

Rengiil v. Otong Clan, 9 ROP 61 (2002)
ASAO RENGIL,
Appellant,

v.

OTONG CLAN,
Appellee.

CIVIL APPEAL NO. 00-40
LC/E 99-39

Supreme Court, Appellate Division
Republic of Palau

Argued: January 24, 2002
Decided: March 25, 2002

[1] **Land Commission/LCHO/Land Court:** Claimants

Once the Land Court concludes that land is not clan land, but rather individual land, it is bound to award the land to the only party claiming to be a successor of the owner.

Counsel for Appellant: Yosiharu Ueda, T.C.

Counsel for Appellee: Pro Se

BEFORE: LARRY W. MILLER, Associate Justice; R. BARRIE MICHELSEN, Associate Justice; ALEX R. MUNSON, Part-Time Associate Justice.

Appeal from the Land Court, the Honorable J. UDUCH SENIOR, Associate Judge, presiding.

MILLER, Justice:

This appeal concerns Kuabesngas, a taro swamp located in Ulimang Hamlet in Ngaraard State, registered in the Tochi Daicho as the individual property of Rengiil Eriu (now deceased).¹ Asao Rengiil (“Appellant” or “Asao”), the surviving son of Rengiil Eriu, appeals the Land Court’s Determination, awarding Otong Clan title in fee simple with Beches Iluches Reksid as trustee. For the reasons stated below, we reverse.

BACKGROUND

Rengiil Eriu died in 1985, survived by his son Asao. Kuabesngas was claimed by Asao as Rengiil’s successor. Beches Iluches Reksid (“Reksid”) claimed the land on behalf of Otong

¹Tochi Daicho Lot No. 1380 is identified as New Lot No. UL-078 on the Bureau of Lands and Surveys Cadastral Worksheet Map No. 99-E-001.

Rengiil v. Otong Clan, 9 ROP 61 (2002)

Clan, arguing that the Tochi Daicho was incorrect and that the land had belonged to the Clan all along. A hearing was held on July 17, 2000. Asao testified that Rengiil told him that he wanted Asao to register his individually-owned property as Asao's property. Asao also said that in 1983, Rengiil made an announcement to Asao and some of Rengiil's sister's children that he wanted his individually-owned property to go to Asao. Asao submitted an affidavit signed by two of Rengiil's sister's children stating that Rengiil said he wanted his individually-owned property to go to Asao. Reksid testified that the land originally belonged to Otong Clan and that the land was neither Rengiil's "on the Daicho records and neither his private property." Reksid went on to testify, however, that if the land were Rengiil's private property, the Clan would have no further claim because "[a]n individual property of a person and his children are automatically outside the clan's responsibility, it goes directly to him."

Asao and Reksid agreed that Rengiil **L62** died in 1985 and that there was an *eldecheduch*, but they disagreed as to what happened at the *eldecheduch*. Asao testified that Kuabesngas was not discussed because Rengiil's relatives knew Rengiil wanted Asao to inherit his land. Asao said Reksid asked about Kuabesngas but was informed of Rengiil's wishes by Rengiil's niece Tmur and that no one objected to Tmur's statements. Reksid said that he was the person in charge of the *eldecheduch* and that Kuabesngas was not discussed because Asao had already been given land known as Klsong and Palauan money.

Another hearing was held on October 6, 2000, for the purpose of allowing Wataru Elbelau to testify as the court's expert on custom. Elbelau said that if Rengiil owned the land in his individual capacity the property would be inherited by Asao even if there was an *eldecheduch* and Asao received other property and Palauan money. He also said that if the children of Rengiil's sister prepared a document stating that Rengiil said that he wanted his property to go to Asao, Reksid would not have the authority to interfere and the property would go to Asao.

The Land Court issued its decision awarding Kuabesngas to Otong Clan on October 31, 2000. The court first ruled that Reksid had not rebutted the presumption of accuracy attached to the Tochi Daicho listing with clear and convincing evidence and that Kuabesngas was Rengiil's individual property. The court then ruled that Rengiil's statements regarding the disposition of his property were invalid as an oral conveyance under the statute of frauds. The court concluded that Kuabesngas was subject to disposition at the *eldecheduch*, that Reksid was the proper person to distribute Rengiil's properties, and that because the land was not discussed, Reksid remained in charge of the land. Asao filed a timely notice of appeal and an opening brief. Otong Clan did not file a brief, thereby waiving oral argument.

DISCUSSION

Appellant makes a number of arguments on appeal, principally that the Land Court erred in applying the statute of frauds to Rengiil's statements regarding the disposition of his property, and that it erred in not determining Rengiil's heirs under the former 39 PNC § 102(d). We agree that the Land Court erred, but find that we need not address all of Appellant's arguments to reach the conclusion that he should have been awarded the land as the successor to Rengiil.

Rengiil v. Otong Clan, 9 ROP 61 (2002)

[1] Here, the sole basis for Reksid's claim was that the Tochi Daicho was wrong and that the land truly belonged to Otong Clan. The Land Court rejected that claim, finding that Reksid had not presented clear and convincing evidence that the Tochi Daicho listing was inaccurate. It therefore determined that the property was the individual property of Rengiil. Reksid specifically denied that the Clan was claiming any interest in land that belonged to Rengiil individually, testifying that "there is absolutely no dispute over his private properties" and that any property that was Rengiil's private property would "go to him because the clan has no say." Given that testimony, it was erroneous for the Land Court to have awarded the land to Otong Clan. Simply put, once the Land Court concluded that Kuabesngas was not clan land as claimed by Reksid, but rather the individual property of Rengiil, it was bound to award the land to Appellant, as the only party claiming to be the successor of Rengiil's property in this proceeding. *See Temaungil v. Ulechong*, 9 ROP 31, 34 (2000), *reh'g denied* (February 12, 2002).

163

CONCLUSION

For the foregoing reasons, the determination of the Land Court awarding the property known as Kuabesngas to Appellee is REVERSED. This case is remanded to the Land Court with instructions to enter a new determination awarding the property to Appellant.