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

IN RE ESTATE OF:
LAWRENCE P. AQUININGOC,
Deceased.

Civil Action No. 96-220

**ORDER DENYING
ADMINISTRATOR'S
MOTION**

Pacifico SN Aquiningoc ("Pacifico"), as the Administrator of the Estate of Lawrence P. Aquiningoc ("Decedent") entered a Petition for Decree of Final Distribution and Motion to Claim Decedent's Agricultural Homestead Lot No. 057-T-059 ("Lot 057-T-059") as an asset of the estate. In the alternative, the administrator requests that the estate be given whatever interest the Decedent had in the homestead at the time of his death so that the estate can continue pursuing the application. The Division of Public Lands ("DPL") opposed the petition and motion, which was heard on August 6, 1996. The Court took the matter under advisement, but ordered the parties to submit proposed findings of fact and conclusions of law. Having considered the arguments and submissions of both parties, the Court now renders its decision.

I. FACTS

The Decedent filed an application for an agricultural homestead on September 29, 1989. In May 1991, prior to departing to attend school in the United States, the Decedent executed a power

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1 of attorney ^{1/} appointing Pacifico, his father, as attorney in fact and granting him the power to take
2 any necessary action with respect to the application for the agricultural homestead. Petitioner's Ex.
3 3. The Permit to Homestead Agricultural Lot No. 057-T-059 was issued by the Marianas Public Land
4 Corporation^{2/} to the Decedent in June 1993. Paragraph seven of the permit requested the designation
5 of an individual to succeed to the Decedent's rights and obligations in the homestead in the event of
6 his death. Petitioner's Ex. 2. The Decedent left this portion of the permit blank, and subsequently
7 died intestate on August 20, 1995. He is survived by his parents.

8 In September 1995, DPL's Administrative Officer on Tinian inquired how the Decedent's
9 permit should be processed in light of his death during the 3 year homesteading process. DPL's legal
10 counsel responded that Lot 057-T-059 had been reserved for the Decedent under the agricultural
11 homestead program and must revert to the government due to his failure to designate a beneficiary
12 in the event of his death. Petitioner's Ex. 7. Subsequently, the administrative officer informed
13 Pacifico in writing of the legal opinion regarding the Decedent's agricultural homestead. Shortly after
14 receiving the letter, Pacifico visited the administrative officer to seek advice. The administrative
15 officer told Pacifico to continue using the land if he planned to go to court to resolve the matter.
16 Declaration of Pacifico SN Aquiningoc ("Pacifico's Declaration").

17 The Decedent's parents continued to use and maintain the agricultural homestead after his
18 death. From the date the permit was issued until the present, the Decedent and his parents have spent
19 \$6,321.28 to develop the homestead. *Id.* With the assistance of Mr. Leon Masga, Resident Director
20 on Tinian for the Department of Land and Natural Resources, Pacifico established a total value of
21 \$19,134.00 of the plants and crops on the property in question. *Id.*

22 The Petitioner argues that the Decedent was denied equal protection under the law because his
23 homestead permit was treated differently than other similarly situated homesteader. Alternatively,
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25 ^{1/} The power of attorney filed with MPLC was never revoked by Lawrence Aquiningoc.

26 ^{2/} Pursuant to Executive Order No. 94-3, the Government Re-organization Plan, the Marianas
27 Public Land Commission was dissolved in 1994 and its functions were transferred to the Division of
Public Lands. Exec. Order No. 94-3 (June 24, 1994), at § 306(a).

1 the Petitioner contends that if the Decedent's heirs cannot acquire title to the homestead, the
2 government must compensate the estate for improvements made since the issuance of the permit.^{3/}
3 In addition, the Petitioner's Proposed Findings of Fact And Conclusions of Law raises two entirely
4 new issues: (1) whether the power of attorney filed by Mr. Aquiningoc meets the requirement of 2
5 CMC § 4309, and in the alternative, (2) whether designating a beneficiary in the event of the
6 homesteader's death constitutes a testamentary act, and thus does not meet the requirements of 8
7 CMC § 2303.^{4/} Administrator's Proposed Findings Of Fact And Conclusions Of Law, pp. 7-10.

9 II. ISSUES

10 1. Whether the government's refusal to convey the agricultural homestead to the heirs of the
11 Decedent is a denial of equal protection of the law.

