

Masang v. Ngirmang, 9 ROP 125 (2002)
SAM YOYO MASANG,
Appellant/Cross-Appellee,

v.

GABRIELLA NGIRMANG,
Appellee/Cross-Appellant.

CIVIL APPEAL NO. 99-14
Civil Action Nos. 235-90 & 241-90

Supreme Court, Appellate Division
Republic of Palau

Argued: November 2, 2001
Submitted: February 26, 2002
Decided: June 12, 2002

[1] **Appeal and Error: Standard of Review**

A trial court's legal conclusions are reviewed *de novo*.

[2] **Descent and Distribution: Applicable Law**

In determining who shall inherit a decedent's property, the court applies the inheritance statute in effect at the decedent's death.

[3] **Return of Public Lands: Elements of Proof**

To prove a claim for return of public lands a claimant must demonstrate that the claimant is a citizen who filed a timely claim, that the claimant is either the original owner of the claimed property or one of the proper heirs, and that the claimed property is public land which became public land by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration.

[4] **Return of Public Lands: Burden of Proof**

In return of public lands cases, where the evidence shows that the proper heirs did not file a timely claim, other claimants do not prevail simply by being the most closely related persons who filed timely claims and the burden remains on the claimants to demonstrate that they satisfy all the requirements of the statute.

[5] **Return of Public Lands: Elements of Proof; Public Lands Authorities**

In return of public lands cases, where the trial court determines that a decedent's proper heirs

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have not filed timely claims, title to the land should remain with the state public lands authority.

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

Although in the usual case a reversal does not inure to the benefit of non-appealing parties, the statutory requirements of 35 PNC § 1304(b) compel a different result.

[7] **Descent and Distribution:** Intestacy

Only persons related by birth or adoption who were actively and primarily involved in caring for the decedent prior to his death are entitled to invoke PDC § 801(d).

[8] **Judgments:** Designation of Parties

Judgments concerning land should identify owners by name or by the most precise available description.

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BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; R. BARRIE MICHELSEN, Associate Justice; DANIEL N. CADRA, Associate Justice Pro Tem.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

MICHELSEN, Justice:

In our first opinion concerning this multi-party appeal,¹ we reserved for later consideration the cross appeals of Sam Masang and Gabriella Ngirmang, both asserting interests in land called Ngerias, which has been public land since the Japanese era. They argue that they qualify as claimants pursuant to 35 PNC § 1304(b), which was enacted pursuant to the Return of Public Lands Clause, Article XIII, section 10 of the Palau Constitution. In reaching its judgment that Ngirmang and Masang (as “trustee” for his brothers and sisters) should hold title to the land, the Trial Division used the 1967 version of the intestate inheritance statute, Palau District Code § 801, to determine the heirs of the original owner of the land, Salii Ngiraikelau (“Salii”). Appellant Masang argues that § 801, or at least subsection (d) of that statute, does not apply. Appellant Ngirmang argues that § 801 was improperly applied. We conclude that the inheritance statute does apply to determine Salii’s heirs, but remand to the Trial Division for further consideration whether the proper subsection of that statute was utilized when determining “the proper heirs to the land” as required by 35 PNC § 1304(b).

FACTUAL BACKGROUND

¹*Adelbai v. Masang*, 9 ROP 35 (2001).

The previous opinion regarding this appeal explained the procedural history of the case, so here we need provide only an abbreviated summary concerning the remaining issues. The Trial Division found, and these parties agree, that the claimed property was owned as individual land by Salii before it was expropriated by the Japanese Government. After World War II, the property became public land held by the Trust Territory Government as the successor government. Title was then transferred to the Koror State Public Lands Authority (“KSPLA”) toward the end of the Trusteeship. Salii died intestate in 1967 with no surviving spouse and no natural children. Appellant Masang’s father, Masang Marcil, timely filed a claim pursuant to 35 PNC § 1304(b), and after his father’s death he was substituted as claimant. Gabriella Ngirmang also filed a timely claim. Dirairachel Salii Adelbai, Dirraklai Tellames Trolii, and Hiromi Rdiall all asserted claims to the property as adopted children of Salii, and moved to intervene.² As we held in our prior opinion regarding this appeal, the Trial Division correctly denied their motions as untimely because they failed to meet the January 1989 deadline for filing such claims. Thus the remaining parties are cross-appellants Masang and Ngirmang and the sole issue for us to consider relates to whether the Trial Division correctly determined that Ngirmang and Masang (as trustee for his father’s children) are, as a matter of law, the proper heirs to inherit **¶127** Ngerias.

