AIMELIIK STATE PUBLIC LANDS AUTHORITY,
Appellant,

v.

KAZUYUKI RENGCHOL, through his attorney-in-fact McVey Kazuyuki,
Appellee.

CIVIL APPEAL NO. 09-029
Civil Action No. 09-001

Supreme Court, Appellate Division
Republic of Palau

Decided: August 20, 2010

[1] **Return of Public Lands:** Nature of Claim

A claim to superior title than a governmental entity claiming ownership of land is distinct from a return of public lands claim and thus need not abide by the return of public lands statutory deadline.

[2] **Land Commission/LCHO/Land Court:** Determinations of Ownership

Procedural deficiencies of an unappealed determination of ownership may be asserted on collateral attack.

[3] **Appeal and Error:** Preserving Issues

Arguments should not be raised for the first time on appeal.

[4] **Appeal and Error:** Preserving Issues

The Appellate Division only decides issues properly presented to it, including citation to relevant legal authority. Litigants may not, without proper support, recite a laundry list of alleged defects in a lower court's opinion and leave it to the Appellate Division to undertake the research.

Counsel for Appellant: Moses Y. Uludong

Counsel for Appellee: Susan Kenney-Pfalzer

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

Aimeliik State Public Lands Authority ("AIMSPLA") appeals the Trial Division's November 2, 2009 decision ordering the Land Court to issue Kazuyuki Rengchol and his siblings a new certificate of title to the land *Teruong*. The Trial Division's decision found errors in the original determination of ownership of the land *Teruong* which eventually led to the issuance of a certificate of title reflecting an award of land to Rengchol and his siblings that was markedly smaller than the land they had sought to claim at an unopposed hearing in 1992. Finding AIMSPLA's appellate arguments unconvincing, we affirm the decision of the Trial Division.

BACKGROUND

On April 15, 1992, Kazuyuki Rengchol ("Rengchol") filed an Application for Land Registration on behalf of himself and his siblings (as children of Ngirur Rengchol) for the land known as *Teruong* with the Land Claims Hearing Office ("LCHO"). *Teruong* is located in Ngerkeai Hamlet in Aimeliik State. Rengchol walked the boundaries of *Teruong* with Aisamerael Samsel (the Land Registration Officer), Tadashi Sakuma (the Executive Director of Palau Public Lands Authority), and Luther Iyar (the Palau Public Lands Authority Realty Technician). Samsel sketched the boundaries of the land during that walk.

For some reason, the LCHO assigned a temporary lot number (143-10070) to Rengchol's claim that corresponded to a completely different (although neighboring) parcel of land than the area he had monumented with Samsel and the other members of the Palau Public Lands Authority. No one else claimed ownership of *Teruong* and, on May 7, 1992, the LCHO held an uncontested hearing on Rengchol's claim. Later that same day, the LCHO issued a Determination of Ownership for Teruong using the designation of Lot No. 143-10070 to Rengchol and his siblings. The Determination of Ownership did not state the area of the land or give any further description. At some point after the hearing but before the determination was issued, Samsel informed the hearing officers that the land discussed at the hearing (Lot No. 143-10070) was not the land that Rengchol was actually claiming—it was not the same land that he had walked and sketched with Rengchol. Despite this information, the determination issued.

The Determination of Ownership issued to Rengchol and his siblings referenced only the name *Teruong* and the Lot No. 143-10070. The determination of a neighboring parcel awarded the land of *Ngilukeu* (then designated as Lot No. 143-10071) to the family of Oiterong and Sariang. In 2003, members of Oiterong and Sariang's family pointed out to Rengchol and his siblings that the LCHO had switched the lot numbers on their determinations of ownership. An affidavit, signed by representatives of both families, was submitted to the Land Court stating that Oiterong and Sariang's family's land was *Ngilukeu*, Lot No. 143-10070, measuring 20,767 square meters and that Rengchol and his siblings' land was *Teruong*, Lot No. 143-10071, measuring 70,000 square meters. The two families requested that the Land Court issue correct certificates of title to each land.

