

**DLUTAOCH TUROU, Appellant**

v.

**SADANG ETIBEK, Appellee**

Civil Action No. 597

Trial Division of the High Court

Palau District

March 22, 1974

Appeal from land commission determination. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that the appeal must fail where it was based on a mistake of fact on appellant's part, and appellant was not a party of record.

**Land Registration—Parties**

Person who did not appear before the land registration team or the land commission was not a party of record in ownership proceedings and therefore had no right of appeal. (67 TTC § 115)

*Assessor:*

SINGICHI IKESAKES, *Associate Judge,*  
*District Court*

*Interpreter:*

AMADOR D. NGIRKELAU

*Counsel for Appellant:*

ITELBANG LUII

*Counsel for Appellee:*

JONAS W. OLKERIIL

**TURNER, Associate Justice**

This was an appeal from the Palau District Land Commission determination of ownership dated September 5, 1972, for Lot 001 A 04, Tochi Daicho No. 1558, located in Meyungs, Arakabesan Island, holding that the appellee was the individual owner. Appellant claimed to be the individual owner of the land known as Ngerukbai designated in the Tochi Daicho as house lot No. 1560.

Appellant's claim was that lot No. 1560, comprising approximately 214 *tsubo* was shown in the Daicho survey sketch to be a house lot within lot No. 1558 known as Ngurukulduul.

Appellant's appeal from the Land Commission determination was based on the assertion that when the Commission surveyed Lot 1558 (and adjoining lots) it omitted from the map the house lot No. 1560 located within lot No. 1558.

The appellant was confused as to what the Land Commission survey actually showed. It is true the survey excluded from within lot 1558 the area of lot 1560. Cadastral Plot 001 A 00 of Arakabesan Island, dated December 3, 1971, made by the Division of Lands and Surveys, shows lot 1560, containing 561.3 square meters, being 170 *tsubo* is adjacent to lot No. 1558, not within it.

The record further shows that appellant's designated representative, Beketaut Madraisau, appeared at the site at the time of the survey, June 21, 1971, together with Melimarang Kinkl, principal title bearer of the Uchelkumer Clan, who claimed lot 1560 for the clan, according to commission records, and Sadang Itilek, appellee claiming lot No. 1558. (Appellee's Exhibit A) These claimants pointed out the corner markers for the lots in question before the map lines were run.

The Arakabesan Daicho map prepared by the Palau District Office of Land Management, sketch No. 65-63, shows the same general location for lots 1558 and 1560 as the Land Commission's map upon which the determination of ownership was made. It is evident from the hearing record that appellant's claim of ownership of an area within lot 1558 was in error and is contrary to the record.

Appellant did not dispute the determination of ownership of Daicho Lot 1558 made by the Commission. His ap-

peal concerned the location of lot 1560 which he claimed. Since the appeal was clearly erroneous it must fail.

There is another reason why the court should reject the appeal as a matter of law. Appellant did not appear at the hearing before the Land Registration team nor before the Land Commission until after the determination of ownership had been made. The appellant was not a party of record in the ownership proceedings and therefor does not have a right of appeal under the statute. The statute, 67 TTC § 115, authorizes appeal from an ownership determination "by any party aggrieved thereby." The question as to when a person is an "aggrieved party" with appeal rights was considered in *Ngirchongor Kumangai v. Iseko M. Ngiraibiochel*, 6 T.T.R. 217, one of the first Land Commission appeals decided by this Court. It was said in that decision:—

"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 . . . 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."

In the *Kumangai* decision the court excused the failure to technically comply with the statute and permitted an appeal because the case represented one of the first commission proceedings in Palau district. The same excuse might be applied to the present appellant except that he waited for a determination to have been made before making an appearance.

In any event, the court heard Dlutaoch's argument from his counsel and granted a weekend recess when it became apparent to counsel the appeal was without merit. On the following Monday counsel informed the court he had requested appellant to dismiss the appeal but that appellant refused to permit him to do so. Under the circumstances

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the Court took the case under advisement without hearing from appellee to decide the appeal upon the basis of the Commission record. By this judgment, rather than dismissal of the appeal, appellant has the right to appeal to the Appellate Division.

Ordered, adjudged and decreed:—

That the determination of ownership by the Palau Land Commission for Lot No. 001 A 04, Tochi Daicho designated No. 1558 that Sedang Etibek is the individual owner is affirmed and the claim of the appellant is denied.