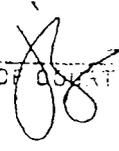


CLERK OF COURT
SUPERIOR COURT
FILED

93 FEB 9 P2:38

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

DEPUTY CLERK OF COURT


IN RE ESTATE OF)
JOSE OGUMORO,)
Deceased)
_____)

Civil Action No. 91-78
Opinion and Order

On August 18, 1992, the Administrators, Daniel Ogumoro [hereinafter "Daniel"] and Felicidad Ogumoro ["Felicidad"], petitioned this Court for final distribution of the estate of Jose Ogumoro ["Jose"]. The Administrators move this Court for final distribution of Jose's estate pursuant to Rule 22 of the Commonwealth Rules of Probate Procedure.¹ Administrators seek an order of final distribution which: (1) would close the administration of the estate; (2) would include in the inventory of the estate E.A. 442 (1 of 3), (2 of 3) and (3 of 3) ["Talofof Lands"]; and (3) would distribute the assets of the estate to

Rule 22 of the Commonwealth Rules of Probate Procedure provides:

When 70 days have elapsed after the appointment of the administrator and the estate is ready to be closed, the administrator shall petition the Court for a decree of final distribution. The petition shall include all of that information required in Rule 12 of these Rules and shall be set down for hearing at which time the Court shall make such orders as are necessary to close the estate or to prepare the estate further so that it can be closed. . . .

Com. R. Probate Pro. 22.

Daniel as customary trustee for the use of the lineal heirs of Jose.

On August 25, 1992, Sita² filed an Opposition to Petition for Final Distribution. The thrust of the dispute is whether the Talofofa Lands should be included as an asset in the inventory of Jose's estate.

On September 1, 1992, the Court held a hearing concerning the Administrators' motion. The Court took the matter under advisement.

I. FACTUAL BACKGROUND

Jose Ogumoro died on December 13, 1907. Jose had eight children: Asuncion L. Ogumoro; Salomon L. Ogumoro; Lucio L. Ogumoro; Teofila L. Ogumoro; Benedicto L. Ogumoro; Nicolas L. Ogumoro; Pedro L. Ogumoro; and Luis L. Ogumoro.³ Only Nicolas, Pedro and Luis survived Jose.

Of Jose's children, only Nicolas and Luis had children. Nicolas had three children: Antonio T. Ogumoro; Joaquin T. Ogumoro; and Sita O. Phillip. Luis had five children: Jose R. Ogumoro; Juan R. Ogumoro; Daniel R. Ogumoro; Juan R. Ogumoro; and Antonio R. Ogumoro. Jose's only surviving grandchildren are Sita

² "Sita O. Phillip and Other Heirs of Nicolas L. Ogumoro" oppose the Administrators' Petition for Final Distribution. For purposes of ease and clarity, this Court will refer to those persons who oppose the Petitioners only as "Sita."

³ All of Jose's children are now deceased.

and Daniel.⁴

During his lifetime, Jose owned Lot Nos. 1833 and 1855. Administrators' Exhibits in Support of Petition for Final Distribution, Exhibit B ["Administrators' Exhibits"]. In 1912, Nicolas inherited the lots from Jose.

In 1952, a Trust Territory land title officer issued Title Determination No. 392 ["T.D. 392"]. T.D. 392 determined Lot Nos. 1833 and 1855 to be the property of "the heirs of Nicolas Ogumoro represented by Luis Ogumoro as land trustee." Administrators' Exhibit E.

In 1954, Luis exchanged Lot Nos. 1833 and 1855 for the Talofofu Lands. Luis was acting in his capacity as Land Trustee, representing the "heirs of Nicolas." Administrators' Exhibit F. The agreement to exchange lands is known as E.A. 442.

In 1982, the Land Commission conducted a formal hearing concerning E.A. 442. Administrators' Exhibit K. Daniel, one of the Administrators in the present case, claimed the Talofofu Lands in a representative capacity for the "heirs of Nicolas Ogumoro, deceased." *Id.*

In 1985, the Land Commission issued Determinations of Ownership for the Talofofu Lands. The Commission concluded that the "heirs of Nicolas Ogumoro" owned the property. Administrators' Exhibits K, L, & M.

⁴ For purposes of ease, this Court has attached a diagram of Jose's heirs. The diagram was submitted as an exhibit to the Administrators' Petition for Final Distribution.

