IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

ULIMANG COUNCIL of CHIEFS and IRRUNG CLAN, rep. by NGIRAIRUNG ISAAC SOALADAOB, and AUGUSTINO BLAILES,
Appellants,
v.
OTONG LINEAGE a.k.a. OTONG CLAN,
Appellee.

Cite as: 2024 Palau 5
Civil Appeal No. 22-024
Appeal from Civil Action No. 15-009

Decided: February 9, 2024

Counsel for Appellant Ulimang Hamlet Council	Vameline Singeo
Counsel for Appellant Augustino Blailes	Johnson Toribiong
Counsel for Appellee	J. Uduch Sengebau Senior

BEFORE: JOHN K. RECHUCHER, Associate Justice, presiding
FRED M. ISAACS, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Antonio L. Cortés, Associate Justice, presiding.

OPINION

PER CURIAM:

[¶ 1] Appellants Ulimang Council of Chiefs and Augustino Blailes appeal several orders issued by the trial court over a long-standing dispute for the access to a bai in Ulimang Hamlet, Ngaraard State.

[¶ 2] For the reasons set forth below, we **AFFIRM**.

BACKGROUND

[¶ 3] The parties dispute the use and ownership of Cadastral Lot No. 025 E 15 ("Lot 15") in Ulimang Hamlet, Ngaraard State, known as *Ikesus*, and the right of access to Cadastral Lot No. 025 E l6 ("Lot 16"). On December 13, 1996, the Palau Land Court issued a Certificate of Title stating that Lot 15 is owned in fee simple by Otong Lineage, chief title *Beches* as trustee. On the other hand, Lot 16 is owned by Ulimang Hamlet, chief title *Beches* as trustee. A bai was constructed on Lot 16 in the mid-1970s. Critically, Lot 16 and the bai can only be accessed by crossing Lot 15. The bai is the traditional meeting place for the Ulimang Hamlet Council of Chiefs and is sometimes used for public gatherings by the community of Ulimang.

[¶ 4] This case stems from a dispute over who is the rightful title-bearer between Evangelisto Ongalibang ("Evangelisto") and Augustino Blailes ("Augustino"). On February 8, 2008, *Beches* Iluches ("Iluches"), the chief of Otong Clan of Ngaraard State, passed away. At his funeral, two women possessed cognizable claims to the title of *Ebil Ra Otong*, the female title-bearer of Otong Clan: Ereong Remeliik, who appointed Evangelisto, and Siual Kadiasang, who appointed Augustino. The Ulimang Klobak met with Siual and accepted the latter's nomination of Augustino as *Beches*, and Augustino's blengur occurred on September 28, 2008.

[¶ 5] This situation led to a long series of actions between Otong Clan/Lineage and its strongest members on the one hand, and Ngirairung Isaac Soaladaob and Augustino Blailes on the other hand. The first of these actions was resolved by a lengthy trial and final judgment. Decision, *Remeliik v. Soaladaob*, Civ. Action No. 08-271, (Tr. Div. July 7, 2009) (hereinafter the "2009 Decision"), aff'd. *Soaladaob v. Remeliik*, 17 ROP 283 (2010) (recounting in detail the origins of the dispute). The 2009 Decision found that Ereong was the *Ebil Ra Otong* and that she properly appointed Evangelisto as *Beches*. The court stated:

> With that in mind, the Court concludes that although Augustino Blailes is currently *Beches*, Evangelisto Ongalibang's name was properly submitted to the Klobak under the customs of Palau and Augustino Blailes' name was not properly submitted to the

> Ulimang Klobak under the customs of Palau. The Klobak relied on faulty and incomplete information when it accepted Augustino Blailes as its friend…. The Court suggests that the Ulimang Klobak adopt Ereong's proposal, hear from both sides and decide on a *Beches*, as is customary.

