

KINGKO APAP, Plaintiff-Appellee

v.

CECILIA CABRERA and IPIN NOGIS, Defendants-Appellants

Civil Appeal No. 408

Appellate Division of the High Court

Truk District

May 17, 1985

Appeal from trial division award of title to plaintiff in a land ownership dispute. The Appellate Division of the High Court, per curiam, held that trial division court did not lack jurisdiction to hear an appeal by trial *de novo* of Determination of Ownership by a Land Commission, and that fact that judgment was erroneously captioned as a "default judgment" was not a ground for reversal, where the court followed proper procedures at trial, and therefore trial division's decision was affirmed.

1. Administrative Law—Judicial Review

Trial court did not lack jurisdiction to hear an appeal by trial *de novo* of a Determination of Ownership by a Land Commission, as it was properly authorized by statute and court rules. (6 TTC § 355; TT Rules App. Proc., R. 15)

2. Judgments—Default

Fact that judgment entered after a trial on the merits at which defendants received notice, but did not appear, was erroneously captioned as a "default judgment" was not a ground for reversal of the judgment, as it was a mere matter of semantics, since the court in fact properly followed procedure for a trial on the merits where defendants do not appear. (6 TTC §§ 51-54)

Counsel for Appellants:

DOUGLAS F. CUSHNIE, P.O. Box
949, Saipan, CM 96950 (On
brief only)

Counsel for Appellee:

CAMILLO NOKET, Micronesia
Legal Services Corporation,
P.O. Box D, Moen, Truk, FSM
96942

Before MUNSON, *Chief Justice*, HEFNER*, *Associate Justice*, and LAURETA**, *Associate Justice*

PER CURIAM

On November 28, 1977, the Land Commission made a Determination of Ownership regarding Winifou No. 1 (Lot No. 002-A-13) which gave title of the property to appellants Cabrera and Nogis. Appellee Apap was not present at the hearing. Apap filed for and was granted a trial de novo by the Trial Division of the High Court. Cabrera and Nogis, although notified (and they do not contend here that they were not), did not appear. After a trial on the merits, the trial division awarded the title to Apap.

Cabrera and Nogis now appeal raising one issue:

Whether the trial court lacked jurisdiction to hear the appeal by trial de novo.

This appeal is meritless. 67 TTC § 115 provides:

§ 115. **Appeal from determination of land commission.** A determination of ownership by a land commission shall be subject to appeal by any party aggrieved thereby to the trial division of the high court at any time within one hundred twenty days from the date of said determination. *Such appeal shall be treated and effected in the same manner as an appeal from a district court in a civil action, shall be subject to the same fees, and the powers of the high court with regard thereto shall be the same.* (Emphasis added.)

On an appeal from a civil case in the district court, 6 TTC § 355 provides:

§ 355. **Powers of courts on appeal or review.** (1) The high court on appeal or review and the district court on appeal shall have the power to affirm, modify, set aside, or reverse the judgment or order

* Chief Judge, Commonwealth of the Northern Mariana Islands, designated as Temporary Associate Justice by the United States Secretary of the Interior.

** U.S. District Judge, District of the Northern Mariana Islands, designated as Temporary Associate Justice by the United States Secretary of the Interior.

appealed from or reviewed and to remand the case with such directions for a new trial or for the entry of judgment as may be just.

(2) The findings of fact of the trial division of the high court in cases tried by it shall not be set aside by the appellate division of that court unless clearly erroneous, but *in all other cases the appellate or reviewing court may review the facts as well as the law.* (Emphasis added.)

Thus, the trial division is given, by statute, broad powers of review, As Apap notes, the trial division is only limited to a review *on the record* in its review of final decisions of the district and community courts in which no appeal has been taken. 6 TTC § 354. Accordingly, broader powers of appeal in other cases are implied. Rule of Appellate Procedure 15 (c) provides:

(c) *Motions to hear evidence.* If any party believes that justice requires the Trial Division of the High Court hear evidence on matters other than amendment of the record, or that the Trial Division reopen the case and try it de novo, such party shall notify the other parties and file his request together with the reasons therefore as soon as practicable. The Trial Division of the High Court shall not try a case de novo unless it is satisfied no other just solution of the matter is practicable.

[1] The trial de novo had below was properly authorized by statute and was governed by Rule of Appellate Procedure 15. There is no error.

[2] Cabrera and Nogis also argue that the decision below was a default judgment which cannot be entered in the absence of initial pleadings. Appellants are toying with semantics. The trial division did not technically enter a default as a trial was had on the merits. The caption of the judgment is incorrect but does not constitute grounds for reversal. The procedure regarding absent defendants appears in 6 TTC §§ 51–54:

§ 51. **Order to appear or plead.** In any action in the high court for annulment, divorce or adoption or to enforce or remove any lien upon or claim to real or personal property within the Trust Terri-

tory, or to adjudicate title to any interest in such property, where any defendant cannot be served within the Trust Territory, or does not voluntarily appear, the court may order the absent defendant to appear or plead by a certain day. (Code 1966, § 338; Code 1970, tit. 6, § 51.)

§ 52. **Personal service of order.** Such orders may be served on the absent defendant personally, wherever found, or, in the case of property, upon the person or persons in possession or charge thereof, if any, or by mailing, postage prepaid, a copy of the order to the absent defendant at his last known address. Where personal service is not practicable, the order shall be posted in one or more conspicuous places as the court may direct, for a period of not less than two weeks. (Code 1966, § 338; Code 1970, tit. 6, § 52.)

§ 53. **Procedure if absent defendant fails to appear or plead.** If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the Trust Territory, but any adjudication shall, as regards the absent defendant without appearance, affect only the property or status which is the subject of the action. (Code 1966, § 338; Code 1970, tit. 6, § 53.)

§ 54. **Judgment may be set aside.** Any defendant not so personally notified may at any time within one year after final judgment enter his appearance and thereupon the court shall set aside the judgment and permit such defendant to plead, on payment of such costs as the court deems best; provided, however, that this right shall not extend to decrees of annulment, divorce or adoption. (Code 1966, § 338; Code 1970, tit. 6, § 54.)

There is no contention that this procedure was not followed below. Nor do the appellants argue that they were without notice of the trial below and they raise no constitutional questions. The trial division's decision is **AF-FIRMED.**