NGIRCHONGOR KUMANGAI, Appellant

v.

ISAKO M. NGIRAIBIOCHEL, Appellee

Civil Action No. 598

Trial Division of the High Court

Palau District

June 7, 1973

Appeal from Palau District Land Commission determinations, following land registration team hearings, of ownership of designated lands in Meyungs Hamlet, Arkabesang Island, Koror Municipality. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where it had not been decided that appellant had an interest in the land, but it appeared he might and his interest was not asserted through a misunderstanding and through lack of familiarity, by all concerned, with proper procedure, case would be remanded for determination of appellant's alleged interest.

1. **Land Registration—Parties**

   With respect to statute allowing appeal from a determination of ownership by a land commission to be taken by any party aggrieved by the determination, anyone who appears in the commission records as a claimant or one contesting a claim is a party, though under certain circumstances a party need not be named in the administrative proceedings, as when he is a member of a class, such as a clan or lineage, which appeared through a representative. (67 TTC § 115)

2. **Land Registration—Record**

   When making inquiries regarding title to land, and when recording claims, holding hearings and making findings and adjudications to be submitted to a land commission, land registration teams should treat the determination of every claim as if it will be appealed, and prepare the record accordingly, so that the court will have an adequate record on which it can review the administrative proceedings. (67 TTC § 115)

3. **Land Registration—Appeal from Commission—Standing**

   In appeals from determinations of ownership made by a land commission following hearings by a land registration team, where appellants had neither filed claims with, nor contested claims before, the land registration team, but it appeared, on appeal, that they might have an interest in the land, and their asserted interest had not been put forward due to a misunderstanding and to lack of familiarity, on the part of all involved, with procedures to be followed before the land registration team and land commission, cases would be remanded for determination of whether appellants had an interest in the land, and if it were found they did, they would be aggrieved and entitled to appeal. (67 TTC § 115)

Assessor:	PABLO RINGANG, *Presiding Judge, District Court*
Interpreter:	AMADOR D. NGIRKELAU
Reporter:	ELSIE T. CERISIER
Counsel for Appellant:	FUMIO RENGIIL and JOHN O. NGIRAKED
Counsel for Appellee:	ROMAN TMETUCHL

TURNER, *Associate Justice*

This case is one of 35 appeals filed in this Court pursuant to 67 TTC § 115 from Palau District Land Commission determination of ownership of designated lands in Meyungs Hamlet, Arkabesang Island, Koror Municipality. Counsel for the parties submitted evidence and argument for 31 of the appeals combined in that each involved a similar issue of law and fact. The opinion in this case will be determinative of the 30 other appeals.

The administrative proceedings began in February 1971, with the designation of the land registration area as "being all of Arkabesang Island adjacent to and lying Northwest of Koror Island, as shown on Palau District Map No. PAr-5, Serial No. 358 approved August 30, 1962, and filed with the Clerk of Courts, Palau District, containing an area of 513.8 acres, more or less."

In accordance with the statute, public notice was given of "Notice of Preliminary Inquiry" by a seven member land registration team. The notice provided that the registration team would institute a "preliminary inquiry regarding title to all lands claimed by individuals, families, lineages, clans, hamlets, municipalities and communities" within the prescribed area, and further added, "If the Team is satisfied that claims are well founded, it shall record the same for hearing . . .". These inquiries were held beginning August 17, 1971.

The land registration teams received claims on standard forms, held hearings when there was a contest between

claimants and, in the absence of contests, made inquiry of and heard testimony from lineage members and the local *rubaks* (titleholders). Thereupon, the registration team made its findings of fact and its adjudication, which it submitted to the three member District Land Commission. The commission then reviewed the record of the registration team and, in accordance with the statute, "if satisfied therewith", issued the formal determination of ownership, signed by the senior land commissioner. Alternatively, the commission could, and sometimes did, hold further hearings before issuing its determination of ownership. These proceedings for the lands in question were in the summer and fall of 1972. Within 120 days of the issuance of the determinations, the appeals were taken to the Trial Division of the High Court.

The controversy which was the basis for the appeals had its beginning in the very remote past, in either Spanish administration times or perhaps even before that. A large clan, Uchelkumer, migrated from Peliliu to Arkabesang Island in the vicinity of Meyungs, and after many years the *Ibedul* of Koror (the high chief of all of southern Palau) divided the clan and sent half of them back to Peliliu, where they settled in Ngesias village. The remainder continued living at Meyungs on Arkabesang Island.

The Peliliu branch continued to call themselves members of Uchelkumer Clan but they selected their own ten each male and female titleholders with the same titles as the Arkabesang group. As it now develops, they also claimed, through the clan, interest in the land on which they lived many years ago in the Meyungs area.

In the comparatively recent times of the Japanese land survey and Tochi Daicho registration, completed during the period from 1938 to 1941, the lands involved in these appeals were shown as being owned by either clans or

lineages within clans. The ownership determinations by the land commission in this group of appeals was for individual ownership based upon consent and agreement of the Meyung Clan and lineage members. This was the rock upon which the proceedings foundered.

When the registration team began taking claims in the area in question, a group of *rubaks* from Ngesias came up from Peliliu to Koror to establish their interests in the land. They twice met with the registration team but no claims were filed in behalf of the Peliliu Clan. Their testimony at the appeal hearing was that they also had met with their counterpart *rubaks* from Arkabesang at the house of Erungel Obak.