12 2. Whether the Agricultural Homestead Lot No. 057-T-059 and the improvements thereon
13 revert to the government pursuant to 2 CMC § 4309.

14 III. ANALYSIS

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16 **A. Equal Protection.** The Equal Protection Clause of the Commonwealth Constitution
17 provides that "no person shall be denied the equal protection of the laws." N.M.I. Const. art. I, §
18 6. The Equal Protection Clause demands at a minimum that a government must apply its laws in a
19 rational and nonarbitrary way and the focus of its analysis is on the differential treatment afforded
20 similar persons in like circumstances. *Pangelinan v. Castro*, 2 CR 429 (D.N.M.I. 1986) citing
21 *Fleming v. Department of Public Safety*, 2 CR 308, (D.N.M.I. 1985) *aff'd* in part and *rev'd* in part,
22 837 F.2d 401 (9th Cir. 1988).

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25 ^{3/} The parties' attorneys informally agreed that should a question of compensation to the estate for
development of the land by Mr. Aquiningoc become an issue, it will be submitted to the Court at a later
time.

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27 ^{4/} The Court notes that these issues were only brought forth in the Administrator's Proposed
Findings Of Fact And Conclusions Of Law, and it will not address these issues at this time.

1 In support of his equal protection claim, the Petitioner compares the Decedent's case with Mr.
2 Pedro S. Mundo's ("Mr. Mundo") homestead permit. In that case, Mr. Mundo applied for an
3 agricultural homestead on Tinian in May of 1975. Mr. Mundo designated his father, Regino Q.
4 Mundo ("Regino"), to succeed to his interest under the permit in the event of his death. The
5 homestead permit was issued, but it was not signed by the Resident Commissioner. Mr. Mundo died
6 three hours after the permit was issued without ever entering the homestead property. Subsequently,
7 the District Attorney advised the Marianas Land Management Office that a homestead permit should
8 not be issued to Regino. The legal opinion was based on the premise that the homestead permit had
9 no legal effect because the Resident Commissioner never signed the permit. Mr. Mundo's file was
10 considered closed in July 1976.

11 However, Mr. Mundo's family pursued the application in 1982 requesting a report on the
12 status of the application. MPLC responded that Regino had no legal claim to Mr. Mundo's
13 agricultural homestead. In March 1984, the MPLC Board Chairman declared that the Commonwealth
14 Constitution prohibited Regino from acquiring Mr. Mundo's agricultural homestead because Regino
15 had already obtained his own agricultural homestead. Regino died in October 1990.

16 In September 1992, Rosa S. Mundo, Regino's widow and mother of Mr. Mundo, filed an
17 Application for Waiver of Agricultural Homestead Requirements under 2 CMC §§ 4321-27 on behalf
18 of her deceased husband and son. In December 1992, MPLC investigated the matter and determined
19 that the applicant met the requirements of the Homestead Waiver Act. Accordingly, a quitclaim deed
20 was issued to the heirs of Regino Q. Mundo on December 7, 1992.

21 It is clear that Mr. Mundo named a beneficiary in his homestead permit and the Decedent did
22 not. From this fact alone, it is a sufficient basis to treat the two matters differently. Furthermore,
23 although the matters started out on equal footing, they became two unlike circumstances when Mr.
24 Mundo's homestead application was revived and pursued under the Homestead Waiver Act. The final
25 decisions were based on two different provisions of the Commonwealth Code which have different
26 requirements.

1 Moreover, even if this Court were to assume that the conveyance in Mr. Mundo's case was
2 improper, it does not follow that DPL is constitutionally required to repeat the error, or commit another
3 error, in the Decedent's case. It defies all logic to argue that if the government makes a mistake in
4 one case, it is subsequently forever bound to repeat that error in later cases to avoid unconstitutional
5 denial of equal protection. To rule that Decedent's homestead now belongs to his heirs would, in
6 effect, be the equivalent of a repeal of 2 CMC § 4309. Consequently, 2 CMC § 4309 could no longer
7 be adhered to because it would be a denial of due process.

8 For the reasons stated above, this Court finds that the Decedent's case is different from Mr.
9 Mundo's case. Therefore, the Petitioner's assertion of denial of equal protection under the law is
10 without merit.

