

Idid Clan v. KSPLA, 9 ROP 12 (2001)
IDID CLAN and MARIANO TELLEI,
Appellants,

v.

KOROR STATE PUBLIC LANDS AUTHORITY,
Appellee.

CIVIL APPEAL NO. 00-10
LC/B 99-02

Supreme Court, Appellate Division
Republic of Palau

Argued: May 30, 2001

Decided: September 4, 2001

[1] **Appeal and Error:** Reversal; **Civil Procedure:** Remand

Reversal on appeal does not generally inure to the benefit of non-appealing parties, but “exceptional circumstances” may justify an exception to this rule.

[2] **Land Commission/LCHO/Land Court:** Preclusive Effect of Land Title Decisions

The Appellate Division has consistently held that claimants in land registration proceedings who do not appeal are bound by unappealed determinations.

[3] **Appeal and Error:** Remand; **Civil Procedure:** Remand

When an opinion is silent as to the scope of retrial, the court should assume as a general rule that only the issues and parties on appeal are included.

[4] **Civil Procedure:** Parties; **Land Commission/LCHO/Land Court:** Claimants

When a person presents a claim as the representative for a clan or lineage, the clan is the party, not its representative.

[5] **Land Commission/LCHO/Land Court:** Claims

It is possible that a person may believe that land is owned by a clan or lineage, but also have a colorable claim to individual ownership and there is no reason why such a person should not be able to make both claims in the alternative, but a person may not claim for a clan or lineage at one stage of a proceeding and claim in an individual capacity at another.

Counsel for Idid Clan: Carlos H. Salii

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Counsel for Tellei: Mark P. Doran

Counsel for Appellee: Greg Fullem, at oral argument; Kathryn B. Fuller, on the brief

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

MILLER, Justice:

The Land Court issued a determination of ownership awarding Lot K-207 in Koror to Koror State Public Lands Authority (“KSPLA”). We affirm.

BACKGROUND

Lot K-207, as shown on BLS Cadastral Worksheet SK No. 533/78, is located in Idid Hamlet, Koror State. The land consists of Tochi Daicho Lot Nos. 894, 896, and 897. Lot No. 894 is registered as the **L13** individual property of Keukl and Lot Nos. 896 and 897 are registered as the individual property of Ngiraked. Lot K-207 was the subject of a 1994 LCHO proceeding which resulted in a determination of ownership awarding the land to KSPLA. The LCHO found that none of the claimants, who included appellants Idid Clan and Mariano Tellei, had established that the land had been wrongfully acquired by the government. *See* 35 PNC § 1304(b). Idid Clan appealed to the Trial Division which vacated and remanded for a new hearing on the grounds that a member of the LCHO panel had a disqualifying conflict of interest. Decision and Order, *Idid Clan v. KSPLA*, Civil Action No. 230-94 (February 5, 1996).

No further action was taken until the Land Court scheduled a status conference for November 9, 1999. After receiving notice of the conference, counsel for Idid Clan wrote a letter to Senior Judge Cadra pointing out that “Idid Clan was the only claimant who timely filed and perfected an appeal.” Judge Cadra sent a letter in response that stated that notice of the proceedings would only be served on Idid Clan and KSPLA “in recognition of the general rule that a non-appealing party is bound by an adverse judgment and is not entitled to participate in a remand proceeding obtained by an appealing party.” After a hearing was held on February 7 and 9, 2000, the Land Court issued a determination of ownership again awarding Lot K-207 to KSPLA. A notice of appeal was filed by Idid Clan. Mariano Tellei, who had not appealed the original LCHO determination, filed a motion to intervene that was construed as a request to file an untimely notice of appeal and granted.

ISSUES ON APPEAL

Tellei argues that he did not receive notice of the hearing on remand and that the Land Court thereby deprived him of his right to assert his claim after the original LCHO determination was vacated. Idid Clan argues that the Land Court erred in holding that Bilung Gloria Salii, who appeared at the Land Court hearing as the representative of the Clan, was barred from claiming in an individual capacity on behalf of the heirs of Keukl and Ngiraked.

A. TELLEI'S APPEAL

Tellei argues that the Land Court erred in excluding him from participating in the proceedings on remand because he was a non-appealing party. He argues that a vacated judgment no longer has legal effect and that because the Trial Division vacated the LCHO determination, he was no longer bound by it. He also argues that the LCHO panel member's failure to recuse himself which resulted in the vacating of the determination affected all of the claimants, not just Idid Clan. Consequently, he argues, all of the claimants should have been allowed to participate in the proceedings on remand.

[1, 2] We disagree. While Tellei in all likelihood would have received the same relief as Idid Clan had he filed an appeal from the original LCHO determination, the ineluctable fact is that he did not do so. As noted by the Land Court, the general rule is that a reversal on appeal does not inure to the benefit of non-appealing parties. *See Federated Dept. Stores, Inc. v. Moitie*, 101 S. Ct. 2424, 2428 n.4 (1981); *Williams v. Nix*, 53 F.3d 212, 213 (8th Cir. 1995); *Daniels v. Gilbreath*, 668 F.2d 477 (10th Cir. 1982); *Shelter Mut. Ins. Co. v. Briggs*, 793 S.W.2d 862 (Mo. 1990) (en banc). This rule applied **¶14** to bar Tellei, who chose not to appeal the first time around, from being able to assert his claim in Land Court on remand from the Trial Division.¹ This Court has consistently held that claimants in land registration proceedings who do not appeal are bound by the unappealed determinations. *See Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 40-42 (1998); *Secharmidal v. Techemding Clan*, 6 ROP Intrm. 245, 246 (1997); *Bilamang v. Oit*, 4 ROP Intrm. 23, 26-8 (1993).

