IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

CHILDREN OF KADOI, represented by Ruth Kadoi
Appellants,
v.
RICHARD EBERDONG, EPHRAM POLYCARP, EFREN POLYCARP, VANCE POLYCARP, OMAR POLYCARP, and LENTCER BASILIUS,
Appellees.

Cite as: 2024 Palau 8
Civil Appeal No. 23-006
Appeal from Civil Case No. 19-146

Decided: February 23, 2024

Counsel for Appellants	Raynold B. Oilouch
Counsel for Appellee Richard Eberdong	Salvador Remoket
Counsel for Appellees Ephram Polycarp, et al.	Kevin Kirk

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

Appeal from the Supreme Court, Trial Division, the Honorable Kathleen M. Salii, Presiding Justice, presiding.

OPINION

PER CURIAM:

[¶ 1] This is an appeal from the Trial Division's order and judgment awarding constructive trusts on the land known as *Debar* in favor of Richard Eberdong, the Polycarps, and Lentcer Basilius (collectively, "Appellees") as an equitable remedy because, although invalid, the deeds vested Appellees with equitable title.

[¶ 2] For the reasons set forth below, we **AFFIRM in part** the Trial Division's determination in law to grant an equitable remedy and **VACATE and REMAND in part** its order imposing constructive trusts as the remedy.

BACKGROUND

[¶ 3] This case concerns Lot No. 028-C-22 in Melekeok State, known as *Debar*. The Tochi Daicho lists the land as Lot 317 and the individual property of Kadoi. Kadoi died intestate and was survived by his natural children: Miyawo, Christina, Tobed, Hanenore, Augustus, Anserm, and Nery ("Larry").[1] The ownership of *Debar* was subject to prior proceedings before the Land Claims Hearing Office ("LCHO"), Trial Division, and Appellate Division. The Land Court issued a Determination of Ownership and Certificate of Title to the "Children of Kadoi." *See Kadoi v. Ngirakesau*, 3 ROP Intrm. 137, 139 (1992).

[¶ 4] Between 1992 and 2006, Miyawo and Christina purported to convey parts of *Debar* to Appellees through a series of transactions: 1) in 1992, Miyawo and Christina executed a Deed of Sale in favor of Eberdong for 20,000 square meters; 2) in 2001, Miyawo executed a Warranty Deed in favor of Ephram Polycarp for 4,000 square meters; and 3) in 2006, Miyawo and Christina executed two more Warranty Deeds conveying a total of 23,000 square meters to Ephram and his siblings (collectively, "the Polycarps") and Lentcer. Then in 2008, Eberdong conveyed 3,300 square meters of his interest in *Debar* to Ephram by a quitclaim deed, which was recorded. Ruth, Christina, Tobed, Hanenore, Augustus, Anserm, Larry, and Svetlana (collectively, "Appellants") executed a Deed of Transfer in 2018 to partition *Debar*, which included Eberdong's interest for 20,000 square meters.

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[1] In 1989, Miyawo claimed *Debar* "as a tenancy in common of the [natural] children of Kadoi," enumerating his six siblings by name. Summ. & Adjudication, *Kadoi v. Ngirakesau*, SC/CA No. 661-89, at 1 (LCHO Oct. 6, 1989). However, in its September 22, 2021 Order Granting Children of Kadoi's Motion for Summary Judgment, the trial court stated that the biological children of Kadoi are Miyawo, Tobed, Hanenore, Augustus, Anserm, Larry, Jacob, Sylvester, and Luisiana. The court further noted that "it appears there are other children, who may have been adopted . . . because at least one party has mentioned as much as [twelve] children." During oral argument, both parties agreed that at all relevant times during the prior proceedings, Jacob, Sylvester, and Luisiana were off island. The question of who is or might be other children of Kadoi—natural or adopted, on-island or off-island—was not addressed below, is not an issue on appeal, and forms no part of this Court's decision. *See infra* ¶ 28 n.4.

