IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

WILLHELM R. RENGIIL, SIANG YUZI, BRENDA NGIRMERIIL, and AUGUSTA RENGIIL,	:	
Appellants,	:	CIVIL APPEAL NO. 13-004 (LC/N 09-0379)
v.	:	**OPINION**
UREBAU CLAN,	:	
Appellee.	:	

Decided: November 11, 2013

Counsel for Appellants: Moses Uludong
Counsel for Appellee: Oldiais Ngiraikelau

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE. Associate Justice; and R. ASHBY PATE, Associate Justice.

Appeal from the Land Court, the Honorable SALVADOR INGEREKLII, Associate Judge, presiding.

PER CURIAM:

This appeal arises from a Land Court Determination awarding ownership of land known as *Ngerkesiwang* to Urebau Clan. For the reasons set forth below, the appeal is **DISMISSED.**

BACKGROUND

On October 6, 1976, Skalsol Uodelchad submitted a Land Acquisition Record in which she claimed and monumented a parcel of land identified as Lot No. 05N001-157 and known as *Ngerkesiwang* (Lot 157) on behalf of Oirei Lineage.[1] On October 6, 1998, Timothy Ngirdimau (Ngirdimau), as representative for Urebau Clan, filed a claim to Lot 157. On September 20, 2007, Ngirdimau submitted a Land Claim Monumentation Record in which he identified Lot 157 as part of the land known as *Ngerkesiwang*. No other person or entity monumented Lot 157, filed a claim to Lot 157, or objected to Urebau Clan's claim to Lot 157. The Land Court held its hearing on January 15, 2013, in which it noted that Urebau Clan was the sole claimant to Lot 157. On January 18, 2013, the Land Court issued its Adjudication and Determination of Ownership awarding Lot 157 to Urebau Clan in fee simple.

Despite filing no claim in the underlying Land Court action and despite failing to appear and contest Urebau Clan's claim at the hearing, Appellants Wilhelm R. Rengiil, Siang Yuzi, Brenda Ngirmeriil, and Augusta Rengiil (Appellants) filed a timely appeal to the Land Court's January 18, 2013 Determination awarding ownership of Lot 157 to Urebau Clan.[2]

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[1] It was established below—and Appellants have not challenged—that Urebau Clan and Oirei Lineage are the same entities.

[2] Appellants were present in Land Court on the day of the Lot 157 hearing for a hearing in another case, LC/N 09-0392 for Lot No. 171-001; however, they made no representations during the hearing for Lot 157.

DISCUSSION

Appellants raise two issues on appeal: (1) Appellants lacked notice that Lot 157 had been monumented or set for a hearing, and, as a result, were denied due process; and (2) the Land Court erred in determining that Urebau Clan was the sole claimant to the land. Before addressing Appellant's assignments of error, however, the Court must review Appellants' standing as a threshold matter. For the reasons set forth below, we dismiss the appeal for lack of standing. *See Gibbons v. Seventh Koror State Legislature*, 11 ROP 97 (2004) (standing is an element of a Court's subject matter jurisdiction); *see also, Pac. Sav. Bank, Ltd. v. Ichikawa*, 16 ROP 1 (2008) (a court may dismiss, *sua sponte*, a matter over which it lacks subject matter jurisdiction).

I. Standing

A. *Ulochong* and the "aggrieved parties" standard

The Land Claims Reorganization Act of 1996 provides that "[a] determination of ownership by the Land Court shall be subject to appeal by any *party aggrieved* thereby directly to the Appellate Division of the Supreme Court in the manner provided in the Rules." 35 PNC §1313 (emphasis added); *see also, Ngermechesong Lineage v. Children of Teocho Oiph*, 11 ROP 196 (2004). Thus, Appellants' standing turns on whether they are "aggrieved parties" within the meaning of Act. To answer this question, this Court's opinion in *Ulochong v. LCHO*, 6 ROP Intrm. 174 (1997) is both factually and legally instructive.