[3] To the extent that Tellei means to argue that, notwithstanding the general rule, the Trial Division's decision vacating the LCHO determination in this case should be read to have broader scope, that argument is untenable in light of the language of the decision, which refers specifically and solely to the burden of proof that *Idid Clan* would face on remand, *see* n.4 *infra*, and is contrary to the principle, cited by the Land Court, that even "[w]hen an opinion is silent as to the scope of the retrial, the . . . court should assume as a general rule that only the issues and parties on appeal are included" *Repola v. Morbark Indus.*, 980 F.2d 938, 943 (3d Cir. 1992). The Land Court made no error in failing to give Tellei notice of the proceedings on remand.

B. IDID CLAN'S APPEAL

[4] The Land Court held that Bilung was barred from claiming for the heirs of Keukl and Ngiraked because she claimed for Idid Clan in the LCHO. Allowing a claim for the heirs of Keukl and Ngiraked, it concluded, would amount to adding a new party on remand and, because

¹There are some cases that have concluded that "exceptional circumstances" may justify an exception to this rule. 15A C. Wright & A. Miller, *Federal Practice and Procedure* § 3904, at 228 (2d ed. 1992); *see* 9 J. Moore *et al.*, *Moore's Federal Practice* ¶ 204.11[5], at 4-60 (2d ed. 1991) ("In some cases, . . . the rights of the parties are tied together so closely that the court can render no judgment that would be just without affecting the rights of parties who did not file a notice of appeal"). Tellei has not suggested, and we do not believe, that any of those cases are pertinent here. *See Federal Practice and Procedure, supra*, at p. 219 (noting that "virtually all involved circumstances in which appeals were taken by one or more defendants or third-party defendants, but not by others").

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it was inconsistent with her prior claim for Idid, was impermissible under the doctrine of judicial estoppel. Various arguments are presented as to why these rulings were error. However, we think that the claim for Bilung suffers the same infirmity as Tellei's claim. Like Tellei, Bilung was a non-appelling party and therefore not entitled to assert a claim to ownership in her individual capacity on remand. If anything, her right to proceed was even weaker because, unlike Tellei, Bilung was not even a claimant in the original proceeding before the LCHO. It bears repeating that when a person presents a claim as the representative for a clan or lineage, "[t]he Clan is the party, not its representative." *Asanuma v. Tmilchol*, 7 ROP Intrm. 261, 262 (Tr. Div. 1998).

[5] It is true that the Land Court found that Bilung had filed a timely claim to ownership on behalf of the heirs of Keukl and Ngiraked when she and Ibedul Yutaka Gibbons jointly claimed the land "as surviving heirs and heads of clans and lineages." However, that finding only means that she *could* have proceeded with that claim before the LCHO. But she did not do so. At the LCHO hearing, Bilung claimed Lot K-207 for Idid Clan and the appeal from its determination was filed and argued for Idid **L15** Clan. No claim was presented and no appeal was filed for Bilung in an individual capacity.² Thus, the Land Court was entirely correct in concluding that her claim on behalf of the heirs of Keukl and Ngiraked was, in effect, a new claim that should not be considered on remand.³

It is argued that the Land Court should have notified Bilung at the hearing that she could not claim for the heirs of Keukl and Ngiraked, and that if it had done so she would have proceeded with her claim for Idid Clan. We are doubtful that the Land Court has any obligation to instruct represented parties on what evidence to present, particularly where, as here, the scope of the hearing had already been made plain both by the remand order of the Trial Division setting forth Idid Clan's burden of proof⁴ and the correspondence between Court and counsel confirming that only Idid Clan was entitled to participate in that hearing. Moreover, from our reading of the

²Indeed, as noted above, even after the remand, counsel emphasized in the Land Court that "Idid Clan was the only claimant" to file an appeal from the original LCHO determination. Likewise, the notice of appeal to this Court was filed on behalf of Idid Clan, not Bilung.

³In reaching this conclusion, we do not mean to suggest that a party to a land registration proceeding may never put forward claims both as a representative of a clan or lineage and in his or her individual capacity. It is possible that a person may believe that land is owned by a clan or lineage, but also have a colorable claim to individual ownership if it is found that the land is not owned by the clan or lineage. We see no reason why such a person should not be able to make both claims in the alternative. *Cf.* ROP R. Civ. Pro. 8(e)(2). However, as each of these claims are made on behalf of different parties in interest, the claims must be presented and preserved as if they were presented by different persons. What a person may not do is claim for a clan or lineage at one stage of a proceeding and claim in an individual capacity at another. *See Tarkong v. Mesebeluu*, 7 ROP Intrm. 85, 87 n.7 (1998) ("A party who makes a claim on one basis cannot prosecute her appeal on another.").

⁴

It is doubtless true that appellant has a difficult burden to meet to prove its claim. It must prove the property was taken by force or without compensation, etc. *It must also overcome the strong presumption of accuracy of the Tochi Daicho and prove that the land was really clan property and not the individual property of Ngiraked and Keukl.*

Decision and Order, Civil Action No. 230-94, slip op. at 4 (February 5, 1996) (emphasis added).

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hearing transcript and the Land Court record, it is not clear that the Land Court was made aware of the changing nature of Bilung's claim until the filing of written closing arguments after the hearing was completed.

CONCLUSION

The Land Court did not err in failing to notify Mariano Tellei of proceedings on remand or in ruling that Bilung Gloria Salii was barred from claiming Lot K-207 for the heirs of Keukl and Ngiraked. We therefore affirm Determination of Ownership No. 12-216 awarding Lot K-207 to Koror State Public Lands Authority.