FILED

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

SUPREME COURT
OF THE
REPUBLIC OF PALAU

CHILDREN OF IDIP NGIRATIOU, Appellants, v. DESCENDANTS OF NGIRATIOU, Rep. by FRANCIS KIB, Appellees.	CIVIL APPEAL NOs. 11-030 & 12-025 (Case No. SP/E 11-001 and SP/E 11-002) **OPINION**

Decided: August 20[1], 2013

Counsel for Appellants: J. Uduch Sengebau Senior
Counsel for Appellees: John K. Rechucher

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and LOURDES F. MATERNE, Associate Justice.

Appeal from the Land Court, the Honorable ROSE MARY SKEBONG, Associate Judge, presiding.

PER CURIAM:

This case concerns the Land Court's Decision to cancel certificates of title and have them reissued due to a clerical error. For the following reasons, the decision of the Land Court is **AFFIRMED.**[2]

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[2] Although Appellant requests oral argument, we determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

BACKGROUND

The parties in this dispute include Descendants of Ngiratiou, who successfully persuaded the Land Court that the Land Claims Hearing Office erred in issuing them Tochi Daicho Lot 498 instead of Lot 489,[3] and the Children of Idip Ngiratiou (hereinafter Children of Idip), who opposed Descendants of Ngiratiou's attempts to have this purported error corrected and who now appeal the Land Court's Decision.

Descendants of Ngiratiou argue that the Tochi Daicho Lots 489 and 498 were distributed to the incorrect parties through a clerical error in a Determination of Ownership and Certificate of Title. The reasons for this error extend back over more than two decades during which multiple mistakes were made in the distribution of the property of the deceased Ngiratiou to his children.

In the 1980s two of the children of Ngiratiou appeared before the Land Commission to claim lands that the Tochi Daicho listed as belonging to their father. The Land Commission issued Determinations of Ownership in favor of the two children individually. Of relevance here, Tochi Daicho Lot 489 was granted to Idip Ngiratiou. Following these Determinations, other family members filed a civil suit to undo the Land Commission's decision. In 1989, the parties settled, purportedly agreeing that these properties, including Tochi Daicho Lot 489, would be issued to Descendants of Ngiratiou, rather than to Idip individually. Citing this settlement agreement, the Trial

[3] During the course of the proceedings in this case, Tochi Daicho Lots 489, 491, and 499 were combined and considered together. For purposes of this Opinion, we refer to the relevant property simply as "Tochi Daicho Lot 489."

Division issued a Judgment, awarding Descendants of Ngiratiou several pieces of land, including Tochi Daicho Lot 489. The Trial Division made no mention of Tochi Daicho Lot 498, which had been purchased and was owned individually by Idip and was irrelevant to that proceeding.

When the Trial Division issued its Judgment in 1989, finding that Descendants of Ngiratiou owned Tochi Daicho Lot 489, it mistakenly listed this Tochi Daicho Lot's corresponding Cadastral Lot as number 021 E 04. Importantly, that Cadastral Lot number actually corresponded with Tochi Daicho Lot 498, the lot that was indisputably owned by Idip, individually.

When the Land Claims Hearing Office issued Determinations of Ownership and Certificates of Title pursuant to the Trial Division's Judgment ten years later, it changed the listed Tochi Daicho number from 489 to 498 rather than adjusting the listed Cadastral Lot number to match the Tochi Daicho. In so doing, it failed to undo the granting of Tochi Daicho Lot 489 to Idip as an individual, which action Descendants of Ngiratiou contend the 1989 Judgment sought to accomplish, and essentially reiterated Idip's ownership of that lot.

Over the course of the two decades after the initial Trial Division judgment, this error went undiscovered by the parties. Descendants of Ngiratiou were unaware of the mistake, explaining before the Land Court prior to this appeal that the 1989 Judgment was served to Descendants of Ngiratiou through Rikel Temarsel, who could not read or

understand English. When she passed away in 2010, the family became aware of the mistake for the first time.

