

CHUUK STATE SUPREME COURT APPELLATE DIVISION

HARUO ARITOS,) CIVIL APPEAL NO. 06-2006
)
Appellant,)
)
vs.)
)
DOLORES MULLER, ROSE EMANUEL, and)
MAKRI SOTAM, on behalf of the lineage of)
the Wito Clan of Enin, Tonoas,)
)
Appellees.)
_____)

OPINION

Hearing: May 1, 2014
Decided: August 27, 2014

BEFORE:

Hon. Repeat R. Samuel, Associate Justice, Presiding
Hon. Benjamin Rodriguez, Temporary Justice*
Hon. Brian Dickson, Temporary Justice**

*Chief Justice, Pohnpei Supreme Court, Kolonia, Pohnpei
**Attorney at Law, Weno, Chuuk

APPEARANCES:

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HEADNOTES

Property – Land Commission; Property – Land Registration

A view that only successful land claimants have to be notified of the Land Commission's determination of ownership is gross legal error. All claimants to a parcel of land must be notified of the determination of ownership for that parcel, and if boundary determinations are involved, the adjoining landowners must also be notified. Aritos v. Muller, 19 FSM R. 533, 536 & n.1 (Chk. S. Ct. App. 2014).

Appellate Review – Standard – Civil Cases

The appellate court reviews questions of law de novo, but will overturn a lower court's factual findings only if they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after considering the entire record, the court is left with a definite and firm conviction that a mistake has been made. Aritos v. Muller, 19 FSM R. 533, 536 (Chk. S. Ct. App. 2014).

Administrative Law – Judicial Review; Constitutional Law – Due Process – Notice and Hearing; Property – Land Registration

The Chuuk State Supreme Court trial division certainly has jurisdiction to consider an attack on a Land Commission determination of ownership as void due to the lack of notice of the formal hearings and lack of notice of the issuance of the determination of ownership because the Chuuk State Supreme Court has jurisdiction to review administrative agency decisions as provided by law, its trial division can exercise appellate review of Land Commission decisions. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

Property – Land Commission; Statutes – Repeal

When the Trust Territory Code Title 67, chapter three, which includes 67 TTC 115, was repealed and replaced by a similar Chuuk state law in 2004, and since the Land Commission acts complained of took place in 1998, and the trial division case was filed in 2000, the Trust Territory Code, Title 67, chapter 3 is the applicable law, but the 2004 Chuuk state statute enacted will apply to the further proceedings on remand. Aritos v. Muller, 19 FSM R. 533, 537 n.2 (Chk. S. Ct. App. 2014).

Property – Land Commission

There is no time limit to seek relief from a void Land Commission decision. To rule otherwise would leave an interested party without any recourse even though that party was unconstitutionally deprived of notice and an opportunity to be heard at the Land Commission formal hearing or was denied the opportunity to file a timely appeal of an adverse determination of ownership of which they never had timely notice. This is similar to the principle that there is no time limit to seek relief from a void judgment because if a judgment is void when issued, it is always void, and a court has no discretion but must grant relief from a void judgment whenever relief is sought. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

Appellate Review – Standard – Civil Cases – Factual Findings

When the appellant does not challenge the trial court's factual findings about the lack of notice or the improper makeup of the land registration team, those trial court findings of fact must stand. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

Jurisdiction; Property – Land Commission

Courts have no jurisdiction to hear cases about interests in land in land registration areas unless there has been a showing of special cause, and a court finding, that action by a court is desirable or that the Land Commission has asked the court to assume jurisdiction without the Land Commission

having made a determination. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

Administrative Law – Judicial Review; Property – Land Commission

By statute, the Chuuk State Supreme Court trial division jurisdiction in appeals from the Land Commission is limited to a review of the Land Commission record and cannot act as a trier of fact unless it grants a trial de novo. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