2009 Decision, at 34. The 2009 Decision further found that although Evangelisto's faction asked the court to unseat Augustino and find that Evangelisto is Beches, the court was not empowered to make that decision, "first because the Ulimang Klobak is not a party to this suit and, more importantly, because the Court is not the Klobak. The Court cannot—and does not want to—make decisions as to who [*sic*] the Klobak should approve as its friend." *Id.*

[¶ 6] From 2009 onwards, several actions ensued between the parties and those in privity with the parties: *Ongalibang v. Blailes*, Civ. Action No. 09-178; *Ongalibang v. Blailes*, Civ. Action No. 09-187; *Ongalibang v. Blailes*, Civ. Action No. l0-160; *Orong Clan v. Blailes*, Civ. Action No. l4-181; *Shiro v. Blailes*, Civ. Action No. 17-324: *Ongalibang v. Remeliik*, Civ. Action No. l8-l3l; *Ulimang County v. Iskawa*, Civ. Action No. 19-097; and *Ongalibang v. Blailes*, Civ. Action No. l9-120.

[¶ 7] The access to the bai on Lot 16 was the recurrent issue of these actions. On at least four occasions, in Civ. Action No. 09-178, No. 10-160, No. 14-181, and No. 19-120, the Trial Division had to issue Temporary Restraining Orders and/or Preliminary Injunctions against Augustino and his privies to restrain them from entering Lot 15.

[¶ 8] We now turn to the underlying Civil Action No. 15-009 and its complex procedural background. First, on January 31, 2022, Appellants filed a Rule 60(b) Motion to correct what they alleged to be a "clerical error" on the Determination of Ownership and the Certificate of Title for Lot 15. The trial court denied this Motion on March 18, 2022 (hereinafter "Motion 60(b) Order"). On May 2, 2022, Appellants filed a Motion for Summary Judgment claiming to have an easement or right of way over Lot 15. On September 1, 2022, the trial court issued an Amended Order denying Appellants' Motion for Summary judgment (hereinafter "Right of Way Order"), in which it outlined

the reasons why it did not find an easement or right of way. On December 13, 2022, the trial court issued an Order Imposing Rule 11 Sanctions (hereinafter "Sanctions Order").[1] The day after, the trial court issued a Judgment, dated December 14, 2022. In this Judgment, the trial court made several findings and determinations. First, Lot 15 is owned by Otong Lineage, Chief *Beches* as trustee. Second, neither Appellants nor the general public have an easement, right of way, license, or other right allowing entry onto Lot 15 without the consent of Otong Lineage through its Chief *Beches*. Third, the trial court imposed financial sanctions upon Appellants and their counsel, specifically:

> Ngirairung Isaac Soaladaob shall pay sanctions of $2250 to Otong Lineage. . . . Augustino Blailes shall pay sanctions of $7000 to Otong Lineage. . . . Attorney Vameline Singeo shall pay sanctions of $2000 to Otong Lineage. . . . Augustino Blailes shall pay sanctions of $1000 to the Court. . . . Attorney Johnson Toribiong shall pay sanctions of $1500 to the Court.

[¶ 9] Judgment, *Ulimang Cnty. Counsel of Chiefs et al. v. Otong Lineage et al.*, Civ. Action No. 15-009, at 2-3 (Tr. Div. Dec. 14, 2022). In addition, the trial court ordered that Attorneys Johnson Toribiong and Vameline Singeo "shall arrange to spend two hours in the Law Library . . . studying the Restatement (Third) of the Law Governing Lawyers." *Id.*

STANDARD OF REVIEW

[¶ 10] This Court reviews the trial court's denial of a Rule 60(b) motion for relief from judgment for abuse of discretion and will not evaluate the merits of the underlying judgment. *Ngeremlengui State Pub. Lands Auth. v. Telungalk Ra Melilt*, 18 ROP 80, 83 (2011). "An abuse of discretion occurs when a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper and no improper factors are considered,

[1] This Order imposed sanctions only after the trial court first issued an Order to Show Cause why sanctions should not issue, through which the parties had the opportunity to submit written and oral responses on the subject.

but the court in weighing those factors commits a clear error of judgment." *Eller v. ROP*, 10 ROP 122, 128-29 (2003).

