Heirs of Mongkeya v. Heirs of Mackwelung

State Court (Kosrae)
King A. J.*
31 May 1988

Administrative law—judicial review of Land Commission—unreasonable assessment of evidence.
Evidence—"good cause" to permit reviewing court to conduct evidentiary proceedings or to remand the case for further proceedings before the Commission.
Land law—custom and tradition—traditional gift of land—improper resolution of legal issues.

The appellant challenged a Land Commission determination that the appellees were owners of land as a result of a traditional gift known as a "kewosr". The Commission relied on a court finding in respect of an adjacent piece of land and on evidence concerning a "kewosr" prior to 1917, although the evidence was unclear as to who was the donor of the "kewosr". The Commission found that the lands under consideration were the "same lands" as those the subject of the earlier civil suit but gave no reasons for this conclusion.

HELD:

The case is remanded to the Land Commission for further proceedings:

(1) On general principles of administrative law the court's judicial review role is a limited one, but in this instance the Commission's determination was not sufficiently supported by either reasoning or evidence. This furnished "good cause" which would permit the Court to conduct its own evidentiary proceedings but it was preferable that the Land Commission be afforded another opportunity to consider the matter.

(2) The Commission's determination is set aside for two reasons. First, it misinterpreted a prior judgment of the Trust Territory High Court as strongly supporting the appellees' claim without stating any grounds for its opinion that the lands under consideration now are the "same lands" in the face of the appellants' strenuous objections to that conclusion. Furthermore, the Commission's opinion was the first official recognition of the custom of "kewosr" in gifting land and at a minimum it must be explained how there could be uncertainty as to who actually gave the "kewosr" yet still a firm conclusion that a "kewosr" was given to the appellees' ancestor.

Cases referred to in judgment:

Alum M. v. *Daniel* civil action no. 111, unreported judgment of the Trust Territory High Court, 23 October 1958

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* (F.S.M.), designated to be Kosrae State Court A.J.

Heirs of Mongkeya v. *Heirs of Mackwelung* 3 F.S.M. Intrm. 92 (Kosrae State Court, 1987)
Oneitam v. *Suain* 4 T.T.R. 62

Legislation referred to in judgment:
67 T.T.C.103(2)
K.C. 11.602(2)
K.C. 11.614

Counsel:
D. Ehmes for the appellants
A. Aliksa for the appellees

KING A.J.

Judgment:

The appellants, the heirs of Kun Mongkeya, challenge the 24 September 1982 Kosrae State Land Commission determination that the heirs of Allen Mackwelung are the owners of land known as Yekula in Tafunsak Municipality. The land involved includes parcel numbers 004-T-09 and 004-T-10, and all the remaining unsurveyed part of Yekula, as shown in the Kosrae Land Commission's "property survey sketch No. 0082-T-01".

In an earlier opinion concerning this case, the Court considered claims of the appellants that Land Commission members who participated in the determination were biased because of their familial relationships to heirs of Allen Mackwelung in violation of T.T.C. 103(2) or K.C. 11.602(2) (*Heirs of Mongkeya* v. *Heirs of Mackwelung* 3 F.S.M. Intrm. 92 (Kos. S. Ct. Tr. 1987)). Thereafter, on 7 April 1987, a hearing was held to assess the familial relationship between the senior land commissioner and the heirs of Allen Mackwelung. The Court found no bias and no violation of the statute or of procedural due process.

The Court now considers the substantive objections of the appellants to the Commission's determination of ownership.

I.

In addressing these claims the Court finds no statutory guidance as to the standard to be used in reviewing the Land Commission's decision. The provision which authorizes the appeal, K.C. 11.614, merely says that the appeal will be heard "on the record" unless "good cause" exists for a trial of the matter.

Drawing on general principles of administrative law, the Court views its normal role in reviewing the Commission's procedures and decision as a limited one. In hearing an appeal on the record compiled by the Land Commission, the Court considers whether the Commission, including the land registration team: (1) has exceeded its constitutional or statutory authority; (2) has conducted a fair proceeding; (3) has properly resolved any legal issues; and (4) has reasonably assessed the evidence presented.

This Court's first opinion, and the subsequent 7 April 1987 hearing, dealt with claims of the Mongkeya family under (1) and (2) above. This opinion treats issues as to the Commission's factual findings and legal rulings.

The Court finds the commission's determination is not sufficiently supported by either reasoning or evidence. This furnishes the "good cause" referred to in K.C. 11.614 and would permit the Court to conduct its own evidentiary proceeding. The Court, however, deems it preferable that the Land Commission be afforded another opportunity to consider the matter and, therefore, remands this case to the Land Commission for further proceedings consistent with this opinion.

II.

The appellants assert that the Commission did not properly consider evidence that Kun Mongkeya received the disputed parcel from his father in 1917 and occupied the land from that date until the Trust Territory built a school on the land in the 1950s. They also object to the fact that the Commission disregarded inconsistencies in testimony concerning the 1932 Japanese land survey which named Allen Mackwelung as owner of Yekula.