[¶ 5] In 2019, the Polycarps and Lentcer filed a Petition to Partition Land with the trial court, claiming 8,000 square meters of *Debar* that they own in fee simple based on their 2006 warranty deed. Notice was issued to the public for anyone claiming an interest in the land. Eberdong filed his claim, and Appellants filed an objection. Subsequently, Appellants moved for summary judgment and Eberdong moved for partial summary judgment.

[¶ 6] On September 22, 2021, the trial court granted Appellants' motion for summary judgment and invalidated both the 1992 and 2018 deeds. The court also requested Appellants to file a supplemental brief on equitable remedies and Appellees to respond. Appellants moved for reconsideration, which the trial court granted on October 18, 2021, amending its previous order to read "GRANTED in part" and for Appellees, instead, to first file supplemental briefs. After receiving the parties' supplemental filings and holding a hearing, the court issued its judgment on December 28, 2022, imposing constructive trusts on *Debar* in favor of Appellees for the parcels they respectively paid for as described in the invalid deeds. This timely appeal followed.

STANDARD OF REVIEW

[¶ 7] "We review matters of law de novo, findings of fact for clear error, and exercises of discretion for abuse of that discretion." *Kammen Chin v. Ngerebrak Clan*, 2024 Palau 4 ¶ 5. Under clear error review, the findings of the lower court will be set aside only if they "lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion." *Etpison v. Rechucher*, 2022 Palau 2 ¶ 14. Generally, a discretionary act or ruling under review is presumptively correct and will not be overturned on appeal unless the decision was "arbitrary, capricious, or manifestly unreasonable or because it stemmed from an improper motive." *Rexid v. Becheserrak*, 2023 Palau 10 ¶ 8.

DISCUSSION

[¶ 8] On appeal, Appellants present several assertions of error, which boil down to two key issues: 1) the trial court erred when it raised *sua sponte* the issue of equitable remedies in the September 22, 2021 Order Granting Summary Judgment and the October 18, 2021 Reconsideration Order; and 2) the trial court abused its discretion in awarding constructive trusts in equity to

Appellees in the December 28, 2022 Order and Judgment. Appellee Eberdong also raises an issue on appeal: the trial court erred in finding the deeds were invalid due to lack of consent. We address each in turn.

I. Raising *Sua Sponte* the Issue of Equitable Remedies

[¶ 9] After finding "that the deeds of transfer [we]re invalid under the law," the trial court raised the issue of equitable remedies in its September 22, 2021 and October 18, 2021 Orders and requested supplemental briefing "on the effect of legally invalid deeds." Appellants argue that their due process rights were violated and that the October 18, 2021 Reconsideration Order was an abuse of discretion because the trial court amended its previous order to grant partial, instead of full, summary judgment to Appellants.

A. Right to Due Process

[¶ 10] "The hallmark of procedural due process is the requirement that the government provide notice and an opportunity to be heard before depriving a person of life, liberty, or property." *Bechab v. Anastacio*, 20 ROP 56, 63 (2013). Where a trial court grants summary judgment "on an issue not raised by a movant, it must first provide the non-movant reasonable notice of its intention to do so, in order that the non-movant 'has an adequate opportunity to argue and present evidence on that issue.'" *Palau Nat'l Commc'ns Corp. v. Uludong*, 2016 Palau 13 ¶ 29.

[¶ 11] Appellants contend that Appellees failed to seek equitable relief in their Petition or file pretrial motions seeking equitable remedies. However, several of Appellees' filings prior to and contemporaneous with the September 22, 2021 Order addressed this. Chronologically, Eberdong raised the issue of equity in his Motion for Partial Summary Judgment, which Appellants acknowledge; the Polycarps and Lentcer requested partition of the land in equity in their Opposition to the Children of Kadoi's Motion for Summary Judgment; and Appellees asked the trial court "to exercise its equitable powers" in their supplemental briefs following the trial court's orders. The trial court provided, and Appellants had, meaningful notice and ample opportunities to be heard on the issue of equitable remedies. Accordingly, we find no violation of due process.