[¶ 11] Similarly, a lower court's decision regarding Rule 11 sanctions or fees is reviewed for abuse of discretion. *Shmull v. Rosenthal*, 8 ROP Intrm. 261, 261–62 (2001). However, Appellants challenges to the trial court's legal conclusions on the matter of the right of way are reviewed on a de novo basis. *Estate of Asanuma v. Blailes*, 13 ROP 84, 86 (2006).

DISCUSSION

[¶ 12] Ulimang Council argues that the trial court erred in denying the Rule 60(b) Motion, that a pre-existing right of way exists through *Ikesus*, and that the trial court erred in imposing sanctions. Augustino raises a similar argument against the sanctions, but additionally maintains that the trial court erred when it determined that res judicata was applicable to voluntary dismissals, that there is a *Beches* of Otong Clan and a *Beches* of the Klobak, and that prior orders had determined the title of *Beches* in favor of Evangelisto. We address these arguments in turn.

I. Rule 60(b) Motion

[¶ 13] Ulimang Council and Augustino argue that the Land Commission Hearing Office committed a clerical error when it issued a Determination of Ownership and a Certificate of Title stating that Lot 15 was owned by Otong Lineage, rather than Ulimang Hamlet. The trial court found that their motion was untimely, as it came almost thirty years after the issuance of the Certificate. The trial court also stated that even if the motion had been reasonably timely, it would still be insufficient.

[¶ 14] Under Civil Procedure Rule 60(b), the trial court may relieve a party from a final judgment, order, or proceeding for several reasons, including mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud. Rule 60(b) motions "shall be made within a reasonable time." ROP Civ. P. 60(b). Whether the motion is made within a reasonable time is a "threshold matter" for the Court to address first. *Ngeremlengui State Pub. Lands Auth. v. Telungalk Ra Melilt*, l8 ROP 80, 85 (2011). For mistakes, the Rules of Civil

Procedure specifically provide that the motion must be made no more than a year after the entry of judgment. ROP R. Civ. P. 60(c)(1).

[¶ 15] Ulimang Council submits that the Certificate of Title should be corrected under Rule 60(b)(4), which provides relief when the judgment is void, Rule 60(b)(5) when the judgment has been satisfied,[2] and Rule 60(b)(6), for any other reason justifying relief. However, a clerical error is a mistake which falls squarely within Rule 60(b)(1) and the 1-year deadline. Ulimang Council has not satisfyingly argued nor does the record reveal that the judgment was void or satisfied in any way. We have explained that Rule 60(b)(6) is a "catch-all provision [that] 'affords relief from a final judgment only under extraordinary circumstances.'" *Estate of Tmetuchl v. Siksei*, 14 ROP 129, 130 (2007) (quoting *Irruul v. Gerbing*, 8 ROP Intrm. 153, 154 (2000)). Thus, Appellants cannot resort to Rule 60(b)(6) in the absence of a showing of extraordinary circumstances.

[¶ 16] The trial court did not abuse its discretion when it concluded that the Motion 60(b) was untimely because it exceeded the 1-year deadline, and Appellants failed to bring forward any evidence of extraordinary circumstances that would justify granting the Motion under Rule 60(b)(6). We have repeatedly emphasized that the conclusiveness of certificates of title is consistent with the important public policy favoring the final adjudication of land titles to promote certainty and to preclude endless litigation *Ngirasibong v. Abelbai*, 4 ROP Intrm. 95, 100 (1993). Therefore, we affirm the trial court's decision in this regard.

II. Right of Way

[¶ 17] Appellants maintain that they have a right of way through Lot 15 to access the bai. They alternatively assert that they have an implied easement or an easement of necessity since the bai has been accessed for public events since the 1970s, and there is no way to access the bai other than by crossing Lot 15. The trial court held in its Right of Way Order that Appellants did not prove

[2] The full rule provides that the judgment has been "satisfied, released, or discharged, or prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." ROP R. Civ. P. 60(b)(5).

either as both types of easements are predicated on an initial unity of ownership and a conveyance of the land.

