

Ulochong v. LCHO, 6 ROP Intrm. 174 (1997)
**DAMASO ULOCHONG, representing the
heirs of Rirou Ulochong and his siblings,
Appellant,**

v.

**LAND CLAIMS HEARING OFFICE and ULOCHONG AMALEI,
Appellees.**

CIVIL APPEAL NO. 23-96
Civil Action No. 318-95

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: June 10, 1997

Counsel for Appellant: Johnson Toribiong

Counsel for Appellees: Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; JEFFREY L. BEATTIE, Associate
Justice; R. BARRIE MICHELSEN, Associate Justice

BEATTIE, Justice:

This appeal regards land in Ngaraard State known as Ngurang, Tochi Daicho Lot Nos. 477, 485, 486, 487 and 488, New Lot Nos. 21-2053 and 20-2048. The Tochi Daicho listed such land as the individual property of Amalei. The only claimant of the land was Amalei's son Ulochong Amalei (hereinafter, Ulochong). At a Ngaraard Land Registration Team (hereinafter, NLR Team) hearing held in March 1982, Ulochong stated that the land had been given to him and his sister Warang, and that he and Warang had decided to divide the land between their children as follows: one-third to Ulochong's children from his prior marriage, represented by Ulochong's son Rirou; one-third to Ulochong's children from his present marriage, represented by Ulochong's son Laurentino; and one-third to Warang's daughter Basilia. Based on these assertions, the NLR Team issued an adjudication that the land should be divided as requested by ¶175 Ulochong.

For reasons not set forth in the record, the Land Commission and, thereafter, the Land Claims Hearing Office (hereinafter, LCHO) ¹ had not acted on this NLR Team recommendation

¹ On June 6, 1986, the Palau Lands Registration Act, 35 PNC § 1101 *et seq.*, was enacted. Pursuant to the Act, Section 15 of the Rules and Regulations of the LCHO was adopted, which stated, in relevant part:

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or issued a determination of ownership in connection with the subject land as of May of 1995. In May 1995 Ulochong informed the LCHO that a determination had not yet been issued and requested, via affidavit, that the LCHO issue a determination that the land was owned only by Ulochong rather than by the children of Ulochong and Warang in one-third shares as he had previously requested. This request was, necessarily, inconsistent with Ulochong's prior stated wish that the land be divided among his and Warang's children. In July 1995, the Presiding Hearing Officer of the LCHO issued a memorandum noting the history of the prior proceedings, stating that the record alone provided a sufficient basis upon which to issue a final determination, and issued a determination that Ulochong, who was the only person who filed a claim to the land, was the fee simple owner of the land.

Like Rirou, Damaso Ulochong (hereinafter, Damaso), is a son of Ulochong from a prior marriage. Damaso appealed the LCHO determination to the Trial Division on the basis of the LCHO's failure to abide by the NLR Team's adjudication. Damaso argued that the LCHO determination should be overturned because (1) it was issued without prior notice to Damaso; (2) the LCHO did not hold in accordance with the NLR Team's adjudication; and (3) it was contrary to the evidence provided.

The Trial Division found that Damaso, who was not a claimant in the LCHO proceeding, did not have standing to appeal the determination made by the LCHO. It further found that Damaso's appeal should be rejected on its merits.

This Court affirms the holding of the Trial Division on the 1176 basis that Damaso lacked standing to appeal the LCHO determination because Damaso was not a claimant in the LCHO proceeding.

DISCUSSION

The question of who can appeal an LCHO determination of ownership was addressed by the Palau Lands Registration Act, which provided that "a determination of ownership by the Land Claims Hearing Office shall be subject to appeal by any *party aggrieved* thereby to the Trial Division." 35 PNC § 1113 (emphasis added).²

Generally, in order to be a "party aggrieved," a person must have been a party to the action from which the appeal is taken. "To have standing to appeal, a person generally must be a party to an action below . . ." *Hana Ranch, Inc. v. Kumakahi*, 720 P.2d 1023, 1024 (Hawaii App. 1986). *See* 5 Am. Jur. 2d, *Appellate Review* § 264 ("An appeal is generally available only to

Section 1127 of the [Palau Lands Registration] Act provides that all cases and matters pending before the former Land Commission and land registration teams shall be transferred to the Hearing Office for further proceedings.

² The Palau Lands Registration Act, 35 PNC § 1101 *et seq.*, adopted on June 6, 1986 and repealed on March 5, 1996, was applicable at all times relevant to this appeal of the 1995 LCHO determination. Chapter 9 of Title 35 of the Palau National Code -- which dealt with the Land Commission -- was repealed on June 6, 1986, and the LCHO was certified by the Chief Justice of the Supreme Court to take over the duties of the Commission in December, 1987.

persons who were parties to the case below.).

This general rule is not without exceptions, however. A nonparty may even in the absence of privity possess a sufficient interest to be allowed to take an appeal. The precise nature of such interest is formulated in various ways. Thus, it has been said that a nonparty has standing to appeal a judgment if he or she has a direct, immediate, and substantial interest which has been prejudiced by the judgment or which would be benefitted by its reversal. Other authority permits a nonparty to appeal who is “aggrieved by the lower court decision, or who has a right which is sufficiently affected by the judgment. Whether a nonparty in a particular case has a sufficient interest in the judgment to allow him or her to take an appeal depends on the circumstances of the case.

5 Am. Jur. 2d *Appellate Review* § 265.

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Damaso has no direct, immediate and substantial interest that has been prejudiced by the judgment, 5 Am. Jur. 2d, *Appellate Review* § 265, because Damaso had “no interest” in the land at issue. The fact that Ulochong at one time was willing to request the Land Commission to divide the property among the children of Ulochong and Warang did not give Damaso any vested or exercisable right to the property. Nor did the NLR adjudication bestow upon Damaso an “interest” in the land. The Land Commission was not bound to accept the adjudication, *see* 35 PNC § 926, so neither was the LCHO, which was obligated to treat it as a pending matter, 35 PNC § 1127. The LCHO did just that, determining that there was only one claimant and awarded the land to him. Accordingly, Damaso was not a “party aggrieved” with a right to appeal the LCHO determination at issue. In view of our holding that Damaso had no standing to appeal the LCHO determination, we need not address his other assignments of error.

CONCLUSION

Damaso lacked standing to appeal the determination of the LCHO. Accordingly, the judgment of the Trial Division is hereby AFFIRMED.