Attacks on the Commission's factual determinations would normally have little chance of succeeding if evidence in the record provides reasonable support for the findings. Here there is some evidence to support both sides of the dispute. Kun Mongkeya and others testified that Mongkeya occupied the land from 1917 to the 1950s. Other evidence, especially the name of Allen Mackwelung on the Japanese land survey of 1932, indicates that Mr. Mackwelung may have been in control of the land.

The testimony in support of the Mongkeya claim that Kun Mongkeya controlled the land until the 1950s does appear strong on paper. However, it is the Commission, not the Court, that is present when witnesses testify and only the Commission sees the manner of their testimony. Therefore, it is primarily the task of the Commission, not the reviewing court, to assess the credibility of witnesses and to resolve factual disputes. There is evidentiary support for the Mackwelung position. The Commission's refusal to credit the testimony of the Mongkeya witnesses concerning pre-1950s control of Yekula may not lightly be overridden by the Court in a review on the record.

In any event the question of pre-1950s control of Yekula does not seem to have been of great import in the decision-making process. The Commission admitted that it was not "vividly clear" as to "exactly when Allen Mackwelung . . . and his predecessors began to occupy and us the land in dispute . . . " (Land Commission Opin. at 3). It is unclear how much importance, if any, the Commission placed upon pre-1950 control of the land. If the Commission's factual determinations concerning pre-1950 control and the Japanese land survey were the only grounds on which the heirs of Mongkeya base an objection to the Commission's decision, the decision would be upheld. Because the case is remanded for other reasons, however, the Commission will have an additional opportunity to review these factual determinations as well.

III.

The Commission's determination of ownership is set aside based on two other contentions of the Mongkeya heirs.

A.

The first claim is that the Land Commission misinterpreted the 23 October 1958 decision of the Trust Territory High Court in *Alun M.* v. *Daniel*, civil action no. 111, as

strongly supporting the claim of the heirs of Allen Mackwelung.

The Commission interpreted civil action no. 111 as indicating that Kun Mongkeya had no serious claim to Yekula. The Commission's finding of fact number 12 is as follows:

> 12. All, or substantially all, of the land in dispute in this action was the subject of Ponape District Civil Action No. 111 (High Court Trial Division, 1958), between Plaintiff Alun M (Allun Mackwelung) and Defendant Kioken (Aliksa) Daniel. In that case, Allun Mackwelung claimed the land through his mother, Sra Niarlang, while Kioken Daniel claimed it through his father, Daniel. Allun Mackwelung's claim prevailed in the action.

The Commission noted, in the same finding 12, the parties' stipulation at the outset of the Commission's proceeding that "the judgment in Civil Action No. 111 is not *res judicata* as to the claim of Kun Mongkeya because he was not a party nor was he claiming through one of those parties in Civil Action No. 111". Nonetheless, the opinion, at page 6, makes clear that the Commission viewed civil action 111 as having great significance:

> The same lands were subject of dispute in Kosrae High Court Civil Action 111 (Trial Div. 1958) between plaintiff Allun Mackwelung and Defendant Koiken Daniel. Although it was stipulated between the parties in the present dispute that Civil Action 111 is not *res judicata* as to the claim of Kun Mongkeya, the Commission, nevertheless, takes notice that Kun appeared at the trial as witness for Koiken Daniel who, at that time, claimed the land through his father, Daniel, the son of Sra Nuarar. Again, the Commission does not see why Kun did not assert his own claim as an intervenor in the case. Surely Kun had the opportunity to present his claim to court in 1958 when the question of ownership was the subject of dispute in Civil Action 111. Instead he was idle all along and expressed no interest in the land. The inaction of Kun raises very serious doubt as to the truth of his claim. In *Oneitam* v. *Suain* 4 T.T.R. 62, the Court said, in part: "An owner of real property may be deprived of his interests because he had not exercised proper diligence in protecting his rights in Court."

The Mongkeya family insists the judgment in civil action no. 111 should have no bearing on this case because the land involved here, Yekula, was not under consideration in civil action no. 111. Trust Territory Chief Justice Furber's judgment identifies the land at issue in that case as Wiya. The appellants contend that Wiya borders on Yekula, but is entirely different land.

The appellants point to two statements in the record of this case which seem to indicate that Wiya and Yekula are separate pieces of land. On 11 September 1979, during the preliminary inquiry, Nithan Jackson, age seventy-nine, was asked if he could identify the boundary of Yekula. He replied, "Yes, it is in between Wiya and Sialat or Finfukul".

At the formal hearing, on 14 November 1979, Mr. Jackson's testimony included the following exchange:

Q.: Can you tell us if you know anything about the boundaries of the land known as Yekula?

A.: I lived with the Nuarar and Tui in Wiya. Mongkeya came to Wiya one day and

> asked Nuarar to go with him so that they could establish their boundary line at Yekula to avoid any possibility of confusion on the part of their children in the future. They walked on the beach from Wiya to Yekula while I was following them. When they reached a place where the stump of a tree was, Mongkeya told Nuarar that that was to be the boundary line.