B. Motion for Reconsideration

[¶ 12] "We review a trial court's handling of a motion for reconsideration for abuse of discretion." *Rekemel v. Tkel*, 2019 Palau 36 ¶ 5. A partial summary judgment declaring that a party's rights have been violated, but "expressly reserving for future litigation a decision on the matter of appropriate relief, does not constitute a final judgment. Instead, a judgment 'is final . . . when there is no further judicial action required to determine the rights of the parties." *Toribiong v. Seid*, 23 ROP 1, 3 (2015).

[¶ 13] Appellants argue that the trial court's October 18, 2021 Order arbitrarily converted summary judgment for Appellants into a partial summary judgment. In the September 22, 2021 Order, the trial court granted Appellants' motion based on the invalidity of the 1992 and 2018 deeds, but reserved the legal issue of equitable relief for supplemental briefing. Regardless of its title, the September 22, 2021 Order only granted partial summary judgment to Appellants as it neither resolved all issues related to the parties' claims nor was it a final judgment. By amending the September 22, 2021 Order to read "GRANTED in part" and reiterating its request for supplemental briefing on equitable remedies, the trial court corrected itself through the October 18, 2021 Order to accurately reflect the disposition of the case.

[¶ 14] Additionally, Appellants argue that the trial court was no longer a neutral arbiter as "it continued to search [for] ways to award parts of *Debar* land [in equity] to the Appellees."[2] This is a mischaracterization. In the October 18, 2021 Order, the trial court explained it might be "the principles of equity [that] permit the Court to find in law that legally invalid deeds of transfer might still operate in equity to grant an interest to [Appellee]s." It further clarified in a footnote that it was asking for a "legal briefing on whether the Court has the power to find that an invalid deed . . . operate[s] to transfer interests in the land . . . based on the principles of equity." The trial court made no conclusions, presented an open question, and gave both parties equal

[2] At best, questioning the trial court's integrity is ineffective advocacy. *Imeong v. Yobech*, 2016 Palau 21 ¶ 25. "To be clear: a party injured by judicial impropriety will have a remedy. But claiming that a Justice of the Court acted dishonestly is a serious accusation, and one that should be supported by more than seriously ill-advised bravado." *Id.*

opportunities to argue the issue. We discern no improper motive in raising equitable remedies *sua sponte*; thus, the trial court did not abuse its discretion.

II. Imposing an Equitable Remedy

[¶ 15] In the December 28, 2022 Order, the trial court concluded that "[i]t would go against equity to allow [Appellants] to retain title to *Debar* when [Appellees] paid valuable consideration for their shares[,] which they reasonably believed were legally conveyed." Appellants contend that the trial court erred in estopping Appellants from asserting a statute-of-limitations defense and imposing constructive trusts for the land in favor of Appellees.

A. Appellee Eberdong's Assignment of Error on Appeal

[¶ 16] Before addressing Appellants' contention, we must first resolve Appellee Eberdong's arguments on appeal: the trial court erred in finding the deeds were invalid because Miyawo and Christina had apparent authority to represent all the Children of Kadoi in conveying the land, and that he is estopped from asserting a statute-of-limitations defense.

[¶ 17] "No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited that issue." *Ngerdelolk Hamlet v. Peleliu State Pub. Lands Auth.*, 2021 Palau 15 ¶ 7. Particularly in land litigation, this rule "bring[s] stability to land titles and finality to disputes." *Ngiratereked v. Erbai*, 18 ROP 44, 46 (2011). Upon review of the record below, including Eberdong's motion for partial summary judgment, response to Appellants' motion to dismiss, response in opposition to Appellants' motion for summary judgment, supplemental briefs pursuant to the trial court's orders, and the court's final December 28, 2022 Order, we find that Eberdong did not make the argument for apparent authority that is being presented on appeal. Accordingly, this issue is forfeited.