Property – Land Commission; Property – Land Registration

When the case was not an appeal from a Land Commission determination of ownership because it was filed too late for that and when it was not, at least initially, a trial court action with regard to interests in land within that registration area before it is likely a determination can be made on the matter by the Land Commission because the Land Commission had already made a decision, the trial court action was, instead, an action to collaterally attack (an allegedly) void Land Commission final decision. Once the trial court had determined that the Land Commission decision was void for the lack of due process, then the statute applied to the case before it and if the trial court wanted to proceed on the merits it had to first find special cause existed. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

Administrative Law – Judicial Review; Property – Land Commission

When, while the trial court might have been able to make out a showing of special cause, it never did so, the appellate court must vacate the trial court determination of ownership and remand the matter to the Land Commission for it to conduct the formal hearing after at least 30 days notice to all interested parties and notice to the general public on the island. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

* * * *

COURT'S OPINION

REPEAT R. SAMUEL, Associate Justice, Presiding:

This appeal arises from a Pungun Kapong (Court Judgment) that Justice John Petewon issued on April 6, 2006, concerning land in Tonoas called Winikachaw. That decision is affirmed in part and vacated in part and the matter is remanded to the Chuuk Land Commission for a new determination of title. Our reasons follow.

I. BACKGROUND

On May 15, 2000, Dolores Muller, Rose Emanuel, and Makri Sotam, on behalf of the lineage of the Wito Clan of Enin, Tonas, filed suit in the Chuuk State Supreme Court trial division alleging: 1) that Siren Alifos and Paulina Esipa had filed applications with the Chuuk Land Commission for ownership and title to land on Tonoas called Winikachaw; 2) that the Land Commission had held a preliminary hearing but had never held a formal hearing for Winikachaw; 3) that Aruo Aritos was not a party that claimed Winikachaw; but 4) that the Land Commission had issued a determination of ownership to Aritos for Winikachaw without notice to anyone else. The Land Commission moved to dismiss on the ground that Aritos had been issued a determination of ownership on September 22, 1998 and the 120-day time to appeal that decision had expired over a year earlier. That motion was later denied.

The Wito Clan plaintiffs tried and failed to obtain the Land Commission records for Winikachaw before the Land Commission burned down in December 2004. Those records could not be located afterward.

Trial was held on February 8, 2006. At trial, Land Commission employees and officers testified that formal hearings had been held on Tonoas for Winikachaw by three members of the Weno Registration Team (not the Tonoas registration team) and that based on those hearings, the Land Commission issued Haruo Aritos a determination of ownership for Winikachaw. They also testified that Paulina Esipa had not been given notice that a determination of ownership issued to Aritos on September 22, 1998, because, in the Land Commission's view, only successful land claimants had to be notified of the determination of ownership.¹

On April 10, 2006, the trial court ruled that the registration team did not have a quorum of five members and had not complied with Trust Territory Code Title 67 (the land registration statutes) so Aritos's September 22, 1998 determination of ownership was void. It further ruled that Winikachaw clearly belonged to the Wito Clan (Dolores Muller representing) and ordered the Land Commission to issue a determination of ownership in the Wito lineage's favor.

Aritos timely appealed.

II. ISSUES PRESENTED AND STANDARD OF REVIEW

Aritos asserts that the trial court judgment should be reversed because: 1) the trial court judgment was clearly erroneous conception of the applicable law; 2) the trial court lacked subject matter jurisdiction; and 3) Aritos's determination of ownership was not appealed.

Our review of questions of law is *de novo*, but we will overturn a lower court's factual findings only if they are not supported by substantial evidence in the record, or if they were the result of an erroneous conception of the applicable law, or if, after considering the entire record, we are left with a definite and firm conviction that a mistake has been made. Enegeitaw Clan v. Heirs of Shirai, 16 FSM Intrm. 547, 553 (Chk. S. Ct. App. 2009).

III. ANALYSIS

Aritos contends that the trial court lacked jurisdiction because Tonoas was a designated land registration area and the court could therefore have had jurisdiction only on a showing of special cause, 67 TTC 105, but no special cause was shown for Winikachaw and the trial court did not cite any. Aritos further contends that, since the Wito Clan did not timely appeal the Winikachaw determination of ownership, the September 22, 1998 determination of ownership is conclusive and final.