In *Ulochong*, the original land proceeding involved a parcel of land in Ngaraard for which Ulochong Amalei (Ulochong) filed the only claim. At the hearing in 1982, Ulochong asked the Ngaraard Land Registration Team (NLR Team) to divide the land between his and his sister's various children. Based on these assertions and on Ulochong's status as the only claimant, the NLR Team issued an adjudication dividing the land in this way. However, for reasons not set forth in the record, the Land Claims Hearing Office (LCHO) never acted on the NLR Team's adjudication and never issued a determination of ownership pursuant thereto.

Thirteen years later, Ulochong finally requested that the LCHO issue the determination; however, instead of requesting a determination dividing the land between his and his sister's children as he had previously requested, Ulochong asked that the determination be issued in his name alone. Noting the inconsistency, the LCHO nonetheless issued a determination to Ulochong in fee simple because it found that the record—namely Ulochong's status as the only claimant—provided a sufficient basis upon which to issue a final determination to Ulochong alone.

One of Ulochong's sons, Damaso, who stood to benefit from the earlier NLR Team adjudication but who never filed a claim in the underlying action, appealed the determination for various reasons, including one which amounted to a due process challenge for lack of notice of the earlier proceedings. In holding that Damaso lacked standing to appeal the LCHO determination because he was not a claimant in the

underlying proceeding, the Court held that an appellant must be an "aggrieved party" in order to bring an appeal. In doing so, the Court defined the term within the meaning of the Land Claims Reorganization Act as follows:

> Generally, in order to be a "party aggrieved," a person must have been a party to the action from which the appeal is taken. "To have standing to appeal, a person generally must be a party to an action below . . ." *Hana Ranch, Inc. v. Kumakahi*, 720 P.2d 1023, 1024 (Hawaii App. 1986). *See* 5 Am. Jur. 2d, *Appellate Review* § [231[3]] ("An appeal is generally available only to persons who were parties to the case below.").

Ulochong, 6 ROP Intrm. at 176.

The Court also recognized a narrow exception to the general rule. It admitted that "[a] nonparty may even in the absence of privity possess a sufficient interest to be allowed to take an appeal. . . . A nonparty has standing to appeal a judgment if he or she has a direct, immediate, and substantial interest which has been prejudiced by the judgment or which would be benefitted by its reversal." *Id.* (*citing* 5 Am. Jur. 2d *Appellate Review* § [232][4]). Despite raising the specter of the narrow exception, the *Ulochong* Court nonetheless determined it did not apply. It held that the NLR Team's prior adjudication never gave Damaso a vested or exercisable right to the property because whatever potential interest he possessed existed prior to the determination of ownership. Consequently, Damaso did not possess a "direct, immediate, and substantial interest" that

[3] Original Opinion incorrectly cites to §264.
[4] Original Opinion incorrectly cites to §265.

had been prejudiced by the judgment. *Ulochong*, 6 ROP Intrm. at 177. The Court determined Ulochong lacked standing to pursue the appeal.

B. Appellants are not "aggrieved parties" within the meaning of the Act

It is undisputed that Appellants here were not parties to the Land Court action for which they now seek an appeal; thus, in order to establish standing, Appellants would have to meet the narrow exception outlined in *Ulochong*. We find that Appellants do not meet this exception and in fact possess an even smaller interest, if any, than the similarly situated appellant in *Ulochong*.

Appellants' only purported interest in the property, for purposes of meeting the exception, arises from a 1976 Land Acquisition Record listing Appellant Wilhelm Rengiil[5] as the claimant not to Lot 157 but for a large parcel of land called *Omisayars*, which, they contend, encompasses Lot 157. Appellants admit that Lot 157 was monumented separately from the other lots allegedly comprising *Omisayars*. Appellants also admit that they were not present at Lot 157's monumentation.

Failure to attend monumentation is a violation of 35 PNC § 1307(d), which holds that "[a] claimant who fails to personally attend or send a representative to a scheduled monumentation may not contest the boundary determinations and monumentation resulting from the session." Nonetheless, Appellants argue that Lot 157 was monumented

[5] The name on the Land Acquisition Record reads Wilhelm "Rengsuul;" however, Appellant maintains that this record evidences the recording of a claim by Wilhelm Rengiil and Appellee does not challenge this assertion.

without their presence or knowledge and, thus, Appellants imply that the monumentation in their absence violated their due process rights.