The Commission may have perfectly legitimate grounds for its certainty that the lands under consideration now are the "same lands" Chief Justice Furber was referring to as Wiya in civil action no. 111. However, those grounds are not discussed in the Commission's opinion and are not obvious to this Court from a review of the record supplied by the Commission.

The case must be remanded to the Commission for an explanation of the Commission's grounds for concluding, over appellants' protests, that the lands in the two cases are the same and that Kun Mongkeya was a witness in civil action no. 111.

B.

The other principal objection of appellants to the Commission's determination goes to the very heart of the Mackwelung heirs' claim of ownership.

All parties agree that Mongkeya, the father of Kun Mongkeya, owned Yekula until at least 1912. The heirs of Mongkeya contend that Mongkeya gave Yekula to Kun Mongkeya, his son, in 1917, when Kun Mongkeya was seventeen years' old.

The Mackwelungs, on the other hand, insist that shortly before that time Yekula was given to Sra Nuarar, Allen Mackwelung's grandmother. On 11 September 1979, at the preliminary inquiry, Nithan Jackson testified that he "was there when Mongkeya came and asked Nuarar to go with him so that they could establish the boundary". Mr. Jackson called this a "kewosr" given to Nuarar by Mongkeya.

At page 5 of its opinion, the Commission says:

> Kewosr is "an outright gift of land from a man to his favourite lover". This customary way of disposing one's land was long recognized and practised in Kosrae in the olden days. Many lands in Kosrae are known to have been given away as "kewosr" and the Commission feels it is high time that this customary land gift be given due recognition.

There is no apparent disagreement as to the existence of "kewosr" as a legitimate method of conveyancing under Kosraean custom.

The appellants, however, contend that there is insufficient evidence to justify a finding that a "kewosr" took place between Kun Mongkeya and Sra Nuarar. In particular, they point to the testimony of Nithan Jackson under cross-examination by trial counselor Lyndon Cornelius during the formal hearing:

> Q.: Who gave this land to Nuarar?
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> A.: The people of Sialat. They gave it to her as "kewosr".
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> Q.: Who, from Sialat, gave her the land?
>
> A.: I think perhaps Mongkeya or those people of Sialat before him.
>
> Q.: In your testimony on September 10[sic], 1979 at the preliminary inquiry, you testified that Mongkeya was the one who gave away this land as a "kewosr". Is that correct?
>
> A.: That's why I said that if not Mongkeya, then those people before him gave away the land.

The Commission did not disregard the above testimony as the product of confusion of Nithan Jackson. The Commission in its opinion, at page 3, specifically found that the "kewosr" was given "by either Mongkeya or someone else from Sialat".

The appellants rightly point out that this raises serious questions about the "kewosr". The parties agreed, and the Commission found as fact, that Mongkeya owned all of Sialat, which included Yekula, before the events at issue here. If Mongkeya was the owner of Sialat, then how is it possible that other people of Sialat could have given away the land? Moreover, if what Nithan Jackson related took place between Kun Mongkeya and Sra Nuarar was not itself a "kewosr," then upon what evidence did the Commission rely in concluding that a "kewosr" took place?

The Commission's opinion apparently represents the first official recognition of the custom of "kewosr". Yet there is little description in the opinion of the proper manner for invoking the custom, or of the custom's effect.

If the possibility remains open that somebody else other than Mongkeya gave the "kewosr", there must be some explanation as to how others legitimately could have made such a gift of land owned by Mongkeya. At a minimum, the Commission must explain how it could be uncertain as to who actually gave the "kewosr", but still firm in its conclusions that a "kewosr" was given, and that the heirs of Mackwelung, therefore, must prevail over the heirs of Mongkeya.

IV.

The issues considered by the Commission were quite complex. Conflicting evidence was presented. Ultimately, the Commission based its determination not upon any single completely persuasive fact, but upon a series of findings that, taken together, pointed toward a conclusion.

This Court, however, finds that the Commission's opinion, when read with the record, does not adequately explain two of the Commission's major findings.

First, the opinion states that this case involves the same, or substantially the same, land as was at issue in civil action no. 111. The Court finds nothing in the record which sufficiently supports that finding.

Second, the Commission concludes that a "kewosr" was made to Sra Nuarar, but admits that it is uncertain whether this was done by "Mongkeya or someone else from Sialat". In the absence of further explanation by the Commission as to the nature of "kewosr" or other information not pointed to in the previous opinion, the Court is unable to accept the conclusion that a "kewosr" did take place.

The 24 September 1982 determination of ownership therefore must be set aside. This case is remanded to the Commission for further proceedings as deemed appropriate by the Commission to reconsider: (1) whether a "kewosr" did take place; and (2) whether the failure of Kun Mongkeya to assert a claim in civil action no. 111 should in any way reflect upon the credibility of his claim in this case.

If, upon reconsideration of the findings enumerated here, the Commission concludes that one or both of these earlier findings must be modified or set aside, the Commission should then reconsider this case in its entirety with additional hearings, if necessary, to determine whether, in the light of the revisions, the Commission's earlier determination of ownership should be reinstated or changed.

At the conclusion of its proceedings upon remand, the Commission shall issue a new or supplemental opinion explaining fully the basis for its determination.