FSM SUPREME COURT APPELLATE DIVISION

HEIRS OF MOSES HENRY and JOHN SIGRAH, Appellants, vs. HEIRS OF ELISE AKINAGA, Appellees.	APPEAL CASE NO. K4-2013 Kosrae Civil Action No. 81-10

DENIAL OF REHEARING PETITION

Decided: April 17, 2014

BEFORE:

Hon. Martin G. Yinug, Chief Justice, FSM Supreme Court
Hon. Dennis K. Yamase, Associate Justice, FSM Supreme Court
Hon. Ready E. Johnny, Associate Justice, FSM Supreme Court

APPEARANCE:

For the Appellees: Snyder H. Simon, Esq.
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HEADNOTES

Appellate Review – Rehearing

Regardless of what the party filing a paper seeking post-appellate-judgment relief calls the filing, it can only be considered a petition for rehearing, the only method of post-judgment relief allowed. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014).

Appellate Review – Rehearing

The appellate court can grant a petition for rehearing only if it has overlooked or misapprehended points of law or fact, and then only if the misapprehended or overlooked point might alter the outcome. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014).

Appellate Review – Rehearing

Petitions for rehearing are usually summarily denied, but, when clarification may be helpful, some reasons may be given. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 365 (App. 2014).

Appellate Review – Rehearing; Jurisdiction

Subject-matter jurisdiction can be raised at any time. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

Appellate Review – Decisions Reviewable; Appellate Review – Rehearing

When the Kosrae State Court's April 23, 2013 order made the denial of a rehearing petition before it final, it made the Kosrae State Court's July 7, 2011 decision final and appealable as of April 23, 2013. Therefore the FSM Supreme Court appellate division had subject-matter jurisdiction over the July 7, 2011 Kosrae State Court decision when a timely appeal was filed after the April 23, 2013 rehearing denial. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

Appellate Review – Rehearing

Since the appellate court must deny a rehearing when, even if it had misapprehended or overlooked a certain point of fact or law, the result in the case would not change, the correction of a person's ancestry is not a ground to grant a petition for rehearing. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

Civil Procedure – Res Judicata; Judgments – Collateral Attack

An argument that the appellants are bound by a Trust Territory High Court judgment but cannot attack that judgment because they were not parties to that case is nonsense and must be rejected. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

Civil Procedure – Res Judicata; Property – Land Court; Property – Land Registration

When a previous court case has res judicata effect and status, it is conclusive only between the parties to the case and those claiming under them and no one else. But there could be persons who were not parties to the court case and who do not claim under those parties but who have their own claim to the land. The Land Court must still go through all of its usual procedures to determine if there are other claimants and, if there are, adjudicate their claims, before it can issue a determination of ownership and, if there is no appeal or if its decision is affirmed on appeal, a certificate of title. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

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COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

On April 4, 2014, the appellees, the Heirs of Elise Akinaga, filed what they called a Motion for Reconsideration/Petition for Rehearing Brief with Memorandum of Points and Authorities. They seek to have our March 19, 2014 decision and the March 24, 2014 judgment in this appeal vacated, amended, or modified, or to have it reheard. Regardless of what the party filing a paper seeking post-appellate-judgment relief calls the filing, it can only be considered a petition for rehearing, the only method of post-judgment relief allowed. Jano v. FSM, 12 FSM Intrm. 633, 634 (App. 2004). We hereby deny the rehearing petition.

I.

We can grant a petition for rehearing only if we have overlooked or misapprehended points of law or fact, Kosrae v. Langu, 16 FSM Intrm. 172, 173 (App. 2008); FSM v. Udot Municipality, 12 FSM Intrm. 622, 624 (App. 2004); Nena v. Kosrae (II), 6 FSM Intrm. 437, 438 (App. 1994), and then only if the misapprehended or overlooked point might alter the outcome. Petitions for rehearing are usually summarily denied, but, when clarification may be helpful, some reasons may be given. Iriarte v. Individual Assurance Co., 18 FSM Intrm. 406, 408 (App. 2012); Goya v. Ramp, 14 FSM Intrm. 305, 307 (App. 2006); Jano, 12 FSM Intrm. at 634; Ting Hong Oceanic Enterprises v. FSM, 7 FSM Intrm. 481, 482 (App. 1996). We feel some explanation may be helpful in this case.

II.

The Heirs of Akinaga first contend that we lack subject-matter jurisdiction over this appeal because the appellants never briefed or addressed the Kosrae State Court's April 23, 2013 order denying rehearing and because this appeal is not from the Kosrae State Court's July 7, 2011 affirmance on the merits of the Kosrae Land Court's August 26, 2010 decision but from the Kosrae State Court's April 23, 2013, denying rehearing. The Heirs of Akinaga correctly note that subject-matter jurisdiction can be raised at any time. *E.g.*, Nelson v. FSM Nat'l Election Dir., 16 FSM Intrm. 414, 419 (App. 2009).

