

Remasch v. Ngiramos, 8 ROP Intrm. 280 (2001)
TAMT REMASCH,
Appellant,

v.

BEDUL ANTONIO NGIRAMOS and
DIRUCHELIOU EDANGEL RENGUUL,
Appellees.

CIVIL APPEAL NO. 00-06
Civil Action No. 383-95

Supreme Court, Appellate Division
Republic of Palau

Argued: January 25, 2001
Decided: March 19, 2001

Counsel for Appellant: Moses Uludong

Counsel for Appellees: David Kirschenheiter

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

PER CURIAM:

This appeal deals with a controversy over the ownership of land where the Appellant's wooden house is located. Appellant Remasch appeals the trial court's finding that the building was on a portion of the lot which the LCHO previously determined was owned by the Ngurungor Clan. We affirm.

Background

The building is an old house that has not been occupied for over 20 years. Appellees are title bearers of the Ngurungor Clan in Ngeremlengui State. Appellees want to remove the house, which they claim is on land called Ngurungor, Tochi Daicho Lot No. 635 or Cadastral 003 K 07 and was awarded to the Clan in 1992.

Cadastral Lot 003 K 07 was one lot which was later parceled into four smaller lots. One of these subdivided lots was then named Lot 003 K 07. This sub-lot is also referred to as Tochi Daicho 635, and we call it that for purposes of clarity. There is no known surviving Tochi Daicho map made for this area of Ngeremlengui. At oral argument both parties mentioned that they requested the land be surveyed before trial, but neither knew exactly what happened at the survey.

Appellant asserted in his answer that the land where the old house stood was actually owned by his father, apparently based on an adverse possession claim,¹ and not land belonging to the Clan. He also filed a counterclaim requesting that the court declare him the owner of Tochi Daicho Lot No. 642, where he claimed the old house was located.

The Trial Division determined that the house was on Tochi Daicho Lot 635. Since there was no Tochi Daicho map for the area, the court found that it could not conclusively find which of the four sub-divided lots of 003 K 07 the house was on, but based upon the evidence concluded that the house was on one of the four lots which the LCHO determined were owned by Ngurungor Clan. The decision, therefore, ordered Appellant to remove his building within 90 days of the date of the decision.

¶281 Analysis

Rule 52 of the ROP Rules of Civil Procedure provides that “[f]indings of facts shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the Trial Court to judge the credibility of the witness.” On appeal, the Appellant’s burden is to show that clear error was committed.

The Trial Division’s finding that the old house was located on one of the four lots that the LCHO had determined were owned by the Ngurungor Clan, rather than on Tochi Daicho Lot No. 642, was in part based upon the testimony of LCHO Land Registration Officer, Tadayoshi Skebong. Skebong testified that an old police station was located on Tochi Daicho 642, and the house was not located on the same lot as the police station, but rather twenty yards away.

“If the trial court’s findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless th[e] Court is left with a definite and firm conviction that a mistake has been committed.” *Fritz v. Blailes*, 7 ROP Intrm. 190, 192 (1999) (citing *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994)). Skebong’s testimony was clearly relevant and “due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” ROP Civ. Pro. R. 52. The Trial Division found that Skebong “testified that defendant’s house was not within the excluded area.” The decision was based on the testimony of a fact witness, as well as his interpretation of the credibility of the witnesses, and was therefore not clear error.

Appellant argues that the court should not have dismissed his counterclaim for ownership of Tochi Daicho Lot No. 642. Appellant claimed in his Answer and Counterclaim that he is the owner of Lot 642 because Appellant and his father continuously occupied the land, and built the disputed house. Because Appellees do not assert any claim with respect to Lot 642, there is no current case or controversy regarding that lot, and the Trial Division correctly dismissed this

¹ In Remasch’s Answer and Counterclaim he argues “[d]efendant with his father, Remasch, took possession of a land by the name of Iriu, TD No. 642 sometime between 1948 and 1950 by building a house and farming on it. They have [continuously] occupied and used the land until now.”

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claim.

In his brief, Appellant attempts to present evidence to show that there was no clan meeting where a decision was made to evict him and to authorize the suit against him. He claims that the evidence, if allowed, would have shown that the eviction was not authorized by the senior strong members. At trial, the court sustained an objection to this testimony on the ground that this argument was never raised in the pleadings. Failure to raise defenses in the answer constitutes a waiver of the defenses. *Kumangai v. Isechal*, 1 ROP Intrm. 587, 589 (1989). The decision to refuse to hear Appellant's testimony regarding the right of a clan to evict a clan member's house from the land was not in error.

Conclusion

The Trial Division did not commit clear error in deciding that the subject land is Tochi Daicho Lot 635, and not Lot 642. Its judgment is therefore AFFIRMED.