The trial court concluded that, since the Wito Clan (Paulina Esipa) was never notified of the determination of ownership, the case was before the trial court as an appeal of the Winikachaw determination of ownership. The trial court then proceeded to a trial *de novo* on the merits of

¹ If this is indeed the Land Commission's view, it is gross legal error. All claimants to a parcel of land must be notified of the determination of ownership for that parcel, 67 TTC 110 (now replaced by Chk. S.L. No. 7-04-06, § 12); *see also* Heirs of Tara v. Heirs of Kurr, 14 FSM Intrm. 521, 525 (Kos. S. Ct. Tr. 2007) (serving notice of a Land Commission decision is required in order to give the party a chance to appeal); Nena v. Heirs of Melander, 10 FSM Intrm. 362, 364 (Kos. S. Ct. Tr. 2001) (must serve actual notice of a determination of ownership upon all persons shown to have an interest in the parcel); Kun v. Kilafwakun, 10 FSM Intrm. 214, 216 (Kos. S. Ct. Tr. 2001) (personal service of the determination of ownership is required on all parties shown by the preliminary inquiry to have an interest in the parcel), and if boundary determinations are involved, the adjoining landowners must also be notified, *see* Heirs of Jerry v. Heirs of Abraham, 15 FSM Intrm. 567, 571 (App. 2008).

Winikachaw's title.

A. Trial Court Ruling That Determination of Ownership Was Void

The trial court certainly had jurisdiction to consider an attack on the Land Commission determination of ownership as void due to the lack of notice of the formal hearings and lack of notice of the issuance of the determination of ownership. The Chuuk State Supreme Court has jurisdiction to review administrative agency decisions as provided by law, Chk. S.L. No. 190-08, § 17, its trial division, under 67 TTC 115,² can exercise appellate review of Land Commission decisions. Nakamura v. Moen Municipality, 7 FSM Intrm. 375, 377 (Chk. S. Ct. Tr. 1996).

Furthermore, we hold that there is no time limit to seek relief from a void Land Commission decision. To rule otherwise would leave an interested party without any recourse even though that party was unconstitutionally deprived of notice and an opportunity to be heard at the Land Commission formal hearing or was denied the opportunity to file a timely appeal of an adverse determination of ownership of which they never had timely notice. This is similar to the principle that there is no time limit to seek relief from a void judgment because if a judgment is void when issued, it is always void, and a court has no discretion but must grant relief from a void judgment whenever relief is sought. Ruben v. Hartman, 15 FSM Intrm. 100, 112 (Chk. S. Ct. App. 2007).

Aritos does not challenge the trial court's factual findings concerning the lack of notice or the improper makeup of the land registration team. Those trial court findings of fact therefore must stand. We therefore affirm the trial court's conclusion that the September 22, 1998 Winikachaw determination of ownership is void. See Heirs of Wakap v. Heirs of Obet, 13 FSM Intrm. 418, 420 (Kos. S. Ct. Tr. 2005) (when the Land Commission has not followed statutory requirements for the formal hearings and there was no substantial compliance with the requirements specified by law, the court must set aside the determination of ownership as void and remand for further proceedings); Heirs of Henry v. Palik, 11 FSM Intrm. 419, 423 (Kos. S. Ct. Tr. 2003) (same).

B. Jurisdiction to Try Title or is Remand Required?

Since the Winikachaw determination of ownership is void, we must next determine if the trial court should have remanded the matter to the Land Commission for a new determination of ownership after the Land Commission has given proper notice and the opportunity to be heard or did the trial court have the authority to try the title to Winikachaw on its own. If it did have that authority, we should then affirm its findings and judgment since Aritos does not try to point to any evidence in the record contradicting the trial court finding that the Wito Clan owned Winikachaw or from which we could conclude that the trial court findings were clearly erroneous.

