IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

GEORGE RECHUCHER,
Appellant,
v.
SHALLUM ETPISON,
Appellee.

Cite as: 2019 Palau 25
Civil Appeal No. 18-035
Appeal from Civil Action No. 16-044

Decided: August 5, 2019

Counsel for Appellant ..... Kevin Kirk
Rachel A. Dimitruk
Counsel for Appellee ..... Lalii Chin Sakuma
R. Ashby Pate

BEFORE: DANIEL R. FOLEY, Associate Justice
DENNIS K. YAMASE, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes Materne, Associate Justice, presiding.

OPINION[1]

PER CURIAM:

[¶ 1] The underlying lawsuit involves a property boundary dispute. This appeal arises from the Trial Division's judgment in favor of Appellee Shallum Etpison, plaintiff below, regarding that dispute. Appellee brought six counts against two defendants. Counts I and II sought declaratory judgments that the certificate of title to a piece of property, Lot K-167, be declared void and that Appellee be declared the owner of the land in dispute. Count III sought

[1] 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).

injunctive relief, enjoining Appellant from activities on the disputed land, also seeking his restoration of the land and ejectment from it. Count IV sought to quiet title to the disputed land.

[¶ 2] The underlying lawsuit also contained trespass, ejectment, and nuisance actions against a co-defendant, Gandhi Baules (found in Counts labeled "VI" and "VIII," technically, Counts V and VI). These actions involved a different piece of Appellee-owned property, one not involved in the boundary dispute in Counts I through IV.

[¶ 3] On a motion for partial summary judgment, the Trial Division found that Appellee and his family did not receive the required statutory personal notice regarding the Land Court adjudication of Lot K-167. As a result of that finding, the Trial Division also concluded that the certificate of title issued on the portion of land in question was inconclusive and did not automatically establish ownership, thereby allowing Appellee to bring his quiet title action in the Trial Division.

[¶ 4] The Trial Division held a trial on the quiet title action and determined that Appellee has superior title to the disputed property. The Trial Division granted judgment in favor of Appellee on all claims; issued a permanent injunction requiring Appellant to cease work, vacate, and restore the disputed property.

[¶ 5] With respect to the counts against co-defendant Baules, the Trial Division found that he was trespassing on Appellee's property and ordered his ejectment from that property. Baules is not a party to this appeal, and the Trial Division's decision and judgment regarding Appellee's claims against him are not before this Court. Accordingly, the Trial Division's decision and judgment regarding Counts "VI" and "VIII," the causes of action for trespass, ejectment, and nuisance against Baules, stand.

[¶ 6] Appellant now appeals the Trial Division's summary judgment decision in Appellee's favor and its decision awarding Appellee title to the disputed property, thus appealing the determinations related to Counts I through IV of the Trial Division's decision and judgment. The Court now **VACATES** the Trial Division's decision and judgment with regard to Counts

I through IV of the Complaint because the Trial Division lacked jurisdiction to hear those matters.

BACKGROUND

[¶ 7] The parties present a long and convoluted history to this matter that is distilled here to its most salient points only. The disputed property is in Ngerbechedesau in Ngermid Hamlet, Koror. The properties at issue were included as part of one or more Tochi Daicho Lots created during the Japanese Administration.[2] Appellee identifies the property as various parts of Lot K-167, which is currently known as Cadastral Lot Nos. 055 B 01 and 055 B 02. Before the Trial Division, Appellee claimed 1) the northern tip and 2) portions of the westernmost boundary of Lot K-167/Cadastral Lot Nos. 055 B 01 and 055 B 02. He argued that the northern tip of Lot K-167 should actually be included as the southernmost portion of the former Lot K-183, now Cadastral Lot No. 102 B 04, and various portions of the western boundary of Lot K-167 should be just east of that boundary line and inside Lots K-166A and K-166B (formerly Tochi Daicho Lot No. 242, Def.'s Exs. A–C), now identified as Cadastral Lot No. 060 B 01. Compl. Exs. A-1; D-1. Appellee asserted that these portions of his properties were included as parts of Lot K-167/Cadastral Lot Nos. 055 B 01 and 055 B 02 by mistake because of drafting errors by the Bureau of Land and Surveys. Compl. ¶¶ 13–14.[3]

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[2] Appellee's Complaint indicates that part of the disputed property was in Tochi Daicho Lot No. 147, Compl. 6, but the parties have not produced a Tochi Daicho map identifying it as such.

