

appellate court will not decide a constitutional issue if not raised below).

C. *Whether the Trial Court's Order was Not Based on Substantial Evidence and Clearly Erroneous.*

Lipton Tilfas requests that we find the trial court's findings as clearly erroneous and unsupported by substantial evidence. He again argues that the record on appeal clearly demonstrates that the statute of limitations should not apply to bar his actions, that it should apply to bar Palik's October 17, 2014 reversal of the original administrative decision issued December 12, 2001, and that Palik and the trial court violated his right to due process by taking their respective actions without notice or opportunity to be heard.

It appears Lipton Tilfas simply quotes the substantial evidence and clearly erroneous standards and continues to argue the same issues as previously set forth. The same holds true for his oral arguments. Because his arguments are duplicative, we need not address them again in light of our conclusions above. Simina v. Kimueo, 16 FSM R. 616, 622-23 (App. 2009).

VI. CONCLUSION

ACCORDINGLY, we AFFIRM the trial court's decision to dismiss Lipton Tilfas's claim for wrongful probationary status on the grounds that, under any set of conceivable facts, it was time-barred by the statute of limitations. We, however, VACATE the trial court's decision as to Lipton Tilfas's claim for wrongful salary classification and REMAND the matter to the trial court for further proceedings consistent with this Memorandum of Decision; Order of Remand.

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FSM SUPREME COURT APPELLATE DIVISION

HEIRS OF SISUO ALOKOA,)	APPEAL CASE NO. K5-2015
)	(Civil Action No. 92-14)
Appellants,)	
)	
vs.)	
)	
HEIRS OF NEIME PRESTON, KOSRAE LAND)	
COURT, and KOSRAE STATE GOVERNMENT,)	
)	
Appellees.)	
)	

OPINION

Argued: July 11, 2016
Decided: December 29, 2016

BEFORE:

Hon. Dennis K. Yamase, Chief Justice, FSM Supreme Court
Hon. Cyprian J. Manmaw, Specially Assigned Justice, FSM Supreme Court*
Hon. Mayceleen J.D. Anson, Specially Assigned Justice, FSM Supreme Court**

*Chief Justice, Yap State Court, Colonia, Yap

**Associate Justice, Pohnpei Supreme Court, Kolonia, Pohnpei

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HEADNOTES

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Judgments – Relief from Judgment
The decision to grant or deny a motion for relief from a final judgment is committed to the trial court's sound discretion. Accordingly, the lower court's decision should be scrutinized, with an eye toward determining whether the trial judge's ruling manifested an abuse of discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Heirs of Alokua v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

Appellate Review – Standard – Civil Cases – Abuse of Discretion

An abuse of discretion occurs when: 1) the court's decision is clearly unreasonable, arbitrary or fanciful; 2) the decision is based on an erroneous conclusion of law; 3) the court's findings are clearly erroneous or; 4) the record contains no evidence on which the court rationally could have based its decision. As such, there is an abuse of discretion only when there is a definite and firm conviction, upon weighing all the relevant factors, that the court below committed a clear error of judgment in the conclusion it reached. Heirs of Alokua v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

Appellate Review – Standard – Civil Cases – Abuse of Discretion; Evidence – Burden of Proof

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Alokua v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

Appellate Review – Standard – Civil Cases – De Novo

Issues of law are reviewed de novo on appeal. Heirs of Alokua v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

Appellate Review – Decisions Reviewable

If the Kosrae State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court, with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate, but if the State Court affirms the Land Court decision, no further appeals to the State

Court will be allowed. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 99 (App. 2016).