STANDARD OF REVIEW

[1] We review the trial court’s legal conclusions *de novo*. *Fanna Mun. Gov’t v. Sonsorol State Govt*, 8 ROP Intrm. 9 (1999).

PERTINENT LAW

[2] The Palau Constitution provides that:

[t]he national government shall, within five (5) years of the effective date of the Constitution, provide for the return to the original owners or their heirs of any land which became part of the public lands as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration.

Palau Const. art. XIII, § 10. To implement this provision the Olbiil Era Kelulau enacted what is now codified at 35 PNC § 1304(b). Pursuant to that section, ownership of public land shall be awarded to any citizen or citizens of the Republic who prove:

(1) that the land became part of the public land, or became claimed as part of the public land, as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation or adequate consideration, and

²Tasia Napoleon also filed a motion to intervene, which the Trial Division granted. The court ultimately decided, however, that Napoleon’s claim to Ngerias lacked merit. We affirmed the Trial Division’s decision with respect to Napoleon in our prior opinion.

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(2) that prior to that acquisition the land was owned by the citizen or citizens or that the citizen or citizens are the proper heirs to the land All claims for public land by citizens of the Republic must have been filed on or before January 1, 1989.

35 PNC § 1304(b). Here, because the original owner Salii died in 1967, these claimants must show they are the “proper heirs to the land.” “In determining who shall inherit a decedent's property, we apply the statute in effect at the time of the decedent’s death.” *Wally v. Sukrad*, 6 ROP Intrm. 38, 39 (1996). At the time of Salii’s death inheritance was governed by section 801 of the Palau District Code. Subsection (c) of that statute provided that in the absence of a will:

lands held in fee simple by an individual shall, upon the death of the owner, be inherited by the owner’s oldest living male child of sound mind, natural or adopted, or, if male heirs are lacking, the oldest living female child of sound mind, natural or adopted, or, in the absence of any issue, by the spouse of the deceased

PDC § 801(c) (1959). Subsection (d) provided a fallback provision when an intestate was neither married at the time of death nor had any natural or adopted children:

If the owner of fee simple land dies without issue or eligible spouse and no will has been made in accordance with this **L128** Section or the laws of the Trust Territory, then the land in question shall be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to his death.

PDC § 801(d) (1959).

ANALYSIS

[3] To prove a claim pursuant to 35 PNC § 1304(b) a claimant must demonstrate that: (1) the claimant is a citizen who has filed a timely claim; (2) the claimant is either the original owner of the claimed property, or one of “the proper heirs”; and (3) the claimed property is public land which became public land by a government taking that involved force or fraud, or was not supported by either just compensation or adequate consideration.

[4] The focus in this case is on the second element. Both parties assume that because neither one of them claimed that they were the natural or adopted children of Salii pursuant to PDC § 801(c), the court can simply treat the case as if Salii had no natural or adopted children. Nevertheless, there was evidence introduced in the Trial Division that Salii had adopted children. During the second phase of the trial, George Shobo Masang, the brother of claimant Masang, testified without contradiction that he knew of two adopted children of Salii: Dirraklei and Sakuma. This testimony was consistent with the motions to intervene of Dirraklei Trolii,

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Adelbai, and Rdiail, who all claimed to be adopted children of Salii. If any of these persons are in fact Salii's adopted children, then the proper heirs of Salii are determined by § 801(c), and neither of the cross-Appellants can prevail. In other words, in cases where the evidence shows that the "proper heirs" did not file a claim, other claimants do not simply move up in the queue and prevail on the basis of being the most closely related persons who filed a timely claim. Rather, the burden remains on the claimants to demonstrate that they satisfy all the requirements of the statute which includes proof not that they are related to the original owner in some way, but rather are the "proper heirs to the land."³ Here, because neither party attempted to prove that Salii did not have heirs pursuant to § 801(c), and in light of testimony that he had adopted children, consideration of § 801(d) was premature. We therefore remand the case so that the Trial Division can decide whether § 801(c) applies.

