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IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

GEGGIE B. ANSON,	:	
	:	CIVIL APPEAL NO. 13-011
Appellant,	:	(LC/N 08-01130)
v.	:	
	:	
RON RONNY NGIRACHEREANG,	:	
	:	**OPINION**
Appellee.	:	
	:	

Decided: May 14 2014

Counsel for Appellant: Moses Uludong
Counsel for Appellee: Ron Ronny Ngirachereang, Pro Se

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; and R. ASHBY PATE, Associate Justice.

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

PER CURIAM:

Appellant Geggie B. Anson appeals the Land Court's Determination of Ownership awarding land identified as Lots No. 05N001-043, 05N001-044 & 05N001-050, located in Ngeruluobel Hamlet in Airai State, to Appellee Ron Ronny Ngirachereang. She argues that the Land Court's failure to provide her with adequate notice of the underlying hearing, pursuant to ROP R. Civ. P. 4(e), violated her constitutional right to

due process. For the reasons set forth below, we **REMAND** to the Land Court for further proceedings.

BACKGROUND

Appellant Geggie Anson (Anson) and Ron Ronny Ngirachereang (Ngirachereang) filed competing claims for the parcels of land at issue in this case, and the Land Court scheduled a hearing for July 17, 2013. The Notice of Hearing intended for Anson was never served on her personally but rather upon Ms. Dixie Tmetuchl at Ms. Tmetuchl's residence in Ngermid on July 5, 2013. As a result, only Ngirachereang appeared at the hearing. In its Determination of Ownership, the Land Court noted that Anson had not been served at the address she provided to the Court, but that, "[a]ccording to Court Mashall Raldston Ngirengkoi, Claimant Anson instructed him to deliver the notice of hearing on Dixie Tmetuchl in [sic] her behalf." The Land Court proceeded with the hearing and awarded the property in question to Ngirachereang.

Anson filed a timely appeal. Ngirachereang has not filed a Response.

STANDARD OF REVIEW

We review the Land Court's factual findings for clear error. *Sechedui Lineage v. Estate of Johnny Reklai*, 14 ROP 169, 170 (2007). Conclusions of law are reviewed *de novo*. *Sechedui Lineage*, 14 ROP at 170. "[W]here a lower court has not clearly set forth the basis for its decision, remand for further elaboration is appropriate." *Estate of Tmilchol*

v. Kumangai, 13 ROP 179, 182 (2006); *see also Eklbai Clan v. Imeong*, 11 ROP 15, 17-18 (2003).

ANALYSIS

It is undisputed that the Notice of Hearing intended for Anson was served upon Ms. Tmetuchl at her home address in Ngermid and not upon Anson at her home address in Airai. On appeal, Anson argues that (a) she did not authorize Ms. Tmetuchl to receive service for her in this case; (b) she was never properly served with notice of the hearing; and (c) she was therefore deprived of adequate notice and an opportunity to be heard, in violation of her due process rights.

The relevant portion of the Land Claims Reorganization Act of 1996 requires that the Land Court serve notice upon all persons known to claim an interest in the land in question by service in the same manner as a civil summons. With respect to the service of summons, Rule 4(e) of the Rules of Civil Procedure states,

> Unless otherwise provided by law, service upon an individual other than an infant or an incompetent person, may be effected in the Republic of Palau by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

ROP R. Civ. P. 4(e). Therefore, under the rules, Anson could either have been served personally or through an appropriate individual at her home address in Airai. Certainly, the Land Court was aware of this address because it served her with other documents at

that address, including the final Determination of Ownership. In the alternative, the Court could have delivered a copy of the notice to someone authorized by appointment or by law to receive service of process on Anson's behalf.

Here, the Land Court served Ms. Tmetuchl at her residence in Ngermid. At the hearing, for which Anson did not appear, the Land Court noted that Anson had not been served personally, went off the record (apparently to consult with the bailiff), and then went back on the record to report that the bailiff said that the Marshals said that Anson said to serve Ms. Tmetuchl instead. The Land Court then continued with the hearing, evidently having concluded that service in this manner was proper. The Land Court also subsequently noted in the Determination of Ownership that the Court Marshal claimed that he served the Notice to Ms. Tmetuchl pursuant to Anson's instruction.