Appellate Review – Decisions Reviewable; Civil Procedure – Res Judicata

When there has been no disposition of an appeal before the Kosrae State Court, and when a separate later civil action is inextricably intertwined with that appeal, the Kosrae State Court is precluded from entertaining the civil action while the appeal is still pending. A civil action in the Kosrae State Court cannot be a substitute for an appeal from the Land Court. Nor can it be a second appeal of a Land Court decision. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

Civil Procedure – Res Judicata

Res judicata prevents a party raising any issues which were open to litigation in the former action, where an opportunity was present to raise such claim(s) at that previous juncture. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

Appellate Review – Decisions Reviewable; Civil Procedure – Res Judicata

When the appellants participated in the appeal on ownership of a specific parcel, they are barred from relitigating the ownership of any part of that parcel under the doctrine of res judicata. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

Civil Procedure – Res Judicata

All causes of action arising out of the same event (and all defenses to a cause of action) must be raised in one case or else they are barred. A plaintiff cannot file one suit claiming title based on a will and then be allowed to file a second lawsuit for title to the same land claiming fraud and breach of contract. He must raise all causes of action for title to the land in the same case. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

Civil Procedure – Res Judicata

The modern trend with respect to the defense of former adjudication is to insist, first, that a plaintiff raise his entire claim in one proceeding, and second, to define "claim" to cover all the claimant's rights against the particular defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100 (App. 2016).

Civil Procedure – Collateral Estoppel

Collateral estoppel is an affirmative defense which bars a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one. This is also referred to as issue preclusion. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 100-01 (App. 2016).

Civil Procedure – Collateral Estoppel

A court's misgivings (against the backdrop of the collateral estoppel doctrine) about a successive civil action are well-founded when, in the successive civil action, the complaint maintains that the certificates of title to a parcel were improperly issued despite having previously acknowledged the parcel's conveyance to a party as a gift. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 101 (App. 2016).

Property – Land Registration

A "registration area," is any area, which has been designated for treatment by the Kosrae Land Court, to determine boundaries and ownership interests. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 101 (App. 2016).

Property – Land Registration

When registered land is later transferred by deed, there is no need to again designate, serve notice, hold hearings, and determine ownership, in order to issue a certificate of title to the new owner. Heirs of Alokoea v. Heirs of Preston, 21 FSM R. 94, 101 (App. 2016).

Property – Land Court; Property – Land Registration

Any subsequent transfer from a registered owner, does not require notice, much less a hearing, to determine ownership anew or a written decision. Heirs of Alokoea v. Heirs of Preston, 21 FSM R. 94, 102 (App. 2016).

* * * *

COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

This appeal stems from an Order issued by the Kosrae State Court on April 27, 2015, that denied Plaintiff/Appellants' (hereinafter referred to as "Alokoea") Motion to Reconsider an April 1, 2015 Order of Dismissal of Action.

I. BACKGROUND

Civil Action No. 92-14 commenced with a November 7, 2014 Complaint filed in Kosrae State Court, which sought to invalidate a Certificate of Title, predicated upon claims sounding in due process rights having been violated, misrepresentation, fraud, and negligence. This Complaint was filed approximately three months after Alokoea had brought an appeal in the Kosrae State Court (Civil No. 72-14), regarding a June 23, 2014 Kosrae Land Court (L.C. No. 20-13) "Ruling on Motions for Summary Judgment and Dismissal" in favor of Defendants/Appellees (hereinafter referred to as "Preston"), involving the same property and underlying facts, that appear in the appeal before us. Although the Civil No. 72-14 appeal was still unresolved, Alokoea brought Civil Action No. 92-14.

The land in dispute involves Parcel Nos. 032-K-04 and 032-K-05, located at Pukursik Te, within Lelu Municipality. These parcels were owned by Sisuo Alokoea, as Certificates of Title had been issued in his name, on or about April 18, 1983. On August 16, 2005, these two parcels were transferred to Neime Preston, via a Deed of Gift and the corresponding Certificates of Title awarded to this grantee on May 17, 2006.

The Kosrae State Appellees filed an Answer to the Complaint in Civil Action No. 92-14, however Preston opted to move for dismissal or in the alternative, summary judgment. On April 1, 2015, the Kosrae State Court issued an Order of Dismissal. On April 13, 2015, Alokoea proceeded to file a Motion for Reconsideration and Relief from Order. The instant Appeal challenges the April 27, 2015 Order which denied Alokoea's Motion to Reconsider the Order of Dismissal.