The Land Court issued a Certificate of Title for *Teruong* to Rengchol and his siblings on July 13, 2004 listing the area of the land as only 14,181 square meters.[1] Rengchol, claiming that *Teruong* is actually a much larger tract of land (in accord with the 1992 monumentation), filed suit on January 6, 2009, for declaratory judgment and to quiet title.[2] The majority of the land claimed by Rengchol was held as public land by AIMSPLA, but some portions had, in the intervening years, been adjudicated to private parties. After hearing the evidence at trial, the Trial Division found in Rengchol's favor, and, in a November 2, 2009 Decision and Judgment, declared a sizeable parcel of land to be the property of Rengchol and his siblings and ordered the preparation of a new certificate of title and map. *See* Civ. No. 09-001, Decision at 10 (Tr. Div. Nov. 2, 2009). Because Rengchol's action below proceeded only against AIMSPLA, the Trial Division only awarded land claimed by AIMSPLA to Rengchol—it did not award any land adjudicated to private individuals to Rengchol even if it fell within the boundaries of *Teruong*. *See id.* AIMSPLA appealed the Trial Division's decision, claiming that Rengchol has no legal rights to the land.

STANDARD OF REVIEW

We show deference to the Trial Division, as first-hand finder of fact, and will not disturb its factual findings unless we perceive a clear error. *See, e.g.*, *Nakamura v. Uchelbang Clan*, 15 ROP 55, 57 (2008). We are not similarly disadvantaged in analyzing conclusions of law and therefore review such conclusions *de novo*. *See id.*

DISCUSSION

[1] A note in the Land Court file indicates that the award was limited by the amount of land that had previously been determined. Subsequently, in late 2005, Rengchol and his siblings sold 2,000 square meters of their land and thus a new certificate of title was issued on September 13, 2006, this time listing the size of their land as 12,181 square meters.

[2] Rengchol filed an Amended Complaint on January 28, 2009. The original complaint named only Aimeliik State as a defendant, but AIMSPLA was subsequently joined upon Rengchol's motion. By stipulation, Aimeliik State was dismissed as a defendant before trial. *See* Civ. No. 09-001, Order Dismissing Pl.'s Compl. Against Def. Aimeliik State (Tr. Div. May 14, 2009).

AIMSPLA sets forth four arguments on appeal: (1) the time limitation of 35 PNC § 1304 bars Rengchol's claim to the land; (2) the unappealed 1992 Determination of Ownership bars Rengchol's claim to the land; (3) the award of the land to Rengchol impermissibly interferes with previous adjudications of portions of the land to private parties; and (4) Rengchol's claim to the land is barred by the doctrines of estoppel, waiver, and laches. We address each argument in turn.

I. The Preclusive Effect of 35 PNC § 1304 on Rengchol's Claim

[1] Claims under the "return of public lands" provision of the Palau Constitution and its enabling legislation are subject to a January 1, 1989 filing deadline. *See* 35 PNC § 1304(b)(2); *see also* ROP Const. art. XIII, § 10. This deadline is applicable only to land claims brought under 35 PNC § 1304(b) for the return of public land that was acquired "by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just compensation or adequate consideration." 35 PNC § 1304(b)(1). Rengchol claims no land under this section; therefore the January 1, 1989 deadline is inapplicable. *See Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185, 185 (2002) ("In *Carlos [v. Ngarchelong State Pub. Lands Auth.*, 8 ROP Intrm. 270 (2001)], we distinguished between a claim for the return of public lands, which is governed by the provisions of 35 PNC § 1304 and which must have been filed no later than 1989, and a quiet title claim asserting that a private claimant has superior title to a piece of property than the governmental entity claiming ownership of it, which is not subject to the same limitations period."); *Carlos v. Ngarchelong State Pub. Lands Auth.*, 8 ROP Intrm. 270, 272 (2001) ("Although Appellant did not file an Article XIII claim, he has not waived his right to assert he has title that is superior to the government.").

II. The Preclusive Effect of the 1992 Determination of Ownership on Rengchol's Claim

AIMSPLA argues that Rengchol and his siblings are bound by the 1992 Determination of Ownership—even if it was erroneous—because they did not appeal it. AIMSPLA cites three cases to support the proposition that an unappealed determination of ownership is final and conclusive as a matter of law. After considering these cases singularly and in combination, we are not persuaded to find in AIMSPLA's favor. We briefly discuss the circumstances of each cited decision.

In *Nakamura v. Isechal*, 10 ROP 134 (2003), the appellant sought to quiet title to a parcel of land. The appellant had not claimed the land at the formal hearing (allegedly because he had not received notice of the hearing) and had not appealed the Land Commission's determination of ownership. *See* 10 ROP at 135-36. Upon finding no procedural deficiency with the Land Commission's hearing or notice, we held that the appellant was bound by the unappealed determination of ownership. *See id.* at 136-38.

