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SCWC-30006

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Application

of

THE TRUSTEES UNDER THE WILL  
AND OF THE ESTATE OF JAMES  
CAMPBELL, DECEASED

to register and confirm title to land situated  
at Kahuku, District of Ko`olau Loa, City and  
County of Honolulu, State of Hawaii

APPLICATION NO. 1095

LAND COURT CASE NO. 08-1-0054

APPEAL FROM THE FINDINGS OF  
FACT, DECISION AND ORDER, AND  
DECREE

LAND COURT

HONORABLE GARY W. B. CHANG,  
JUDGE

**PETITIONER STATE OF HAWAII'S REPLY IN SUPPORT OF  
APPLICATION FOR WRIT OF CERTIORARI**

**CERTIFICATE OF SERVICE**

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## I. INTRODUCTION

The Intermediate Court of Appeals (ICA) erred in ruling that a 1938 Land Court registration of real property by the Trustees under the Will and of the Estate of James Campbell, Deceased (Trustees) extinguished the Territory of Hawaii's (now, the State of Hawaii) ownership of minerals and metallic mines, including geothermal rights. Respondent James Campbell Company LLC (Campbell) attempts to frame this case as a simple matter involving a Land Court consolidation and re-subdivision of property. To the contrary, this case involves Land Court Application No. 1095 which, in total, comprises approximately 15,000 acres of land on the North Shore of Oahu.<sup>1</sup> ROA at 88 (Campbell's Supp. Mem., Exs. A and B). The published ICA Opinion could have far reaching consequences well beyond this case. *See In re Will of Campbell*, 130 Hawai'i 183, 307 P.3d 163 (2013). This is no minor land dispute undeserving of this Court's attention.

The State of Hawaii replies to the response submitted by Campbell, and Respondents Continental Pacific, LLC and James C. Reynolds, Inc.'s joinders to Campbell's response.<sup>2</sup>

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<sup>1</sup> A portion of the land covered by Land Court Application No. 1095, totaling approximately either 235 or 270 acres, is the subject of this application for writ of certiorari (hereinafter referred to as the "Subject Property"). JEFS 87; *Campbell's Response* at 2.

Citations to the Land Court record are abbreviated as follows: "ROA at \_\_\_." ROA refers to the page number of the record. Citations to the record on appeal are abbreviated as follows: "JEFS \_\_\_." The JEFS reference is to the Judiciary Electronic Filing and Service System online document number.

<sup>2</sup> The Trustees under the Will of the Estate of James Campbell obtained title to the Subject Property in 1934, and the James Campbell Company LLC, a Delaware limited liability company, obtained title to the Subject Property in 2007 following the termination of the trust. ROA at 1074 (Tr. June 1, 2009 at 16). James Campbell Company LLC is the present owner of Lot 1219 as shown on Map 176 of the Subject Property. Respondents Continental Pacific, LLC, a Delaware limited liability company and James C. Reynolds, Inc., a California corporation, are the present owners of Lot 1218 as shown on Map 176 of the Subject Property. All Respondents

## II. ARGUMENT

### A. The Clearly Erroneous ICA Opinion Could Have Far Reaching Consequences

Campbell attempts to minimize the impact of the ICA’s decision by stating that the Subject Property is a small portion of Land Court Application No. 1095, and that the ICA “Opinion is limited to the facts and circumstances of this case.” *Campbell’s Response* at 1, 5, 7. At the same time, Campbell predicts dire consequences if this Court reviews this matter because “hundreds of other Land Court registrations” could be affected. *Id.* at 3.

The simple truth is that the State is very concerned about the ICA Opinion. Because the Opinion has been published, the impact may be far reaching. The Subject Property is a portion of Land Court Application No. 1095, but the application itself covers approximately 15,000 acres of land. It would not take much to argue that the ICA Opinion applies to the rest of the registered property under the same Land Court Application No. 1095. If nothing else, the Land Court judge will continue to make similar rulings in other Land Court cases, for which the State may not be a party.<sup>3</sup> Other parties to Land Court proceedings may cite to the published ICA Opinion to support their claim that the State no longer owns the minerals and metallic mines on their property. The protection of the State’s minerals and metallic mines is a constitutional mandate whether or not they rise to the level of a public trust resource. Haw. Const. art. XI, § 1. Extinguishing the State’s ownership of minerals and metallic mines will result in manifest injustice.

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are jointly referred to as “Campbell” or “Trustees.” Petitioner State of Hawaii is referred to as either the “State” or “Territory.”

