IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

NGATPANG STATE PUBLIC LANDS AUTHORITY,
Appellant,
v.
SURANGEL WHIPPS, JR.,
Appellee.

Cite as: 2020 Palau 17
Civil Appeal No. 19-025
(LC/L 18-00167)

Argued: June 10, 2020
Decided: July 16, 2020

Counsel for Appellant ..... C. Quay Polloi

Counsel for Appellees ..... Allison Nixon & Yukiwo P. Dengokl

BEFORE: GREGORY DOLIN, Associate Justice
KATHERINE A. MARAMAN, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

Appeal from the Land Court, the Honorable Judge Rose Mary Skebong, Acting Senior Judge, presiding.

OPINION

CASTRO, Associate Justice:

[¶1] At issue in this case is the Land Court's determination of the ownership of Worksheet Lot 124-37. This is the fourth time this Court has been called upon to address the unusual land ownership situation in Ngatpang State. In 1959, the Ngatpang government itself filed a return of public lands claim with the Trust Territory government and won title to these properties, known as D.O. 126, with the goal of redistributing the lands to its citizens. Building on our decision in *Ngatpang State v. Rebluud*, 11 ROP 48 (2004), we

hold that the statutory deadline for an individual to file a return of public lands claim, 35 PNC § 1304(b)(2) does not apply to D.O. 126 lands because Ngatpang State had already gotten the land "returned" from the national government. We further hold that Ngatpang State had neither the authority to re-designate the lands as "public lands" under national law nor to alter the Land Court's procedures. We therefore **AFFIRM** the Land Court's determination that Appellant Surangel Whipps, Jr. had superior title to the Ngatpang State Public Lands Authority (NSPLA).

FACTS[1]

[¶2] Shortly before World War II, the Japanese Imperial Administration seized land in Ngatpang State without just compensation giving Ngatpang's citizens no time to seek redress in the Japanese courts. After the war, the Trust Territory government created a process for the return of public lands unlawfully seized. The residents of Ngatpang, some of whom lacked the funds to pursue individual claims, held a meeting and agreed to have Ngatpang Municipality (now Ngatpang State) pursue a claim to the seized lands on their joint behalf, and then distribute the returned lands among the Municipality's residents. Ngatpang filed such a claim, and the Municipality was awarded the land through a 1959 Determination of Ownership, D.O. 126.

[¶3] In 1975, the Ngaimis (the traditional council of chiefs of Ngatpang)[2] decided that it was finally time to re-distribute the land. In pursuit of that goal, the Ngaimis created procedures for a homesteading program that made every adult citizen eligible for a tract of at least seven *chiob*, or almost seven hectares. In order to claim land, residents could put boundary markers around their claim. This procedure for "making claims," unlike that of the Land Court and its predecessors, was very informal. In 1982, the Land Claims Hearing Office (LCHO) held hearings to determine ownership of some parcels within D.O. 126, and by 1989 had issued determinations of ownership for 19 parcels.[3] In the meantime, debate continued among members of the Ngaimis about what to do with the rest of the land.

[¶4] Finally, in 1987, Ngatpang State enacted Public Law 7-86, which required the Governor to "negotiate and contract with the Palau Land Commission" to permit one of its registration teams to hear claims of clans, lineages, and individuals to the land, which the Ngamis would then review. The State law purported to make the registration team's

[1] The following factual background is taken from our opinions in *Aimeliik State Pub. Lands Auth. v. Rengchol*, 17 ROP 276, 280 (2010), *Ngatpang State v. Amboi*, 7 ROP Intrm. 12, 13 (1998), and *Rebluud*, 11 ROP at 49.

[2] The Ngatpang State Constitution vests the Ngaimis with "[a]ll powers of the State Government." Ngatpang Const. Art. IV, § 1.

[3] In 1993, the new governor attempted to overturn these determinations because he disagreed with the distribution, but this Court rejected the attempt because Ngatpang state had failed to timely notice an appeal. *See Amboi*, 7 ROP Intrm. at 13, 16 (1998).

decisions appealable to the National Court.[4] It also purported to set a one-year deadline for filing claims.

