

Ngerketiit Lineage v. Ngirarsaol, 8 ROP Intrm. 126 (2000)
NGERKETIIT LINEAGE,
Appellant,

v.

GEORGE NGIRARSAOL, et al.,
Appellees.

CIVIL APPEAL NO. 98-57

Supreme Court, Appellate Division
Republic of Palau

Argued: February 9, 2000

Decided: March 6, 2000

Counsel for Appellant: Douglas Cushnie

Counsel for Appellees: Kevin Kirk; J. Roman Bedor, Trial Counselor

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice;
DANIEL CADRA, Senior Land Court Judge, Sitting by Designation.

BEATTIE, Justice:

This is an appeal from the Trial Division's denial of a motion for relief from a judgment determining ownership of various contested parcels of land. Appellant Ngerketiit Lineage ("Ngerketiit") moved for relief pursuant to ROP R. Civ. P. 60(b), arguing that the trial court erred in relying on a Land Commission Determination that was allegedly void. The Trial Court denied the motion, and we affirm.

BACKGROUND

The judgment from which appellants seek relief is a judgment of the Trial Division entered in February of 1996 which determined ownership of various parcels of land (the "Judgment").¹ The Judgment was based in part upon the Trial Division's ruling that a 1987 Land Commission Determination of Ownership was conclusive on the issue of ownership of certain parcels and could not be relitigated. That ruling was affirmed in *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38 (1998), which sets forth the history of this dispute in more detail.

After the *Ngerketiit Lineage v. Ngerukebid Clan* opinion was issued, Ngerketiit filed this Rule 60(b) motion for relief from the Judgment. Although Ngerketiit did not specify under which subsections of Rule 60(b) its motion was filed, the claims were based on newly discovered

¹ The Judgment was entered in civil action numbers 108-94 and 121-94.

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evidence, excusable neglect, and fraud, grounds falling under subsections (1), (2), and (3). In a later filing, Ngerketiit conceded that the motion on those grounds was untimely because it was filed more than a year after entry of the Judgment. Ngerketiit then alleged that the motion was also brought under Rule 60(b)(4), arguing that the trial court relied upon a void Land Commission Determination of Ownership in rendering the Judgment. Ngerketiit claimed the Land Commission Determination was void because 1) it was based on a fraudulent deed, and 2) the Land Commission failed to provide it with notice of other claimants in violation of its due process rights. Ngerketiit also alleged that the trial court had “reversed” *Kloteraol v. Ulengchong*, 2 ROP Intrm. 145 (1990), claiming that, contrary to the findings of the Trial Division which rendered the Judgment, *Kloteraol* had overruled all, not just one, of **1127** the Land Commission’s Determinations regarding contested lots.

The trial court denied the motion for relief from the Judgment, finding that there was no evidence of fraud, and that the rest of the arguments, including improper notice, could have been raised before the Judgment was entered. The trial court also found that Ngerketiit’s argument that all of the 1987 Land Commission determinations had been overruled was incorrect, as *Kloteraol* specifically stated that the appeal pertained only to the lots awarded to one of the claimants.

Ngerketiit now brings this appeal, arguing that the Judgment is void because it relied on a Land Commission Determination that is void due to fraud, due process violations, lack of jurisdiction, “manifest injustice,” and lack of subject matter jurisdiction.

DISCUSSION

We review the trial court’s denial of a Rule 60(b) motion for an abuse of discretion. *Secharmidal v. Tmekei*, 6 ROP Intrm. 83, 85 (1997).

Ngerketiit’s argument is legally flawed. Ngerketiit cannot use a Rule 60(b)(4) motion to attack the validity of the Land Commission’s Determination. Motions brought under Rule 60(b) can only be used to challenge the judgment in the action in which the judgment was entered, not decisions in other actions. *See Bankers Mortgage Co. v. United States*, 423 F.2d 73, 78 (5th Cir. 1970) (Rule 60(b) motions must be brought in the court and in the action in which the original judgment was entered). The trial court in the action underlying this motion clearly had jurisdiction under 4 PNC § 208 to determine ownership of land. Because the trial court had jurisdiction, its judgment is not void.

Moreover, even if we assumed, without concluding, that the Judgment was based on a void Land Commission Determination, that would only mean that the Judgment was erroneous, not void. A judgment is void only if the court that rendered the judgment lacked jurisdiction or where the court’s action amounted to a “plain usurpation of power constituting a violation of due process.” *United States v. Boch Oldsmobile, Inc.* 909 F.2d 657, 661 (1st Cir. 1990). A judgment is not void merely because it is or may be wrong. *Id.* The facts alleged by appellant, if believed, would indicate that its due process rights were violated in the Land Commission proceedings. There is no indication that appellant was denied due process in the trial in which the Judgment

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from which it seeks relief was rendered. In that case, the trial court clearly had jurisdiction to hear Ngerketiit's challenge to title of the land, and thus its judgment is not void for want of jurisdiction.

CONCLUSION

For the foregoing reasons, the Trial Division's denial of appellant's Rule 60(b) motion is **AFFIRMED**.