[3] The relevant text of the Complaint follows:

> In the course of its issuance of the determination of ownership, the Land Court, through the Bureau of Land and Surveys, combined [Techereng] Sechelong's Tochi Daicho lots into one larger lot, known [as] Lot K-167, or alternatively, Cadastral Lot No. 055 B[]01.
>
> When this new, combined lot was created, it was done incorrectly, and the new lot's boundaries improperly encroached north into [Appellee's] land—namely lot K-183[](alternatively labeled Cadastral Lot 102 B[]04 and/or Tochi Daicho 147). It also improperly encroached south into [his] land—namely portions of Cadastral Lot 55 B 01 and Cadastral Lot 055 B 02 . . . .

Id. (internal citations omitted).

[¶ 8] Lot K-167/Cadastral Lot Nos. 055 B 01 and 055 B 02, including the portion on appeal, was awarded by the Land Court to Techereng Baules Sechelong on April 10, 2000, based on an 1980 adjudication of Tochi Daicho Lot Nos. 148, 149, and 150 (the "Lot K-167 adjudication").[4] Appellee did not receive personal notice of that Land Court matter at any time during its proceedings. Appellee admits that neither he nor his family ever had a claim for any of the lots at issue in that case. He also does not dispute the determination of ownership that resulted from the Land Court proceeding. He disputes only the boundary of the land as it was drawn because he says that it erroneously includes some of his property as the result of the Bureau of Land and Surveys' error in drawing the map. On June 15, 2000, Appellee informally attempted to reopen that matter after the Land Court issued its determination of ownership, but the Land Court denied his request.[5]

[¶ 9] In 2008 and 2009, the Land Court held hearings related to Lot K-183, the lot Appellee maintains should contain the disputed portion of land that was awarded to Techereng Baules Sechelong.[6] In its decision with respect to Lot K-183, which was issued January 29, 2010, the Land Court explained that the Palau District Land Commission began the process of registering the lands at issue in that case in the 1970s, with some of the claims being monumented in that time. *In re: the Ownership of Lands in Ngermid Hamlet, Koror State*

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[4] The Lot K-167 adjudication case appears to have fallen through the administrative cracks. A determination of ownership was not issued in 1980 because there was confusion on the correct worksheet number of the map. The error in the worksheet number was corrected on April 30, 1981, but still no determination of ownership was issued. *See* Mem. R. 2, *In re: Determination of Ownership of a land known as "Ngerbechedesau," T.D. Lot Nos. 148, 149, & 150 located in Ngermid Hamlet, Koror State*, Case No. LC/B 00-259 (Land Ct. Apr. 10, 2000) ("[N]o determination of ownership was issued for this property, and the matter remained pending before the Palau District Land Commission, Land Claims Hearing Office, and now the Land Court [since 1980/1981]. . . . This Court has reviewed the record in this case and concludes that a determination of ownership for this land may be issued based on the record of the hearing, the adjudication made by the Koror Land Registration Team, and documents in the file.").

[5] Appellee did not file anything in the case itself. Rather, his counsel at the time wrote a letter to the Land Court, to which the Land Court responded in kind with a letter refusing Appellee's request for a status conference.

[6] On December 29, 2011, Gandhi Baules inherited title to Cadastral Lot No. 055 B 01 (formerly Lot K-167) through a litigation settlement involving Techereng Baules Sechelong's estate. On February 29, 2012, he sold the lot to Appellant.

Referred to as Ngerbechedesau, shown as Lots K-183 and K-183B on the BLS Worksheet No. C29 B 00, Consolidated Case Nos. LC/B 07-565 & LC/B 07-566 at 2 (Land Ct. Jan. 29, 2010) ("LC/B 07-565"). In its opinion, the Land Court acknowledged that Appellee claimed "a portion of K-167, which he says has been awarded to [Techereng] Baules [Sechelong] without [Appellee's family's] knowledge." *Id.* at 10. It further noted that Appellee identified a taro patch "located on the portion of Lot K-167 that has been awarded to Techereng Baules [Sechelong] but which [Appellee] contends is part of [his] land." *Id.* at 11.