Upon discovering the error, Descendants of Ngiratiou filed a Petition to Correct Clerical Error in the Land Court, which sought to have the issuing of Tochi Daicho Lots 489 and 498 to Children of Idip and Descendants of Ngiratiou, respectively, reversed. Judge Polloi denied the Petition, finding that the Land Court lacked jurisdiction to correct a decision by the Trial Division, and noting that Descendants of Ngiratiou appeared to be seeking the Cadastral Lot that was, in fact, already granted to them. In his Determination, Judge Polloi did not appear to understand that Descendants of Ngiratiou were seeking ownership of Tochi Daicho Lot 489.

Descendants of Ngiratiou filed a motion for reconsideration of the Land Court's decision to deny the motion to correct the clerical error. Judge Polloi recused himself and assigned the case to Judge Skebong. Judge Skebong granted the motion for reconsideration, accepting Descendants of Ngiratiou's reasons for waiting so long to seek a correction of the error. The Land Court then set aside its own order granting the motion in order to allow Children of Idip the opportunity to be heard. It had taken evidence concerning the purpose of the settlement agreement that prompted the 1989 Judgment, which it referenced in its Decision. After concluding that it had jurisdiction to correct a clerical error, the Land Court determined that the original purpose of the settlement

agreement and corresponding Trial Division Judgment in 1989 was to undo the improper granting of Tochi Daicho Lot 489 to Idip.

Further, the Land Court concluded that the Land Claims Hearing Office committed a clerical error by issuing a Determination of Ownership to Descendants of Ngiratiou of Tochi Daicho Lot 498, which was *not* listed in the Trial Division's Judgment. The Land Court determined that the Land Claims Hearing Office further failed to reissue a Determination of Ownership of Tochi Daicho Lot 489 to Descendants of Ngiratiou, as it was directed to do in the 1989 Judgment. The Land Court, therefore, ordered that the prior Determinations of Ownership and Certificates of Title for Tochi Daicho Lots 489 and 498, which were incorrectly issued due to this clerical error, be cancelled and reissued according to the corrected information. Children of Ngiratiou appeal this ruling.

STANDARD OF REVIEW

Children of Idip argue that the Land Court does not have jurisdiction to correct a clerical error made by the Trial Division and that its actions constituted a correction of the Trial Division's Judgment. Questions of jurisdiction are questions of law, which we review de novo. *Skebong v. EQPB*, 8 ROP Intrm. 80, 82 (1999).

Children of Idip also contend that that the Land Claims Hearing Office correctly interpreted the 1989 Judgment and did not commit error in issuing a Certificate of Title to them for Tochi Daicho Lot 489. Accordingly, Children of Idip assert that the Land Court

erred in concluding otherwise and canceling the Certificate of Title. The Land Court's determination regarding the intention of the 1989 Judgment and the preceding settlement agreement is a mixed question of law and fact. *See Mikel v. Saito*, Civ. App. No. 12-032, slip op. at *8 (2013). We review questions of law de novo, giving no deference to the Land Court. *Singeo v. Secharmidal*, 14 ROP 99, 100 (2007). We review the Land Court's factual findings for correctness, only setting them aside if no reasonable trier of fact could have come to the same conclusion. *Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 168 (2006).

DISCUSSION

Some of Children of Idip's arguments on appeal essentially amount to challenges to the Land Court's jurisdiction to correct what it determined to be a clerical error. Children of Idip also contend that no error occurred with respect to the Certificates of Title and that the Trial Division intended to allow Idip to retain ownership of Tochi Daicho Lot 489. We consider these arguments in turn below.

I. The Land Court has authority to correct a void Determination of Ownership and corresponding Certificate of Title.

A Court has the power and duty to determine whether it has jurisdiction over the matter before it, including the power to resolve factual and legal disputes that bear on the question of jurisdiction. *Roman Tmetuchl Family Trust v. Ordomel Hamlet*, 11 ROP 158, 160 (2004).