11 **B. Agricultural Homestead.** The “right to succession to homestead land is controlled by
12 statute and where the settler ha[s] not complied with the statutes regarding such succession the
13 homestead land revert[s] to the government upon the death of the settler.” *Norman v. Eskar*, 4 TTR
14 164 (1968). In *Norman*, the property belonging to the Trust Territory Government was occupied by
15 Mr. Sindaro Essang, also known as Mr. Sindaro Eskar (“Mr. Eskar”) under a homestead permit. Mr.
16 Eskar did not receive a deed of conveyance from the Trust Territory Government, and he died without
17 designating a beneficiary pursuant to Section 958 of the Trust Territory Code. After Mr. Eskar's
18 death, the plaintiff claimed the homestead property under a will and the defendant, as an adopted son
19 of Mr. Eskar, claimed a right of succession to the property. *Id.* at 164. The court held that because
20 of the failure to prove compliance with the conditions established by the homestead law, there was
21 no title or claim of title perfected in Mr. Eskar at the time of his death. *Id.* Consequently, there were
22 no rights remaining with Mr. Eskar which could pass by inheritance or otherwise to either party. *Id.*
23 Therefore, there can be no succession where there is, in fact, clear and unambiguous statutory
24 direction as to the manner in which a homesteader might designate his successor except upon full
25 compliance with that direction. *Id.* at 166.

26 The rights of a claimant to public land must be strictly governed by the statutes. *Rector v.*
27 *Ashley*, 73 U.S. 142 (1867). A homestead is purely statutory and gives no greater right than the

1 statute itself creates. *Pelisamen v. Land Commission of the Commonwealth Government*, 3 CR
2 790,794 (N.M.I Tr.Ct. 1989) citing *In re Doody's Estate*, 313 P.2d 444 (Oreg. 1957). The meaning
3 of a statute must, in the first instance, be sought in the language in which the act is framed, and if that
4 is plain, and if the law is within the constitutional authority of the law-making body which passed it,
5 the sole function of the courts is to enforce it according to its terms. *Bank of Guam v. Demapan*, 2
6 CR 983 (D.N.M.I. App. 1987), *rev'd*, 839 F.2d 1344 (9th Cir. 1988). The Commonwealth Code
7 states, in relevant part:

8 [I]n the event of the death of a homesteader prior to the issuance of a
9 deed of conveyance, all rights under the permit shall inure to the benefit
10 of such person or persons, if any, as the homesteader shall last designate
11 in writing filed with the Public Land Corporation. In the event no
12 designation has been made by the homesteader as provided by this section,
13 then the permit shall be revoked, and the land, together with all appurtenances
14 thereto entered thereunder, shall revert to the government.

15 2 CMC § 4309^{5/}

16 The statute is clear and precise that if the homesteader failed to designate a beneficiary on the
17 homestead permit, then the permit shall be revoked upon homesteader's death. As in *Norman v.*
18 *Eskar and Pelisamen v. Land Commission of the Commonwealth Government*, the Decedent failed
19 to designate a beneficiary to succeed to his rights in the homestead. Therefore, the homestead permit
20 is revoked and the property reverts to the government. Thus, the motion to include Lot 057-T-059
21 in the Estate of Lawrence P. Aquiningoc must be denied.

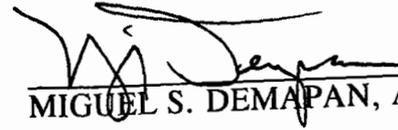
22 IV. CONCLUSION

23 Accordingly, the Court finds the Decedent has not been denied equal protection under the law
24 because his case is different from Mr. Mundo's case. As a matter of law, the Agricultural Homestead
25 Lot No. 057-T-059 is not part of the Estate of Lawrence P. Aquiningoc. Rather, it reverted to the
26 government upon the Decedent's death pursuant to 4 CMC § 4309. Therefore, the Petitioner's
27 motion to include the agricultural homestead lot in Estate of Lawrence P. Aquiningoc is DENIED.

28 ^{5/} The source of this provision is 67 TTC § 209 which is identical to Section 958 of the Trust
Territory Code.

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So ORDERED this 31 day of October, 1996.


MIGUEL S. DEMAPAN, Associate Judge