[¶5] On March 27, 1989, approximately two months after the expiration of the deadline to file public lands claims under the Palau National Code, *see* 35 PNC § 1304(b)(2), the Ngaimis sent a letter to the Land Commission (hereinafter "1989 Letter") in which "the members of Ngaimis and the Ngaimis, which is charged with the responsibility for managing all public lands, . . . declare[d] that the land under Claim No. 126 is a private land." The letter went on to request the assistance of the Land Commission in adjudicating claims to the land and also stated that "[a]ny unclaimed portion of land under Claim No. 126 which shall remain unclaimed within two years from the date of this act, shall revert to the Ngaimis and [is] to be regarded as public lands, which may then be leased or homestead [sic] as may be provided by law."

[¶6] In this case, it is undisputed that Lot 124-37 is part of D.O. 126, and there was evidence that it belonged, prior to the land being taken by the Japanese government, to Delangabiang Clan. The Land Court found that "[a]lmost immediately after [the 1989 Letter] Delangebiang Clan promptly registered its claim to Lot 124-37 and other adjacent lots by marking their boundaries at a formal monumentation conducted by [the Bureau of] Lands and Surveys."[5] Less than one month after the 1989 Letter issued, on April 21, 1989, Delangabiang Clan transferred ownership of Lot 124-37 to Johnson Toribiong, [6] who promptly recorded the *Oidel a Chutem*[7] with the Clerk of Courts. The Land Court found that "Lot 124-37 was claimed within the [two-year] period prescribed by the Ngatpang government." Although it is undisputed that no formal written claim was filed, the Land Court noted that the process for "claiming" D.O. 126 lands was an informal one. The land was later monumented and surveyed again in 1998-99, at which point it was given the "Lot 124-37" designation.

[¶7] Toribiong eventually sold the property to Appellant Surangel Whipps, Jr., and the Warranty Deed was recorded on August 31, 2002. Then on May 30, 2005, Whipps filed a claim of land ownership in the instant case; there is no dispute that it was timely in terms

[4] While a National Court was provided for in the Constitution when Palau became independent in 1994, it has never actually existed since Palau has been a sovereign nation.

[5] Although Appellant argued that there was no evidence that a claim was made, given our deferential standard of review of factual matters, we leave the Land Court's determination on this point undisturbed. Additionally, Appellant's brief focuses only on a physical, written claim and does not address the issue of whether a monumentation was done by the Clan. Given our holding today that no formal claim is required, resolution of this factual issue is not essential to our holding.

[6] Before the Land Court, NSPLA disputed the validity of the transfer on the basis that not all of the senior strong members of Delangabiang Clan had consented to it, but the Land Court disagreed and this factual determination was not appealed.

[7] A transfer of ownership. *See Koror State Pub. Lands Auth. v. Toribiong*, 2017 Palau 12 ¶ 10.

of the Land Court's statutorily mandated procedures. Ngatpang State also filed a claim. On August 14, 2018, Ngatpang State quitclaimed its interest in the D.O. 126 lands to NSPLA; the quitclaim deed was recorded on April 11, 2019.[8] When this matter came before the Land Court for a hearing in September 2019, the only claimants were Whipps and NSPLA. Following the Land Court's determination that Whipps owned the land in fee simple (in Determination of Ownership 10-157, issued December 10, 2019), NSPLA timely appealed.

STANDARD OF REVIEW

[¶8] "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." *E.g.*, *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4. We can affirm the Land Court on "any basis apparent in the record" and need not "adopt[] its precise reasoning." *Island Paradise Resort Club v. Gibbons*, 2020 Palau 3 ¶ 17.

DISCUSSION

A.

[¶9] Appellant's first argument is that the Land Court, in treating as valid the 1989 Letter's waiver of Ngatpang State's interest in any D.O. 126 lands to which claims were filed within two years, violated the Supremacy Clause of the Palau Constitution. Appellee contends that this argument was waived because it was not raised before the Land Court. *See, e.g.*, *Nakamura v. Nakamura*, 2016 Palau 23 ¶ 25. NSPLA counters that, while it may not have specifically referenced the constitutional provision it now does, it clearly argued that the Palau National Code should be applied and the statutory procedures for return of public lands claims adhered to. We agree that the issue of the applicability of the return of public lands claim filing deadline, *see* 35 PNC § 1304(b)(2), was clearly raised below, and we will address it herein.[9]

[8] This is significant because it was Ngatpang State, not NSPLA, that won title to the D.O. 126 lands (prior to the transfer of title to public lands from the Trust Territory government to the Palau Public Lands Authority to the state public lands authorities), and we have made clear that "[s]tate public lands authorities are . . . not [] a part of state government, but are hybrid entities." *KSPLA v. Diberdii Lineage*, 3 ROP Intrm. 305, 308 (1993). In addition, as the quitclaim deed itself acknowledges, if Ngatpang State were a party to this case, it would divest the Land Court of jurisdiction. *See* Constitution, Article X, Section 5; *Ngatpang State v. Ngiradilubech*, 11 ROP 89, 91 (2004).