We note that the decision that is challenged on appeal is the Land Court's grant of a Motion for Reconsideration of the Land Court's earlier decision to deny a motion to correct a clerical error. We have previously held that the Land Court has inherent authority to reconsider its own decisions when there has been an intervening change in the law, a discovery of new evidence that was previously unavailable, or a need to correct clear error or prevent manifest injustice due to the court's misapprehension of the facts, a party's position, or the controlling law. *Senior v. Masami*, 16 ROP 196, 198 (2009). While the Land Court clearly has the inherent authority to reconsider its own decision, what complicates matters here is Children of Idip's contention that the Land Court has corrected clerical errors made by bodies separate from the Land Court, including either the Land Claims Hearing Office or the Trial Division or both. Before we can determine whether or not the Land Court has the authority to correct such an error, we must establish whose error it attempted to correct.

Mistakes were made all along the way in this case by the parties, by their attorneys, by the Land Claims Hearing Office, by the Trial Division, and by the Land Court. This has resulted in over two decades of failed attempts to correct errors that have complicated what should have never been a complicated case.[4] The greatest amount of

[4] While it is disconcerting that so much time has passed without the parties bringing the error to the Land Court's attention, we are satisfied that Judge Skebong considered this and was reasonable in accepting Descendants of Ngiratiou's explanation for the delay, that the Certificate of Title was delivered to and sat with someone who could not read English and that the parties had no reason to believe that they needed to check for an error. Further, where a piece of

confusion in this particular dispute may be traced back to the Trial Division's 1989 Judgment, which acknowledged the settlement agreement by the parties and, accordingly, ordered that the Land Claims Hearing Office issue Determinations of Ownership and Certificates of Title to Descendants of Ngiratiou for certain properties. Listed in these properties was Tochi Daicho Lot 489, called *Ngermedong*, and labeled as Cadastral Lot number 021 E 04. It is undisputed that this was an error, because Cadastral Lot number 021 E 04 actually corresponded with Tochi Daicho Lot 498, which was indisputably owned by Idip, individually.

Faced with this obvious discrepancy, the Land Claims Hearing Office then made the decision to base its Determination of Ownership and Certificate of Title, which it was ordered to issue, on the Cadastral Lot number, rather than the Tochi Daicho number, and it issued Tochi Daicho Lot 498 to Descendants of Ngiratiou. As explained in Section II of this Opinion, it was an error for the Land Claims Hearing Office to do so. Thus, both the Trial Division *and* the Land Claims Hearing Office committed clerical errors.

When the Land Court was asked by Descendants of Ngiratiou to correct a clerical error in the issuance of the Certificates of Title, contrary to Children of Idip's contention, it was *not* faced with the task of correcting the error of the Trial Division. Rather, it was asked to correct the error of the Land Claims Hearing Office, which made its error in part due to the confusion that the Trial Division caused. The Land Court did not order that the

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property was issued in error, we have a strong interest in correcting this error, particularly when it has gone innocently unnoticed.

1989 Judgment be corrected. It ordered that the incorrect Determinations of Ownership and Certificates of Title be canceled and be reissued according to a more accurate interpretation of the Trial Division's Judgment. Thus, we are not required to determine whether the Land Court has jurisdiction to correct a clerical error made by the Trial Division of the Supreme Court, but whether it has jurisdiction to correct clerical errors in determinations of ownership and certificates of title issued by the Land Claims Hearing Office.

We have already determined that the Land Court has such authority, so long as the determination of ownership and subsequent certificate of title are void due to some mistake in their issuance. *In re Idelul*, 17 ROP 300, 303–04 (2010). When a determination of ownership and certificate of title are issued contrary to a court order, their issuance constitutes a clerical error and they are void. *See id.* (explaining that judgments are void that lack jurisdiction or constitute a violation of due process). This is precisely what happened here. The Trial Division determined in 1989 that Tochi Daicho Lot 489 belonged to Descendants of Ngiratiou. The Land Claims Hearing Office issued the Certificate of Title contrary to the Trial Division's order. The Land Court discovered this error that made the Certificates of Title void because they were not made pursuant to a valid judgment. And the Land Court has the authority to set such invalid issuances

aside in the interest of justice. *Id.* The Land Court did its job in setting aside the Certificates of Title after so many years of mistakes.[5]

II. The 1989 Trial Division Judgment ordered that Tochi Daicho Lot 489 be issued to Descendants of Ngiratiou.

There is great disagreement in the briefing over the initial intentions of the Trial Division's 1989 Judgment, due to the discrepancy between the listed Tochi Daicho Lot number 489 and what the Judgment falsely listed as its corresponding Cadastral Lot number. In order to determine the true effect of the Judgment, Judge Skebong reviewed the complaints and Certificates of Title and received sworn affidavits by those involved in the 1989 proceeding.

