

*Kebekol v. Ngeremengiau Clan*, 7 ROP Intrm. 126 (1998)

**ROSE KEBEKOL,  
Appellant,**

**v.**

**NGEREMENGIAU CLAN,  
Appellee.**

CIVIL APPEAL NO. 98-07  
Civil Action No. 408-95

Supreme Court, Appellate Division  
Republic of Palau

Argued: October 2, 1998  
Decided: October 14, 1998

Counsel for Appellant: Carlos H. Salii

Counsel for Appellee: Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice,  
R. BARRIE MICHELSEN, Associate Justice.

MICHELSEN, Justice:

This appeal concerns a Land Claims Hearing Office (LCHO) award of land to Ngeremengiau Clan. On appeal to the Trial Division, appellant Rose Kebekol requested a limited trial de novo on two issues. Because we are unable to determine whether the Trial Division considered these issues as material to the outcome of its decision, we are remanding the case to the Trial Division for further proceedings.

#### BACKGROUND

The land at issue is known as Ngermokirong and is located in Idid Hamlet in Koror State.<sup>1</sup> It is listed in the Tochi Daicho under the name of one Reklai, a member of Ngermengiau Clan, as his individual property. Reklai died shortly after World War II.

Kebekol claims the property in her individual capacity as Reklai's closest living relative. Ngermengiau Clan contends that the property belongs to the Clan but was mistakenly listed as Reklai's individual property.

The LCHO concluded that Kebekol bears the female title Dirremengiau; that she is the

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<sup>1</sup> The land is identified as Cadastral Lot K-218 and consists of two adjoining parcels of land registered in the Tochi Daicho as Lot Nos. 878 and 879.

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head of Ngeremengiau Clan; and that members of the Clan have occupied the land with the consent of the Clan's senior female members during the post-war period. The LCHO awarded the land to Ngeremengiau Clan, to be administered by Kebekol as the bearer of the clan title Dirremengiau.

In her appeal to the Trial Division, Kebekol requested a trial *de novo* on two issues that Kebekol claims bear on the credibility of witnesses. Although the Trial Division decision did not explicitly deny the request for a trial *de novo*, it made no mention of Kebekol's request and did not comment upon the factual issues that Kebekol raised in her request. A fair reading of the decision is that the Trial Division implicitly denied the motion.

The Trial Division affirmed the LCHO determination in favor of Ngeremengiau Clan. The court noted that Kebekol on appeal claimed the land under a different theory than was first asserted, "[W]hen Kebekol filed her ¶127 initial claim with the LCHO, she filed it as 'Rose K. Dirremengiau' and claimed that it was clan property. Six years later she changed her claim to claim it as her individual property." Trial Decision at 4. The court rejected Kebekol's argument that she should be the one to inherit the land from Reklai as his closest relative, and upheld the LCHO determination that the property was clan land.

#### ANALYSIS

On appeal, Kebekol contends that the Trial Division's failure to hold a trial *de novo* was an abuse of discretion. Kebekol also claims that since the credibility of two key witnesses was at issue the Trial Division was clearly in error to rely upon portions of the LCHO's findings of fact and determinations concerning the credibility of the witnesses. Kebekol argues that the Trial Division should have granted a trial *de novo* to make its own credibility determinations.

The Trial Division has the discretion to grant a trial *de novo* when it sits in review of a LCHO determination. *Otiwii v. Iyebukel Hamlet*, 3 ROP Intrm. 159, 169 (1992). The Appellate Division will not disturb the Trial Division's decision to deny a motion for a trial *de novo* absent a showing that the Trial Division abused its discretion. *Osarch v. Wasisang*, 7 ROP Intrm. 82, 84 (1998). Whether the Trial Division abused its discretion will depend upon the particular facts and circumstances of the case. *KSPLA v. Meriang Clan*, 6 ROP Intrm. 10, 14 (1996).

While Kebekol is not entitled to a trial *de novo* as a matter of right, *Otiwii*, 3 ROP Intrm. at 169-70, she is entitled to know the disposition of her request for a trial *de novo*. See 12 JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 59.54[3] (3d ed. 1998)(appellate court may rule on trial court's failure to exercise discretion and may remand case or decide issue itself, provided that record is sufficiently developed).

We are unable to review the Trial Division's decision under the abuse of discretion standard because we do not know how the Trial Division resolved the issues that Kebekol raised in her request for a trial *de novo*. If the record on appeal showed that these issues were marginal or immaterial to the outcome of the case, we could review the Trial Division's decision and conclude that the issues would not affect the court's decision. See *Wharf v. Burlington Northern*

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*Railroad Co.*, 60 F.3d 631, 637 (9th Cir. 1995) (“Where the trial court has erroneously failed to exercise its discretion, we may either remand or, if the record is sufficiently developed, decide the issue ourselves.”).

Since we are unable to conclude on this record that the issues are marginal or immaterial, we are remanding the case. On remand, the Trial Division is to place on the record its decision regarding Kebekol’s request for a trial *de novo*, and the reasons therefore. It may then affirm its earlier decision, amend it as appropriate, or grant a trial *de novo*.

The case is hereby remanded to the Trial Division for further proceedings consistent with this opinion.