

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

IGNACIO RENGULBAI and LUKES CLAN,
Appellants,
v.
SINGENARI AZUMA,¹
Appellee.

Cite as: 2019 Palau 12
Civil Appeal No. 18-028
Appeal from Civil Action No. 17-220

Decided: April 16, 2019

Counsel for Appellants Salvador Remoket
Counsel for Appellee Johnson Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
 JOHN K. RECHUCHER, Associate Justice
 ALEXANDRO C. CASTRO, Associate Justice

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

¹ Appellants in this action also name “John Does 1 through 10” as Appellees and did the same in this matter regarding defendants before the lower court. In the Motions Justice’s order on March 11, 2019, he stated that the John Does “are not ‘appellees’ in this appeal, and [thus] reference to these fictitious parties is deleted.” “Where plaintiff had an opportunity to pursue discovery to identify the unknown defendants but failed to do so, this Court adheres to the general rule that disfavors the use of John Does to identify a defendant.” *Esperanza v. City of New York*, 325 F. Supp. 2d 288, 294 n.1 (E.D.N.Y. 2018) (internal quotations and citations omitted); *see also Melimarang v. Debesol*, 7 ROP Intrm. 263, 264 (Tr. Div. 1998) (dismissing John Doe defendants because “the presence of ‘John Doe’ defendants is, at best, surplusage”); ROP R. Civ. P. 10(a) (“In the complaint, the title of the action shall include the names of all the parties”). As such, claims against the unnamed defendants should have been dismissed or removed at the trial level. Because they were not, this Court dismisses and removes them now. There is, thus, only one appellee in this matter: Singenari Azuma.

OPINION²

PER CURIAM:

INTRODUCTION

[¶ 1] This case involves a dispute surrounding the burial of the remains of several of Appellee's relatives on the stone platform at a site known as *Lukes*, Cadastral Lot No. 010 C 11, in Melekeok State. Appellants (two of the three Plaintiffs below – Plaintiff Teruko R. Aitaro, Appellant Ignacio Rengulbai's sister, does not appeal) filed a lawsuit alleging trespass by Appellee, contending that the burial of the remains was not authorized, and seeking damages, punitive damages, and attorneys' fees. Although Appellants did not bring a complaint for declaratory judgment or permanent injunction, they sought declaratory and equitable relief in their trespass complaint, requesting declarations that Appellants are senior strong members of Lukes Clan, Appellants bear the highest clan titles (*Ruluked* and *Ebil Ruluked*), and that Appellees are not members of Lukes Clan and did not have permission to enter the property. They further sought exhumation of the remains and a permanent injunction preventing Appellee and his relatives from entering *Lukes*.

[¶ 2] The Trial Division found that Appellee and his relatives are members of Lukes Clan; Appellee and Naomi Ueki, not Appellant and Aitaro, bear the titles *Ruluked* and *Ebil Ruluked*, respectively; and Appellee did not need Plaintiffs' permission to enter *Lukes* or to bury his relatives on the stone platform located there. For the reasons set forth below, the Court now **AFFIRMS** the Trial Division's decision and judgment.

FACTS

[¶ 3] This case involves Lukes Clan and clan land. Lukes Clan owns several parcels of land in Melekeok, including the site known as *Lukes*. The male chief titleholder, *Ruluked*, is listed on *Lukes*'s Certificate of Title as trustee of the property. In 2016, Appellee entered the land *Lukes* and buried

² The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

the remains of six of his relatives at the stone platform. He did not seek permission from Appellant or Aitaro to do so. Appellant and Aitaro claim to hold the highest-ranking chief titles in Lukes Clan, *Ruluked* and *Ebil Ruluked*, respectively, and assert that because they bear these titles, their permission was required for Appellee to bury his relatives at *Lukes*.

[¶ 4] Appellant is associated with Lukes Clan through his father, Rengulbai, the only child of Ngeburch and Trachol. Trachol was the daughter of Besul, father, and Okard, mother. Trachol is connected to Lukes Clan through her father, Besul. Rengulbai is then an ulechell member of Lukes Clan, and Appellant is a third-generation ulechell member of Lukes Clan. Rengulbai; Baudista, Rengulbai's son; and one of Besul's sons are buried at *Babellukes*, a different Lukes Clan property.

[¶ 5] Rengulbai held the title *Ruluked*, as did Appellant's brother, Kazumoto Rengulbai ("Kazumoto"), until his removal for failing to carry out his basic traditional obligation of paying his *nglosch*. *Ebil Ruluked* Kyarii Mellil appointed Appellee to replace Kazumoto as *Ruluked*. On October 13, 2011, the Melekeok State Legislature adopted a Resolution to approve Appellee's appointment and his admission into the Melekeok State Legislature through his *Ruluked* title.

[¶ 6] One of Trachol's niece's and Aitaro have previously held the *Ebil Ruluked* title. Aitaro held the title until October 25, 2017, when she was replaced by Naomi Ueki.

STANDARD OF REVIEW

[¶ 7] This Court has previously and succinctly explained the appellate review standards as follows:

A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. Matters of law we decide *de novo*. We review findings of fact for clear error. Exercises of discretion are reviewed for abuse of that discretion.