As a brief but necessary digression, Appellants' due process challenge in this appeal fails for two reasons. First, a due process challenge should be brought as a collateral attack on the underlying judgment through a quiet title action against the party named in the allegedly void determination of ownership, rather than through this non-party appeal. *Aimeliik State Pub. Lands Auth. v. Rengchol*, 17 ROP 276, 281 (2010) ("[P]rocedural deficiencies of an unappealed determination of ownership may be asserted on collateral attack."); *Becheserrak v. Eritem Lineage*, 14 ROP 80, 83 (2007) (the party challenging Land Court notice procedures via collateral attack must do so by clear and convincing evidence); *West v. Ongalek ra Iyong*, 15 ROP 4, 8 (2007) ("[A] party may only collaterally attack a prior determination of ownership if it can carry the burden of proving non-compliance with statutory or constitutional requirements by clear and convincing evidence."); *Ucherremascech v. Wong*, 5 ROP Intrm. 142, 144 (1995) (outlining requirements for collateral attack of an LCHO determination). Second, even assuming a non-party appeal is the proper forum for a due process challenge, Appellants fail to proffer any evidence—let alone clear and convincing evidence—to show that the Land Court failed to follow the procedural notice requirements outlined in 35 PNC § 1309 in noticing the monumentation and hearing of Lot 157. *See Becheserrak v. Eritem Lineage*, 14 ROP 80, 83 (2007) (holding that a party claiming that they failed to file a

claim or attend a hearing because they did not receive notice must prove, by clear and convincing evidence, that the Land Court did not follow their established procedural notice requirements.). On the scant record before us, we cannot simply assume a violation of due process.

Returning to the issue of standing, in determining that Appellants here fail to meet the *Ulochong* exception for non-party appeals, we hold that the mere existence of a 1976 Land Acquisition Record for an entirely separate parcel of land, which was monumented separately from Lot 157, coupled with Appellants' bald assertions that they lacked notice of the hearing on Lot 157, is simply not enough—they have failed to prove any vested or exercisable right to Lot 157. The appellants in *Ulochong* at least showed a direct link between themselves and the land in question, this being a prior interest, however tenuous, based on the NLR Team's prior division of the land for their benefit. Here, Appellants lack even this tenuous connection. Under even a generous reading of *Ulochong*, Appellants have no "direct, immediate, and substantial interest" in Lot 157 for purposes of establishing standing in the appeal.

From a purely doctrinal standpoint, we feel compelled to reemphasize the well-settled rule that any issue that is not raised in the trial court is waived and may not be raised for the first time on appeal. *Ngarametal Ass'n v. Ingas*, 17 ROP 122 (2010); *Children of Merep v. Youlbeluu Lineage*, 12 ROP 25 (2004); *West v. Ongalek ra Iyong*, 15 ROP 4 (2007); *see also Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004). Of relevance

here, if a non-party filed no claim whatsoever, never attended the monumentation, and failed even to contest the claim at the lower proceeding (despite their coincidental attendance at that very hearing), then the corollary must hold that that non-party failed to preserve any arguments for purposes of appeal. In this sense, the rule articulated in *Ulochong*, i.e., to be an "aggrieved party" one must actually have been a party in the underlying suit is, and should be, more ironclad than the rule articulated in *Ingas* above, i.e., arguments may not be raised for the first time on appeal. Although the *Ulochong* Court acknowledged the existence of what must be the narrowest of exceptions to the rule requiring that one be a party to the original action in order to appeal the judgment, no Court of this Republic, in nearly two decades, has permitted an appellant to squeeze through it. We also decline.

We hold that Appellants were not aggrieved parties within the meaning of the Act and are without standing to appeal the Land Court's determination of ownership. The appeal is dismissed and we need not address Appellants' assignments of error.

CONCLUSION

For the foregoing reasons, the appeal is **DISMISSED**.

SO ORDERED, this 11th day of November, 2013.

KATHLEEN M. SALII
Associate Justice

LOURDES F. MATERNE
Associate Justice

R. ASHBY PATE
Associate Justice