In so holding, the Kosrae State Court noted:

There is pending appeal of a Land Court decision between parties Heirs of Alokoea and Heirs of Preston in this Court, under Case No. 72-14. Both cases involve the same land parcel under dispute and essentially the same facts The Court granted defendants' Motion [to Dismiss], as there was no effective way to evaluate any of Plaintiffs' claims in this matter, without also deciding the validity of the Land Court Decision, which is still under appeal. Therefore, the complaint was found to suffer from

fatal procedural defects. . . . Plaintiffs seek to file a new complaint while the facts and legal questions at issue are still being adjudicated under appeal in a prior matter. Any ruling the Court could issue in this complaint would be unavoidably prejudicial to Civil Case No. 72-14 currently under appeal. . . . These new allegations against the Land Court cannot be evaluated fairly until proceedings are concluded in the original case addressing the same factual questions and legal issues. Accordingly, this case is dismissed without prejudice, pending the final adjudication of the Land Court appeal in Matter No. 72-14.

II. ISSUES ON APPEAL

A. Whether the Kosrae State Court Order entered on April 27, 2015, denying a Motion for Reconsideration and Relief from an Order of Dismissal dated April 1, 2015, was erroneous and contrary to law?

B. Whether the Kosrae State Court Order entered on April 27, 2015, denying a Motion for Reconsideration and Relief from an Order of Dismissal dated April 1, 2015, was based on substantial evidence?

III. STANDARD OF REVIEW

The decision to grant or deny a motion for relief from a final judgment is committed to the sound discretion of the trial Court. Accordingly, the lower Court's decision should be scrutinized, with an eye toward determining whether the trial judge's ruling manifested an abuse of discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Simina v. Kimeou, 16 FSM R. 616, 619 (App. 2009).

An abuse of discretion occurs when: (1) the court's decision is clearly unreasonable, arbitrary or fanciful; (2) the decision is based on an erroneous conclusion of law; (3) the court's findings are clearly erroneous or; (4) the record contains no evidence, on which the court rationally could have based its decision. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657-58 (App. 2009). As such, this Court will find an abuse of discretion only when there is a definite and firm conviction, upon weighing all the relevant factors, that the court below committed a clear error of judgment in the conclusion it reached.

With respect to a claim that substantial evidence was lacking, the standard of review was set forth in Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650 (App 2011). "Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." *Id.* at 655. Finally, issues of law are reviewed *de novo* on appeal. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 351 (App. 2012).

IV. ANALYSIS

1. *Jurisdictional Issue*

Appellants' first assignment of error, contends the underlying dismissal by the Kosrae State Court was not predicated upon a lack of subject matter jurisdiction, but instead reflected its preference for resolving Alokoa's pending appeal in Civil No. 72-14, before addressing the Civil Action No. 92-14 Complaint. Appellants misunderstand the significance of the lower Court's reasoning. The existence of an unresolved appeal before the Kosrae State Court, which closely resembled the Complaint filed in

Heirs of Alokoa v. Heirs of Preston
21 FSM R. 94 (App. 2016)

Civil Action No. 92-14, in terms of a common nucleus of operative facts, is akin to bringing an appeal prematurely or before a final decision has been rendered below. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 359 (App 2011).

The reasoning employed by the Kosrae State Court, in its April 27, 2015 decision to deny the motion to reconsider its April 1st Order of Dismissal can be gleaned from the Kosrae State Code (KSC) sections that govern the applicable procedure for Land Court Appeals.

Kosrae State Code § 11.614(5)(d), sets forth:

If the State Court finds the Land Court Decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it shall remand the case to the Land Court, with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate.

Furthermore, subsection (5)(e) provides: "If the State Court affirms the decision of the Land Court, no further appeals to the State Court shall be allowed."

