

Idid Clan v. KSPLA, 6 ROP Intrm. 302 (1996)
IDID CLAN, Rep. by Bilung Gloria G. Salii,
Appellant,

v.

KOROR STATE PUBLIC LANDS AUTHORITY,
Appellee.

CIVIL ACTION NO. 230-94
IN RE: D.O. NO. 12-010

Supreme Court, Trial Division
Republic of Palau

Decision and order
Decided: February 5, 1996

Counsel for Appellant: Carlos H. Salii

Counsel for Appellee: Antonio Cortes

JEFFREY L. BEATTIE, Associate Justice:

This is an appeal of a determination of the Land Claims Hearing Office which held that the subject property, Tochi Daicho Lots 894, 896 and 897 (Lot No. K-207 and DLS Map SK-533/78) is public land owned by Koror State Public Land Authority (KSPLA). The property is located in Idid Hamlet, Koror State.

Lot 894 is registered in the Tochi Daicho as the individual property of Keukl, and Lots 896 and 897 are registered as the individual property of Ngiraked. Starting in the 1950's, the Trust Territory Government began leasing the property to various individuals. These individuals or their successors in interest have built houses on the property and are residing there.

Appellant claims that, notwithstanding that the property is registered as individual property in the Tochi Daicho, Keukl and Ngiraked actually held the property as trustees for Appellant. Appellant claims that the land then became public land or claimed as public land "as a result of the acquisition by previous occupying powers or their nationals . . . through force . . . or without just compensation." 35 PNC § 1104(b).

¶303 The LCHO held that Appellant had not sustained its burden of proving that (1) the land was acquired by force or without just compensation by previous occupying powers; and that (2) appellant owned the land prior to such acquisition.

Under the controlling statute, ¹ appellant had the burden of proving the foregoing two

¹ "The Land Claims Hearing Office shall award ownership of any public land, or land

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elements of its claim. Therefore, if the evidence presented failed to demonstrate how the land became public land, appellants claim must fail. The record is sufficient to support the determination of the LCHO that appellant failed to meet its burden. Ordinarily, that would end the matter. However, here we are faced with special circumstances.

The presiding hearing officer in this case has a brother who resides on a portion of the subject property under a lease with KSPLA. Appellant requested that the presiding officer recuse himself and appoint a different hearing officer to hear the case on the grounds that the presiding officer's relation to a lessee of a party may affect his impartiality. The presiding officer refused to disqualify himself.

The Palau Lands Registration Act provides that a hearing officer should not sit in any case in which he is "so related to or connected with any party . . . as to render it improper, in his opinion, for him to participate in hearing and determination of the case." 35 PNC § 1123. Although the presiding officer was not related to a party, this Court cannot by that fact alone end its inquiry. It has been held that the LCHO is an inferior court of limited jurisdiction. *Otiwii v. Iyebukl Hamlet*, 3 ROP Intrm. 159 (1992). Therefore, the LCHO hearing officers must stand in at least a quasi-judicial capacity, subject to the same basic rules concerning disqualification, even though the statutory grounds for disqualification may be narrower. Few rules of disqualification are more important than the one which provides that:

1304 A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where

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(d) the judge . . . or a person within the third degree of relationship to [him] . . . is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding.

Cannon 3, *ABA Model Code of Judicial Conduct* . . . This rule is designed to ensure that legal disputes are resolved based on the law and evidence by an impartial judge. While some judges may be able to remain neutral and impartial even though a close relative may be substantially affected by his decision, their impartiality could reasonably be questioned nonetheless. To maintain public confidence in the judicial system, a judge whose impartiality in a proceeding may reasonably be questioned should disqualify himself from participating in the proceeding.

Following these principles, claims filed in an LCHO proceeding should be determined by hearing officers who not only are in fact impartial, but also whose impartiality may not reasonably be questioned. An LCHO hearing officer should not participate in a proceeding in which his brother is a lessee of or otherwise occupies land through a party claiming ownership of

claimed as public land, to any citizen or citizens of the Republic who prove that such land became part of the public lands, or became claimed as part of the public lands, as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation or adequate consideration, and that prior to such acquisition such land was owned by such citizen or citizens or that such citizen or citizens are the proper heirs to such land." 35 PNC §1104(b).

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the land in question. Not all relationships will mandate disqualification, but surely when the person whose interest stands to be substantially affected by the proceeding is the brother of a hearing officer, the hearing officer should step down. This Court does not conclude that the presiding officer in this case was unfair or biased. However, because his brother lives on the subject property, his impartiality can without doubt be reasonably questioned and he should have disqualified himself on the motion of appellant.

It is doubtless true that appellant has a difficult burden to meet to prove its claim. It must prove the property was taken by force or without compensation, etc. It must also overcome the strong presumption of accuracy of the Tochi Daicho and prove that the land was really clan property and not the individual property of Ngiraked and Keukl. In deciding these factual issues, the hearing officers must normally weigh conflicting testimony and make inferences from the evidence. As already stated, under normal circumstances, the Court, after reviewing this record, would not be inclined to disturb the LCHO determination in this case. However, the factual determinations should in the first instance be made by **1305** a panel of impartial hearing officers. Then the Court may review the LCHO findings and determinations, whatever they may be, and take into consideration the fact that the findings have been made by finders of fact that have had the opportunity to observe and hear the witnesses with impartial eyes and ears.

For these reasons, the decision of the LCHO is VACATED and the matter is REMANDED to the LCHO or its successor for a new hearing before a new panel of hearing officers.