

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

<p><b>KALISTUS REXID,</b> <i>Appellant,</i></p> <p style="text-align:center">v.</p> <p><b>MIHAINA BECHESERRAK, ROBERT BECHESERRAK,</b> <b>individually and on behalf of ELEU LINEAGE,</b> <i>Appellees.</i></p>
<p><b>JI GANG, JI HAI MEI, and PALAU EU INVESTMENT INC.,</b> <i>Appellants,</i></p> <p style="text-align:center">v.</p> <p><b>MIHAINA BECHESERRAK, ROBERT BECHESERRAK,</b> <b>ELEU LINEAGE, and KALISTUS REXID,</b> <i>Appellees.</i></p>

Cite as: 2023 Palau 10  
Civil Appeal No. 22-004  
Appeal from 17-330 & 18-142

Decided: March 9, 2023

Counsel for Appellant Kalistus Rexid .....	Salvador Remoket
Counsel for Appellants Ji Gang et. al., .....	C. Quay Polloi
Counsel for Appellees Mihaina Becheserrak et. al .....	Rachel Dimitruk

BEFORE: JOHN K. RECHUCHER, Associate Justice, presiding  
FRED M. ISAACS, Associate Justice  
DANIEL R. FOLEY, Associate Justice

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

## OPINION<sup>1</sup>

PER CURIAM:

[¶ 1] This appeal concerns the Trial Division’s Judgment invalidating a lease agreement between Kalistus Rexid (“Rexid”) and Ji Gang, Ji Hai Mei, and Palau EU Investment Inc. (collectively “Ji Gang”), of Eleu Lineage property without the consent of its senior strong members. Appellant Ji Gang challenges the Trial Division’s determination that said senior strong members Mihaina and Robert Becheserrak had standing to challenge the lease. The parties also dispute the Trial Division’s determination on damages for the invalid lease.

[¶ 2] For the reasons set forth below, we **AFFIRM** in part the Trial Division’s determination on standing and **REVERSE** and **REMAND** in part to further determine damages.

## BACKGROUND

[¶ 1] Cadastral Lot No. 037 N 09, known as *Ochelochel*, located in Ngetkib Hamlet of Arai State, is owned by Eleu Lineage. On May 10, 2016, Appellant Kalistus Rexid, chief of Eleu Lineage, leased *Ochelochel* to Appellant Ji Gang. Appellees Mihaina Becheserrak and Robert Becheserrak<sup>2</sup> filed suit on November 9, 2017, asserting that as senior strong members of the lineage, their consent was required to lease *Ochelochel*. On June 4, 2018, Ji Gang raised affirmative defenses and counterclaims in response to the complaint, among which he claimed unjust enrichment, refunds, offsets, and lost profits, specifically stating that he had expended funds for infrastructure development on *Ochelochel* and that the ongoing construction would unjustly enrich Eleu Lineage.

[¶ 2] On September 5, 2018, Mihaina and Robert signed a document titled “Quitclaim Deed” in which they asserted their intent to convey all of their

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<sup>1</sup> The parties withdrew their request for 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).

<sup>2</sup> We note that Robert Becheserrak passed away during the pendency of this case, but his claim continues to be pursued by Mihaina. For ease of reference, we will refer to both of these individuals as Mihaina.

interest in *Ochelochel* to Laurentino Ulechong. They argued that because Eleu Lineage consisted at one point of solely their mother Anna Becheserrak and her sister Uchab Rengiil, *Ochelochel* became in effect the property of both sisters and their children as heirs.<sup>3</sup> Ulechong moved to intervene in the suit, but no order was issued to grant intervention.

[¶ 3] On November 18, 2019, the Trial Division issued an Order in which it denied the motions to dismiss Mihaina and Robert for lack of standing. The Trial Division noted that given that “the issue of who currently has an interest in the land is in dispute, [Mihaina and Robert] remain a proper party to request adjudication.” Order Granting Def. Morishita’s Cross Mot. And Den. Pls’ Mot. For Summ. J. (Nov. 18, 2019) at 4. All parties consented to bifurcating the trial to first resolve the issue of Mihaina and Robert’s status in the lineage, then any remaining claims. The Trial Division did not issue a written order for bifurcation, but Appellee Mihaina confirms that the order was issued orally.