[¶ 18] "The statute of limitations for actions to recover land is twenty years, 14 PNC § 402; [and] for any other legal claim potentially applicable to the case is six years, 14 PNC § 405." *Minor v. Rechucher*, 22 ROP 102, 110 (2015). Generally, the statute of limitations for suing for the recovery of land relates to adverse possession. *See id.* at 110. "By contrast, where the essence of a claim is that the owner did part with title to his land, . . . [and] he is not . . . in a position to say[,] 'Get off my land[,]' . . . until some deed . . . is undone,"

such claim is governed by the six-year statute. *Isimang v. Arbedul*, 11 ROP 66, 72 (2005). Courts have long held that a party is equitably estopped from asserting a statute-of-limitations defense "when its actions led the party against whom the defense is asserted to justifiably believe that the time limit would be tolled." *Becheserrak v. ROP*, 4 ROP Intrm. 103, 108 (1993).

[¶ 19] Other than the 2018 deed, it is undisputed that more than six years have passed since the deeds were signed. However, during the six-year periods following the signing of these deeds, the trial court noted in its December 28, 2022 Order that "from time to time, [Eberdong] would see one of the Children of Kadoi and ask about his portion, [and] he was always assured not to worry, that he will receive his share as agreed in the past." Appellants concede that Eberdong repeatedly dealt with Miyawo, Christina, and Ruth. Eberdong also testified that three years after he had signed the 1992 deed, he surveyed his purported 20,000 square meters with Miyawo. *See* Trial Tr. 14:9–21; 17:24–28. The six-year limitation period for the 2018 deed will elapse on July 12, 2024 as the signing of the deed was the first act that triggered the running of the statute. *See Isimang*, 11 ROP at 74. Thus, Eberdong is not barred from claiming his interest. Finding that the correct statute was applied and no clear error, we affirm the trial court's determination that Appellants are estopped from asserting the statute of limitations defense.

C. Constructive Trusts in Equity

[¶ 20] Pursuant to the Constitution, "[t]he judicial power shall extend to all matters in law and equity." ROP Const. art. X, § 5; *see Ngiraterang v. Ngarchelong State Assembly*, 2021 Palau 18 ¶ 9. Where not specifically requested by either party, the court may grant equitable relief if it finds that such relief is the most appropriate remedy to end the controversy and the party has generally prayed for "all other just and proper relief." *Fan v. Pacifica Dev. Corp.*, 16 ROP 56, 62 (2008); ROP R. Civ. P. 54(c). However, "the relief must be based on what is alleged in the pleadings and justified by plaintiff's proof, which the opposing party has had the opportunity to challenge." *Lucio Obakerbau v. Nat'l Weather Serv.*, 14 ROP 132, 134–35 (2007).

[¶ 21] Given that land is not fungible, equitable remedies are preferred for real property. *See In re Estate of Delemel*, 1 ROP Intrm. 653A, 653C (1989); *see also* 27A Am. Jur. 2d *Equity* § 30 (Feb. 2024). In a tenancy in common,

each cotenant has an undivided interest, or an equal right to possess the whole. *See Shih Bin-Fang v. Mobel*, 2020 Palau 7 ¶ 24. Therefore, a conveyance by one cotenant of a specific parcel of the common tract "is inoperative to impair any of the rights of his cotenants" without their consent. *Id.* at ¶ 24. However, where a contract for the transfer of real property fails to vest legal title in the transferee, the contract "does vest equitable title." *Id.* at ¶ 37. Thus, while all tenants in common hold legal title in the land, the equitable interest held by any one cotenant secures his beneficial use and possession of the whole property. *See* Restatement (Fourth) of Property § 1.3 (Vol. 4) TD No. 3 (2022).[3]

[¶ 22] "A constructive trust arises where a person who holds property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it." *Basiou v. Ngeskesuk Clan*, 8 ROP Intrm. 209, 211 (2000). Where property is owned as a tenancy in common, an equitable entitlement to a specific parcel of the common land must not prejudice the (undivided) interests of the non-consenting cotenants. *See Shih Bin-Fang*, 2020 Palau at ¶ 24. Stated differently, the grantee of a specific parcel of the common tract from one cotenant is equitably entitled to have that parcel allotted to him only when doing so does not injure the interests of the non-consenting cotenants. One's right to enforce a constructive trust may also be terminated by laches, which requires "an individualized inquiry into the situation of the parties, weighing the justification (if any) for the plaintiff's delay and prejudice (if any) to the defendants." *Minor*, 22 ROP at 113.