[9] NSPLA also contends that it did not expect the Land Court to treat the 1989 letter as valid, requiring that a claim be made within two years and then holding that such a claim was in fact made, because neither party specifically argued for this approach. Certainly, if it were true that neither party argued in favor of the result reached by the Land Court, we could nonetheless pass upon the validity of its ruling on appeal. *E.g. United States v. Williams*, 504 U.S. 36, 41, 112 S. Ct. 1735, 1738 (1992).

B.

[¶10] The Land Court analyzed ownership of this property under both the "return of public lands" and the "superior title" frameworks. As this Court has repeatedly pointed out, "the two types of claim[s] are fundamentally different, with different burdens of proof and different defenses applicable to each." *Espong Lineage v. Airai State Pub. Lands Auth.*, 12 ROP 1, 5 (2004). "In a return of public lands case pursuant to Article XIII and § 1304, the claimant acknowledges that an occupying power acquired the land but attempts to prove that the acquisition was wrongful . . . [because] the land was acquired by an occupying power through force, coercion, fraud, or without just compensation or adequate consideration." *Ngarameketii v. Koror State Pub. Lands. Auth.*, 18 ROP 59, 63-64 (2011) (citations and quotation marks omitted). To put it differently, in a return of public lands claim, the individual claimant acknowledges that the relevant government entity holds superior title to the land, but argues that its title was improperly acquired. *See Klai Clan v. Airai State Public Lands Authority*, 20 ROP 253, 255 (2013).[10] In contrast, in a "superior title" framework, the claimant does not concede that the public lands authority (or anyone else) holds superior title to the land, and instead argues that their title is superior to all others. While we have said that "a claimant asserting superior title is "claim[ing] the land on the theory that it never became public land in the first place," *id.* at 64, this statement is somewhat misleading. A private claimant need not prove that the land was *never* owned by the government. There are certainly cases where land was owned by the government at some time in the past but no longer is, such as where the Trust Territory government quitclaimed the property to a private citizen as a homestead. *See, e.g., Tebelak Clan v. Children of Ngiramos*, 2020 Palau 13 ¶ 3. In those cases, even though the land was public at one time, once the land returned to private hands, all further disputes should be analyzed under the "superior title" framework. "Public lands," as specifically defined in 35 PNC § 101, is a term of art and does not encompass all land ever owned by any government body. The choice of framework has significant consequences for the burden of proof that each party bears. Where the claim is for return of public lands, the government entity holds the title at the time of the Land Court hearing and the burden of proof is on the claimant. *See Kebekol v. KSPLA*, 22 ROP 74, 75 (2015) ("[The burden was on the claimants to show that the land was wrongfully taken."); *Palau Pub. Lands Auth. v. Ngiratrang*, 13 ROP 90, 96

[10] *See also* 35 PNC § 1302 (specifying that only the "land which became public land as a result of the acquisition by the previous occupying powers or their nationals through force, coercion, fraud or without just compensation or adequate consideration" is subject to the return of public lands provisions); 35 PNC § 1304(b)(1) (specifying that in order to prevail on a "return of public lands" claim, a claimant must show, *inter alia*, "that the land became part of the public land, or became claimed as part of the public land, as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation or adequate consideration."). The inclusion of that date makes it clear that the statute applies only to disputes related to prior governments, such as the Trust Territory and the Japanese administrations. .

(2006) ("[P]ublic lands authorities have no obligation to appear or present evidence at a return of public lands hearing[.]").