We recently discussed the process by which a court interprets a judgment. We held that judgments should be construed like any other written agreement and that "[t]he determinative factor in interpreting a judgment is the intention of the court, as gathered, not from an isolated part thereof but from all parts of the judgment itself." *Mikel*, Civ. App. No. 12-032, at *8 (citation and internal quotation marks omitted). We also determined that if a judgment is issued "pursuant" to something else, "it follows any ambiguity as to the meaning of [the judgment] must be resolved by reference to the underlying" factor that motivated its issuance. *Id.* at *7.

[5] We note that typically certificates of title are final and there are rules governing collateral attacks of those certificates. However, here the procedural history of this case shows the Certificates of Title to be void.

The 1989 Judgment provides good insight to its intention, explaining that its declaration was being made "[p]ursuant to a settlement agreement" by the parties. Accordingly, Judge Skebong properly took evidence concerning the intent of the settlement agreement with respect to ownership of Tochi Daicho Lots 489 and 498.

The evidence showed that the parties' settlement agreement attempted to grant ownership of Tochi Daicho Lot 489 to Descendants of Ngiratiou. Such evidence included a sworn affidavit by Roman Bedor, who acted as counsel for Descendants of Ngiratiou in 1989 and who was a part of the settlement negotiations. Bedor's account regarding the settlement conversations about Tochi Daicho Lot 489 was detailed and clear and it asserted that the parties agreed that the Lot should have gone to Descendants of Ngiratiou. This testimony was consistent with the Trial Division's statement in its Judgment that Tochi Daicho Lot 489 would go to Descendants of Ngiratiou in accordance with the settlement. Accordingly, the Land Court concluded that there was convincing evidence that the purpose of the proceedings in 1989 was to return Tochi Daicho Lot 489 to Descendants of Ngiratiou. This was a factual determination, which we will not disturb because "the findings are supported by evidence such that a reasonable trier of fact could have reached the same conclusion." *Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 168 (2006).

Children of Idip contend that the Certificates of Title were issued appropriately and that it was the intention of the Trial Division all along to issue Tochi Daicho Lot 489

to Idip and Tochi Daicho Lot 498 to Descendants of Ngiratiou. The reasoning behind Children of Idip's argument is nonsensical to us, primarily because it is undisputed that Idip purchased Tochi Daicho Lot 498 individually, and we cannot understand why any court would have determined that this lot belonged to Descendants of Ngiratiou. For the Land Claims Hearing Office to later issue a Determination of Ownership and Certificate of Title for Tochi Daicho Lots 489 and 498 to Children of Idip and to Descendants of Ngiratiou, respectively, was obviously an error and was inconsistent with the intention of the 1989 Judgment. It was an error that benefited Children of Idip, who essentially exchanged their interest in Tochi Daicho Lot 498 for interest in the much larger Tochi Daicho Lot 489.

We are satisfied after a careful reading of the record and of Judge Skebong's Order Granting Motion for Reconsideration that there was no clear error in the Land Court's conclusion that the initial intention of the 1989 Trial Division Judgment and settlement agreement that prompted the Judgment was to correct a previous error that improperly granted Tochi Daicho Lot 489 to Idip, individually. Accordingly, we dismiss Children of Idip's suggestion that the Trial Division intended to allow them to retain Lot 489.

CONCLUSION

For the foregoing reasons, we conclude that the Land Claims Hearing Office committed a clerical error when it failed to issue a certificate of title to Descendants of

Ngiratiou for Tochi Daicho Lot 489 and instead issued one to them for Tochi Daicho Lot 498. The Land Court was correct to fix this error. Accordingly, its decision is **AFFIRMED.**

SO ORDERED, this 19 day of August, 2013.

ARTHUR NGIRAKLSONG
Chief Justice

KATHLEEN M. SALII
Associate Justice

LOURDES F. MATERNE
Associate Justice