

Ngirumerang v. Tmakeung, 8 ROP Intrm. 230 (2000)
ADELBAI NGIRUMERANG,
Appellant,

v.

ESTHER TMAKEUNG TELLAMES
and EBIL BENJAMIN,
Appellees.

CIVIL APPEAL NO. 98-11
D.O. No. 03-81-85

Supreme Court, Appellate Division
Republic of Palau

Argued: August 31, 2000
Decided: November 3, 2000

Counsel for Appellant: Raynold Oilouch

Counsel for Appellees: John K. Rechucher

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; JANET HEALY WEEKS, Part-time Associate Justice.

PER CURIAM:

This appeal arises from a proceeding under the Land Claims Reorganization Act of 1996, 35 PNCA § 1301, *et seq.*, to determine the ownership of Tochi Daicho Lot Nos. 511, 513, 531, 534, and 535 in Elab Hamlet, Ngaraard. After a hearing the Land Court determined that the lots are owned jointly by Esther Tmakeung Tellames and Ebil Benjamin. We affirm.

I. Background

The Tochi Daicho for Babeldaob lists Tmakeung as the owner of Lot Nos. 511, 513, 531, 534, and 535. Tmakeung died intestate in 1971. Tmakeung was survived by four children -- two natural daughters, Dirruchei and Ebil Benjamin, an adopted son James, and an adopted daughter, Esther Tmakeung Tellames. Esther is the natural daughter of Dirruchei, who died in 1994.

At the hearing Esther claimed she and Ebil inherited the lots from Tmakeung under section 801 of the Palau District Code, the statute governing inheritance from intestate decedents which was in force at the time of Tmakeung's death. Appellant Adelbai Ngirumerang claimed the lots for Iterir Clan. Adelbai testified that Iterir Clan gave Lot Nos. 511, 513, and 535 to Adelbai and her mother at the time of the Japanese land surveys and that Tmakeung was trustee for the lots. Adelbai claimed that Lot No. 531 was given to Tmakeung and his sister by their

father and that Lot No. 534 belongs to relatives in Kayangel.¹

The Land Court determined that Esther and Ebil inherited the lots in a line of succession from Tmakeung. The court found that the contradictory testimony of Adelbai and a co-claimant did not amount to clear and convincing evidence that the Tochi Daicho listing was inaccurate. The court then held that Dirruchei inherited the lots from Tmakeung as his oldest surviving daughter under section 801 and that Esther and Ebil inherited from Dirruchei.

II. Discussion of Issues on Appeal

A. The Fairness of the Hearing

Adelbai makes several procedural arguments about the fairness of the hearing. First, Adelbai argues that her appearance without an attorney put her at a disadvantage to Esther, who was represented by counsel. **1231** Adelbai contends that the Land Court should have informed her of her right to an attorney and postponed the hearing to enable her to obtain counsel. Second, Adelbai argues that the Land Court erred by consolidating the five lots into one hearing. She contends that the consolidation was confusing, prevented her from explaining the history of the lots, and led the Land Court to view her testimony as contradictory. Third, Adelbai claims that a Land Court staff member denied her request to reopen the hearing. She argues that given the unfairness of the hearing, the hearing should have been reopened to enable her to hire an attorney and present more evidence.

We have examined the record carefully and conclude that the hearing was not unfair to Adelbai. Requiring the Land Court to ensure claimants have attorneys would contradict its statutory mandate to conduct hearings so claims can be presented without legal counsel. *See* 35 PNCA § 1309 (1996); Land Court R. Pro. 2. Moreover, the Land Court could not have postponed or reopened the hearing as requested consistent with its duty of impartiality, as Adelbai makes no claim that she had less time than the other claimants to hire an attorney or prepare her claims. The record does not support Adelbai's claim that she was prejudiced by consolidation. Adelbai explained her claim to all the lots and did not express confusion at the hearing. The testimony the Land Court viewed as contradictory occurred before the hearings were consolidated, so consolidation could not have affected the court's assessment of that testimony. Adelbai also has not demonstrated that she was prevented from presenting any evidence by consolidation. The witness she says she would have called was at the hearing.

B. Esther and Ebil's Inheritance from Tmakeung

Adelbai contends the Land Court erred in holding that Esther and Ebil inherited the lots in a line of succession from Tmakeung. She argues that Tmakeung's son James, not Dirruchei, inherited from Tmakeung under section 801 and that Iwei Lineage, which Adelbai claims to

¹ Takeko S. Willett claimed she purchased Lot Nos. 511, 513, and 535 from Dirruchei. Takeko's appeal of the Land Court's finding that there was no such purchase was dismissed on January 22, 1999.

represent, stood to inherit from Dirruchei.

Adelbai is correct insofar as she argues that James appears to be Tmakeung's heir, and could have claimed these lands, under section 801(c) as it read at the time of Tmakeung's death. Likewise, she is correct in noting that under the version of the statute in effect at the time of Dirruchei's death, Iwei Lineage might have claimed the right to dispose of these lands as the lineage that was actively and primarily responsible for her care before her death. *See* 25 PNCA § 301 (1996). But neither James, nor Iwei Lineage, nor anyone claiming to have been selected by Iwei to receive these lands, filed a claim, and Adelbai is not entitled to change the theory of her claim on appeal. *See Tarkong v. Mesebehuu*, 7 ROP Intrm. 85, 87 n.7 (1998) ("A party who makes a claim on one basis cannot prosecute her appeal on another.").² The Land Court can, and must, choose among the claimants who appear before it and cannot choose someone who did not, even though his or her claim might be theoretically more sound. Here, with no claim on behalf of James or Iwei Lineage, the Land Court had to choose between a claimant disputing the accuracy of the Tochi Daicho listing and those claiming as descendants of the listed owner. 1232 The Land Court did not err in awarding the lots to the descendants of the listed owner once it determined that the listing was accurate.

III. Conclusion

We affirm the Land Court's determination that Esther Tmakeung Tellames and Ebil Benjamin own Tochi Daicho Lot Nos. 511, 513, 531, 534, and 535 in Elab Hamlet, Ngaraard.

² Adelbai asserts she claimed for Iwei Lineage rather than Iterir Clan. While Adelbai filed claims for Iwei Lineage and "Ongalk ra Tmakeung, Ngeream and Ngkeruker," she abandoned these claims at the hearing and no testimony was given about Iwei Lineage's claim.