[¶11] Appellant's argument is entirely based on this case being a return of public lands claim. If that were indeed the case, Appellant would prevail because the land in question was claimed by Delangabiang Clan (Appellee's predecessor in interest) after the deadline to file such claims had expired. *See* 35 PNC § 1304(b)(2) (setting January 1, 1989 as the deadline to file a "return of public lands" claim). However, NSPLA is incorrect in its understanding of the land's legal status. The land was "public land" between the time it was seized by the Japanese Imperial Administration and 1959, when the Trust Territory Government (then sovereign over Palau) returned it to Ngatpang State. Ngatpang in turn held the land, not as a governmental entity, but rather as a quasi-trustee for its citizens who agreed to allow their own individual claims to be subsumed by a single claim—on the understanding that the State would later equitably distribute the land. Even though as a technical matter Ngatpang State is not a private entity and therefore could not be a "private claimant," its claim was based, not on the State's assertion that *it* owned the land, but rather on the private claims of its citizens. Accordingly, we will treat Ngatpang as if it were a "private claimant" before the Trust Territory Administration.

[¶12] Because we conclude that from 1959 onward, the land in question was no longer "public land" as that term is used in the Palau National Code, *see* 35 PNC § 1302; 1304(b)(1), NSPLA's argument that it should prevail because "[u]nregistered land is presumed to be public, held in trust by the government until a private claimant either prevails on a return of public lands claim or proves that the land never became public in the first place such that she or he can prevail on a superior title claim," is a non-sequitur.*Koror State Pub. Lands Auth. v. Toribiong*, 2017 Palau 12 ¶ 15 As the land was no longer "public," there was no need—or ability—for private citizens to file "return of public lands" claims with the national government. Indeed, we have previously held that the 1959 determination was *res judicata* against any private claimants claiming this land before the Land Court's predecessors (prior to the 1989 Letter). *See Uchellas v. Etpison*, 5 ROP Intrm. 86, 90 (1995) (affirming the Land Commission's 1982 determination that it was bound by the 1959 decision that Ngatpang State owned D.O. 126). Therefore, even if Delangabiang Clan *had* filed a claim after 1959 utilizing the "return of public lands" process, it would have been unsuccessful. At that point, Delangabiang Clan's dispute (if any) was no longer with the sovereign national government of Palau but with Ngatpang State.

[¶13] This brings us to the Ngaimis' 1989 letter. As we explained in *Rebluud*,

> The Ngaimis [] conceded that "the land under Claim No. 126 is a private land," and indicated that determinations of ownership could be issued to private citizens based upon any "competent evidence, either oral or physical." This release, executed after the Ngaimis was officially vested

> with the executive functions of state government, is a waiver of any objection based upon any technically-flawed or premature determinations of the Ngaimis before 1989.

11 ROP at 51-52. Simply stated, the 1989 letter was a waiver of Ngatpang State's rights to the land in favor of individual claimants.

[¶14] To be sure, the waiver in the 1989 letter specified that whatever land remained unclaimed after the expiration of a two-year period would revert to the State and become "public land." This language has sowed much confusion. As we have just explained, "public land"—as it is used in 35 PNC § 1304—is land that was acquired by prior governments from private owners who were not provided just compensation. The land described in D.O. 126 *was* public land prior to 1959, but stopped being such once the Trust Territory Administration returned the land to Ngatpang State. Ngatpang State could not then unilaterally redesignate the land as "public land" as that term is understood in sections 1302 and 1304. We believe that a better reading of the letter is that it waived *any* claim by Ngatpang State that the land is public land subject to a return of public lands claim, without affecting the State's (or its successor NSPLA's) ability to argue and prevail in a future "superior title" claim. We therefore hold that lands which are part of D.O. 126 ceased being public lands in 1959, and as a consequence, the deadline to file a return of public lands claim established by 35 PNC §1304(b)(2), does not apply to claimants such as Whipps.

C.

[¶15] Appellant next argues that the Land Court, by referencing the two-year time limit for filing claims in the 1989 Letter, improperly allowed a state-created procedure to trump national law in violation of the "Supremacy Clause" of the Palau Constitution, which he references as Article XI, Section 2: "All governmental powers not expressly delegated by this Constitution to the states nor denied to the national government are powers of the national government. The national government may delegate powers by law to the state governments." Our case law refers to the Supremacy Clause as a different section of the Constitution, Article II, section 2, which makes laws that conflict with the Constitution "invalid to the extent of such conflict." *See Rengiil v. Ongos*, 22 ROP 48, 50 (2015).

[¶16] Regardless of the terminology, Appellant is correct, as an abstract principle, that a state law cannot conflict with the Palau National Code. To the extent that the 1989 letter attempted to impose limits, beyond those provided for by the Palau National Code, on citizens' abilities to bring cases before the Land Court (or its predecessors), such limits are unconstitutional and cannot be enforced. As we held in *Rebluud*:

> Ngatpang State cannot confer jurisdiction on the LCHO or the Land Court or vary either body's procedures, because the national government established those entities to complete the national land registration program

> and to implement the provisions of the Return of Public Lands Clause. The LCHO and the Land Court were not authorized to accept separate assignments from state governments.