II. ISSUE PRESENTED

The Court will consider the issue of whether the principle of res judicata precludes it from setting aside T.D. 392 on the grounds that the title determination constitutes a conclusive administrative adjudication.

III. ANALYSIS

T.D. 392 specifies that Lot Nos. 1833 and 1855 are the property of "the heirs of Nicolas Ogumoro represented by Luis Ogumoro as land trustee." E.A. 442 similarly concludes that the land was owned by Nicolas individually.⁵ Administrators' Exhibits N, O, & P.

Daniel and Felicidad argue that the Court should set aside T.D. 392 and E.A. 442. They assert that the record underlying the determinations of ownership is patently inadequate to support the decision that the land belongs to the heirs of Nicolas. Given that Jose did not have a surviving daughter, the Administrators assert that title to the disputed land vested in his oldest son, Nicolas, who acted as the customary trustee for the lineal descendants of Jose. Upon Nicolas' death, title to the land vested in Pedro as the oldest surviving son, and upon Pedro's

⁵ Where land is obtained through an exchange with the government, that land takes the place of the land that was given to the government. *Dela Cruz, supra*, slip op. at 10 (citing *Blas v. Blas*, 3 T.T.R. 99 (H.C.T.T., Tr. Div. 1966)). The incidents of ownership that attached to the original parcel of land therefore transfer and attach to the exchanged land. *Id.* For this reason, the rights of the heirs of Nicolas with respect to Lot Nos. 1833 and 1855 transferred to the Talofofa Lands.

death, title vested in Luis as the sole surviving son. They urge the Court to hold that the lands were inherited by Nicolas, Pedro, and Luis as Carolinian family lands, and as such, did not belong to Nicolas individually.

Sita, however, contends that the principle of res judicata precludes the Court from setting aside the determinations of ownership. She asserts that the record adequately supports the decision that the heirs of Nicolas own the land. This Court agrees with Sita.

The principle of res judicata addresses the conclusive effect of judgments in subsequent actions. Where a court of competent jurisdiction renders a final judgment on the merits, the judgment is conclusive as to the rights of the parties and their privies. *Restatement (Second) of Judgments* § 18 (1971); *Black's Law Dictionary* 1174 (5th ed. 1979). In other words, the judgment "constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." *Black's Law Dictionary* 1174; see *Restatement (Second) of Judgments* § 18.

In the decision of *In Re Estate of Joaquin Concepcion Dela Cruz*, the Commonwealth Supreme Court applied the concept of res judicata to administrative proceedings of the Trust Territory District Land Title Office. Appeal No. 90-023, slip. op. at 8 (N.M.I. Feb. 7, 1991). Where a title determination is not appealed, it becomes final under the concept of res judicata. *Id.* at 8; see also *Otto v. Konang*, 5 T.T.R. 76, 77 (H.C.T.T., Tr. Div. 1970).

Land Management Regulation No. 1 ["Regulation No. 1"] provided the mechanism for appealing title determinations issued in 1952. See *Land Management Regulation No. 1, § 14 (1951)*, cited in *Santos v. Trust Territory of the Pac. Islands*, 7 T.T.R. 615, 616-17 (H.C.T.T., App. Div. 1978). Section 14 of Regulation No. 1 stated that:

Any person who has or claims an interest in the lands concerned may appeal from a District Land Title Officer's determination of ownership to the Trial Division of the High Court at any time *within one year* from the date the determination is filed in the Office of the Clerk of Courts

Land Management Regulation No. 1, § 14 (cited in Santos, 7 T.T.R. at 616-17 (emphasis added)).

In the present case, T.D. 392 was issued on October 2, 1952. Administrators' Exhibit E. The record does not show that the title determination was ever appealed. Given that an appeal was not taken within one year of the issuance of T.D. 392, that decision was final. See, e.g., *Dela Cruz, supra*, slip op. at 8.

Title 2 C.M.C. § 4249 establishes the procedure for the review of determinations of ownership issued by the Land Commission. Section 4249 provides:

Any person who has actual or constructive notice of the determination of ownership and who claims an interest in the property which is the subject of the determination of ownership and who disagrees with the determination of ownership may file for a review of the determination of ownership by filing a complaint in the Commonwealth Trial Court *within 120 days* from the date of the determination.

