

Heirs of Drairoro v. Dalton, 7 ROP Intrm. 204 (1999)

**HEIRS OF DRAIRORO, et. al.,
Appellants,**

v.

**MARGARITA BORJA DALTON, et. al.
Appellees.**

CIVIL APPEAL NO. 12-97
Civil Action No. 354-93

Supreme Court, Appellate Division
Republic of Palau

Decided: May 19, 1999

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

MILLER, Justice:

Several parties to the appeal have petitioned this Court for rehearing relating to this Court's February 26, 1999 decision. Appellants Heirs of Drairoro and Florentine Yangilmau request that the Court's decision, which speaks of awarding some of the challenged property to Appellee Dalton, be modified to award the land to "the Heirs of Jesus Borja," thus reflecting the representative capacity in which Dalton brought this action. Appellee Dalton seeks rehearing on the merits of the Court's decision, arguing that the decision of the Trial Division was not clearly erroneous and should not have been reversed.

Appellants' Petition

Appellants contend that the Court's award of the properties to "Appellee Dalton" was error, and that the proper award should have been to "the Heirs of Jesus Borja." To the extent that this Court reversed the Trial Division's findings with respect to Lots 1588, **L205** 1589, and 1590, we have held that these lots are owned by one or more of the Heirs of Drairoro, which implicitly rejects claims of ownership of Dalton or any other heir of Jesus Borja to these properties. No modification of this Court's decision is necessary as regards these properties.

We affirmed the Trial Division's judgment with respect to Lot 1587. Since that judgment awarded the land to the "heirs of Jesus Borja," our decision should be modified accordingly to state that "the decision of the Trial Division is affirmed insofar as it awards title to Lot 1587 to the heirs of Jesus Borja," rather than to Dalton. ¹ Appellants' petition for rehearing is granted to

¹ In so doing, we acknowledge that the situation with respect to the western portion of Lot 1587 is somewhat more complicated, insofar as all of the potential heirs of Jesus Borja other than Dalton have disclaimed any interest in that portion of the land. We have previously noted

that extent.

Appellee's Petition

Appellee Dalton argues that this Court erred in several ways. Dalton's first argument is that the Court, in finding that the 1980 Summary and Adjudication listing Jesus Borja as Tochi Daicho owner of Lot 1590 was in error, failed to give due consideration to the testimony of various witnesses who supported the credibility of the 1980 Adjudication. We find no error in that ruling. We rejected the Trial Division's reliance on the unsigned 1980 Adjudication largely because it was inconsistent with other documents in the record, namely, the Tochi Daicho listing from Volume 1, which did not include Borja as one of the claimants to the disputed Lot 1590. The testimony cited by Dalton does not account for that inconsistency.

Dalton's second argument contends that the Trial Division's decision to credit the testimony of Dalton's witnesses over the conflicting testimony of Appellants' witnesses was an independent basis to affirm the Trial Division, even absent the 1980 Summary and Adjudication. We find no merit in this argument. This Court did not re-weigh the credibility findings of the Trial Division; rather, we simply observed that, given the contents of the Tochi Daicho that were part of the record, a finding that Jesus Borja was Tochi Daicho owner of Lot 1590 was clearly erroneous. The only Tochi Daicho listing in the record reveals that during the Japanese time, Lot 1590 was claimed by a man named Nakamura² and, apparently, members of the clans of Ngerkebesang. Dalton's failure to offer evidence reconciling Borja's absence from the disputed volume of the Tochi Daicho and his subsequent claim of ownership to the parcels is fatal to her claim, despite the testimony of witnesses who saw Jesus Borja using the land.

¶206 Dalton's third and final argument extensively challenges this Court's findings regarding the contents of the Tochi Daicho. Dalton contends that the Tochi Daicho does not indicate that Lot 1590 was resolved along with other disputed parcels in favor of the Southwest Islands settlers, and that findings of the Land Commission from Formal Hearing No. 38 should control here. However, Dalton's arguments cite and rely on numerous entries in the Tochi Daicho that were not made a part of the record at trial, and are therefore beyond this Court's consideration on appeal. Dalton has requested that we take judicial notice of the contents of the Tochi Daicho. We refuse the invitation to do so, but note that, even if this Court were to take judicial notice of the Tochi Daicho's content, our review of both the current records in English and the 1967

Appellants' contention that ongoing estate proceedings might result in someone other than Dalton being declared the true heir, and we have left open the possibility of Appellants seeking relief on that basis from the Trial Division. *See* Decision of February 26, 1999 at 3-4, n. 4. On the other hand, if such relief is not warranted, it might be appropriate for the judgment to be altered to reflect Dalton's sole interest in the western portion of Lot 1587. As before, we believe these matters are best addressed by the Trial Division on remand.

² Dalton's contention that Borja leased Lot 1590 to Nakamura, one of the parties who appears as claimant to the lot in the Tochi Daicho, is unavailing. The Tochi Daicho lists owners of properties, not lessees, and thus, Nakamura would not have been listed were he occupying the property pursuant to a lease. Moreover, our review of the transcript finds no testimony that Borja specifically leased land to a man named Nakamura, rather than to "the Japanese" generally.

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version in Japanese reveals no basis for us to reconsider our earlier ruling. As for Dalton's contention that the findings of the Land Commission during Formal Hearing No. 38 should be adopted by this Court, we merely observe that the results of Formal Hearing No. 38 are embodied in the 1980 Summary and Adjudication which we have found to be in error in respect to Lot 1590. Dalton's petition is therefore denied

In conclusion, Appellants' petition is granted to the extent that the conclusion of our February 26, 1999 decision is amended to state that the Trial Division's decision is aimed "insofar as it awards title to Lot 1587 to the heirs of Jesus Borja." Appellee Dalton's petition for rehearing is denied.