[5, 6] If on remand the Trial Division determines that Salii had adopted children who did not file timely claims, then title to the 1129 land should remain with KSPLA. Although in the usual case "a reversal on appeal does not inure to the benefit of non-appealing parties," see *Idid Clan v. KSPLA*, 9 ROP 12, 13 (2001), we believe that the statutory requirements to be applied here compel a different result in this case. See *id.* at 14, n.1 (citing 15A C. Wright & A. Miller, *Federal Practice and Procedure* § 3904, at 228 (2d ed. 1992)). See also 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"). The Trial Division, therefore, should permit KSPLA to participate in any further proceedings that the court finds necessary.

[7] We do not intend to foreclose the application of § 801(d) in this case. If the Trial Division ultimately determines that Salii had no adopted or natural children, it would then need to apply § 801(d) to determine the "proper" heir. Should the court conclude that § 801(d) is the required subsection of the inheritance statute to apply because there were no § 801(c) heirs, then the court must make additional findings. We therefore must note our disagreement with the Trial Division's construction of § 801(d) that when there are no children or surviving spouse, the distribution of the deceased person's property is determined by "the persons who would customarily be responsible for the distribution of a decedent's properties at an eldecheduch or otherwise." When the trial court considered the language in § 801(d) providing that the disposition of decedent's property is to be made by the lineage that "was actively and primarily responsible for the deceased prior to his death," the court in effect construed the words "prior to his death" to mean "upon his death," and did not consider the word "actively" when applying the statute. If the legislature had intended that custom, rather than active responsibility, controls the

³Thus, cases brought under 35 PNC § 1304(b) are distinguishable from the on-going land registration program conducted pursuant to 35 PNC § 1304(a). In land registration proceedings, the objective is to "make determinations with respect to the ownership of all land within the Republic" 35 PNC § 1304(a), and there the court "can, and must, choose among the claimants who appear before it . . ." *Ngirumerang v. Tellames*, 8 ROP Intrm. 230, 231 (2000). In contrast, § 1304(b) establishes specific elements peculiar to the return of public lands (i.e., proof that the filing deadline of January 1989 was met, that the claimant is the original owner or is the owner's "proper heir," that the transfer of title to the government occurred by one of the specified methods). If no claimant proves these necessary elements, title cannot be transferred pursuant to section 1304(b), and the property remains public land.

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disposition of land, then the legislature would have used the word “customarily” instead of “actively.” We accordingly hold that only persons related by birth or adoption who were actively and primarily involved in caring for the decedent prior to his death are entitled to invoke § 801(d). Such persons may be from either the deceased’s maternal or paternal lineage. Hence, the Trial Division should hold whatever further proceedings it believes necessary to determine who actually cared for Salii prior to his death.

[8] Finally, in keeping with our recently-expressed view that judgments concerning land should “identify owners by name or by the most precise available description,” *Mokoll v. Ibutirang*, 8 ROP Intrm. 114, 115 n.3 (2000), we note that the judgment in this case should not have awarded title to “the children of Masang [Marcil],” but instead named the children individually and also avoid the use of the term, “trustee.” Accordingly, if on remand the court determines, pursuant to our interpretation of § 801(d) outlined above, that Masang’s father is the proper heir, then the court must identify who specifically inherited Masang’s father’s interest.

CONCLUSION

The purpose of the Return of Public Lands Clause is to return legal title back to the original owner (or members of the original owner’s family) who, but for the governmental taking, would hold title today. In the case of Ngerias, such title would be vested in the children of Salii, if any there be. Only if there are no eligible persons pursuant to § 801(c) need the court undertake the task of determining alternate heirs pursuant to [L130](#) § 801(d).

For the foregoing reasons, we reverse the trial court’s decisions awarding Ngerias to Ngirmang and Sam Masang as trustee for the children of Masang Marcil, and remand for further proceedings regarding whether there were any heirs who qualified pursuant to § 801(c), and to make such other findings as may be required consistent with this opinion.