

Kebekol v. Ngermengiau, 8 ROP Intrm. 1 (1999)
ROSE KEBEKOL,
Appellant,

v.

NGERMENGIAU CLAN,
Appellee.

CIVIL APPEAL NO. 98-66
Civil Action No. 408-95

Supreme Court, Appellate Division
Republic of Palau

Decided: July 20, 1999¹

Counsel for Appellant: Carlos H. Salii

Counsel for Appellee: Johnson Toribiong

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

PER CURIAM:

On November 7, 1995, the Land Claims Hearing Office (LCHO) rendered a decision awarding a parcel of land known as Ngermokirong, located in Idid Hamlet, Koror State, to Appellee Ngermengiau Clan (with Appellant Kebekol as trustee), rather than to Appellant Kebekol in her individual capacity. Kebekol appealed the determination to the Trial Division, which affirmed the LCHO's determination on January 14, 1998. Kebekol then appealed the Trial Division's decision to this Court, where we held that the Trial Division had failed to rule on Kebekol's request for a trial *de novo*, and remanded the case back to the Trial Division for a decision on that request. *Kebekol v. Ngermengiau Clan*, 7 ROP Intrm. 126 (1998). On November 27, 1998, the Trial Division denied Kebekol's request for a trial *de novo*. Kebekol now appeals that decision, claiming that the Trial Division failed to comply with this Court's mandate on remand.

Our order of October 15, 1998 stated that:

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

¹ Because the panel has determined that oral argument would not materially assist the Court in resolving this appeal, we are considering this appeal on the briefs. ROP R. App. Pro. 34 (a). The previously scheduled oral argument is therefore vacated.

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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.

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 12 its earlier decision, amend it as appropriate, or grant a trial *de novo*.

Kebekol, 7 ROP Intrm. at 127. While the first paragraph of the quote might be read to suggest that the Trial Division was directed to affirmatively "resolve the issues" raised by Kebekol in her request for a trial *de novo*, our instructions on remand make it clear that the Trial Division was only required to rule on Kebekol's request and state the reasons for its ruling.

This, the Trial Division did. The court expressly denied the request, citing *Arbedul v. Mokoll*, 4 ROP Intrm. 189, 191 (1994), on the grounds that the additional evidence she sought to introduce at a trial *de novo* was not provided to the LCHO. This was sufficient compliance with our mandate. While Kebekol's argument seems to suggest that we required the Trial Division to hear and evaluate her claims that additional facts would dispute the credibility determinations made by the LCHO, or at least directed the Trial Division to "point to those portions of the record which would render the two issues marginal or immaterial," our remand contains no such requirement. The Trial Division was merely required to "place on the record its decision regarding Kebekol's request for a trial *de novo* and the reasons therefore." Since the Trial Division's decision fulfills this mandate, we can now review whether that decision was an abuse of discretion. *Osarch v. Wasisang*, 7 ROP Intrm. 82, 84 (1998).

As stated by both the Trial Division and Kebekol, the request for a trial *de novo* was based on Kebekol's desire to supplement the record with "critical facts which bear on the credibility of the witnesses." Kebekol admitted in her papers before the Trial Division that she was not prevented from eliciting such facts at the LCHO hearing.² In *Arbedul v. Mokoll*, we held that "[i]f an appellant has had a full and fair opportunity to present his case to the LCHO, requests for a trial *de novo* to present new evidence may, in the sound discretion of the trial court, be denied." 4 ROP Intrm. at 191. As the desire to present new evidence is the heart of Kebekol's request for a trial *de novo*, the ruling in *Arbedul* disposes of the appeal here. The Trial Division's decision not to hold a trial *de novo* was not an abuse of discretion. Therefore, its judgment affirming the award of land to Ngermengiau Clan is AFFIRMED.

² Indeed, the record before the LCHO indicates that Kebekol had a full and fair opportunity to litigate her claim. Her testimony comprises nearly half of the entire hearing transcript (42 pages out of 94), and concludes with the three-judge LCHO panel asking her "do you [have] anything more you would like to say?" In addition, Kebekol was asked to give additional testimony near the end of the hearing, after all of the other claimants and witnesses had testified. On this record, then, we cannot conclude that Kebekol was denied an opportunity to present to the LCHO the evidence she now seeks to introduce.