[¶ 10] In its findings of fact, the Land Court determined that "Iked Etpison filed a claim for Tochi Daich[o] Lots 144, 145, 146, and 147 on June 2, 1975," and "Ngiratkel Etpison [Iked's son and Appellee's father] filed a claim for 'Ngerbechedesau,' Tochi Daich[o] Lots 146 and 147 on May 3, 1978." *Id.* at 16. The Land Court concluded that "Lots K-183 and K-183B are part of Iked Etpison's Tochi Daich[o] Lots 144, 145, 146, and 147" and awarded the lots to Appellee "based on evidence that Iked [Etpison] conveyed his lands to his son Ngiratkel, who in turn, conveyed them to [Appellee] through [his] will." *Id.* at 20. Although the Land Court described Appellee's concerns about the boundary between Lots K-183 and K-167, it did not rule or make any factual findings related to the boundary issue.

[¶ 11] The underlying trial court matter in this appeal was filed in 2016. The Trial Division found at the summary judgment stage that Appellee was not provided individual notice regarding the Lot K-167 adjudication, which it determined was improper as a violation of Appellee's due process rights. It further determined at the summary judgment phase that the certificate of title resulting from the Lot K-167 adjudication was inconclusive and did not automatically establish ownership of the land, which, in turn, allowed Appellee to continue on with his quiet title action.

[¶ 12] The Trial Division held a trial on Appellee's quiet title action and determined that Appellee has superior title to the disputed property. The Trial Division granted judgment in favor of Appellee on all claims; issued a permanent injunction requiring Appellant to cease work, vacate, and restore the disputed property; and found that a co-defendant in the underlying matter

was trespassing and ordered his ejectment from another Appellee-owned property.

[¶ 13] Appellant now appeals the Trial Division's summary judgment decision in Appellee's favor regarding the notice issue and its decision awarding Appellee title to the disputed property.

STANDARD OF REVIEW

[¶ 14] 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).

[¶ 15] "Whether or not a claim for relief is justiciable is a conclusion of law." *Palau Civil Serv. Pension Plan v. Udui*, 22 ROP 11, 14 (2014). Accordingly, the Court reviews *de novo* the Trial Division's implicit determination that the case before it was justiciable.

ANALYSIS

[¶ 16] "As an appellate court, we have a special obligation to satisfy ourselves of our own jurisdiction and the jurisdiction of the lower court. . . even if the parties (and the lower court) are willing to assume it." *Idid Clan v. Palau Pub. Lands Auth.*, 2016 Palau 7 ¶ 7. "This Court is duty-bound to pay heed – *sua sponte* as the case may be – to this issue," *Nayem v. Sengebau*, 2017 Palau 35 ¶ 6 (citation omitted), because "an order entered without jurisdiction is without force and must be vacated," *Rengulbai v. Klai Clan*, 22 ROP 56, 60 (2015).

[¶ 17] "Where a lower court lacks jurisdiction to reach the merits of a claim, [the Appellate] Court has appellate jurisdiction only to correct the lower

court's error in adjudicating the claim, not to review the merits of the claim itself." *Idid Clan*, 2016 Palau 7 ¶ 27.

[¶ 18] Appellee characterized his case as 1) a collateral attack on the Land Court's determination of ownership in the Lot K-167 adjudication, although he admits that he did not file a claim to the lots at issue in that case and that he is not actually challenging the ownership determination of those lots; and 2) a quiet title action, though there is no title dispute regarding which lots are owned by whom.

