

VICENTE SAN MIGUEL ARRIOLA, Plaintiff

v.

JESUS SANTOS ARRIOLA, and JAMES B. JOHNSON, SENIOR
LAND COMMISSIONER, MARIANA ISLANDS DISTRICT
LAND COMMISSION, Defendants

Civil Action No. 1049

Trial Division of the High Court

Mariana Islands District

August 8, 1973

Appeal from land commission title determination. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where claimants received no actual notice of hearing before land registration team, statutory notice having been given, and the team and the claimants were inexperienced in forming a record for appeal, court would remand for determination of claimants' claims, though appellant had never appeared at the registration team hearing and was not shown to be a party and aggrieved as required by statute.

1. Land Registration—Appeal from Commission—Alternative Relief

Relief from a land commission determination is obtainable only by appeal, and not by declaratory judgment or default judgment.

2. Land Registration—Appeal from Commission—Standing

Where record on appeal from land commission was inadequate and did not show who had appeared before the registration team, and the team members and claimants were inexperienced in establishing a record for appeal, and the statutory notice of hearing before the registration team did not actually reach appellant and the other claimants, court would, though appellant never appeared before the registration team and was not shown to be a party and aggrieved, as required by statute to appeal, remand for determination of claimants' claims. (6 TTC § 355; 67 TTC § 115)

TURNER, *Associate Justice*

This was a hearing on appeal from the title determination of the Mariana Islands Land Commission. It was the first Land Commission appeal hearing from this Land Commission, and similarly to other first appeals in other districts, the parties and counsel evidenced uncertainty as to procedure, even though the statutory requirements are reasonably clear in 67 TTC § 115 and 6 TTC § 355.

The senior land commissioner, although named a "defendant," and actually an appellee, by the appellant declined to attend the appeal hearing. As a result the ambiguous record certified from the commission to the court was not amplified or explained. It is concluded, as result of appellant's showing and the inadequacy of the record before the court, the matter must be remanded for further hearing and determination for the reasons set forth in this opinion. A title determination made upon this remand will set a new appeal period running. *Ngirudelsang v. Etibek*, 6 T.T.R. 235.

[1] There appears in the court record pleadings in behalf of appellant which are entirely inappropriate and contrary to the statute. Relief from a land commission determination is obtainable only by appeal. A complaint for declaratory judgment is not authorized. A default judgment, as appellant sought in this case, also is not authorized. There can be no default because the court is empowered to pass upon the record unless supplemental testimony is offered. Once an appeal has been perfected neither appellant nor appellee need appear and the judgment will be based upon the record. 6 TTC § 355 and Rule 31 (e), Rules of Criminal Procedure, made applicable to civil appeals.

The record certified by the land commission in the case at bar shows several ambiguous elements which together with the appellants' offers of proof require a remand. It appears that the "Application for Registration of Land Parcel" was made by Antonio S. Arriola, son of the appellant, and brother of the appellee, Jesus S. Arriola, in whose favor the title determination was made even though Jesus did not apply for registration, did not appear before the land commission and did not appear before the court. The court was told appellee attended school in Guam and lived there from 1958 until he recently moved to the state of California.

Title determination in favor of appellee was based solely

upon a government homestead quitclaim deed issued in 1962. Appellant asserted the quitclaim was invalid because the appellee was a minor when homestead application was made, contrary to law, and that his certificate of compliance was erroneously issued because he had not resided upon or improved the land in question.

Appellant claimed that he, not his son, had first made the homestead application, had lived upon and improved the land but by some administrative error the certificate of compliance and deed were issued to his son rather than to him. Whether or not these and other asserted facts are sufficient to require a change in the title determination we do not now decide.

[2] The court does decide the appellant is entitled, in accordance with due process, to his day in court which he has not yet had. The record shows that neither appellant, nor his other son, Antonio, who made application for title registration, appeared before the land registration teams. The statutory notices were given by posting and radio announcement but apparently none of the three claimants, appellant and his two sons, received actual notice. Appellant moved from Saipan to Guam, he told the court, before the hearing, and appellee, in whom title was found, was either a Guam or California resident. The son, Antonio, presently lives on the land in question but for reasons not appearing in the record did not follow up his application for registration.

The substantial legal question now confronting the court upon this state of facts is whether the father, Vicente, has standing to bring the appeal. It is the same obstacle passed upon in *Kumangai v. Ngiraibiochel*, 6 T.T.R. 217. The court said in that case:—

“Unless an appellant was a ‘party’ before the Land Commission he has no standing to appeal. The real problem is to define a party. Anyone who appears in the commission records as a claimant or one

contesting a claim is a party, and if his claim is denied then he is an 'aggrieved' party with a statutory appeal right."

The present case as well as the Palau case failed to show who, if anyone, appeared before the registration team. In this respect the record is inadequate. However, in Saipan as well as Palau the inexperience of the team members as well as the claimants in establishing an "appealable" record in these first cases warrants a reconsideration.

The appellant in the present case meets all requirements of an "aggrieved party" by the tests of the Palau decision. Had he been given actual notice instead of the statutory constructive notice he would have been a party of record. In the interest of justice and due process this court is willing in this instance to give him another chance. It is, therefore,

Ordered, adjudged and decreed that the decision appealed from shall be remanded to the Land Commission for further proceedings, at which appellant and his two sons, will upon notice be given opportunity to be heard and for re-determination of ownership of the land in question in accordance with the evidence received on rehearing.