[¶ 23] Appellants argue that the trial court was limited to awarding restitution, Appellees were barred by laches, and, if Appellees were entitled to receive the land that the court gave them more than what they were entitled to. First, in their Petition, the Polycarps and Lentcer generally asked the trial court to grant "such relief as may be just and proper." Second, as we noted above, Appellees requested and raised the issue of equitable remedies in multiple filings prior to and contemporaneous with the trial court's September 22, 2021 and October 18, 2021 Orders. Therefore, notwithstanding Appellees' general

[3] At the 2022 Annual Meeting, the membership of the American Law Institute voted to approve Tentative Draft No.3, which includes material from Volumes 2, 3, 4, and 7. *Restatement of the Law Fourth: Property*, A.L.I., https://www.ali.org/projects/show/property/#_status (last visited Feb. 15, 2024). *See generally* 1 PNC § 303 (applying the rules of U.S. common law in the absence of applicable Palauan statutory or customary law).

prayer for relief, they requested the court to exercise its equitable powers and grant an appropriate remedy throughout the proceedings. The trial court did not abuse its discretion in broadly considering remedies, including constructive trusts, in the December 28, 2022 Order.

[¶ 24] Appellants contend that Appellees were guilty of laches because Eberdong "did not do anything to the land until after the Petition was filed" and the Polycarps and Lentcer "only filed the Petition for [a] parcel-split in 2021" despite purportedly acquiring ownership in 2001. First, we note that the Petition was filed in 2019, not 2021. Second, because the trial court's December 28, 2022 Order is devoid of any discussion of laches, we are precluded from meaningful review. *See Koror State Pub. Lands Auth. v. Idong Lineage*, 17 ROP 82, 85 (2010). However, in the interest of fully addressing Appellants' contentions, here, prejudice to Appellants do not outweigh Appellees' justification for the delay. Although Miyawo died in 2014, Ruth was alive at the time the deeds were signed and has first-hand knowledge of the transactions. In fact, in the following years, Appellees received oral assurances from Ruth that they will receive their parcels of *Debar*. Additionally, Appellees paid for the land in full and Appellants have not contested otherwise. Although Eberdong never worked on the land, Ephram bulldozed his purported 4,000 square meters and "constructed several foundations for buildings" in 2002. *See* Aff. of Ephram Polycarp, Civil Action No. 19-146, at 4 (May 26, 2021). There was no objection from Appellants. Thus, the record justifies equitable relief.

[¶ 25] In the December 28, 2022 Order, the trial court stated that equity obligates Appellants "to surrender the portions of *Debar* that [Appellees] paid for." Each deed purported to convey a certain area of *Debar*, ranging from 4,000 to 20,000 square meters. To grant Appellees their respective parcels, *Debar* must be partitioned and the interests of the Children of Kadoi, whether there are seven or twelve in total,[4] must also be determined and divided. Although Appellants attempted to partition *Debar* by agreement through the 2018 deed, nothing in the record shows that Miyawo's heirs, whoever they may be, had consented. Since the constructive trusts would convey divided

[4] The specific individuals belonging to the class "Children of Kadoi" have never been clearly determined by the lower courts. *See supra* ¶ 3 n.1; *infra* ¶ 28 n.4.

interests in *Debar*, they cannot be enforced against all the Children of Kadoi as the undivided interests of the non-consenting cotenants would be prejudiced. Because the trial court misapprehended the law of a tenancy in common, its grant of constructive trusts was an abuse of discretion.