<sup>3</sup> As Campbell admits, “The one and only reason the State had a right to participate in the subdivision is because a portion of the approximately 270-acre Subject Property is along the shoreline and had experienced erosion.” *Campbell’s Response* at 2.

**B. Campbell Failed to Meet Its Burden of Proof as to Ownership of Minerals and Metallic Mines and the ICA Gravely Erred By Placing This Burden on the State**

The ICA gravely erred when it incorrectly placed the burden of claiming the minerals and metallic mines on the Territory during the 1934 Land Court registration proceeding. JEFS 87 at 14. The Trustees were the applicant in the registration proceeding and it was their burden to establish title. *In re State of Hawaii*, 50 Haw. 507, 444 P.2d 909 (1968); *In re Wong*, 47 Haw. 472, 391 P.2d 403 (1964); *Hana Ranch v. Kumukahi*, 6 Haw. App. 341, 351, 720 P.2d 1023, 1030 (1986). Procedures used to establish title in a quiet title action are applicable in Land Court. For example, claims of adverse possession may be made in Land Court. *Hana Ranch*, 6 Haw. App. at 347, 720 P.2d at 1028; *In re Wong*, 47 Haw. at 477, 391 P.2d at 406. *But see Territory of Hawaii v. Puahi*, 18 Haw. 649 (Haw. Terr. 1908) (no right of adverse possession against the government).

Appellant's burden did not, as Campbell claims, shift to the Territory once it was served and appeared in Land Court because the Trustees did not and could not claim ownership of the minerals and metallic mines. *Campbell's Response* at 8. The real property that was registered in Land Court Application No. 1095 was identified by the Kamehameha Deed and the Royal Patents. *See* ROA at 88 (Campbell's Supp. Mem. (Ex. A Application No. 1095)); *Id.* (Ex. N (Original Certificate of Title No. 17,854)); *Id.* (Ex. I Map 1 filed pursuant to Application No. 1095). "It is factually undisputed that the Royal Patents and the Royal Patent Grant originally contained a reservation of mineral or metallic mines in favor of the government." *Campbell's Response* at 7. Therefore, the Trustees did not and could not establish title to the minerals and metallic mines in the 1930's. Title to minerals and metallic mines simply was not in dispute during the 1934 Land Court proceeding.

The State's claim is timely. *See Campbell's Response* at 9. The State thought it owned the minerals and metallic mines until 2009 when Campbell disputed the State's claim and the Land Court erroneously ruled that the State's ownership of minerals and metallic mines had been extinguished by the original decree in Land Court Application No. 1095 in 1938. ROA at 998 (Findings of Fact, Decision and Order, FOF 30-32, D&O 1).

It is disingenuous for Campbell to claim that the Trustees did not gain minerals or metallic mines through the Land Court registration process, but that the Territory lost them upon the issuance of the Original Decree. *Campbell's Response* at 8. Clearly, by denying the State's ownership of the minerals and metallic mines, the ICA decided that they belonged to Campbell. *See JEFS 87* at 18-19. The Trustees could not obtain any better title to the Subject Property than was originally conveyed to it simply by registering it in Land Court. The ICA Opinion is in clear grave error. The application for writ of certiorari should be granted.

**C. The Court Is Not Precluded from Considering Issues Relating to the Kamehameha III Deed and Geothermal Rights**

If this Court grants the State's application for writ of certiorari, it will have to consider whether minerals and metallic mines were ever part of the "bundle of sticks" conveyed by a Kamehameha III Deed, which were used when the King sold his personal lands. ROA 87 at 15. The State claims minerals and metallic mines in the Subject Property through four original land grants, one of which is a Kamehameha III Deed. *Id.*

If this Court grants the State's application for writ of certiorari, it may also consider whether geothermal rights are part of the minerals and metallic mines claimed by the State. ROA 87 at 15 fn.10.

Even though both issues were properly raised, the ICA did not reach either issue. ROA 87 at 15.

### III. CONCLUSION

The ICA gravely erred by denying the State's claim of ownership of all minerals and metallic mines, including geothermal rights, in the Subject Property. The application for writ of certiorari should be granted, the lower courts' orders and judgments vacated, and the case remanded to the Land Court to note the State's interest on the Subject Property's certificate of title.

DATED: Honolulu, Hawaii, October 28, 2013.

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CERTIFICATE OF SERVICE

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I certify that the State of Hawaii's Reply in Support of Application for Writ of Certiorari was either served electronically (through the Court's JEFS system), or conventionally (by mailing a copy via USPS, first class, postage prepaid), upon the following on October 28, 2013:

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