At that meeting the first order of business was to replace a deceased titleholder by the appointment of Melimarang as *Ngirchongor*, replacing the decedent Kumangai. This bit of clan business having been accomplished, discussion of land interests was undertaken, resulting in an agreement, according to the Peliliu testimony, that land ownership would be continued under the Land Commission determination upon the same registration as shown in the Tochi Daicho. This was the reason, the Peliliu appellants argued, why they never filed claims nor contested in advance the determination of individual ownership. They expected their interests to be continued by representation of the Arkabesang Clan.

Upon the uncontested facts, the Court is inclined to sympathize with the plight of the appellants. However, they are confronted with a substantial legal obstacle in their appeal.

The question now to be decided is whether or not appellants have "standing" to bring these appeals. The statute, 67 TTC § 115, permits appeal from an ownership determination "by any party aggrieved thereby." This Court is

given the same authority and powers as in an appeal from a District Court judgment.

[1] We take it that when the statute says "any party" it means precisely that. Unless an appellant was a "party" before the Land Commission he has no standing to appeal. The real problem is to define a party. Anyone who appears in the commission records as a claimant or one contesting a claim is a party, and if his claim is denied then he is an "aggrieved" party with a statutory appeal right.

At this point we must note that the Land Commission records, as submitted in these appeals, were entirely inadequate for any determination "on the record."

Under certain circumstances a party need not be named in the administrative proceedings, as when he is a member of a class and the class appears through a representative. Thus, a clan or lineage may be represented by a titleholder, and it seems only fair to say a member of either group could be a party to an appeal.

One of the leading, if not actually the leading case at this moment of standing for court review of an administrative decision is the 1972 U.S. Supreme Court case of *Sierra Club* v. *Morton*, 405 U.S. 1972, 92 S.Ct. 39, which affirmed the Ninth Circuit decision denying standing to a national conservation organization to bring an action challenging the grant by the Secretary of the Interior of a permit for a ski resort in a mountainous area of California. According to this decision, a person has standing to seek judicial review only if he can show that he himself has suffered, or will suffer injury, economic or otherwise. The injury test requires the party seeking review be himself among the injured.

Applying the principal of the *Sierra Club* to these appellants, they have standing as being aggrieved by the Land Commission decision only if it can be shown that they, as

members of the Peliliu Clan, have an interest in the Arkabesang lands. If they retained their interest after the clan was separated, then the decisions in behalf of individual owners is an injury to their property "interests" and they are aggrieved.

Whether or not they are "parties" and thus complete the statutory requirement of a "party aggrieved" by the title determination is another matter. Technically they were not parties to the administrative proceedings because they did not file a formal claim with the registration team.

But they did twice appear before the registration team. The fact the Peliliu *rubaks* took no formal action and that the registration team took no formal recognition of their appearances can be excused on the grounds this was the first proceeding of its kind in Palau. The people were not familiar with the procedure to be followed, and the registration team itself was too inexperienced to intelligently assist the group in protection of its interests. In short, the determinations were subject to technical rules rather than to procedural due process and substantial justice.

The appeal provision of the Land Commission act provides the appeal to this court "shall be treated and effected in the same manner as an appeal from a District Court in a civil action," and we interpret "treated and effected" to mean "taken." That being the case, the Land Commission must promptly revise its record-keeping procedures. An essential help in these appeals would have been a list of all witnesses, or, as expressed by the registration team chairman, all persons of whom inquiries were made. What these witnesses said can be paraphrased. The result will give this court some semblance of a record to review. Such has not been the case in these appeals. Both the registration teams and the claimants should familiarize themselves with Rule 21, Rules of Civil Procedure, and with the sections on appeal and review in Title 6, Chapter 15, of the

Code. Also, the Land Commission might well be guided by the procedure followed by the Clerk of Courts in preparing the record for a High Court appeal from the District Court. There is also a large body of court decisions governing appeals found in the Trust Territory Reports. If an appellant desires to question the sufficiency of the evidence upon which the determination is based, he should prepare, with approval of those conducting the hearings and with the appellee, a draft report of the evidence. Without it, or a transcript, there can be no review of the sufficiency of the evidence.

[2] Without an adequate record the Court is confronted with the time-consuming alternatives of hearing and determination de novo or remand for further hearing, if need be, or at least for preparation of an adequate record. We understand these are the first determinations made. There was neither precedent nor experience to guide the administrative body except as the forms and procedures used by the Clerk of Courts could serve as guides. In any event, in the future the registration teams should treat every claim, and prepare the record accordingly, as if it were going to be appealed.

[3] This Court is given power under 6 TTC § 355 to affirm, modify, set aside, or reverse and to remand for new trial a judgment appealed from the District Court. The same statute and rules governing such appeals are made specifically applicable by 67 TTC § 115 to appeals from Land Commission determinations of ownership. The Court believes the appellants should be given an opportunity to present their claims.

Such claims, however, must be measured in the light of the major problem considered in this opinion. The claim must depend upon whether or not the Peliliu Uchelkumer Clan retained any interest after the separation in the land

occupied and used by the Meyungs Uchelkumer Clan. Unless it is adequately demonstrated that there is this retention of interest, the Peliliu people are not injured by the determination of individual ownership. Without injury they are not "aggrieved" and have no standing to appeal.

The solution of the problem is properly in the first instance with the Land Commission. Accordingly, it is

Ordered, adjudged and decreed that this appeal (and all others as may be specifically shown in the case record) shall be remanded to the Land Commission for further proceedings, at which appellants will be given an opportunity to be heard, and for redetermination of land ownership in accordance with this decision and the evidence received on rehearing.