[¶ 4] On February 2, 2022, the Trial Division issued a Judgment which found that Mihaina and Robert are senior strong members of Eleu Lineage, and that without their consent, the 2016 lease is invalid. The Trial Division further stated that Ji Gang and Ji Hai Mei are entitled to the purchasing proceeds of the lease from “Defendants”, and that all other claims and counterclaims are dismissed as moot or undeveloped.

[¶ 5] Appellant Ji Gang filed for reconsideration, which the Trial Division denied on June 13, 2022. However, the Trial Division clarified that Ji Gang was entitled to the proceeds from Rexid, and not Mihaina, stating:

The Court’s ruling that Plaintiffs were strong senior members in 2016 and their permission was required for the Lease to be valid is based on credible facts and law. It follows from this ruling that the Lease Agreement having been declared null and void does not bind Mihaina Becheserrak, her deceased son or Eleu Lineage.

Orders Denying Defs’ Mot. For Recon. (June 13, 2022).

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<sup>3</sup> Uchab Rengiil had seven children, including Kalistus Rexid.

[¶ 6] Rexid appeals the determination that he is liable for the repayment of the rental proceeds. Ji Gang appeals the Trial Division's failure to dismiss Mihaina from the case for lack of standing, arguing that she has deeded her interest to Laurentino Ulechong. Ji Gang also argues that the dismissal of their counterclaims as undeveloped was premature, as he did not have the opportunity to appear during the trial.

### STANDARD OF REVIEW

[¶ 7] We have stated the appellate standard of review 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

[¶ 8] An abuse of discretion occurs when the [trial court's] decision is "arbitrary, capricious, or manifestly unreasonable, or because it stemmed from improper motive." *Esuroi Clan v. Roman Tmetuchl Family Trust*, 2019 Palau 31 (internal citations omitted). "We review a trial court's handling of a motion for reconsideration for abuse of discretion." *Rekemel v. Tkel*, 2019 Palau 36 ¶ 5. "Under this standard, a decision of the Trial Division will not be overturned unless it was clearly wrong." *Sugiyama v. Airai State Pub. Lands Auth.*, 19 ROP 99, 101- 02 (2012) (internal quotation marks omitted).

### DISCUSSION

#### I. Standing

[¶ 9] Under our Constitution, "[t]he judicial power shall extend to all matters in law and equity." Const., art. X, § 5. Because this constitutional provision does not explicitly limit our jurisdiction based on the identity of a plaintiff who initiates a lawsuit, our doctrine of standing is a purely prudential

consideration to determine whether a case is justiciable. See *Koror State Legislature v. KSPLA*, 2017 Palau 28 ¶ 22-24. Our concept of standing is both nascent and purposefully broad, and we have characterized it as such:

A proper standing inquiry asks whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue. The goal is to consider whether the plaintiff has an interest in the adjudication so as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends and to ensure the court will not be asked to decide ill defined legal and equitable questions.

*Id.* at ¶ 30. This raises the following question: how does a plaintiff have an *interest* in the adjudication? We do not presume to delineate every single way through which a plaintiff may have an interest in a case. Nonetheless, we can at the very least recognize that a plaintiff has standing when she or he has a substantive right to assert through adjudication and has a legal right to enforce a claim.

[¶ 10] With this definition in mind, we find that Mihaina’s interest is twofold. There is no question that under Palauan custom, the consent of senior strong members of a Lineage is necessary to alienate Lineage land. *Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 47 (2006); *Ngiradilubch v. Nabeyama*, 3 ROP Intrm. 101, 105 (1992) (citing *Gibbons v. Bismark*, 1 TTR 372 (1958)). The Trial Division properly found that Mihaina is a senior strong member of the Lineage, and Appellants do not challenge that determination. Thus, as a senior strong member, Mihaina first has an individual interest in asserting her own status in the Lineage. Second, as senior strong member, she possesses the substantive right to represent that Lineage and has the legal right to enforce the Lineage’s claims. Therefore, the Trial Division properly found that she had standing.

[¶ 11] Ji Gang argues that Mihaina has no standing, because she deeded her interest in the land to Laurentino Ulechong. This is incorrect because *Ochelochele* is property of Eleu Lineage. Mihaina as an individual has no

property interest in *Ochelocheh*: she does not own it, nor does she own any part of it. Her real interest in this case pertains to her membership status in the Lineage. As a senior strong member of Eleu Lineage, she possesses the substantive right to represent the Lineage and enforce its rights. But that right begins and ends there. Crucially, it does not give her the right to alienate Lineage property by herself. Consequently, the quitclaim deed to Ulechong has no value and does not affect Mihaina’s standing.