[¶ 18] As this Court has previously recognized,

> When land in one ownership is divided into separately owned parts by a conveyance, an easement may be created . . . in favor of one who has . . . a possessory interest in one part as against one who has . . . a possessory interest in another part by implication from the circumstances under which the conveyance was made, alone.

Irikl Clan v. Renguul, 8 ROP Intrm. 156 (2000) (quoting Restatement of Property § 424 (1944)).

[¶ 19] Under the Third Restatement of Property on Servitudes,[3] servitudes are created by implication from the circumstances surrounding the conveyance of another interest in land. Restatement (Third) of Property (Servitudes) § 2.11 (2000). On the other hand, servitudes by necessity are typically implied when a "conveyance that would otherwise deprive the land conveyed to the grantee, or land retained by the grantor, of rights necessary to reasonable enjoyment of the land." *Id.* at § 2.15. Critically, both types of easements require a conveyance following an initial unity of ownership.[4]

[¶ 20] As the trial court correctly noted, Appellants did not prove the required conveyance. Lots 15 and 16 were separated prior to 1941, and the bai was not constructed until the 1970s. Appellants did not show that the public accessed Lot 16 before the construction of the bai. Appellants submit that they

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[3] We note that this Third Restatement adopts a slightly different approach to easements than the 1944 Restatement of Property quoted in *Irikl*. The Third Restatement now distinguishes between different types of servitudes, including servitudes by implication and servitudes by necessity.

[4] "Although the public policy favoring utilization of land and avoidance of the costs involved in forcing the landlocked owner to acquire access rights from the neighboring landowners might have justified it, the common law never developed a general method for providing access to landlocked property. Only if the cause of the landlocking can be traced back to a particular conveyance does the common law provide a solution." Restatement (Third) of Property (Servitudes) § 2.15, cmt. b (2000).

had unobstructed public access to the bai from the 1970s until the start of the dispute in 2009, but this is insufficient because it was not the separation of the two lots that "caused the necessity to arise." Restatement (Third) of Property (Servitudes) § 2.15, cmt. c (2000). The trial court rightfully recognized that the answer to this dispute was not to be found in the common law. While the answer might be found in custom, neither party presented evidence that would have allowed the trial court to make a finding of custom under *Beouch v. Sasao*, 20 ROP 41 (2013). Therefore, we do not find error in the trial court's determination.

III. Sanctions

[¶ 21] Finally, Appellants maintain that the trial court erred in sanctioning Appellants and their respective counsel. The trial court imposed Rule 11 sanctions on several discrete bases, but the parties only appeal two: Soaladaob's claim to have superior authority over the Ulimang Klobak and Augustino's continued assertion that he is *Beches*.

[¶ 22] Rule 11 of the Rules of Civil Procedure allows the court to impose sanctions on parties who raise baseless or frivolous claims. It provides that by presenting a pleading, written motion, or other paper to the court, an attorney certifies that to the best of his or her knowledge, formed after an inquiry reasonable under the circumstances, such document is not being presented for any improper purpose, that the document's legal contentions are warranted by existing law or nonfrivolous, that its factual contentions have evidentiary support, and that any denials of factual contentions are warranted on the evidence. ROP R. Civ. P. 11(b). A pleading does not violate Rule 11 simply by being unsuccessful; it must be wholly without merit. *Rdialul v. Kirk & Shadel*, 12 ROP 89, 94 (2005). In fact, Rule 11 sanctions are an "unusual and somewhat extraordinary measure because their purpose is to be punitive and act as a deterrent to future conduct." *PCSPP v. Udui*, 22 ROP 11, 19 (2014) (citing *Arugay v. Wolff*, 5 ROP Intrm. 239, 247 (1996)).

