

FILED

DATE 8/27/13 TIME 3:50

BY fr
FEDERAL STATES OF MICRONESIA SUPREME COURT

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA APPELLATE DIVISION

GINN P. NENA,)
)
Appellant,)
)
v.)
HAMLIN SAIMON, JOSHAIA)
SAIMON, and LENORA)
SIGRAH,)
)
Appellees.)
)
_____)

APPEAL CASE K7-2013
Kos.S.Ct. Tr. C.A. 39-13

APPELLANT'S OPPOSITION TO APPELLEES'
MOTION TO DISMISS APPEAL

The Appellees moved the Court to dismiss the appeal. They offer no valid ground upon which to dismiss the appeal. Appellant prays that the Court does not dismiss the appeal. The accompanying memorandum of law supports this opposition.

Respectfully Submitted,

26 Aug 2013

S. George
Sasaki L. George, Esq.

RULE 25(d) CERTIFICATION

This Opposition and its accompanying memorandum of law were served upon the attorney for Appellees. Delivery of service was made by Sasaki L. George, Esq., on 27 August 2013, at about _____, at place _____, upon _____.



Sasaki L. George, Esq.

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA APPELLATE DIVISION

GINN P. NENA,)	APPEAL CASE _____
)	Kos.S.Ct. Tr. C.A. 39-13
Appellant,)	
)	
v.)	MEMORANDUM OF LAW IN SUPPORT OF
HAMLIN SAIMON, JOSHAIA)	OPPOSITION TO MOTION TO DISMISS
SAIMON, and LENORA)	APPEAL
SIGRAH,)	
)	
Appellees.)	
)	
_____)	

The adverse party moved the Court to dismiss the appeal. We pray that the Court hear and decide the appeal. This memorandum of law supports our opposition to the adverse party's motion to dismiss.

Notice of appeal was served and mailed to the Clerk on 22 July 2013. The appeal was from an interlocutory order of the Kosrae State trial court granting t.r.o. and injunction against Appellant Ginn Nena who has resided on the land for 57 years. Appeal of interlocutory order is permitted under Kosrae State Code (KSC) 6.404(2). Points of errors raised in the notice of appeal were: 1) inadequate/improper service of the complaint and petition for t.r.o and injunction, see page 2 of notice of appeal. 2) designation of immediate family as a party defendant was improper, see page 2 of notice of appeal. 3) Court's notice for the 11 July 2013 was inadequate; and service of this notice was improper; page 3 notice of appeal. 4) The Appellees' motion was granted without hearing and the Appellant was not

given opportunity to be heard , page 3 notice of appeal. 5) the order issued was end result of circumventing the requirements of applicable law and making findings not based on evidence.

Adverse party filed and served a motion to dismiss the appeal. Their argument may be summarized as follows: 1) Ginn Nena or his predecessor did not appeal the agency's determination of ownership and therefore waived the opportunity to challenge the agency's findings or certificate of title, page 1-3 motion to dismiss. 2) Ginn Nena has no standing to bring suit, not entitled to notice, or not authorized to represent his siblings, page 3 motion to dismiss. 3) The appeal is not permitted because it is not a final order. 4) The Appellate Court should not interfere , page 4 motion. 5) The appeal is disfavored because it involves a preliminary issue that should eventually be resolved at the end of litigation at the trial court, page 5 motion. 6) Appellees are likely to succeed on the merit at the trial court, see page 5 motion. 7) Judicial economy calls for dismissal of the case. 8) Due process violation claim is not available against the Appellees because they are not state actors, page 6 of motion.

Should the appeal be dismissed?

The arguments of the adverse party do not present valid or sound reasons for dismissing the appeal. For fairness and public policy consideration, the Court must hear and decide the appeal. The appeal should not be dismissed.

1. A person may appeal a written decision (determination of ownership) issued by the land commission (agency) after receipt of the written decision. In Ginn's case,

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he or his predecessor in interest did not receive a written decision (determination of ownership). Because he has not been served a determination of ownership, he has not filed a notice of appeal of the determination of ownership.

2. Ginn lived on the land for 57 consecutive years, he has standing to bring suit.

Ginn was the only heir named as defendant in the original action below. 5 of the heirs have died already. One lives in Hawaii ;another lives in Lelu. Only one other lives in Utwe. Ginn should not be required to get their permission to defend himself in this lawsuit.

3. Interlocutory appeal is allowed.
4. Reviewing the appeal is the proper course.
5. The issue of t.r.o. and injunction is important.
6. The Appellees think they are likely to succeed on the merit at the triad court ; this belief results because the trial court did not give Appellant the opportunity to be heard.
7. Judicial economy should not trump the principle of fairness.
8. The due process issue in this appeal, no opportunity to be heard at the scheduled 11 July hearing, does not stem from Appellees' action but from government (trial court below) action.

Ginn Nena has lived on the land for 57 years. He is suddenly ordered to vacate the land and not to enter his home without being given the opportunity to be heard. This is extremely contrary to fairness and public policy.

Respectfully Submitted,

26 August 2013



Sasaki L. George, Esq.