## II. Damages

[¶ 12] We now get to the issue of damages, whether in the form of rental proceeds, unjust enrichment, or lost profits.

[¶ 13] At the outset, we note that a trial court’s decision should “reveal[] an understanding analysis of the evidence, a resolution of the material issues of ‘fact’ that penetrate beneath the generality of conclusions, and an application of the law to the facts.” *WCTC v. Meteolechol*, 14 ROP 58, 61 (2007) (quoting *Cura v. Salvador*, 11 ROP 221, 223 (2004)). Additionally, Rule 52(a) of the Rules of Civil Procedure for the Courts of Palau requires a court to “find the facts specially and state separately its conclusions of law thereon.” ROP R. Civ. P. 52(A); *see also Melekeok Gov’t Bank v. Adelbai*, 13 ROP 183, 191 (2006) (stating that a trial court’s findings are adequate if “they are sufficiently comprehensive and pertinent to the issue to form a basis for the decision and whether they are supported by the evidence.”). Finally, “a ruling at the trial court that resolves fewer than all of the claims or determines completely the rights and liabilities of fewer than all of the parties is an unappealable interlocutory order.” *Gibbons v. ROP*, 1 ROP Intrm. 547MM (1988) (citing *Carolyn Huckleby v. Frozen Food Express*, 555 Fed 2d 542 (1977)).

[¶ 14] We first look at the liability for rental proceeds. Rexid argues that the Trial Division erred in holding him liable for rental proceeds when Mihaina did not make a claim for damages, Ji Gang did not participate in the trial, and there was no proof of damages.

[¶ 15] “Generally, the burden of proof is upon the plaintiff, or on the party making a claim for damages, to show the fact and extent of an injury and to show the amount and value of his or her damages . . . . Damages must be proved with reasonable certainty or by a preponderance of the evidence. . . .” 22 Am.

Jur. 2d, Damages, §719; *see also PPLA v. Emesiochel*, 22 ROP 126, 134 (2015). Once the existence of damages is established, however, mere uncertainty as to the precise amount of those damages will not prohibit recovery. *Emesiochel*, 22 ROP at 135. Rather, the plaintiff need only prove “the extent of the harm and the amount of money representing adequate compensation with as much certainty as the nature of the tort and the circumstances permit.” *Id.*

[¶ 16] The trial revolved around the issue of Mihaina’s membership in the Lineage. As a result, there is very little evidence in the record on the rental proceeds. The lease outlines the rental payments to Kalistus Rexid and their due dates. There is no evidence as to how many rental payments were actually made, whether they were made in full, and how the money was used. Therefore, we cannot find that sufficient evidence supports the Trial Division’s decision to award “rental proceeds” to Ji Gang.<sup>4</sup>

[¶ 17] We now turn to Ji Gang’s claims for unjust enrichment and lost profits. The record shows that Ji Gang raised these arguments early in this litigation. The trial was bifurcated afterwards, first to address whether Mihaina was a senior strong member, then to determine at a later stage any remaining issues. Ji Gang’s counsel, although present, was not allowed to participate during the first stage of the trial nor was he able to introduce evidence. The trial court then entered its decision, stated that “Ji Gang and Ji Hai Mei have no interest in the land and are entitled to the purchasing proceeds from Defendants”, then dismissed the issues of unjust enrichment and lost profits, claiming they were moot or undeveloped. Ji Gang had no opportunity to introduce evidence towards his claims of unjust enrichment and lost profits. The Trial Division abused its discretion when it vacated the second stage of the trial without giving Ji Gang a fair opportunity to develop his arguments.

[¶ 18] Therefore, because the parties had no opportunity to prove the existence and extent of damages, and because the trial court did not meet its obligation to resolve the material issues before it, we lack an adequate basis

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<sup>4</sup> We acknowledge that Mihaina testified that she never received any of the rental proceeds from Rexid and argues that neither she nor Eleu Lineage should be held liable for them. Although this argument may be meritorious, we decline to reach this question and leave it to be determined on remand.

for review. “In situations such as these, ...remand for further elaboration is appropriate.” *Estate of Tmilchol v. Kumangai*, 13 ROP 179, 182 (2006).

### CONCLUSION

[¶ 19] We **AFFIRM** the Trial Division’s Order on the issue of standing and **REVERSE** and **REMAND** the Trial Division’s Judgment on the issue of damages.