[¶ 26] However, Appellees are not without remedy. One's entitlement to land through restitution is determined by "(a) the reasonable value . . . of what it would have cost him to obtain it from a person in the claimant's position, or (b) the extent to which the . . . property has been increased in value or his other interests advanced." *Estate of Nobor King v. Rengulbai*, 19 ROP 9, 16 (2011). Appellees may become tenants in common with the Children of Kadoi, with the Polycarps and Lentcer receiving the undivided interests of Miyawo and Christina, and Eberdong receiving Appellants' interests up to 20,000 square meters. *See Wally v. Sukrad*, 6 ROP Intrm. 38, 41 n.9 (1996). Alternatively, the trial court may determine that the land should be partitioned in-kind to promote the best interests of the cotenants, considering the totality of the circumstances. *See Fairbanks Dev., L.L.C v. Johnson*, 295 So. 3d 1279, 1289 (La. App. 2d Cir. 2020) ("Whether or how a particular tract of land may be divided in kind are necessarily fact-specific, considering such factors as the size of the tract, the natural characteristics of the land, the presence or absence of public-road access, [and] the number of owners indivision . . . ."); *see also* 59A Am. Jur. 2d *Partition* § 3 (Feb. 2024). We neither endorse nor reject such courses of action. The grant of an equitable remedy is within the sound discretion of the trial court, and we leave it to that court to apply that discretion, taking all the relevant factors into account.

III. Considerations on Remand

[¶ 27] "We usually loathe to dictate to the Trial Division how it should conduct its proceedings." *Shih Bin-Fang*, 2020 Palau at ¶ 48. Nonetheless, we will make some observations, which we hope may be helpful to the trial court and litigants, along with some instructions for guidance on remand.

[¶ 28] The dispute centers on who is a tenant in common within the "Children of Kadoi" as expressed in the Certificate of Title for *Debar*. As noted by the trial court in the September 22, 2021 Order, we agree that "the trial decision remanding the LCHO decision [and] the appellate decision upholding

the trial decision [n]ever decided *who* the Children of Kadoi are."[5] Therefore, to avoid a repetition of this saga, we instruct the trial court to make a clear finding on the membership of the "Children of Kadoi." *See Masang v. Ngirmang*, 9 ROP 125, 129 (2002) (holding that the court must identify who specifically inherited the decedent's interests by naming his children individually rather than awarding title to "the children of Masang"). Prior to determining an equitable remedy, it may also behoove the trial court to determine who are the rightful heirs of Miyawo pursuant to statute and/or custom because the interest of a deceased cotenant passes equally to his heirs. *See Robert v. Ngirngemeusch*, 2023 Palau 5 ¶¶ 20–23.

[¶ 29] Finally, if, after weighing the equities, the court decides that partition in-kind is the most appropriate remedy, the trial court must ensure that, when the Bureau of Lands and Surveys conducts a survey of *Debar*, all parties to this case are given proper notice and an opportunity to object. Recognizing some children of Kadoi may be off island, their "mere absence from the Republic in no way diminishes [their] right to continue to own property or to due process." *Robert v. Robert*, 2021 Palau 34 ¶ 24. However, due process does not require "a worldwide search" and is "satisfied by either serving notice on such individuals' representatives in the Republic or complying with the public notice requirements set forth in 35 PNC § 1309(b)." *Id.* Lack of notice makes the Certificates of Title liable to a future collateral attack, which must be avoided at all costs to maintain a credible and reliable land registration system.

CONCLUSION

[¶ 30] For the reasons set forth above, we **AFFIRM in part** the trial court's legal conclusion that Appellees are entitled to equitable relief and **VACATE in part** its order awarding constructive trusts. The matter is **REMANDED with instructions** for further proceedings consistent with this Opinion.

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[5] "In determining land ownership, the Land Court can, and must, choose among the claimants who appear before it . . . ." *Ibuuch Clan v. Children of Antonio Fritz*, 2020 Palau 1 ¶ 12. Although Miyawo named himself and his six siblings as the children of Kadoi before the LCHO, the LCHO ultimately determined that the land belonged to Uchelkumer Lineage. In reversing and remanding the LCHO's determination "with instructions to enter a new determination that the land *Debar* is the property of the children of Kadoi as tenants in common," the trial court found that "during [Kadoi]'s *[ch]eldecheduch* it was mentioned that all lands listed under Kadoi's name [we]re designated as property *of his children*." Decision, *Kadoi v. Ngirakesau*, Civil Action No. 661-89, at 2 (Tr. Div. Oct. 28, 1990) (emphasis added).