

**DAVID OTIWII, Plaintiff-Appellee**  
v.  
**EMILIANO NGIREKLEI, Defendant-Appellant**  
Civil Appeal No. 270  
Appellate Division of the High Court  
Palau District  
September 22, 1981

Motion to reverse and remand the Judgment of the Trial Division. The Appellate Division of the High Court, per curiam, held that the Appellate Division had authority to reverse and remand under Appellate Rules based on an appropriate motion before the Court, and that there were sufficient facts warranting reversal and remand to the Trial Division to review the matter.

**1. Appeal and Error—Scope of Review**

Appellate Division has the authority in certain situations to reverse and remand based on an appropriate motion before the Court. (TT Rules App. Proc., R. 7)

**2. Appeal and Error—Scope of Review—Particular Cases**

Where defendant filed a motion to reverse and remand the judgment of the Trial Court that a decision of the Micronesian Claims Commission was final and conclusive, the Appellate Court found sufficient facts to reverse and remand to the Trial Division to review the matter.

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Before BURNETT, *Chief Justice*, and GIANOTTI, *Associate Justice*

**PER CURIAM**

Defendant-appellant timely filed a Notice of Appeal from a judgment rendered on July 14, 1978. Subsequently, on February 15, 1979, defendant filed a motion pursuant to Rule 7 of the Appellate Rules to reverse the Judgment of the Trial Division and remand for further proceedings. It is this motion that is under consideration here.

The Judgment of the Trial Division held that the Decision of the Micronesian Claims Commission is final and conclusive and that it is clear from reading the Decision that the award was made specifically to the heirs of Otiwii Ngirdengoll and not to Otowii Ngirdengoll.

Defendant cites *Ngikleb v. Ngirakelbid*, 8 T.T.R. 11 (App. Div. 1979), an Appellate decision rendered after the Judgment entered in this case, as holding that the finality provision of Title II of the Micronesian Claims Act of 1971 does not preclude judicial review of the Postwar Claims awards.

Before considering the substance of defendant's motion, it must be pointed out that Rule 7 of the Appellate Rules is not catch-all authority for bringing any type of motion

before the Appellate Division. Rule 7 merely states that motions presented to the Appellate Division must be in writing. Whether or not a motion to reverse or remand is a proper motion before the Appellate Division is not supported by Rule 7. Since there is no other authority or precedent cited by appellant for such a motion, and since the plaintiff has filed nothing in opposition to defendant's motion, much less a brief showing such a motion is without legal basis, this Court must research and consider the point itself.

[1] After reviewing the Rules and the applicable precedents, let it suffice to say that we find that this Court does have the authority in certain situations to reverse and remand based upon an appropriate motion before the Court.

Is this then a proper case in which to do so? The issue appears to turn on the scope and interpretation of the *Ngikleb*, supra, decision. It is apparent that counsel for defendant gives a broad interpretation to *Ngikleb* that allows the Court to go behind the Micronesian Claims Commission's Decisions in all cases at any time to determine the proper awardees of the claims.

This, however, is not our interpretation of *Ngikleb*. The holding in *Ngikleb* was essentially the same or merely an extension of the rationale of what Trial Division judges had done in pre-*Ngikleb* cases. *Ngikleb* was a special case based on a certain particular set of facts. The Court, in fairness, determined who Kebekol Ngirakelbid, the defendant there, was in relation to the Decision of the Micronesian Claims Commission, and concluded that Kebekol Ngirakelbid was the Imerab lineage for the purpose of that claim. Kebekol Ngirakelbid, the individual, was merely a representative of that lineage.

In *Ngikleb*, the facts showed that the defendant was the recognized head of his lineage; that the properties in question were indisputably and admitted lineage properties;

that the members of the lineage had contacted him to file on behalf of the lineage for losses to those properties; and that he led them to believe that he had indeed filed for these losses on behalf of the lineage. The defendant, however, failed to divide up the moneys among the members of his lineage after receiving the checks issued in his name in an apparent individual capacity.

[2] Appellant-defendant, herein, in his brief failed to explain how *Ngikleb* is applicable in this case. No facts were presented to this Court to show that this case is a true *Ngikleb* situation. Since we do not adhere to the broad view of *Ngikleb* asserted by counsel, and since counsel presented no factual basis to ascertain similarities between this case and *Ngikleb*, ordinarily we would be unable to make a ruling on a motion such as this and the matter would have to proceed by way of appeal. However, since an appeal was filed and a transcript prepared, we have taken the liberty to review the transcript. Without determining the actual merits of whether this is a true *Ngikleb* case, we merely find that there are sufficient facts warranting reversal and remand to the Trial Division to review the matter in light of *Ngikleb* and this Opinion; to determine if further proceedings are necessary; and to reconsider its original Judgment.

Therefore,

IT IS ORDERED that the Judgment of the Trial Division be, and is REVERSED, and

IT IS FURTHER ORDERED that this matter be, and is, REMANDED to the Trial Division for further consideration and Judgment in light of this Opinion and the *Ngikleb* Opinion.