Kiuluul v. Elilai Clan, 2017 Palau 14 ¶ 4 (internal citations omitted).

[¶ 8] In this appeal, the issues raised by Appellant regard the Trial Division’s declining to determine whether 1) Appellants are senior strong members of Lukes Clan and 2) the status of Appellee’s membership in Lukes Clan.³ “[A] decision by a Trial Division whether to intervene in a customary matter and issue a declaratory judgment . . . is a matter committed to the sound discretion of the Trial Division and cannot be reversed absent an abuse of that discretion.” *Id.* at ¶ 6 (quoting *Filibert v. Ngirmang*, 8 ROP Intrm. 273, 276 (2001)). The issues on appeal here, therefore, involve the Trial Division’s exercise of discretion, and the question on appeal is whether the Trial Division abused its discretion. “Under the abuse of discretion standard, a Trial Division’s decision will not be overturned on appeal unless the decision was arbitrary, capricious, or manifestly unreasonable or because it stemmed from an improper motive.” *W. Caroline Trading Co. v. Kinney*, 18 ROP 70, 71 (2011) (citing *Ngoriakl v. Gulibert*, 16 ROP 105, 107 (2008)).

[¶ 9] “We may affirm or reverse a decision of the Trial Division for any reason apparent in the record.” *Galo v. Bank of Hawaii*, 2019 Palau 1 ¶ 8 (quoting *Rengiil v. Ongos*, 22 ROP 48, 50 (2015)).

DISCUSSION

[¶ 10] Appellants two questions on appeal follow:

1. Did the lower court commit a reversible error when it decided that it is not necessary for the court to determine whether or not Appellants are strong senior members of Lukes Clan because Appellee Singenari Azuma was bearing the title *Ruluked* and did not need permission from Appellants to enter the *odesongel* [stone burial platform] of Lukes Clan to bury the remains of his family members[?]

³ Appellants raise an additional question in their reply brief, namely, “Did the [Trial Division erroneously find that the] expert witnesses agree[d] that adoption of a child plus contributions, work, and services can elevate the adopted to achieve more strength in a clan than ulehell member[s] of the same clan[?]” Reply iii. Because this question was not raised in Appellants’ opening brief, except as an argument in support of its positions regarding the two questions on appeal, the issue is deemed waived. See *Anderson v. Kim*, 2018 Palau 23 ¶ 5 (“The reply brief is not the appropriate forum for an appellant to make her initial arguments. Rather, an appellant’s initial arguments should appear in her opening brief.”).

2. Did the lower court commit a reversible error when [it] found that Appellees are members of Lukes Clan and did not specify the status of Appellees' membership in Lukes Clan[?]

Opening Br. iii.

[¶ 11] Specifically, Appellants argue that the Trial Division erred in not declaring whether Appellants are senior strong members of Lukes Clan and in “ma[king] no findings as to the status of Appellee . . . and his relatives in Lukes Clan[,] whether they are ochell, ulechell, adopted or drifted members of Lukes Clan.” *Id.* at 2.

[¶ 12] Appellant brought suit for trespass only. The Trial Division determined that Appellee did not need permission to be on the land *Lukes*, *i.e.*, he was not trespassing, basing its conclusion on the finding that Appellant and Aitaro were not the *Ruluked* and *Ebil Ruluked* titleholders when Appellee entered *Lukes*, and thus could not prevent or have a say in Appellee's entrance on the land. Because Appellant neither appeals the Trial Division's determination that he does not hold the *Ruluked* title nor its determination regarding the trespass action, he cannot now seek review of remedies sought but not granted in the trespass matter. Because the Trial Division concluded that there was no trespass, Appellant is not entitled to any remedies for that cause of action, including the two that he appeals. On this basis, we affirm the Trial Division's decision and judgment.

[¶ 13] Even if we were to review the two questions brought on appeal, we would affirm the Trial Division's determination not to address them. These questions are reviewed for abuse of discretion. The Trial Division determined that “it [was] not necessary for the Court to determine whether or not Plaintiffs are strong senior members of the Clan” because the Trial Division had already determined that all parties were members of Lukes Clan, Appellant and Aitaro did not hold the chief titles, and Appellee did not need Appellant's or Aitaro's permission to enter clan land and bury his relatives' remains. Findings of Fact and Conclusions of Law 14. It also concluded that, “[f]or the same reason, the Court need not address [Appellee's] assertion that he and his relatives are the strongest members of Lukes Clan.” *Id.* Answers to the questions on appeal were not essential or even necessary to the Trial Division's trespass analysis and subsequent determination. As such, the Trial

Division's decision not to address the issues was not "arbitrary, capricious, or manifestly unreasonable [nor did] it stem[] from an improper motive." *W. Caroline Trading Co.*, 18 ROP at 71. It is completely reasonable for the Trial Division to have decided not to address issues not related to the cause of action before it. For this reason, were we to find it necessary to address the questions brought by the Appellant on appeal, we would nonetheless affirm the Trial Division's decision.

CONCLUSION

[¶ 14] The Court **AFFIRMS** the Trial Division's decision and judgment for the reasons stated herein.