In accordance with these statutory provisions, contingent upon the ruling reached by the Kosrae State Court in the pending Civil No. 72-14 appeal from Land Court Case No. 20-13, the latter could get the case anew (i.e. on remand) or if affirmed, the inherent finality of such a judgment would prohibit any further appeal thereof to the State Court. Within the April 1st Order of Dismissal, the Kosrae State Court aptly recognized this procedural impediment, within its Order of Dismissal, when it opined: "There is no claim for relief which can be granted in this [92-14] matter, until proper proceedings are completed through a decision in the Land Court appeal of Case No. 72-14."

Alokoa also argues, that the Land Court is devoid of jurisdiction to address the claims of due process violations, fraud and misrepresentation, as set forth in Civil Action No. 92-14. Consequently, Appellants submit the Complaint filed in Civil Action No. 92-14 differs from the Land Court appeal before the Kosrae State Court in Civil No. 72-14 and portrays a seemingly distinct cause of action, beyond the pale of the Land Court's authority to oversee such an action.

In the April 27th Order, which denied a motion to reconsider its previously issued Order of Dismissal, the Kosrae State Court acknowledged this conundrum, *to wit*:

This Court disagrees generally with Plaintiffs' assertion that the issues of the Land Court appeal are "separate" from the issues in this Complaint. While Plaintiffs are correct, in a narrow sense, that their claims against the Land Court for violations of due process, misrepresentation and fraud and negligence are novel to this Complaint, it is simply inaccurate to state that "this lawsuit does not relate to recent actions by the Land Court that took place in 2014." The underlying facts involve the same questions of land ownership and transfer of title among the same parties and cannot avoid being a judgment on the validity of the original Land Court Decision itself. The Court agrees with the Plaintiffs, that this Complaint has some novel aspects and touches on issues and allegations beyond the scope of the Land Court Decision. This does not change the fact that this matter could not be possibly adjudicated without being prejudicial to the prior case under appeal. Contrary to Plaintiffs' assertions in this Motion, there are "two pending lawsuits" and they are intimately related and connected to each other on core factual and legal questions.

In sum, since there has been no disposition of the Civil No. 72-14 appeal before the Kosrae State

Court, coupled with the fact that Civil Action No. 92-14 is inextricably intertwined to the former, the lower Court correctly determined, that it was precluded from entertaining the latter while the appeal was still pending and hence, its decision to deny Alokoa's motion to reconsider its Order of Dismissal was proper.

A civil action in the Kosrae State Court cannot be a substitute for an appeal from the Land Court. Nor can it be a second appeal of a Land Court decision.

2. Successive Causes of Action

Although there is no final determination, with respect to the appeal in Civil No. 72-14, the principle embodied within the doctrine of *res judicata* poses an additional hurdle for Alokoa. As noted by the Kosrae State Court: "This Court agrees with Defendant, that the [92-14] matter is barred by *res judicata* and collateral estoppel, pending the Land Court appeal"

Given the same set of operative facts between the underlying Complaint in Civil Action No. 92-14 and the pending Civil No. 72-14 appeal, it is well settled, that *res judicata* prevents a party raising any issues which were open to litigation in the former action, where an opportunity was present to raise such claim(s) at that previous juncture. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 156 (Pon. 2012). In Heirs of Tulenkun v. George, 14 FSM R. 560 (Kos. S. Ct. Tr. 2007), the Court found, that "Appellants participated . . . in the appeal on ownership of [a specific] Parcel. They are barred from relitigating the ownership of any part of that parcel under the doctrine of *res judicata*." *Id.* at 562.

This issue, regarding filing successive causes of action, was addressed in Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494 (Kos. S. Ct. Tr. 2006), where the Court held:

It is similar to the requirement that all causes of action arising out of the same event (and all defenses to a cause of action) must be raised in one case or else they are barred. A plaintiff cannot file one suit claiming title based on a will and then be allowed to file a second lawsuit for title to the same land claiming fraud and breach of contract. He must raise all causes of action for title to the land in the same case.

Id. at 496. Succinctly put, the Civil Action No. 92-14 Complaint, wherein Appellants joined the Kosrae State Appellees, concerning the same land transaction involved in the Land Court Case No. 20-13 (which constitutes the Civil No. 72-14 appeal, currently before the Kosrae State Court) is frowned upon.