On appeal, Anson first argues that any verbal instructions given to the Marshal by anyone, including herself, to serve Ms. Tmetuchl rather than Anson would have been insufficient to satisfy the requirements of Rule 4 and establish an agency by appointment. We decline to accept Anson's position as a broad concept; however, given the record before the Court, we agree that the facts of this case are insufficient to establish that an appointment was made. [1]

[1] Anson argues that the authorization of an agent to receive service of process by appointment under Rule 4 must be in writing, citing *Renguul v. Elidechedong,* 11 ROP 11 (2003) in support of this assertion. However, *Renguul* does not stand for the proposition that appointment of an agent for purposes of service of process must be in writing. Rather, it establishes that, where authorization to present a claim on a claimant's behalf has been reduced to writing (in the form of

Because there is scant decisional law in the Republic defining agency by appointment for purposes of service of process, the Court looks to the law of other jurisdictions. *Kazuo v. Republic of Palau*, 1 ROP Intrm. 154, 172 (1984); *see also Mesubed v. Urebau Clan*, 20 ROP 166, 167 & n.1 (2013) (citing 1 PNC § 303, which requires that "[t]he rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Republic in applicable cases . . . .").

To establish agency by appointment, "an actual appointment for the specific purpose of receiving process normally is expected." 4A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1097 (3d ed. 2002). "Although actual appointment is required, evidence of 'the requisite intent' of defendant to make that appointment may be 'implied . . . from the circumstances surrounding the service upon the agent.'" *Pollard v. District of Columbia*, 285 F.R.D. 125, 128 (D.D.C. 2012) (*citing* Wright & Miller, *supra*, § 1097). Thus, written authorization is not necessarily required to satisfy Rule 4.

Nevertheless, some evidence that an "actual appointment" took place is required. In this case, there is no satisfactory evidence before the Court indicating that Anson made any such appointment. The only suggestion in the record that Anson may have appointed

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a power of attorney), the claimant's due process right are not violated when her representative, rather than claimant herself, presents the claim at the Land Court hearing.

Ms. Tmetuchl to receive service of process on her behalf is the whisper-down-the-lane allegation in which the Land Court Judge reported that the bailiff said that the Marshals said that Anson said to serve Ms. Tmetuchl instead. At her first opportunity to do so, Anson has disputed the notion that she authorized anyone other than herself to receive service of process on her behalf, and she suggests that the Marshal may have confused this case with another in which Anson was a party, but Ms. Tmetuchl was the appropriate authorizing agent to be served.

Given Anson's unrebutted affidavit certifying that she never authorized Ms. Tmetuchl to accept service on her behalf in this case, the lack of satisfactory evidence in the record to indicate that Ms. Tmetuchl was so authorized, and the plausible explanation as to how confusion may have arisen, the Land Court's conclusion, based on what is essentially triple hearsay, does not adequately support its determination that service was proper. Accordingly, we remand this case to the Land Court for further inquiry and explanation as to whether service was proper. *Tmilchol v. Kumangai*, 13 ROP 179, 182 (2006) ("[W]here a lower court has not clearly set forth the basis for its decision, remand for further elaboration is appropriate."); *see also Imeong v. Yobech*, 17 ROP 210, 215 (2010) ("An appellate court's role is not to determine issues of fact or custom as though hearing them for the first time. The trial court is in the best position to hear the evidence and make credibility determinations, and if the evidence before it is insufficient to support

its findings, the Court should remand rather determine unresolved factual or customary issues on appeal.").

CONCLUSION

For the foregoing reasons, we **REMAND** the case to the Land Court for further inquiry and elaboration as to whether Appellant was properly served the Notice of Hearing. If the Land Court determines that service was defective, its previous Adjudication and Determination shall be void and the Land Court shall proceed with a re-hearing so that Appellant may be heard on her claim of ownership. *In re Idelui*, 17 ROP 300, 304 ("The deprivation of a party's constitutional due process right to notice and an opportunity to be heard renders a court's judgment on that issue void.").

SO ORDERED, this 14th day of May, 2014.

KATHLEEN M. SALII
Associate Justice

LOURDES F. MATERNE
Associate Justice

R. ASHBY PATE
Associate Justice