[¶ 23] The trial court found that the 2009 Decision explicitly resolved the claim of *Ngirairung*'s superior authority in the Ulimang Klobak, and Augustino's claim to the *Beches* title. As such, it found that Appellants' claims were untenable as a matter of law because the 2009 Decision had clearly rejected them, they were devoid of evidentiary support, and that Appellants had

an improper motive in raising these claims: to burden Otong's property rights in Lot 15 and increase the cost of proceedings. We analyze these sanctions in turn.

A. Ngirairung's alleged superior authority

[¶ 24] Soaladaob argues that the 2009 Decision's finding on *Ngirairung*'s authority were not necessary to the decision and only incidental to it. As such, Soaladaob's renewed claims that "the title *Ngirairung* . . . has superior authority over the Klobak of Ulimang," and that, "therefore every decision of the Klobak of Ulimang has to be approved by *Ngirairung*" were not untenable as a matter of law. The 2009 Decision made a clear finding that *Ngirairung* is the chief of Irrung Clan and the fifth ranking title in the Ulimang Koblak. 2009 Decision, at 15, n. 26. The 2009 court further noted that the evidence did not support that *Ngirairung* had a role to play in disputes over the *Beches* title. *Id.*[5] Thus, the 2009 Decision determined that *Ngirairung* is the fifth-ranking title in the hamlet, which directly contradicts Soaladaob's superior authority claim. The trial court did not abuse its discretion in imposing sanctions against Soaladaob and his counsel.

B. Augustino Blailes holding himself out as Beches

[¶ 25] The trial court in its Sanctions Order imposed sanctions on Augustino as he continued to claim to be *Beches* after this claim was rejected in the 2009 Decision, and noted that several of the Civil Actions following the 2009 Decision reiterated this holding in preliminary injunctions. Augustino points to a July 22, 2015 letter signed by Ereong claiming to appoint Augustino as *Beches*, which he introduced during the sanctions hearing. He maintains that this letter constituted a sufficient basis for Augustino to argue in good faith that he became *Beches* following the 2009 Decision. However, the trial court found

[5] The 2009 Decision stated that "Defendants [Appellants] contend . . . that Ngirairung has historically held great powers within Ulimang, especially Otong Clan. According to legend, Ngirairung organized the Klobak and appointed the first Beches. Further the seating in the Klobak reflects Ngirairung's special position. He is seated next to Beches. The Court notes that there are no references to Ngirairung in the dispute over the Beches title between Orrukem and Rengiil, nor has there been any testimony of Ngirairung's involvement in the dispute between Elbelau and Iluches before Iluches became Beches. When asked, Ngirairung testified that he had no knowledge of his predecessor's involvement in these conflicts over Beches." 2009 Decision, at 15, n. 27.

that such letter had several shortcomings, chief among them that Augustino failed to present evidence that the letter followed the customary steps outlined in the 2009 Decision to appoint the male titleholder, including the approval of the *ourrots*. Accordingly, the trial court did not abuse its discretion in imposing sanctions against Augustino and his counsel.

[¶ 26] Augustino raises additional arguments: first, that he cannot be precluded from arguing that he is *Beches* based on Civil Actions that were dismissed voluntarily and without prejudice;[6] second, that the trial court erred in seemingly indicating that there are two *Beches* titles; and third, that the trial court committed error in interpreting the 2009 Decision to declare that Evangelisto and Paulus Ongalibang held the *Beches* title. However, the only relevant inquiry is whether Augustino presented sufficient evidence to justify his *Beches* claim under the standards set by Rule 11. Therefore, these issues were incidental to the determination and we do not need to reach them to uphold the sanctions. Were we writing on a clean slate we might very well impose different, lesser, or perhaps no sanctions. But such is not the case; we are reviewing a narrow point under Rule 11 under the abuse of discretion standard, and for the reasons noted, we do not find the court's imposition to have been an abuse of discretion.

CONCLUSION

[¶ 27] We **AFFIRM** the Trial Division's judgment.

[6] Augustino here refers to Civ. Actions No. 09-178, No. 10-160 and No. 19-120, in which the Trial Division issued Preliminary Injunctions.