The modern trend with respect to the defense of former adjudication is to insist, first, that a plaintiff raise his entire "claim" in one proceeding, and second, to define "claim" to cover all the claimant's rights against the particular defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.

Maruwa v. Shokai Guam, Inc. v. Pyung Hwa 31, 6 FSM R. 238, 241 (Pon. 1993) (quoting Container Transport Int'l. Inc. v. United States, 468 F.2d 926, 928-29 (Ct. Cl. 1972)). Parties are precluded from raising any issues that were or could have been raised in a previous proceeding.

3. Collateral Estoppel

As set forth above, the Kosrae State Court found collateral estoppel posed, yet another impediment, to the Complaint filed by Appellants in Civil Action No. 92-14; warranting dismissal of same. "Collateral estoppel is an affirmative defense which bars a party from relitigating an issue

determined against that party in an earlier action, even if the second action differs significantly from the first one. This is also referred to as issue preclusion." Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007) (citing BLACK'S LAW DICTIONARY 256 (7th ed. 1999)).

In short, the initial Statement of Land Claim for Relief in L. C. No. 20-13 only disputed ownership of Parcel No. 032-K-05. This is corroborated by, not only the subject prayer for relief in the Land Court matter, but a missive penned by Appellants' Attorney and affixed to the Land Court Complaint as an exhibit. This letter/exhibit stated, inter alia, "Any transfer of land by virtue of an executed Deed of Gift was for Parcel 032-K-04, the beachside parcel and not 032-K-05 (mountainside parcel). It was the intent of Papa Sisuo [Alokoa], with the knowledge of all of Neime Preston's siblings, to present the beachside parcel as a land gift to Neime. There was never any intent for formal passage of title to the mountainside parcel [i.e. 032-K-05], where the business structures were built on."¹ Furthermore, within the Land Court's June 23, 2014 Ruling on Motion for Summary Judgment in L.C. No. 20-13 (which is presently the subject of the Civil No. 72-14 appeal before the Kosrae State Court), the propriety of the aforementioned Deed of Gift, concerning 032-K-04, was given credence. The Land Court's June 23, 2014 Ruling on Motions for Summary Judgment in L.C. No. 20-13, Preston's Appendix, Exhibit "D," at 83.

In the successive cause of action filed in Civil Action No. 92-14 however, this Complaint maintains that the Certificates of Title to 032-K-04, as well as 032-K-05, were improperly issued to Preston. In other words, Alokoa now attempts to lodge a claim to 032-K-04, despite having previously acknowledged its conveyance to Neime Preston as a gift. Given the aforementioned concession by Alokoa, coupled with the Land Court's recognition of such transfer, we find the lower Court's misgivings (against the backdrop of the doctrine of collateral estoppel) about the successive Civil Action No. 92-14 action, to be well-founded.

4. *Deprivation of Due Process*

Alokoa also submits that the issuance of Certificates of Title to Parcel Nos. 032-K-04 and 032-K-05 to Neime Preston on May 17, 2006 (in the wake of an executed Deed of Gift from Alokoa, dated August 16, 2005), did not comply with "the statutory scheme of the Land Court Act and Title 11 on land determination and registration." Alokoa claims the relevant Certificates of Title were issued without having been provided notice and an opportunity to be heard. Alokoa labors under the impression, that each time a land transfer is effectuated, a hearing before the Land Court, along with the ancillary notice to the parties is required. In short, a landowner's conveyance of his/her property or any part thereof, does not necessarily trigger Title 11 of the Kosrae State Code and reliance upon the statutory sections cited by Alokoa (§ 11.612(4) and § 11.613) is simply misplaced.

Under Kosrae State Code § 11.602(6), "Registration area," is defined as "any area, which has been designated for treatment by the Land Court, to determine boundaries and ownership interests." Furthermore, Kosrae State Code § 11.612 sets forth:

(1) The Principal Land Court Justice shall systematically designate registration areas for treatment within one year.

