains free to ask Ngatpang to return his land, or some part of it, we remain convinced that the legal course he chose here cannot succeed.¹ The petition for rehearing is accordingly denied.

¹ It should be noted that Uchellas' appellate counsel did not represent him in the trial court.