In *Idid Clan v. Koror State Pub. Lands Auth.*, 9 ROP 12, 13 (2001), the claimants to the land at the LCHO hearing included Idid Clan, Mariano Tellei, and Koror State Public

Lands Authority ("KSPLA"). After the LCHO awarded the land to KSPLA, only Idid Clan appealed the decision to the Trial Division. *See* 9 ROP at 13. The Trial Division vacated the determination and remanded the case back to the LCHO on the grounds that one of the LCHO panel members at the original hearing had a conflict of interest. *See id.* By order of the Land Court, only KSPLA and Idid Clan received notice of the re-hearing. *See id.* The Land Court re-awarded the land to KSPLA and Idid Clan again appealed. *See id.* Tellei motioned to intervene in KSPLA's appeal (which we construed as a request to file an untimely appeal). *See id.* Tellei argued that he did not receive notice of the re-hearing and therefore was deprived of his right to state his claim. *See id.* We held that it was not erroneous for Tellei to be un-noticed and excluded from the re-hearing because reversals on appeal generally do not inure to the benefit of non-appealing parties. *See id.* at 13-14. In so ruling, we stated that claimants in land registration proceedings who do not appeal are bound by unappealed determinations. *See id.* at 14.

Lastly, AIMSPLA cites *Ngatpang State v. Amboi,* 7 ROP Intrm. 12 (1998), for support. After World War II, the residents of Ngatpang agreed not to file individual claims for their lands taken by the Japanese and instead agreed to have the land awarded at large to Ngatpang municipality and then split it up themselves. *See* 7 ROP Intrm. at 13. Ngatpang municipality was awarded the land through a 1959 Determination of Ownership. *See id.* In 1975, the Ngaimis (the traditional council of chiefs of Ngatpang) decided that it was time to re-distribute the land and hearings were held in 1982 to determine the individual owners of the land. *See id.* After some waffling, the Ngaimis and the governor of Ngatpang State wrote a letter to the LCHO revoking Ngatpang's claim to the land and asking the LCHO to distribute the land to individuals. *See id.* at 13-14. The LCHO determined that it had sufficient evidence from the 1982 hearings and commenced in determining the ownership of the land. *See id.* at 14. The LCHO issued determinations of ownership for 19 parcels of land in Ngatpang in 1989. *See id.* In 1993 the new governor of Ngatpang apparently disagreed with the previous governor's decision to distribute the land to individuals and filed a lawsuit to have the determinations set aside, arguing that the 1959 Determination of Ownership conclusively awarded the land to the predecessor of Ngatpang State and that the LCHO had no jurisdiction to re-determine ownership in the land because the 1959 Determination of Ownership was not timely appealed. *See id.* The Trial Division upheld the 1989 individual determinations and we affirmed, stating that Ngatpang lost the right to complain about the 1989 determinations—other than to make a collateral attack on procedural deficiencies—when it failed to file a timely appeal to those determinations. *See id.* at 15-17.

[2] Unlike the three cases above, Rengchol's complaint with the LCHO's determination is based on a procedural deficiency—the lack of notice of the area of the land awarded in the 1992 Determination of Ownership.[3] And, as we stated in *Ngatpang*

[3] The three cases are also distinguishable on a purely factual level because, none of the appellants in those three cases—Nakamura,

State, procedural deficiencies of an unappealed determination of ownership may be asserted on collateral attack. *See Ngatpang State*, 7 ROP Intrm. at 16. It would be unfair to bar Rengchol from challenging the LCHO's determination when—through the error of the LCHO—he had no notice that what the LCHO awarded him was not the full extent of his claim until well after the 45-day period to appeal the LCHO's determination.

III. The Effect of the Trial Division's Decision on Land Already Adjudicated to Third Parties

AIMSPLA complains that the Trial Division's decision must be overturned because it awards land to Rengchol that has already been adjudicated to third parties by the Land Court (and, in at least one instance, affirmed by this Court). As Rengchol succinctly points out in response, the Trial Division's decision specifically orders the Land Court to "exclude any portions of *Teruong* that have been adjudicated as belonging to other private individuals" when issuing a new certificate of title to Rengchol and his siblings. Civ. No. 09-001, Decision at 10 (Tr. Div. Nov. 2, 2009). Therefore the Trial Division's decision presents no conflict with other judicial awards of land to parties who were not joined in the present dispute.