Relying on 67 TTC 105, we have previously held that courts have no jurisdiction to hear cases with regard to interests in land in land registration areas unless there has been a showing of special cause, and a finding by the court, that action by a court is desirable or that the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Mathias v. Engichy, 15 FSM Intrm. 90, 95 (Chk. S. Ct. App. 2007). Cf. Liwis v. Rudolph, 15 FSM Intrm. 245, 248 (Chk. S. Ct. Tr. 2007) (by statute, appeals from determinations of ownership by the

² Trust Territory Code Title 67, chapter three, which includes 67 TTC 115, was repealed and replaced by a similar Chuuk state law in 2004. Since the Land Commission acts complained of took place in 1998, and the trial division case was filed in 2000, the Trust Territory Code, Title 67, chapter 3 is the applicable law. The Chuuk state statute enacted in 2004, Chk. S.L. No. 7-04-06, will apply to the further proceedings on remand.

Land Commission are treated and effected in the same manner as an appeal from a Chuuk State Supreme Court civil action; appellate rules followed); Hartman v. Chuuk, 12 FSM Intrm. 388, 398-99 (Chk. S. Ct. Tr. 2004) (judgment must be vacated when case sought a determination of ownership of land lying within a land registration area and only the Land Commission had jurisdiction to determine ownership of land within a land registration area); Simina v. Rayphand, 9 FSM Intrm. 508, 509 (Chk. S. Ct. Tr. 2000) ("After a designation of any registration area has been filed, the Court will entertain only those cases involving land title where there is a 'showing of special cause why action by a court is desirable.'" (quoting 67 TTC 105)).

That statute, which was applicable when the trial court case was filed in 2000, provided that after the Land Commission's designation of a land registration area has been filed with the court clerk, "thereafter the courts shall not entertain any action with regard to interests in land within that registration area without a showing of special cause why action by a court is desirable before it is likely a determination can be made on the matter by the land commission." 67 TTC 105.

A Land Commission determination of ownership can be appealed within 120 days of the decision, and "[s]uch appeal shall be treated and effected in the same manner as an appeal from a . . . court in a civil action" 67 TTC 115. That statute, was construed to mean that the Chuuk State Supreme Court trial division jurisdiction in appeals from the Land Commission was limited to a review of the Land Commission record and cannot act as a trier of fact unless it grants a trial de novo. O'Sonis v. Sana, 9 FSM Intrm. 501, 502-03 (Chk. S. Ct. Tr. 2000).

But this case was not, although the trial court considered it to be, an appeal from a Land Commission determination of ownership. It was filed too late for that. Nor was it, at least initially, a trial court action "with regard to interests in land within that registration area . . . before it is likely a determination can be made on the matter by the land commission." The Land Commission had already made a decision. The trial court action was, instead, an action to collaterally attack (an allegedly) void Land Commission final decision. Once the trial court had determined that the Land Commission decision was void for the lack of due process, then 67 TTC 105 applied to the case before it. If the trial court wanted to proceed on the merits it had to first find special cause existed. It did not.

In this case, while the trial court might have been able to make out a showing of special cause, it never did so. We therefore have no choice. We must vacate the trial court determination and remand the matter to the Land Commission for it to conduct the formal hearing, Chk. S.L. No. 7-04-06, § 14, after at least 30 days notice to all interested parties, *id.* § 12(1)(c), and notice to the general public on Tonoas, *id.* § 12(1)(a) and (b). Once the Land Commission has decided the merits and issued a determination of ownership, notice of the determination of ownership shall be given to all interested parties and to the general public on Tonoas. *id.* § 16. The Land Commission should make this determination of ownership its highest priority and it should complete this process within six months.

IV. CONCLUSION

Accordingly, we affirm the trial court ruling that the September 22, 1998 determination of ownership of Winikachaw is void. The trial court not having found special cause in the record, we therefore order this matter remanded to the Land Commission for a new determination of ownership proceeding once all the proper notice has been given to all the claimants. The Land Commission shall strictly comply with all the notice requirements in Chuuk State Law No. 7-04-06, § 12 and § 16.

* * * *