The Heirs of Akinaga, however, misunderstand the import of our dismissal of the earlier appeal from the July 7, 2011 Kosrae State Court decision. Our earlier dismissal was for lack of jurisdiction because the July 7, 2011 Kosrae State Court decision was not considered a final decision since a petition for rehearing was still pending. Heirs of Henry v. Heirs of Akinaga, 18 FSM Intrm. 542, 546, (App. 2013). When the Kosrae State Court's April 23, 2013 order made the denial of that rehearing petition final, it made the July 7, 2011 decision final and appealable as of April 23, 2013. Therefore we had subject-matter jurisdiction over the July 7, 2011 Kosrae State Court decision when a timely appeal was filed after the April 23, 2013 rehearing denial.

III.

Next, the Heirs of Akinaga state that Elise Akinaga was not Kosraean, as recited in our opinion, but was a Pohnpeian of Ngatikese/Sapwuafikese descent and they assert this point for correction purposes. Since we must deny a rehearing when, even if we had misapprehended or overlooked a certain point of fact or law, the result in the case would not change, Iriarte, 18 FSM Intrm. at 408; Berman v. Pohnpei, 17 FSM Intrm. 464, 465 (App. 2011); Goya, 14 FSM Intrm. at 307, Akinaga's ancestry is not a ground to grant a petition for rehearing.

IV.

The Heirs of Akinaga also contend that the issue of whether the Trust Territory court judgment was infirm was raised for the first time on the appeal to this court and we therefore should not have addressed it. This contention cannot be correct as, in the decision appealed from, the Kosrae State Court ruled that the appellants "cannot now challenge this [Trust Territory] judgment," Memo. of Decision at 3 (July 7, 2011), indicating that the appellants had challenged the Trust Territory judgment.

The Heirs of Akinaga also contend that the "[a]ppellants have collaterally attacked the [Trust Territory] Judgment during the land court and trial court proceedings but failed without any support of evidence that theirs or Soarku's constitutional due process or bill of rights were violated nor that the Judgment is infirm." Pet. for Reh'g at 8 (Apr. 4, 2014). This essentially concedes the point that the appellants raised the issue of the Trust Territory High Court judgment's infirmity below.

V.

The Heirs of Akinaga further raise a number of issues relating to whether the appellants can successfully collaterally attack the Trust Territory High Court judgment; the merits of their own claim; whether the Trust Territory High Court judgment is infirm; and the like. These are all arguments that the Heirs of Akinaga can and should raise at the proper time when the appellants collaterally attack the Trust Territory High Court judgment or later. We take no position on whether the appellants' collateral attack will succeed on the limited ground that is possible. We only note that were the appellants to succeed in voiding the Trust Territory High Court judgment, the Heirs of Akinaga may still prevail on

the merits of their claim. Our ruling only requires that the appellants be given the opportunity to mount a collateral attack on the Trust Territory High Court judgment. The Heirs of Akinaga's argument that the appellants are bound by the Trust Territory High Court judgment but cannot attack that judgment because they were not parties to that case is nonsense and must be rejected.

The Heirs of Akinaga also contend that the only thing that should be left to do in this case is that the Land Court should issue a certificate of title in their name. This would not be true even if they had completely prevailed in this appeal. This is because even when a previous court case has res judicata effect and status, it is conclusive only between the parties to the case and those claiming under them and no one else. We will not speculate who, but in this or any similar case, there could be persons who were not parties to the court case and who do not claim under those parties but who have their own claim to the land. The Land Court must still go through all of its usual procedures to determine if there are other claimants and, if there are, adjudicate their claims, before it can issue a determination of ownership and, if there is no appeal or if its decision is affirmed on appeal, a certificate of title.

VI.

Accordingly, the petition for rehearing is denied. The mandate shall issue herewith. FSM App. R. 41.

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FSM SUPREME COURT TRIAL DIVISION

PERDUS I. EHSA AND TIMAKIO I. EHSA, Plaintiffs, vs. FSM DEVELOPMENT BANK, JOSES GALLEN, HON. READY JOHNNY, POHNPEI STATE, and POHNPEI STATE DEPARTMENT OF LAND AND NATURAL RESOURCES, and POHNPEI STATE COURT OF LAND TENURE, Defendants.	)	CIVIL ACTION NO. 2013-030

MEMORANDUM AND ORDER IMPOSING RULE 11 SANCTIONS

Martin G. Yinug
Chief Justice

Decided: April 29, 2014

APPEARANCES:

For the Plaintiffs: Benjamin M. Abrams, Esq.
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