

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

**AIMELIIK STATE PUBLIC LANDS AUTHORITY, represented
by its Chairman Aisamerael Samsel and Vice Chairman Olngelel
Mongami
*Appellant,***

v.

**BORMAN TELTULL, Aimeliik State Land Registration Officer,
LRO, BUREAU OF LANDS and SURVEY, TREI CLAN,
represented by Fred Andres and Hatsuichi Ngirchomlei,
Dirrechalraimul Dengir Wasisang, Dirrehekemu Katsue
Andres, CHELUI CLAN, represented by Dirrengichel Sariang
Timulch, CHOMAOCH “YI” CLAN, represented by
Dirrengichel Sariang Timulch, TMA TK TIMULCH, represented
by Jason Timulch, and NGERUNGEL/TREI CLAN, represented
by Rehekemur Remoket Ngiriou,
*Appellees.***

Cite as: 2018 Palau 6
Civil Appeal No. 17-016
Appeal from Civil Action No. 17-226

Decided: June 4, 2018

Counsel for Appellant	J. Roman Bedor
Counsel for Appellees Fred Andres and Borman Teltull	Johnson Toribiong, Esq.
Counsel for Appellee Bureau of Lands and Survey	L. Seibenhener, Asst. AG

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

Appeal from the Trial Division, the Honorable Oldiais Ngiraikelau, Presiding Justice, presiding.

OPINION

PER CURIAM:

[¶ 1] This appeal involves several parcels of land located in Aimeliik State. Appellant Aimeliik State Public Lands Authority (Plaintiff below) appeals the Trial Court's order granting Appellees' motion to dismiss in Civil Action No. 17-226, rendered on October 5, 2017. For the following reasons, we **AFFIRM** the Trial Court's order.

BACKGROUND

[¶ 2] On May 7, 2017, the Land Court held a status conference in preparation for a pending hearing involving several lots in Aimeliik State.¹ Aimeliik State Public Lands Authority (ASPLA), through its Vice Chairman of the Board of Trustees, Olngelel Mongami, attempted to participate in this conference, but was told by Land Registration Officer Borman Teltull (one of the Appellees) that ASPLA was not allowed to participate in the hearing because it was not a party to the dispute.

[¶ 3] On June 12, 2017, the Land Court held the hearing for the lots in question. ASPLA's Chairman, Aisamerael Samsel, along with Aimeliik Governor Demei Obak, appeared at the hearing, but Judge Ingereklii informed them that ASPLA could not participate in the hearing because it had not filed a claim, and because nothing in the record suggested that the land in question was public. The hearing proceeded in ASPLA's absence, and the Land Court ultimately awarded the land to Appellee Trei Clan on August 1, 2017.

[¶ 4] ASPLA claims this land is public land, and the Aimeliik State Government has already leased a large portion of the land to the National Government to build a new dump site to replace the landfill currently located at M-Dock in Koror. Believing there was no other way to adequately protect

¹ These lots are identified as 17M02-001 through 010 on BLS Worksheet Map No. 2017 M 02 and lots 17M01-001 through 007 on BLS Worksheet Map 2017 M 01.

its interest in the land, ASPLA filed a complaint in the Trial Division of the Supreme Court on July 6, 2017. In its complaint, ASPLA alleged that Appellee Bureau of Lands and Survey (BLS) wrongfully allowed Trei Clan to file a late claim to the land, in violation of 35 PNC § 1304 (b)(2) (“All claims for public land by citizens of the Republic must have been filed on or before January 1, 1989.”). On August 14, 2017, Appellees filed a motion to dismiss, which the Trial Court granted on October 5, 2017.

[¶ 5] The Trial Court dismissed Appellant’s complaint because it viewed the complaint as a challenge to the Land Court’s decision not to allow ASPLA to participate in the hearing. Therefore, the Trial Court found that it did not have jurisdiction over the case. As the Court explained,

The Land Court exists parallel to the Trial Division with regard to cases involving the adjudication of title to land. *Rengulbai v. Klai Clan*, 22 ROP 56, 61 (2015). Therefore, the Trial Division has no jurisdiction to review decisions by the Land Court—such appeals must be filed in the Appellate Division of the Supreme Court. Thus, a party who desires to challenge a Land Court decision or ruling must appeal the same to the Appellate Division. This also applies to a nonparty where “he or she has a direct, immediate, and substantial interest which has been prejudiced by the judgment or which would be benefitted by its reversal.” *Ulochong v. LCHO*, 6 ROP Intrm. 174, 176 (1997) (quoting 5 AM. JUR. 2d *Appellate Review* § 265). . . . Plaintiff could and should have filed a motion to intervene. Failing that it could have appealed the Land Court ruling and the subsequent adverse action to the Appellate Division.

Aimeliik State Pub. Lands Auth. v. Teltull, et al., Civil Action No. 17-226, Order Granting Defs.’ Mot. Dismiss 3 (October 5, 2017).