(2) The Principal Land Court Justice shall assign himself and the Associate Land Court Justice specific registration areas. Each individual Justice shall be responsible for

¹ A September 25, 2013 missive from Alokoa's Attorney, was attached to the initial Complaint in L.C. 20-13, as Exhibit "B," Preston's Appendix "B" at 35.

determined against that party in an earlier action, even if the second action differs significantly from the first one. This is also referred to as issue preclusion." Nakamura v. Chuuk, 15 FSM R. 146, 150 (Chk. S. Ct. App. 2007) (citing BLACK'S LAW DICTIONARY 256 (7th ed. 1999)).

In short, the initial Statement of Land Claim for Relief in L. C. No. 20-13 only disputed ownership of Parcel No. 032-K-05. This is corroborated by, not only the subject prayer for relief in the Land Court matter, but a missive penned by Appellants' Attorney and affixed to the Land Court Complaint as an exhibit. This letter/exhibit stated, inter alia, "Any transfer of land by virtue of an executed Deed of Gift was for Parcel 032-K-04, the beachside parcel and not 032-K-05 (mountainside parcel). It was the intent of Papa Sisuo [Alokoo], with the knowledge of all of Neime Preston's siblings, to present the beachside parcel as a land gift to Neime. There was never any intent for formal passage of title to the mountainside parcel [i.e. 032-K-05], where the business structures were built on."¹ Furthermore, within the Land Court's June 23, 2014 Ruling on Motion for Summary Judgment in L.C. No. 20-13 (which is presently the subject of the Civil No. 72-14 appeal before the Kosrae State Court), the propriety of the aforementioned Deed of Gift, concerning 032-K-04, was given credence. The Land Court's June 23, 2014 Ruling on Motions for Summary Judgment in L.C. No. 20-13, Preston's Appendix, Exhibit "D," at 83.

In the successive cause of action filed in Civil Action No. 92-14 however, this Complaint maintains that the Certificates of Title to 032-K-04, as well as 032-K-05, were improperly issued to Preston. In other words, Alokoo now attempts to lodge a claim to 032-K-04, despite having previously acknowledged its conveyance to Neime Preston as a gift. Given the aforementioned concession by Alokoo, coupled with the Land Court's recognition of such transfer, we find the lower Court's misgivings (against the backdrop of the doctrine of collateral estoppel) about the successive Civil Action No. 92-14 action, to be well-founded.

4. *Deprivation of Due Process*

Alokoo also submits that the issuance of Certificates of Title to Parcel Nos. 032-K-04 and 032-K-05 to Neime Preston on May 17, 2006 (in the wake of an executed Deed of Gift from Alokoo, dated August 16, 2005), did not comply with "the statutory scheme of the Land Court Act and Title 11 on land determination and registration." Alokoo claims the relevant Certificates of Title were issued without having been provided notice and an opportunity to be heard. Alokoo labors under the impression, that each time a land transfer is effectuated, a hearing before the Land Court, along with the ancillary notice to the parties is required. In short, a landowner's conveyance of his/her property or any part thereof, does not necessarily trigger Title 11 of the Kosrae State Code and reliance upon the statutory sections cited by Alokoo (§ 11.612(4) and § 11.613) is simply misplaced.

Under Kosrae State Code § 11.602(6), "Registration area," is defined as "any area, which has been designated for treatment by the Land Court, to determine boundaries and ownership interests." Furthermore, Kosrae State Code § 11.612 sets forth:

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- (2) The Principal Land Court Justice shall assign himself and the Associate Land Court Justice specific registration areas. Each individual Justice shall be responsible for

¹ A September 25, 2013 missive from Alokoo's Attorney, was attached to the initial Complaint in L.C. 20-13, as Exhibit "B," Preston's Appendix "B" at 35.

determining boundaries, title and registration of the parcels within his assigned area.

(3) Each Justice shall institute diligent inquiry regarding each claim of interest within their area and set each well-founded claim for hearing once all claims are recorded. Each Justice shall provide notice to each claimant, as provided in § 11.613 of this Act.

