

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.)	
)	

ORDER DENYING REHEARING PETITION

Decided: October 9, 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

APPEARANCE:

For the Appellees: Jack Fritz, Esq.
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HEADNOTES

Appellate Review – Rehearing

While the court may grant a petition for rehearing if it has overlooked or misapprehended points of law or fact that may affect the outcome, petitions for rehearing are usually summarily denied but when clarification may be helpful, reasons may be given. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

Constitutional Law – Chuuk – Interpretation; Property – Land Commission

The Chuuk Constitution provides that the trial division of the State Supreme Court has "concurrent original jurisdiction with other courts to try all civil, criminal, probate, juvenile, traffic, and land cases." The word "concurrent" modifies the term "original jurisdiction" and when jurisdiction is concurrent, the appropriate court may be prescribed by statute. The appropriate court for land cases in declared land registration areas was prescribed by statute as an administrative agency, the Chuuk Land Commission. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

Administrative Law – Judicial Review; Property – Land Commission

While it is a matter of some concern, whether the Land Commission will be able to decide the case in a timely manner because of certain vacancies on the Commission, it is not a ground on which the appellate court can base its decision whether to remand to the Land Commission. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

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COURT'S OPINION

REPEAT R. SAMUEL, Associate Justice, Presiding:

On September 3, 2014, the appellees timely filed their petition for rehearing. They contend that we overlooked their argument in their supplemental brief regarding the Chuuk State Supreme Court trial division's original jurisdiction as provided for in the Chuuk Constitution, article VII, section 3(b), and that if we had not overlooked that argument we would have concluded that the trial court did not need to find special cause in order to exercise jurisdiction over this land case.

While a petition for rehearing may be granted if the court has overlooked or misapprehended points of law or fact that may affect the outcome, petitions for rehearing are usually summarily denied but when clarification may be helpful, reasons may be given. Rosokow v. Bob, 11 FSM R. 454, 456 (Chk. S. Ct. App. 2003). We believe clarification would be helpful in this case.

While the petitioners are correct that we did not directly address their supplemental point about original jurisdiction and probably should have, we did not think we had to. The Chuuk Constitution provides that "the trial division of the State Supreme Court has concurrent original jurisdiction with other courts to try all civil, criminal, probate, juvenile, traffic, and land cases" Chk. Const. art. VII, § 3(b). The petitioners overlook the word "concurrent" which modifies the term "original jurisdiction" and the following constitutional provision: "When jurisdiction is concurrent, the appropriate court may be prescribed by statute." Chk. Const. art. VII, § 3(d). The "appropriate court," for land cases in declared land registration areas was prescribed by statute (67 TTC 105 at the time of trial now superseded by Chk. S.L. No. 7-04-06, § 7) as an administrative agency, the Chuuk Land Commission. The trial division may then exercise appellate Review over that agency decision. 67 TTC 115 (superseded by Chk. S.L. No. 7-04-06, § 17).

The petitioners also assert that we misapprehended whether the trial division did have special cause to assume jurisdiction over the case even though it was in a land registration area. They contend we could assume that the trial court found special cause when it recited three possible ways the case might be resolved – by remand to the Land Commission, by dismissal, or by trial on the merits – and then eventually proceeded to try the case on its merits. We decline to make that assumption. Accordingly, we must deny the petition.

The petitioners also express doubt that the Land Commission will be able to decide this case in a timely manner because of certain vacancies on the Commission. While this is a matter of some concern, it is not a ground on which we can base our decision.

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