STANDARD OF REVIEW

[¶ 6] The Appellate Court reviews the Trial Court’s grant of a motion to dismiss *de novo*. *Palau Pub. Lands Auth. v. Koror State Pub. Lands Auth.*, 19

ROP 24, 27 (2011) (citing *Giraked v. Estate of Rechucher*, 12 ROP 133, 145 (2005)). In adjudicating a motion to dismiss, all allegations in the complaint are accepted as true, and the Court is left to determine whether those allegations are sufficient to justify relief. *Baules v. Nakamura*, 6 ROP Intrm. 317, 317 (1996). A complaint should not be dismissed unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Taro v. ROP*, 12 ROP 175, 177 (Tr. Div. 2004).

DISCUSSION

[¶ 7] Properly characterized, this case represents ASPLA’s objection to the Land Court’s decision not to allow ASPLA to participate in the status conference or hearing. Despite ASPLA’s attempt to disguise its lawsuit as a separate complaint against BLS, the Trial Court correctly spotted this case for what it actually was—an appeal of a Land Court decision—which should have been filed before the Appellate Division in the first instance. Therefore, the Trial Court correctly dismissed ASPLA’s complaint for lack of jurisdiction. *See, e.g., Airai State Pub. Lands Auth. v. Seventh Day Adventist Mission*, 12 ROP 38, 42 (2004) (“Although there was a time when the Trial Division was authorized to hear appeals from the [Land Court], . . . that is no longer the case. The Trial Division has no appellate authority over the Land Court . . .”); *West v. Ongalek ra Iyong*, 15 ROP 4, 8 (2007) (“ . . . the Trial Division lacks appellate authority over the Land Court . . .”); *Rengulbai v. Klai Clan*, 22 ROP 56, 61 (2015) (“The Land Court exists parallel to the Trial Division with regard to cases involving the adjudication of title to land . . .”).

[¶ 8] Collateral attacks of Land Court decisions may be filed with the Trial Division in cases where a party can show by clear and convincing evidence that “statutory or constitutional procedural requirements were not complied with during the land claims process.” *Koror State Pub. Lands Auth. v. Wong*, 21 ROP 5, 7 (2012) (quoting *Ucherremasech v. Wong*, 5 ROP Intrm. 142, 147 (1995)). Such an attack is not possible in this case, however, because ASPLA had actual notice of the hearing, and even appeared at the status conference a month before the hearing. Thus, ASPLA had ample opportunity to take appropriate legal action, such as filing a motion to

intervene or appealing the Land Court’s decision to the Appellate Division (as the Trial Court correctly noted, see ¶ 5, *supra*).

[¶ 9] As the Court explained in *Wong*, 21 ROP at 10, “Once a party receives actual notice, it is incumbent on the party to vindicate its interest—not to take a wait-and-see approach, hoping for a positive outcome without expending any resources and relying on collateral attack as an alternate route to success.” ASPLA should have filed a motion to intervene, or appealed the Land Court’s refusal to the Appellate Division, back in May (or June) when ASPLA was denied permission to participate the proceedings, rather than wait until July to file a complaint in the Trial Division. If ASPLA was without counsel for some reason, it should have immediately retained representation when the Land Court denied its request to participate in May’s status conference. Such action would have ensured that ASPLA’s interests were adequately protected.

[¶ 10] We take this opportunity to remind litigants, once again, that the appropriate time to retain counsel is at the original hearing (or earlier, such as before a status conference). This is especially true of public land authorities who, in truth, are not appearing *pro se* (i.e. for themselves) but for the public, and should therefore be represented by counsel given the multitude of interests at stake.

[¶ 11] Accordingly, the Court affirms the Trial Court’s order dismissing ASPLA’s complaint for lack of jurisdiction.

CONCLUSION

[¶ 12] For the foregoing reasons, the Trial Court’s order is **AFFIRMED**.

SO ORDERED, this 4th day of June, 2018.

NGIRAKLSONG, Chief Justice, concurring:

[¶ 13] I concur with the Court’s opinion. I write separately to emphasize the jurisdiction and independence of each court and each judge. Jurisdiction is conferred by the Constitution or through legislation.

[¶ 14] Because this case was filed in the Land Court, the Land Court was vested with jurisdiction over this matter. This vesting excluded all other courts, even those with subject matter jurisdiction, from any involvement with this case. It is as if this case is already “taken” by the Land Court.

[¶ 15] Once a case is filed in one court, the case remains in that court until it is resolved to the satisfaction of the parties or is dismissed for some reason, such as if a plaintiff fails in his pleading to state a claim upon which relief can be granted. For all practical purposes, the only avenue through which a case can leave the court in which it was first filed and move to another court would be via an appeal to the Appellate Division of the Supreme Court.

[¶ 16] By affirming the Trial Court’s dismissal of this case for lack of jurisdiction, this case returns to the court where it was filed—i.e., the Land Court. The Land Court is the only court that has jurisdiction in this case. The Trial Division of the Supreme Court lacks jurisdiction, and so do we.

[¶ 17] The independence of the judiciary begins with the independence of each judge. Each judge is independent from other judges and other influences in the performance of his or her duties. ROP Code of Judicial Conduct, Cannon 1. This independence also entails the independence of each court from other courts in the performance of the tasks assigned thereto. And the Palau Judiciary’s independence from the other branches of the National Government is enshrined in the Constitution. *See* Palau Const. Art. X.