

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

FILED

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2024 SEP 26 P 1:32

**STEVEN R. SALII, in his official capacity as Governor of
Angaur State,
Appellant,**
**v.
GOVERNMENT OF THE REPUBLIC OF PALAU and
PALAU PUBLIC LANDS AUTHORITY,
Appellees.**

SUPREME COURT
OF THE
REPUBLIC OF PALAU

Cite as: 2024 Palau 27
Civil Appeal No. 24-005
Appeal from Civil Action No. 23-111

Decided: September 26, 2024

Counsel for Appellant Brien Sers Nicholas
Counsel for Appellee Kathleen Burch, AAG

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
DANIEL R. FOLEY, Associate Justice

Appeal from the Trial Division, the Honorable Honora E. Remengesau Rudimch, Associate Justice, presiding.

OPINION¹

PER CURIAM:

[¶ 1] Appellant Steven R. Salii, Governor of Angaur, disputes the ownership of three Cadastral Lots in Angaur State. He appeals the Trial Division’s January 10, 2024 Judgment and Order dismissing his claim for failure to state a claim.

¹ Although Appellant and Appellee request oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

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

BACKGROUND

[¶ 3] This dispute concerns four Cadastral Lots in Angaur State: Cadastral Lots 009 S 01 (the Coast Guard Station), 009 S 02, (The Coast Guard Water Point), 009 S 04 (the Air Strip), and 009 S 06 (*Btelul a Ersuuch/Erotchet Ouchelbesas*), hereinafter referred to as the “Parcels”. Governor Salii claimed that based on the Constitutions of Palau and Angaur, Angaur State is the rightful owner of the Parcels.

[¶ 4] The Parcels were originally claimed by Ochedaruchi Clan. In 1909, Ochedaruchi Clan, through the signature of its title-bearer, sold the Parcels to the German authorities. *Thomas v. Trust Territory*, 8 T.T.R. 40, 45 (1979). When the U.S. took the island during World War II, “it acquired all rights of prior sovereigns.” *Id.* at 46. The U.S. Coast Guard commenced to use the Parcels in 1952 or 1953. *Id.* at 44. In 1979, the Trust Territory Court determined that although the 1909 Agreement purported to transfer the entire island of Angaur to the German administration, it was only signed by three titleholders of the eighteen Angaur clans. *Id.* As such, the transfer only affected the lands belonging to the three clans whose titleholders had signed unto the 1909 Agreement, which included Ochedaruchi Clan. *Id.* at 46.

[¶ 5] On July 2, 1982, the Republic of Palau, the Palau Public Land Authorities, and the Angaur Municipal Council signed an agreement through which the parties recognized the deprivation of lands during the foreign administrations and agreed to return public lands to the Angaur Municipal Council (“the 1982 Agreement”). On December 6, 1982, the Trust Territory Government conveyed all public lands to the Palau Public Lands Authority through a quitclaim deed, including the Parcels.

[¶ 6] In 1998, the Land Court held a hearing to consider the ownership of the first three Parcels (the Coast Guard Station, the Coast Guard Water Point, and the Air Strip), as well as other lands in Angaur. *See Determination of Ownership No. 14-12, No. LC/S 02-98*, at 2 (L.C. Aug. 12, 1998). It explicitly adopted the findings of facts from the *Thomas* opinion and stated that the Parcels were acquired by the government for adequate consideration from Ochedaruchi Clan, and that as such, the Clan had failed to prove that the

Parcels had been wrongfully acquired. The Land Court thus awarded the Parcels to the Palau Public Land Authority and issued corresponding Certificates of Title on March 19-20, 2003. As to the remaining Parcel, known as *Btelul a Ersuuch, Erochet*, the Land Court awarded it to PPLA in 2000 as it was the only claimant to the land. *See* Determination of Ownership No. 14-23, No. LC/S 99-130 (L.C. April 4, 2000). A corresponding Certificate of Title was issued on March 19, 2003.