2 C.M.C. § 4249 (emphasis added).

In the case at bar, on May 16, 1985, the Land Commission issued determinations of ownership for the Talofofa Lands, otherwise

known as E.A. 442. Administrators' Exhibits N, O, & P. There is no evidence in the record that this determination was ever appealed. E.A. 442, therefore, constitutes a final decision.⁶

Although a final title determination ordinarily bars subsequent actions, a court may set aside a title determination in four instances. *Dela Cruz, supra*, slip op. at 8. Res judicata will not apply if the title determination was:

(1) void when issued, or (2) the record is *patently inadequate* to support the agency's decision, or if according the ruling res judicata effect would (3) contravene an overriding public policy or (4) result in a manifest injustice.

Id. (emphasis in the original).

In the case at bar, the record pertaining to T.D. 392 includes the following documents: (1) a statement by Luis Ogumoro concerning an exchange of land; (2) a statement made by Pedro Ogumoro on January 28, 1948, concerning the death of his brother Nicolas; (3) a Report of Property made by Pedro on February 14, 1948; and (4) Translation of Japanese Land Documents.

Of the documents, this Court finds that the statement of Luis Ogumoro and the statement made by Pedro Ogumoro on January 28, 1948, provide the most persuasive support for the decision that Nicolas Ogumoro owned the land individually and not as a co-owner. Luis was one of Nicolas' brothers. After Nicolas passed away,

⁶ Under the facts of this case, the Land Management Regulation and section 4249 provided a total of *not one but two separate avenues* for the review of title determinations. Neither avenue appears to have been pursued. The facts of the present case thus speak strongly for the application of res judicata, especially in light of importance of land in the Commonwealth.

Luis declared that Antonio Ogumoro, Joaquin Ogumoro, and Tresita Ogumoro owned the land. Administrators' Exhibit D. Antonio, Joaquin and Tresita are Nicolas' children. Luis not only failed to assert any claim of co-ownership that he had in the land but also admitted that the children of his brother owned the land.

The statement that Pedro made on January 28, 1948, similarly supports the conclusion that Nicolas owned the land individually. In this statement, Pedro admitted that his brother, Nicolas, owned Lot Nos. 1833 and 1855, and stated that Nicolas had inherited them from his father, Jose. Administrators' Exhibit B. This document further refutes any claim of co-ownership.

This Court also finds that the least persuasive evidence stems from Pedro's Report of Property. Administrators' Exhibit C. This report is dated February 14, 1948 - only two weeks after his earlier statement. *Id.* In the report, Pedro contradicted his initial statement by asserting that the property was last owned by Nicolas but was currently owned by Pedro. *Id.* The reliability of the statement that Pedro owned the property is thus dubious.

The only other evidence that Nicolas may not have been the sole owner of the land stems from the Japanese Land Documents. Administrators' Exhibit A. The documents concern the validation of a lease of land in 1941. They identify Nicolas, Pedro and Luis as the lessors and co-owners of land. The documents admittedly contradict the determination that only Nicolas owned the land.

The determination that the "heirs of Nicolas" owned the land was adequately supported by Luis' statement and by the statement

that Pedro made in January of 1948. For reasons unknown to the Court, the District Land Title Office either did not find the other documents credible or did not consider them to be very persuasive. In any event, based on the record before the Court today, this Court will not substitute its judgment for that of the District Land Title Office.

With respect to E.A. 442, the Land Commission considered the following records: (1) T.D. 392; (2) Agreement to Exchange Lands dated October 30, 1954; (3) Quit Claim Deed; (4) Grant of Public Domain Lands; and (5) Application for Registration of Land Parcel. Administrators' Exhibits K, L, & M. Both Daniel and Felicidad were present at the Land Commission hearings. *Id.* Daniel and Felicidad appear to contend that E.A. 442 is patently inadequate⁷ because of the alleged inadequacies of T.D. 392 and because of statements made by Daniel Ogumoro that Jose owned the land. Given that the Administrators have not specifically attacked the validity or propriety of the other documents, Daniel's statements present the only additional evidence. When viewed with the other evidence, however, the statements do not justify a conclusion that Nicolas held the land as customary trustee for the family. Therefore, a finding by this Court that T.D. 392 was adequately supported by evidence is tantamount to finding that E.A. 442 was also adequately supported.

