

*Joseph v. Ngerkodolang Lineage*, 8 ROP Intrm. 256 (2000)

**BACHIEI JOSEPH,<sup>1</sup>**

**Appellant,**

**v.**

**NGERKODOLANG LINEAGE, PAUL D. SIMANG,**

**DEBELBOT NGIRATNGERUR, Represented by**

**YOSHIRO EMESIOCHEL, URBAU MONGAMI,**

**Represented by OLNELLEL MONGAMI,**

**Appellees.**

CIVIL APPEAL NO. 99-39

Land Court D.O. No. 11-49

Supreme Court, Appellate Division  
Republic of Palau

Decided: December 19, 2000<sup>2</sup>

Counsel for Appellant: Moses Uludong

Counsel for Appellees: Yukiwo Dengokl

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

PER CURIAM:

This is an appeal that should have been brought before the Trial Division as a motion for relief from judgment. Appellant Bachiei Joseph (“Joseph”) appeals from a determination of the Land Court on November 23, 1999, that Ngerkodolang Lineage owns the parcel of land in Aimeliik known as Ngerdelungch, Lot No. 127-43, claiming that he never received notice of the hearing. Rebechong had filed a claim to Lot 127-43, but Joseph did not appear at the Land Court hearing.

Joseph attaches to his opening brief an affidavit dated September 5, 2000, stating that he never received notice of the hearing. Appellee Ngerkodolang Lineage argues that Joseph was served with appropriate notice, and attaches to its responsive brief an affidavit dated October 12,

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<sup>1</sup> This appeal was originally filed under the caption, “Skilang Rebechong, Rep. by Bachiei Joseph v. Ngerkodolang Lineage, et. al.” The record indicates that Skilang Rebechong is deceased and Bachiei Joseph subsequently asserted a claim to the land. The record does not indicate how Joseph derives his claim through Rebechong. In any event, we have changed the caption to reflect the real parties in interest to this appeal.

<sup>2</sup> 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).

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2000, from an individual who states he personally served notice upon Joseph's son. Joseph attaches additional affidavits to his reply brief that are also signed in October 2000.

It is for the trial court, not the Appellate Division, to inquire into critical factual issues. *See Uchel v. Deluus*, 8 ROP Intrm. 120, 121 (2000). Because these affidavits were never presented to the Trial Division or the Land Court, none are part of the record upon appeal, *see* ROP R. App. Pro. 10(a), and are therefore not appropriate for consideration by this court. *See Whitecotton v. Secretary of Health and Human Serv.*, 81 F.3d 1099, 1104-05 (Fed. Cir. 1996) (stating that evidence not presented in proceedings below is "not appropriate for consideration on appellate review"); *Plemer v. Parsons-Gilbane*, 713 F.2d 1127, 1138 (5th Cir. 1983) (noting that an appellate court may not consider evidence in the first instance). The Trial Division has previously considered challenges to Land Court determinations on the basis of inadequate notice, and there **¶257** appears to be nothing here that prevents the Appellant from bringing this claim to the Trial Division. *See, e.g., Adelbai v. Eleu Lineage*, 8 ROP Intrm. 218 (2000); *Uchel*, 8 ROP Intrm. at 121; *Irruul v. Gerbing*, 8 ROP Intrm. 153, 154 (2000).

For the foregoing reasons, the instant appeal is DISMISSED.