[¶ 19] Despite Appellee's characterization, this is not an appropriate case for a collateral attack. This Court has described that a collateral attack is appropriate as follows: "A person may collaterally attack a determination of ownership rendered by the Land [Court] on the grounds that statutory or constitutional procedural requirements were not complied with, but that person has the burden of proving non-compliance by clear and convincing evidence." *Nakamura v. Isechal*, 10 ROP 134, 136 (2003). These requirements include notice and an opportunity to be heard for all "interested individuals." *Tebelak v. Rdialul*, 13 ROP 150, 154 (2006) (referring to notice requirement of Land Commission, predecessor to Land Court); *see also* 35 PNC § 1309 (describing notice procedures for Land Court for "all persons known to the Registration Officer to claim an interest in the land"). "This Court has held that an 'interested party' in claims before the Land Commission, the Land Court's predecessor, is 'a person . . . who has actually filed a claim and whose claim the land registration team concluded merited an evidentiary hearing.'" *Id.* at 155 (quoting *Nakamura*, 10 ROP at 138)). "Individuals who have not filed claims are not entitled to service of notice of the determination." *Id.* at 155 (citing *Secharmidal v. Techemding*, 6 ROP Intrm. 245, 249 (1997)).

[¶ 20] Appellee admits that he did not file a claim for the property involved in the Lot K-167 adjudication, and thus was not an "interested party" requiring personal notice. In addition to personal notice for interested parties, the law requires various forms of notice by publication as well. *See* 35 PNC § 1309. Potential claimants who are not identified as interested parties are adequately provided notice in this manner. *See Ucherremasech v. Wong*, 5 ROP Intrm. 142, 145–46 (1995) (implicitly held that notice by publication satisfies due process). Appellee does not argue that there were deficiencies with notice by

publication, and it is presumed that "official duties of public officers have been properly discharged in the absence of clear evidence to the contrary." *Id.* at 146. Accordingly, Appellee presents no valid ground for a collateral attack on the determination of ownership resulting from the Lot K-167 adjudication. Instead, disguised in the cloaks of collateral attack and quiet title, Appellee actually seeks to intervene or appeal an earlier Land Court determination due to a perceived mistake in fact regarding lot boundaries.

[¶ 21] In his opening brief, Appellant points out that "except for the claims [Appellee] made in Land Court Case LC/B 07-565, . . . there is nothing in the record showing that [Appellee,] prior to the case at bar[,] ever filed a lawsuit . . . in any court bringing the claim he [now] brings. . . ." Opening Br. 30. Appellant also argues that, Appellee raised the boundary dispute issue in LC/B 07-565 and did not appeal the Land Court's determination in that matter when he should have.[7] *Id.* at 33.

[¶ 22] This Court agrees. Appellee had the opportunity to formally intervene in or request reconsideration of the Lot K-167 adjudication determination after learning that a determination of ownership was issued in April 2000. In June 2000, his counsel wrote a letter to the Land Court following the determination, but chose not to formally seek redress, either directly with the Land Court or as an intervenor appealing the Land Court's determination before the Appellate Division. *See Shmull v. Ngirirs Clan*, 11 ROP 198, 202 (2004) (affirming Land Court's reconsideration of its determination of ownership because "[w]here, as here, a court misapprehends the evidence or commits an inadvertent mistake, that court historically has had the inherent authority to correct its own erroneous decision") *and Aimeliik State Pub. Lands Auth. v. Teltull*, 2018 Palau 6 ¶ 7 (affirming dismissal on jurisdictional grounds because "[t]he 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.").

[7] Appellant argues that the Land Court ruled against Appellee on the boundary dispute, *id.*, but that is not the case. The Land Court did not make any findings related to the boundary dispute. It only acknowledged that Appellee argued that there existed a dispute. On appeal, Appellant, thus, incorrectly frames the issue as either res judicata or estoppel (issue preclusion).