(4) Each Justice, after providing notice, shall hear the claimants, witnesses and other such evidence, as may be offered and make a decision based on the evidence received at the hearing.

Finally, Kos. S.C. § 11.613 (relied upon by Alokoa) denotes the requirements for proper notice to parties of a hearing before the Land Court, when a hearing is scheduled to address a "Registration area."

As noted by the Presiding Land Court Judge in the June 23, 2014 Decision in the initial action brought by Alokoa (L.C. No. 20-13):

In 1979, title to the subject land was issued to Loary Saleus Loary . . . Public notices for designation areas and registration of land hearings and determination of ownership were served, posted and announced. . . The Commission's issuance of title to Loary S. Loary was in compliance with statutory requirements. . . He had quiet title and exclusive ownership of the subject land, subject to his sole choosing of whether to transfer title or who to pass it on title to. Having been designated, heard, adjudicated of its ownership, title issued and registered, there was no need to again designate, serve notice, hold hearings and determine ownership, based on a mere transfer of quiet title Come May 28, 1982, Loary S, Loary transferred title to the subject land, Parcel No. 032-K-05 and an adjacent Parcel No. 032-K-04, lumped together, to Sisuo Alokoa, based on an Exchange Deed. There was no need for a hearing and notice of Exchange Deed, except for signing of the Deed between the grantor Loary S. Loary and the grantee, Sisuo Alokoa.

The same exclusive rights to land were vested in the Petitioner Sisuo Alokoa when he decided to transfer title to Neime Preston on August 16, 2005, by way of Deed of Gift . . . [S]imilarly, there was no need for notice and hearing. . . . To issue Certificate of Title to Neime Preston, the Land Court did not need to go through the whole process of having to designate the subject land, serve notice of hearing, hold a hearing, determine ownership, issue title and serve notice thereof. . . . In issuing title to Neime Preston, the Land Court did not need to satisfy the statutory rights pursuant to Kosrae State Code, Sections 11.612, 11.613 and 11.614, as argued by Petitioners.

As articulated by the Presiding Land Court Judge, the original determination of interest concerning the parcels in interest and concomitant issuance of title (to Loary S. Loary in 1979), fully complied with the statutory requirements set forth in Title 11. Thereafter, this individual held a valid Certificate of Title, which constituted *prima facie* evidence of ownership. In fact, courts must attach a presumption of correctness to a Certificate of Title. Anton v. Shrew, 12 FSM R. 274, 277 (App. 2003). Any subsequent transfer from this owner, did not require notice, much less a hearing to determine ownership anew or written decision. Accordingly, the argument marshaled by Alokoa, that noncompliance with the "statutory scheme on land determination and registration" violated due process rights, is misguided.

5. *Statute of Limitations*

It is unnecessary to discuss this issue as the Kosrae State Court decision is affirmed on all relevant grounds and this issue is left for decision in the pending appeal matter in the Kosrae State Court.

V. CONCLUSION

The Kosrae State Court's Order denying reconsideration of its Order of Dismissal was proper given the unresolved status of Appellant's Civil No. 72-14 appeal before the Kosrae State Court of the Land Court decision rendered in L.C. No. 20-13, which involves the same underlying facts and similar parties as those present in the cause of action brought in Civil Action No. 92-14. We find no abuse of discretion in the lower court's denial of reconsideration of its Order of Dismissal.

Accordingly, the decision of the Kosrae State Court, which denied the Motion to Reconsider an Order of Dismissal, is hereby AFFIRMED.

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FSM SUPREME COURT APPELLATE DIVISION

SEPE LONNO,)	APPEAL CASE NO. K6-2015
)	(Civil Action No. 25-15)
Appellant,)	
)	
vs.)	
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HEIRS OF RICHARD PALIK, KOSRAE LAND)	
COURT, and KOSRAE STATE GOVERNMENT,)	
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OPINION

Argued: July 13, 2016
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*Chief Justice, Yap State Court, Colonia, Yap

**Associate Justice, Pohnpei Supreme Court, Kolonia, Pohnpei