11 ROP at 49 (citations omitted). Insofar as the 1989 Letter attempted to force the national government to accept claims to the D.O. 126 lands within the specified two-year timeframe, we hold that it was unconstitutional. At the same time, to the extent Ngatpang State had wished to establish *internal* procedures for the distribution of the D.O. 126 land that it held in a quasi-trustee capacity or condition the release of its claims to the land on the happening of some other event, it could have unquestionably done so. But that is not what the 1989 Letter did.[11] Instead, following the language of the unconditional "release and discharge" of Ngatpang State's claims, the letter attempted to assign "[t]he adjudication of claims [to] the Palau Land Claim Hearing Office." The letter's attempt to impose a two-year time limit for filing claims was made in conjunction with its (unconstitutional) attempt to confer jurisdiction on the LCHO. Because it lacked the authority to conscript the LCHO to hold hearings and distribute the land on its behalf, all provisions of the 1989 Letter attempting to govern LCHO's hearings, including the requirement that a claim be filed with the LCHO within two years, are invalid.[12] Our judgment today nevertheless holds Ngatpang State to its own unconditional decision to waive its interest in this land, in accordance with the promise it made to its citizens when it claimed the land on their behalf in the 1950s.

D.

[¶17] Finally, we note that adopting Appellant's argument would work a particular unfairness, because Ngatpang State did not release its claim to the D.O. 126 properties until March 27, 1989, or thirty years after the land was awarded to it and only a few months after the deadline for the filing of return of public lands claims. *See* 35 PNC § 1304(b)(2). The citizens of Ngatpang State who claimed a portion of D.O. 126 were relying on the State to return this land to them, or were participating in the informal homesteading program that took place during the period between the award of the land to the State in 1959 and the State's formal release of its claims in 1989. Ngatpang State itself acknowledged its "full expectation that upon its receipt of the title and ownership to such areas concerned, these

[11] To further confuse the issue, as discussed above Ngatpang did establish some very informal procedures for claiming D.O. 126 Land in the 1970s, and it appears to us that Delangabiang Clan complied with them by monumenting its claim. That informal procedure is not the basis of our decision today, however, because Appellant's argument is based on the fact that a formal, written claim was not filed by the Clan (or by Toribiong) with the Land Court or its predecessors.

[12] Ngatpang State could not create its own process, separate from that established by the National Government, for the return of *public* lands, but it could have adopted whatever process it chose for the distribution of *private* lands—except a process that co-ops the national Land Court. Although failure to comply with Ngatpang's internal rules would not affect citizens' ability to seek recourse in the national courts, such a failure could be evidence in those courts that the private claimant's claim of title is not superior to NSPLA's claim.

lands would be opened up for registration and adjudication of claims by individuals, families, lineages, clans, or other entities, and title to the same issued to them." Ngatpang Pub. L. No. 7-86, § 1 (1986). It is apparent from the record before us, and the history of D.O. 126, that the State's position on these lands has changed with shifts in political power. A newly elected administration is of course entitled to implement its own policy preferences; however, this freedom is somewhat limited by the reliance interests created by government's own actions. In this case, the citizens of Ngatpang State justifiably relied on the State's decades-long assurances that the D.O. 126 properties would be distributed to individual claimants. The State's reluctance to honor these pronouncements and agreements has caused a proliferation of litigation and further complicated the Land Court's efforts to determine ownership of these lands. We are hopeful that today's opinion will help bring any still-pending matters to a speedier resolution.

[¶18] All this is not to say that, if a private claim is not timely filed in the Land Court, or if the NSPLA prevails under the superior title framework, the land would not once again become public, to be administered by NSPLA. We simply hold because of Ngatpang State's 1989 waiver, NSPLA does not get the benefit of proceeding under the return of public lands framework , and that NSPLA cannot force the national government to adjudicate claims to D.O. 126 land in a particular way or impose additional or different claim filing deadlines in national courts. In this case, where Whipps filed a timely claim to this land under the Land Court's procedures, and nothing in this appeal challenges his superior title to this land, the judgment of the Land Court should be and hereby is **AFFIRMED**.