[¶ 23] The facts that Appellee presents fit the mold of an inadvertent mistake as discussed in *Shmull* and would have allowed the Land Court, through its inherent authority, to review its determination of ownership, even in circumstances, as here, where the individual was not a party in the underlying case. *See Ulochong v. Land Claims Hearing Office*, 6 ROP Intrm. 174, 176 (1997) ("A nonparty may[,] even in the absence of privity[,] possess a sufficient interest to be allowed to take an appeal . . . [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" (citing 5 Am. Jur. 2d *Appellate Rev.* § 265)), *recognized in Rengiil v. Urebau Clan*, 21 ROP 11, 14 (2013). Appellee could have even done so years after the determination. *See Blailes v. Bekebekmad*, 2018 Palau 5 ¶1 (affirming Land Court's decision to vacate a certificate of title when it discovered one had been issued for the same property years earlier); *Children of Ngiratiou v. Descendants of Ngiratiou*, 20 ROP 264, (2013) (affirming Land Court's *sua sponte* decision to cancel and reissue certificates of title incorrectly issued due to a clerical error more than 20 years after their issuance); *In re Idelui*, 17 ROP 300, 304 (2010) (affirming Land Court's *sua sponte* decision to set aside a void 2008 judgment in 2010 because its inherent authority allowed it to do so). *But cf. Blailes*, 2018 Palau 5 ¶ 14 (citing cases demonstrating that "[r]egarding any statutory or constitutional defects in the process of issuing either a Determination of Ownership or Certificate of Title, the Trial Division of this Court has long been considered the proper venue for such claims").

[¶ 24] Even though Appellee chose not to formally seek redress in the Lot K-167 adjudication, with LC/B 07-565, Appellee was unequivocally presented with a second bite at the apple regarding the boundary dispute. He raised the issue before the Land Court in LC/B 07-565, as the Land Court's opinion shows.[8] *See* LC/B 07-565 at 10–11. Following the Land Court's determination, Appellee again could have requested that the Land Court explicitly address the boundary issue, or he could have appealed that decision. *See* 35 PNC § 1313 (parties to Land Court matters can appeal "directly to the Appellate Division

[8] Appellee argues that "the Land Court declined to exercise jurisdiction over the boundary dispute" and indicates that "[it] did so for reasons that are not embodied in its decision." Resp. Br. 29. The Land Court, however, clearly considered Appellee's testimony, but did not make a determination on the boundary dispute. Its actions do not equate to declining to exercise jurisdiction.

of the Supreme Court");[9] *see also Andreas v. Masami*, 5 ROP Intrm. 205, 206 (1996) (affirming predecessor entity to Land Court's jurisdiction over boundary dispute because "determining boundaries as part of determination of ownership is part and parcel of the [predecessor entity]'s duties" and "[t]he determination of property boundaries is inherent in the determination of ownership").

[¶ 25] Appellee points out that Appellant was not a claimant in LC/B 07-565. The Land Court, however, could have brought Appellant into the matter had Appellee requested reconsideration of the decision. *See Rengulbai v. Klai Clan*, 22 ROP 56, 64 (2015) ("[I]ntervention of parties is left to the general discretion of the Land Court judge to manage the proceedings."). Likewise, the Appellate Division could have brought Appellant into an appeal. *See Rengiil*, 21 ROP at 14 (recognizing existence of non-party appeals in circumstances outlined in *Ulochong*, 6 ROP Intrm. at 176); *see also Salii v. House of Delegates*, 1 ROP Intrm. 708, 710 (1989) (allowing appeal brought against non-party to proceed for mootness determination).

CONCLUSION

[¶ 26] For the foregoing reasons, we **VACATE** the Trial Division's decision and judgment with regard to Counts I through IV of the Complaint as they pertain to Lot K-167 for lack of jurisdiction.

[9] A prevailing party may appeal a judgment in his favor if he remains aggrieved. *See, e.g.*, *United States v. Windsor*, 570 U.S. 744, 759 (2013) (appeal may be brought by prevailing party as long as he possess the requisite personal stake in the litigation); *Camreta v. Greene*, 563 U.S. 692, 702 (2011) (same); *Deposit Guar. Nat. Bank, Jackson, Miss. v. Roper*, 445 U.S. 326, 334 (1980) ("In an appropriate case, appeal may be permitted from an adverse ruling collateral to the judgment on the merits at the behest of the party who has prevailed on the merits, so long as that party retains a stake in the appeal satisfying the requirements of Art. III," but "[a] party who receives all that he has sought generally is not aggrieved by the judgment affording the relief and cannot appeal from it."). Although the Article III requirements need not be met under Palauan law, there does not appear to be any barrier under Palauan law to prevent the application of the idea that a prevailing party may appeal as long as he remains aggrieved.