

*Carlos v. Ngarchelong SPLA*, 8 ROP Intrm. 270 (2001)

**MARIANO CARLOS,  
Appellant,**

v.

**NGARCHELONG STATE PUBLIC LANDS AUTHORITY,  
Appellee.**

CIVIL APPEAL NO. 99-33  
Land Court D.O. No. F-01-97

Supreme Court, Appellate Division  
Republic of Palau

Argued: November 30, 2000  
Decided: January 31, 2001

Counsel for Appellant: Mariano W. Carlos

Counsel for Appellee: Douglas J. Juergens<sup>1</sup>

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; KATHLEEN M. SALII, Associate Justice.

MICHELSEN, Justice:

This case concerns hearings held pursuant to 35 PNC § 1104(b),<sup>2</sup> which is the legislation enacted to implement Article XIII, section 10 of the Palau Constitution. Appellant Mariano Carlos appeals a denial of his motion to allow him to file a late claim to Ngerkekklau, an island of Ngarchelong State. We affirm.

## **¶271 BACKGROUND**

The Tochi Daicho lists Ngerkekklau as property of the “Palau Administration.” In late 1987, the Land Claims Hearing Office (“LCHO”) began publishing notices in newspapers announcing that it would be accepting claims to public lands until January 1, 1989, the statutory deadline for such claims. Ngerbau Hamlet filed a timely claim to Ngerkekklau, and LCHO hearings began on May 23, 1990, but were not concluded and remained pending until further hearings were scheduled for May 12, 1999. Carlos filed a claim to Ngerkekklau on November 7, 1990, after the statutory deadline and after the 1990 hearings, but before the 1999 hearings. When hearings resumed in 1999, the Land Court dismissed Carlos’ claim as untimely. On the merits of Ngerbau Hamlet’s claim, the court found no evidence that the government acquired the

---

<sup>1</sup> Douglas Juergens filed a response brief but did not appear at oral argument.

<sup>2</sup> 35 PNC § 1104(b), which has been superseded by 35 PNC § 1304(b)(2), provided that “[a]ll claims for public land . . . may not be filed after January 1, 1989.”

*Carlos v. Ngarchelong SPLA*, 8 ROP Intrm. 270 (2001)

land wrongfully, and noted that nobody had objected to the government's control of the island, including its leasing it to a private party, and thus awarded NSPLA ownership.

Carlos brought this appeal contending that he was denied adequate notice that Ngerkeklau was considered public land that was subject to the statutory deadline, and thus was denied due process. He asserts that he should be permitted to proceed with his claim that his grandparents bought Ngerkeklau during German times. Carlos explains that his grandparents left during German times and did not return, except for a brief visit by his grandparents during Japanese times.<sup>3</sup> He contends that his father intended to return to Ngerkeklau after hearing in 1953 that another man who stayed there "had started to claim the island," but was unable to return due to ill health. Carlos argues that he was waiting for Ngerkeklau to be designated as a registration area so he could claim it, and was surprised to learn in 1990 that Ngerbau Hamlet had filed a public land claim to Ngerkeklau.

### ANALYSIS

Appellant's underlying argument is that his title is superior to government claims of ownership because his grandfather bought the island about one hundred years ago, his father was born there, and the family lived on the island during the German period. Appellant states he had every intention of making a claim of ownership to the island when the land registration program reached that part of Ngarchelong. He explains he was unaware of the Tochi Daicho listing, and concedes he did not file a timely Article XIII claim. However, he argues that the Land Court's failure to publish a public notice that the island was considered public land, coupled with its denial of his request to permit a late filing of an Article XIII claim, violated his due process rights to fair notice and an opportunity to be heard.<sup>4</sup>

We disagree. The enabling legislation for Article XIII, section 10 (currently codified at 35 PNC § 1304(b)) does not deprive anyone of a property interest. Rather, it revives legal interests previously lost. It establishes a reasonable procedure, and a reasonable period, to assert the reinstated claims. It does not extinguish previous claims, nor require such other claims to be joined and heard with the constitutionally-created claim. Once the law was enacted, any citizens considering invoking this new right would be responsible to search the public records to determine whether any property they were claiming was listed as public land. In this case, the search **L272** would have been a short one - the island is listed as government land in the Tochi Daicho.<sup>5</sup>

---

<sup>3</sup> Carlos claims that they left other relatives behind to watch the land.

<sup>4</sup> Article IV, section 6 of the Palau Constitution states that "[t]he government shall take no action to deprive any person of life, liberty, or property without due process of law."

<sup>5</sup> We are unaware of any examples where the government asserts that it owns land that is not documented by some discoverable public record or law. Indeed, both the Trust Territory Government and the Japanese Mandate Government expended significant time and effort to create a written record for their land claims. We need not determine here whether a different rule would be required in a case where the claimant could show that the government claim of title could not have been discovered before January 1, 1989.

*Carlos v. Ngarchelong SPLA*, 8 ROP Intrm. 270 (2001)

Although Appellant did not file an Article XIII claim, he has not waived his right to assert he has title that is superior to the government. Citizens had a right to contest government claims of title to property before the enactment of the Constitution,<sup>6</sup> and that right continues after the expiration of the period for filing Article XIII claims.<sup>7</sup> Hence, Appellant could have, and still may, bring a quiet title action.<sup>8</sup>

Hence, we perceive no due process violation. Appellant was given notice of the right to claim public lands by the passage of the enabling legislation. The same act imposed reasonable conditions on asserting that right, including a deadline for filing claims. The procedures established for such claims do not violate due process.

### CONCLUSION

Because there was no due process violation, the land court's dismissal of Carlos' claim as untimely is AFFIRMED.

---

<sup>6</sup> For an example of a claimant successfully defeating a government claim of title during the Trusteeship period, see *In re Ngiralois*, 3 TTR 303 (Tr. Div. 1967), and related proceedings before the Land Title Officer.

<sup>7</sup> See, e.g., *Dilubech Clan v. Ngeremlengui State*, 8 ROP Intrm. 106 (2000).

<sup>8</sup> In making this observation, we do not make light of the obvious evidentiary hurdles facing Appellant's claim, including the adverse Tochi Daicho listing, and the availability of affirmative defenses not permitted the government in Article XIII cases. We merely note that Appellant's claims that he holds superior title to the island were not forfeited by failing to file an Article XIII claim.