Osarch v. Wasisang, 7 ROP Intrm. 82 (1998)

BESEBES OSARCH,
Appellant,

v.

ONGALK RA WASISANG,
Trustee by KALISTUS WASISANG,
Appellees.

BESEBES OSARCH,
Appellant,

v.

ONGALK RA RUBASCH,
Trustee by TERENCE RUBASCH,
Appellee.

CIVIL APPEAL NO. 50-97
Civil Action Nos. 96-96 and 97-96

Supreme Court, Appellate Division
Republic of Palau

Argued: May 15, 1998
Decided: June 17, 1998

Counsel for Appellant: Richard Johnson, Esq.

Counsel for Appellee: Oldiais Ngiraikelau, Esq.

BEFORE: JEFFREY R. BEATTIE, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

BEATTIE, Justice:

This appeal consists of two consolidated cases. The disputes involve the ownership of two parcels of land called *Imedebech* and *Oitoluk*. The Trial Division upheld the Land Claims Hearing Office (LCHO) determination of ownership and denied appellant's request for a trial *de novo*. Appellant contends that the Trial Division erred because the LCHO decision was supported in large part by hearsay testimony and an unauthenticated exhibit. We affirm the Trial Division's decision.

BACKGROUND

Imedebech and *Oitoluk* are portions of Tochi Daicho Lot Nos. 1067 and 1068, respectively, located in Ngriil Harnlet, Ngerchelong State. [1] There is no dispute that both lots were owned individually by Irrung, who was the maternal uncle of appellant Besebes Osarch and his siblings. Appellant Osarch claims the properties on behalf of the family of Ngerwikl.

Although Irrung was married three times, he had no children of his own. His first wife, Kebor, was from the Meketii lineage. Wasisang, who was the father of appellee Kalistus Wasisang, was related to Kebor through the Meketii lineage. Wasisang lived on Irrung's land and brought him fish from time to time. After Kebor died, Irrung's second marriage was brief and is not material to this litigation. Irrung's third wife, Ilong, brought to the marriage a daughter, Ilebrang, and her daughter named Tiou. Irrung and Ilong raised both Ilebrang and Tiou as their own children. Ilebrang married Rubasch. Appellee Ongalk ra Rubasch consists of the children of Ilebrang and Rubasch. Irrung died in 1954.

Osarch claimed that, because Irrung was his maternal uncle, he and his siblings had the ⊥83 right to dispose of Irrung's property upon his death. The LCHO found that Irrung had given *Imedebech* to Rubasch and gave *Oitoluk* to Wasisang. It held that, because Irrung no longer owned these properties at the time of his death, Osarch and his siblings had no authority to dispose of them. Accordingly, it awarded the portion of Lot 1067 known as *Imedebech* to appellee Ongalk Ra Rubasch; the portion of Lot No. 1068 known as *Oitoluk* to appellee Ongalk Ra Wasisang; and the remaining portions of Lots 1067 and 1068 to the family of Ngerwikl with Osarch as trustee.

ANALYSIS

On appeal, appellant contends that the Trial Division erred by (1) adopting findings of the LCHO which were supported by hearsay evidence and an unauthenticated exhibit, and (2) denying appellant's motion for a trial *de novo*.

A. Standard of Review

When reviewing an LCHO determination, the Trial Division has a great deal of discretion. Among other things, "[i]t has the discretion to adopt the LCHO findings in whole or in part and/or make its own new findings as long as there is evidence in the LCHO record to support its findings." *Ngiratereked v. Joseph*, 4 ROP Intrm. 80, 83 (1993). We, however, review the Trial Division's findings under the clearly erroneous standard. *Diberdii Lineage v. Iyar*, 5 ROP Intrm. 61, 62 (1995). Under that standard, if the factual findings made or adopted by the Trial Division are "supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, those findings will not be set aside unless this Court is left with a definite conviction that a mistake has been committed." *Elbelau v. Semdiu*, 5 ROP Intrm. 19, 22 (1994).

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[1] These lots have been designated as Cadastral Lot Numbers 016 F 05 and 016 F 07 respectively.

B. Trial Division's Findings

Appellant's primary arguments are that appellees relied on hearsay testimony and an unauthenticated document[2] to support their claims, and that it was clearly erroneous for the Trial Division to adopt the LCHO findings based upon that evidence. The Trial Division noted that, although appellees' claims were supported, in part, by hearsay, that was neither unusual in LCHO proceedings nor in itself grounds for reversal. We agree. [3] The ROP Rules of Evidence do not apply in LCHO proceedings. *Ngirdengoll v. Santos*, 5 ROP Intrm. 219, 220 (1996). The fact that hearsay evidence is relied upon to support a claim in the LCHO can be considered in weighing the evidence in support of the claim, but there is nothing in the record to indicate that the Trial Division was clearly erroneous in upholding ⊥84 the LCHO's findings.

The same analysis is applicable with regard to the unauthenticated document--the rules of evidence do not apply, but evidence bearing on its authenticity may be considered in determining how much weight to give the document. Appellant argues that the court based its decision solely on the unauthenticated document, but there is other evidence to support appellees' claim and nothing in the record indicates that such evidence was not considered.

The Trial Division noted that the LCHO determined that the testimony presented by the appellees was more credible than the conflicting testimony presented by appellants. The Trial Division saw no basis for second guessing the LCHO's assessment of credibility. On the record before us, it was not clearly erroneous for the Trial Division to adopt the LCHO findings.

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[2] The document, dated July 21, 1952, contains a sketch of the lands at issue and states, as translated, "Imedebech as Irrung's personal property to Rubasch as his personal property." The sketch indicates that Wasisang is the owner of the land adjoining Rubasch's.

[3] Indeed, as the Trial Division noted, appellant also relied on hearsay evidence as part of his case before the LCHO. For example, part of Besebes' argument against Wasisang's claim was that money had been given out to Wasisang during the eldecheduch of his mother, Kebor. But, as Besebes readily admitted, he was very young and did not attend that eldecheduch; rather, his father attended it and he related the facts to him. Also, Besebes account of the dealings between Irrung and Wasisang and Rubasch, was based on alleged conversations with Irrung, and is no less hearsay than appellees' accounts based on what their parents told to them.

C. Request for Trial De Novo

Although the Trial Division has the discretion to grant a trial *de novo* when it sits in review of a LCHO determination, a party is not entitled to a trial *de novo* as a matter of right. *Otiwii v. Iyebukel Hamlet*, 3 ROP Intrm. 159, 169 (1992). In this case, the Trial Division denied Osarch's request for a new trial because it found that Osarch had not shown that anything essential was missing from the LCHO record.

We 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.

> Whether the Trial Division abused its discretion will depend upon the particular facts and circumstances of the case. The existence of severe deficiencies in the record is an important factor in determining whether to grant a trial *de novo*.

KSPLA v. Meriang Clan, 6 ROP Intrm. 10, 14 (1996).

Appellant did not argue that anything material was missing from the record presented to the Trial Division, but rather based his request for trial *de novo* on the contention that the Trial Division might reach a different conclusion than the LCHO regarding credibility if the Trial Division were to hear the testimony itself. Under these circumstances, the Trial Division did not abuse its discretion. "[T]he discretion to grant a trial de novo need not be exercised merely because an appellant believes that a better case can be presented if granted a second opportunity." *Arbedul v. Mokoll*, 4 ROP Intrm. 189, 191 (1994).

CONCLUSION

For the foregoing reasons, the decision of the Trial Division is AFFIRMED.