Having weighed the evidence, this Court holds that the record

⁷ The Administrators have not specifically explained the basis for this assertion.

was not patently inadequate to support the decisions of the District Land Title Office and the Land Commission. The principle of res judicata, therefore, precludes the Court from setting aside the determination that the heirs of Nicolas own the land.⁸

IV. CONCLUSION

For the foregoing reasons, the Administrators' motion is, therefore, granted in part and denied in part. The Court orders the following:

(1) The Talofofa Lands known as E.A. 442 shall be excluded from the inventory of Jose's estate;

(2) With the exception of E.A. 442, the assets of the estate shall be distributed to Daniel as customary trustee for the use of the lineal heirs of Jose; and

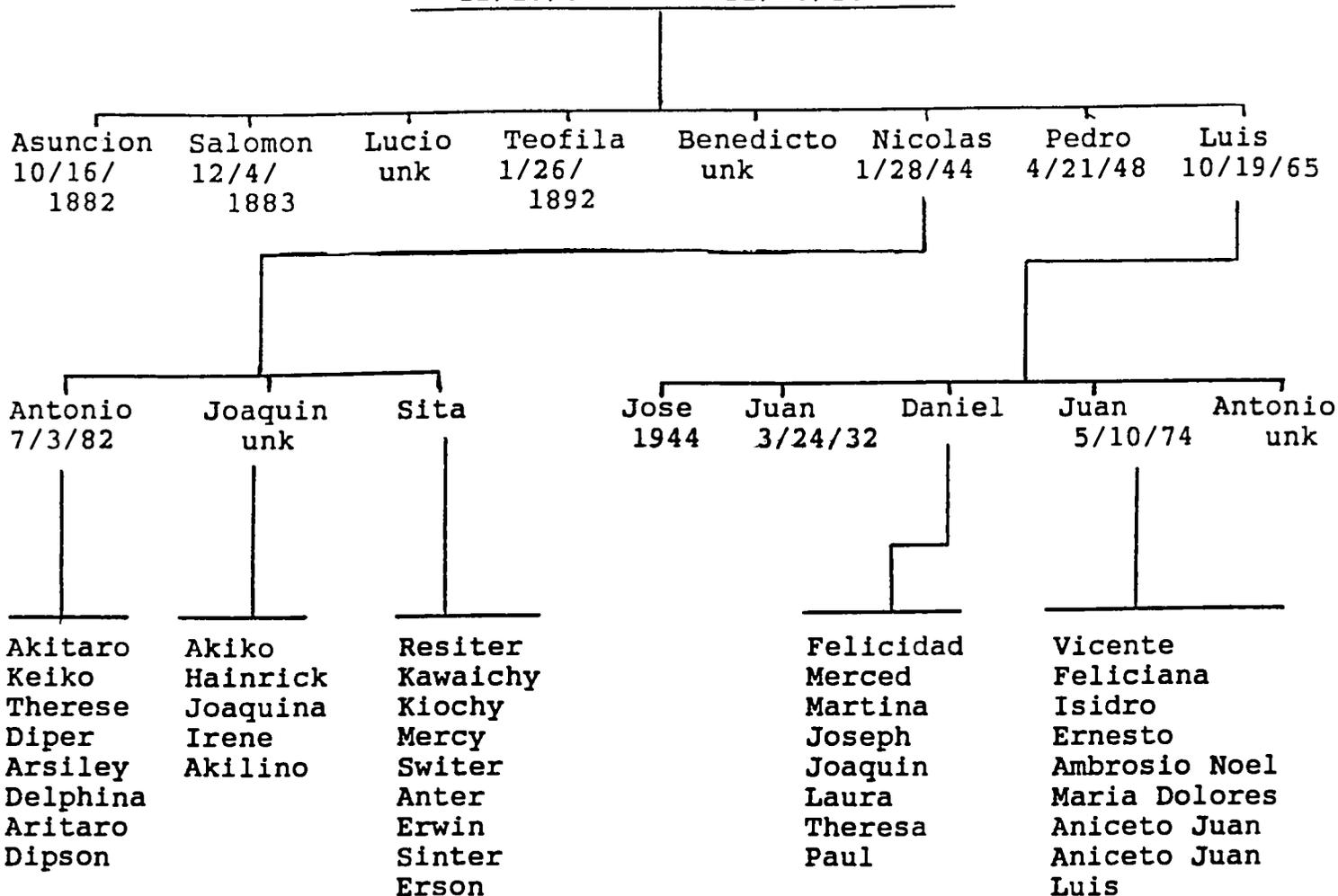
(3) The administration of the estate shall be closed.

Dated this 9 day of February, 1993.


ALEXANDRO C. CASTRO
Associate Judge

⁸ In light of the Court's holding, the other arguments raised by counsel need not be reached.

JOSE OGUMORO - MARIA LABAURATOP
 12/13/07 11/26/14



Note: dates shown are dates of death.