IV. The Effect of Estoppel, Waiver, and Laches on Rengchol's Claim

Without citation to any authority, AIMSPLA claims that the doctrines of estoppel, waiver, and laches each preclude Rengchol from bringing his current claim because Rengchol did not file a dispute to the 1992 Determination of Ownership until 2009. Rengchol responds that he was not put on notice of the LCHO's error until 2004 and his current lawsuit was filed well within the 20-year statute of limitations of 14 PNC § 402. Rengchol neglects to cite any authority for the proposition that a claims of estoppel, waiver, and laches are each overcome by a showing that the action was commenced within the statutory limitations period.[4]

[3] It is unclear to us whether any of the issues of estoppel, waiver, or laches were presented to the Trial Division for decision. Arguments should not be raised for the first time on appeal. *See, e.g.*, *Nebre v. Uludong*, 15 ROP 15, 25 (2008) ("Generally, an issue that is not raised in the trial court is waived

Tellei, and Ngatpang State—appeared at the Land Commission hearings they sought to appeal. Nakamura had never appeared before the Land Commission claiming that parcel of land, Tellei had not appeared at the re-hearing that was the subject of the appeal, and Ngatpang State had not appeared at the hearings after it repudiated its interest in the land to the LCHO. Rengchol did appear at the hearing before the LCHO for *Teruong* (in fact, he and his siblings were the *only* claimants).

[4] Rengchol also neglects to provide analysis on why the 20-year statute of limitations applies rather than the 6 year "catch all" statute of limitations of 14 PNC § 405. Applying the 20-year statute of limitations, Rengchol's 2009 complaint would still be within the limitations period even if he had been put on notice of his injury in 1992. Or, applying the 6-year statute of limitations, Rengchol's complaint would be timely if the statute of limitations clock did not start ticking until 2004. Ultimately, we need not decide which limitations period applies in order to resolve the appeal.

and may not be raised on appeal. Therefore, the Appellate Division will not generally consider an issue unless the issue was first addressed by the trial court." (citations omitted)). Although AIMSPLA listed estoppel, laches, and waiver as affirmative defenses when it entered the litigation (*see* Aimeliik State Pub. Lands Auth. Answer and Affirmative Defenses at 2), neither AIMSPLA's Pre-Trial Statement nor the Trial Division's decision make any mention of these defenses, (*see* Aimeliik State Pub. Lands Auth. Pre-Trial Statement). Without a primary decision on the issue by the lower court, we have nothing to review.[5] AIMSPLA apparently wants us to make the initial decision on these issues, but such a request runs counter to our function as an appellate court.

[4] Furthermore, the Trial Division found that Rengchol was not on notice of the LCHO's error until 2004. *See* Civ. No. 09-001, Decision at 7 (Tr. Div. Nov. 2, 2009) ("Because the [Determination of Ownership] issued on May 7, 1992, listed not only the incorrect number, but failed to indicate the size or area of the property, [Rengchol] was not aware of the mistake that was made until the Certificate of Title issued in 2004."). The 5-year interim between Rengchol's 2004 notice and his 2009 complaint does not appear to be overly lengthy. And, without citation to authority to guide us to a contrary conclusion—or even lay out the elementary law of estoppel, waiver, and laches—we will not stray from our usual course of only deciding issues properly presented to us, which, of course, includes citation to relevant legal authority. *See Pacific Call Invs., Inc. v. Long*, 17 ROP 148, 156 n.11 (2010) (refusing to consider an inadequately briefed claim); *Gibbons v. Seventh Koror State Legislature*, 13 ROP 156, 164 (2006) (same); *Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 50 (2006) (same). Litigants may not, without proper support, recite a laundry list of alleged defects in a lower court's opinion and leave it to this Court to undertake the research.

CONCLUSION

Rengchol and his siblings had no reason to know of the LCHO's mistake in the award of their land until 2004. It would be unjust to deny them ownership of their full property based on such a mistake. For the foregoing reasons, AIMSPLA's appellate arguments fail and the decision of the Trial Division is AFFIRMED.

[5] Nor has AIMSPLA pointed us to any indication in the record that it presented argument on estoppel, waiver, or laches in the lower court and the Trial Division refused to render a decision on those issues.