Mokoll v. Ngirbedul, 8 ROP Intrm. 114 (2000)
MOSES I. MOKOLL,
Appellant,

v.

NGIRBEDUL AND DIRRATENGADIK IBUTIRANG ON BEHALF OF CHILDREN OF IBUTIRANG,
Appellees.

CIVIL APPEAL NO. 98-29
D.O. No. 90-9

Supreme Court, Appellate Division
Republic of Palau

Argued: December 28, 1999
Decided: January 31, 2000

Counsel for Appellant: Oldiais Ngiraikelau

Counsel for Appellees: Johnson Toribiong

BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice.

MILLER, Justice:

This appeal arises from a dispute among the children of the late Ibutirang over a parcel of land known as "Wes," consisting of Tochi Daicho Lots 673 and 674, which Ibutirang owned in fee simple. Appellees are the natural children of Ibutirang's first marriage to Tarmau, who died in the 1930's. Appellant Moses I. Mokoll is a natural child of Ibutirang's second wife, Irorou. Ibutirang adopted Mokoll when he married Irorou. Ibutirang died intestate in 1965. [1] Appellant and Appellees each asserted that Ibutirang had intended to leave Wes to them.

The Land Court awarded Wes to the "Telungalek ra Ibutirang," or lineage of Ibutirang, which it defined to include "at the least, all of the children of Ibutirang, natural and adopted," and appointed the lineage's eldest male, Appellee Ngirbedul Ibutirang, as the trustee. The court also noted Mokoll's assertion that portions of Wes were improperly omitted from some survey maps, but rejected these assertions of a boundary discrepancy on the grounds that they were "not convincing." Mokoll then brought this appeal contending that the court erred in awarding Appellees an interest in Wes and in failing to correct the erroneous boundaries of Wes.

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[1] The Land Court stated that Ibutirang "died around 1955." However, the evidence in the record consistently indicates, and the parties agree, that he died in 1965. *See* Tr. at 8, 10, 11, 67, 70-71.

Since the late 1950's statutory law has governed the issue of succession where, as here, a fee simple landowner dies intestate. Although the relevant statutory provisions are currently codified at 39 PNC § 403 and 25 PNC § 301, we must apply the statute that was in effect at the time of Ibutirang's death in 1965. *See Lakobong v. Anastacio* , 6 ROP Intrm. 178, 182 (1997); *Kubarii v. Olkeriil* , 3 ROP Intrm. 39, 41 (1991). That version provides that in the absence of a will, "lands held in fee simple by an individual shall, upon the death of the owner, be inherited by the owner's oldest living male child." Palau Dist. Code § 801(c) (1959). Pursuant to this provision, upon Ibutirang's death intestate his ⊥115 oldest male child, Appellee Ngirbedul Ibutirang, acquired Wes, leaving Mokoll with no claim thereto.

While the Land Court failed to apply this provision, we cannot similarly disregard the controlling statutory language.[2] We therefore must recognize that Appellee Ngirbedul Ibutirang had a legally enforceable right to exclusive ownership of Wes. However, despite this clear statutory grant of an exclusive ownership right, at the hearing below and at oral argument Appellee Ngirbedul Ibutirang stated his willingness to share ownership of Wes with his siblings, including not only the other Appellees, but also Appellant Mokoll.

By virtue of Appellee Ngirbedul Ibutirang's waiver of his right of exclusive ownership, Mokoll is entitled to retain the non-exclusive ownership interest the Land Court awarded him. However, because Mokoll's ownership interest in Wes derives solely from Appellee Ngirbedul Ibutirang's waiver and not from any legally enforceable claim of title, we reject his contentions on appeal, which seek to expand upon the limited interest he was awarded by the Land Court. Appellee Ngirbedul Ibutirang is the only party whose legally protected interests were arguably infringed by the Land Court's Determination, and he has waived any objection thereto. We therefore affirm the Land Court's Determination awarding an interest in Wes to the "Telungalek ra Ibutirang."[3]

Mokoll also appeals the Land Court's rejection of his claim that there is a discrepancy in the boundaries between Wes and surrounding parcels. In rejecting this claim, the Land Court relied on its finding that "Ibutirang had a representative on the field during the original monumentation of this land." As we read Mokoll's arguments, however, it is his contention, at

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[2] The Land Court also stated that Ibutirang acquired Wes "through means other than bona fide purchases." While this fact is relevant under later versions of the intestate succession statute, *see* 25 PNC § 301, it is immaterial under the controlling statutory language discussed above.

[3] The Land Court defined "Telungalek ra Ibutirang" to include "at the least, all of the children of Ibutirang, natural and adopted." "Telungalek" could be construed to include not only the children of Ibutirang who are parties to this case, but also non-parties such as Ibutirang's grandchildren. Because the award cannot properly extend beyond the parties to this case and the individuals they represent, the certificate of title resulting from this case should vest ownership in the parties to this case, namely Appellant Moses I. Mokoll, Appellees Ngirbedul and Dirratengadik Ibutirang, and their surviving siblings, while avoiding the ambiguity introduced by the term "Telungalek." We urge the Land Court to be cognizant of potential ambiguities in the future and to identify owners by name or by the most precise available description where possible.

least in part, that the boundaries of Wes and adjoining lands were set not on the basis of the monumentation, but on the basis of an aerial survey which he contends is inconsistent with the monumentation.

We have no occasion, however, to consider either the precise nature or the merits of Mokoll's assertions, because a boundary dispute cannot appropriately be resolved in this appeal. Rather, it can be adjudicated only in a case to which the adjacent landowners are ⊥116 parties.[4] Because those adjacent landowners are not parties here, we decline to adjudicate the boundary issue, and will simply affirm the Determination as to the ownership of Wes, which consists of Tochi Daicho lots 673 and 674, without prejudice to any future claims contesting the boundaries of Wes that might be brought against appropriate parties.[5]

[4] Furthermore, Appellee Ngirbedul Ibutirang stated at oral argument that Appellees do not dispute the boundaries of Wes as identified and defined in the Land Court's Determination. Thus, the owners of Wes must first decide among themselves whether they believe there is a boundary dispute to be raised with adjacent landowners.

[5] The record reflects that the additional areas claimed by Mokoll fall within lands that have already been adjudicated. If that is the case, any subsequent challenge will constitute a collateral attack that must meet a more demanding burden of proof. *See Ucherremasech v. Wong*, 5 ROP Intrm. 142, 146-47 (1995).