

*Mesebeluu v. Uchelkumer Clan*, 9 ROP 193 (2002)  
**AUGUSTINE MESEBELUU, et al.,**  
**Appellants,**

v.

**UCHELKUMER CLAN,**  
**Appellee.**

CIVIL APPEAL NO. 99-10  
LC/R 08-98 & 09-98

Supreme Court, Appellate Division  
Republic of Palau

Decided: September 10, 2002

[1] **Appeal and Error:** Dismissal of Appeal

The timeliness of the filing of a claim in the Land Court is not the proper subject of a motion to dismiss an appeal but is a subject more properly dealt with on the merits and as part of the briefs.

[2] **Appeal and Error:** Dismissal of Appeal

Motions to dismiss in the Appellate Division should not be used to raise issues presented in the trial court, but should be limited to issues that relate peculiarly to the appellate court's jurisdiction or to the propriety of the appeal itself.

[3] **Land Commission/LCHO/Land Court:** Appeals; Service

An appeal from a Land Court judgment is to be filed within thirty days after service of the judgment or order.

[4] **Land Commission/LCHO/Land Court:** Service

Service of the Land Court's final determination was defective when it was delivered to Appellant's minor daughter, who failed to give it to him.

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

Within twenty days after hearing a claim, the Land Court is required to serve a copy of the final determination on all parties of record at such address within the Republic as each party shall register at the hearing.

[6] **Land Commission/LCHO/Land Court:** Appeals; Service

*Mesebeluu v. Uchelkumer Clan*, 9 ROP 193 (2002)

The burden is on the Land Court to effectuate service, and the clock for filing a notice of appeal does not begin to tick until personal service of the adverse decision has been made upon the claimant.

[7] **Land Commission/LCHO/Land Court: Service**

The Land Court shall effectuate personal service by leaving the order at the person's dwelling house or usual place of abode with some person over the age of eighteen and of suitable discretion then residing therein.

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; J. UDUCH SENIOR, Associate Justice Pro Tem.

Appellee Uchelkumer Clan ("Clan") has moved to dismiss two of the appellants, Augustine Mesebeluu and Caleb Koshiba, from this multi-party appeal of a Land Court decision. The Clan argues that the dismissal of Mesebeluu is appropriate because he did not file a timely claim in the Land Court. With regard to Koshiba, the Clan contends **¶ 194** that he failed to file a timely notice of appeal. Because the issue whether Mesebeluu filed a claim in Land Court is a subject more properly dealt with on the merits and as part of the briefs, we deny the Clan's request with regard to that appellant. Additionally, because we believe that Koshiba timely filed his notice of appeal, we also deny the Clan's second motion to dismiss.

**I. Augustine Mesebeluu's Appeal**

[1, 2] The Clan argues that Mesebeluu's appeal should be dismissed because he did not file, pursuant to 35 PNC § 1308(a), a claim for the land at issue with the Land Court no later than 60 days prior to the date set for the hearing on the property. This argument is not a proper subject of a motion to dismiss an appeal. Assuming that the Clan raised this issue in the trial court, the appropriate place to argue whether Mesebeluu filed a claim in the Land Court is in the Clan's appellate brief. The Clan, who already filed its opening brief prior to filing this motion, did not make this argument. As stated in *Becheserrak v. ROP*, 3 ROP Intrm. 279, 280-81 (1993), "[m]otions to dismiss in this Court should not be used to raise issues presented in the trial court, but should be limited to issues that relate peculiarly to this Court's jurisdiction or to the propriety of the appeal itself." Accordingly, we deny the Clan's motion to dismiss Mesebeluu.

**II. Caleb Koshiba's Appeal**

[3] Pursuant to 35 PNC § 1312 and ROP Rule of Appellate Procedure 4, an appeal from a Land Court judgment is to be filed within 30 days "after . . . service of judgment or order . . . ." ROP R. App. Pro. 4(a). As the Clan explains, although the proof of service of the Land Court's final determination at Koshiba's house is dated April 7, 1999, Koshiba did not file his notice of appeal until May 13, 1999, or more than 30 days after the notice was delivered to Koshiba's residence. In his response to the Clan's motion to dismiss, Koshiba primarily counters that the service of the order to his house was defective because it was served on his minor daughter, who was only 16 at the time, and because he never actually received the determination. Furthermore,

*Mesebeluu v. Uchelkumer Clan*, 9 ROP 193 (2002)

he avers that he filed his notice of appeal as soon as he learned of the adverse determination of ownership and thus he claims that his notice of appeal was timely.

[4-6] We agree with Koshiha's contention that because the adverse determination was delivered to his minor daughter who failed to give it to him, service was not effectuated, and thus Koshiha's appeal was timely. The statutory provisions relating to the Land Court do not specify what constitutes "service" of a final order besides to explain that, within 20 days after hearing a claim, the Land Court is required "to serve a copy of the [final determination] on all parties of record at such address within the Republic as each party shall register at the hearing." 35 PNC § 1311. Nevertheless, the Senate Conference Committee Report on the Land Claims Reorganization Act explains that the service provision is meant to "require[] the [Land Court] to promptly serve all claimants with a copy of the . . . determinations made." S. Stand. Com. Rep. 4-255, at 6 (1996). This legislative history suggests that, in order to effectuate legislative intent, the Court should interpret the term "serve" to mean personal service. As a practical matter, interpreting the statute in this manner places the burden on the Land Court to effectuate service, and supports the conclusion that the clock for filing a notice of appeal does not begin to tick until personal service of the adverse decision has been made upon the claimant.

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[7] Nonetheless, this interpretation of the service requirement in § 1311 leaves open the question regarding the manner in which the Land Court is to effectuate personal service. We therefore will look, by analogy, to the provisions of the ROP Rules of Civil Procedure regarding service of court orders. Specifically, ROP Rule of Civil Procedure 5(d) provides that service of a court order can be made by "leaving [the order] at the person's dwelling house or usual place of abode with some person over the age of 18 and of suitable discretion then residing therein." No one disputes in the matter at hand that Koshiha's daughter was under the age of 18 when she signed the receipt for the delivery of the final Land Court determination. Proper service of the determination therefore did not occur, and Koshiha's notice of appeal, which he filed despite this lack of proper service, was filed in time. Thus, we also deny the Clan's motion to dismiss Koshiha's appeal.