[¶ 7] On September 18, 2023, more than 20 years after the issuance of the Certificates of Title, Governor Salii filed a complaint to quiet title to the Parcels. He argued that PPLA should have transferred the Parcels to the Angaur Municipal Council, pursuant to the Constitutions of Palau and Angaur, as well as the 1982 Agreement. The Trial Division issued a decision on January 10, 2024, granting the ROP’s Rule 12(b)(6) Motion to Dismiss. *See* Decision and Order Grant. Def’s Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim and Dismissing Def’s Rule 12(b)(1) and 12(E) Motions, *Salii v. Republic of Palau*, CA No. 23-111 (Tr. Div. Jan 10, 2024) [hereinafter “Trial Court Decision”]. The decision to dismiss was grounded on two bases: first, the trial court found nothing in the Palau and Angaur Constitutions justifying Angaur’s claims of ownership of the land, and found that the 1982 Agreement did not transfer any land but rather agreed upon undertaking a study of public lands for the purpose of transferring them at a later date. *Id.* at 5-7. Second, the trial court found that the claims were time-barred under the twenty-year statute of limitations. *Id.* at 6-7.

STANDARD OF REVIEW

[¶ 8] We have delineated the appellate standards 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 (internal citations omitted).

DISCUSSION

[¶ 9] Governor Salii raises two arguments on appeal: first, he maintains that the trial court erred in finding that the Angaur and Palau Constitutions did not grant Angaur State ownership of the Parcels. He points to Article I, § 2, of the Palau Constitution, which provides for state ownership of living and nonliving resources, and Article V, § 2 of the Angaur Constitution, pursuant to which Angaur State can regulate ownership of natural resources within its land.² He maintains that land is a “resource” under these provisions of the Constitutions, thus granting to Angaur State ownership of the Parcels. Second, he argues that the trial court erred in finding that his claims were barred by the twenty-years statute of limitations because the 1982 Agreement was not constrained by time limitations. Neither of these arguments prevails.

[¶ 10] We find that the trial court correctly found that the statute of limitations bars Governor Salii’s claims. The statute of limitations for actions to recover land is twenty years. 14 PNC § 402. In addition, the Palau National Code provides that certificates of title “shall be conclusive upon all persons so long as notice was given. . . .” 35 PNC § 1314(b). Accordingly, it is well-established that a certificate of title is prima facie evidence of ownership and is conclusive on all persons who have notice of the proceedings. *Irikl Clan v. Renguul*, 8 ROP Intrm. 156, 158 (2000); *Heirs of Drairoro v. Dalton*, 7 ROP Intrm. 162, 165 (1999).

[¶ 11] We have repeatedly declared that our public policy favors the finality of land titles to promote certainty and to preclude endless litigation. *Ngirasibong v. Adelbai*, 4 ROP Intrm. 95, 100 (1993). Accordingly, unappealed determinations of ownership are generally valid against the world. *See Bilamang v. Oit*, 4 ROP Intrm. 23, 28 (1993). “A party that chooses not to appeal loses the opportunity to come back in another lawsuit to raise arguments

² Article I, § 2 of the Palau Constitution reads that “[e]ach state shall have exclusive ownership of all living and nonliving resources, except highly migratory fish, from the land to twelve (12) nautical miles seaward from the traditional baselines . . .”, while Article V, § 2 of the Angaur Constitution reads that “Subject to traditional rights and ownership, the Angaur State Government shall have the power to regulate exploration, exploitation, protection and ownership, including investment relating thereto, of all natural resources within its land, marine and air space jurisdiction.”

that should have been pressed in the original case.” *Ngatpang State v. Amboi*, 7 ROP Intrm. 12, 16 (1998).

[¶ 12] The Certificates of Title were issued on March 19-20, 2003, and the complaint in this case was filed in September 2023. To challenge the validity of the Certificates of Title, a proper collateral attack³ should have been brought prior to the running of the twenty years that elapsed between March 20, 2003 and March 19, 2023. To overcome the statute of limitations, Governor Salii points to the 1982 Agreement between the Trust Territory and the Angaur Municipal Council, which provides that the Angaur Municipal Council “is or shall be the legal owner of all public lands and improvements thereon situated in the State of Angaur” and argues that a claim of a constitutional violation should not be time-barred. The first argument is unavailing: Angaur State should have vindicated any rights acquired from the 1982 Agreement within the running of the statute of limitations.⁴ Further, we have expressly recognized that a statute of limitations applies to collateral attacks, even where they allege constitutional violations of due process. *Ngeruburk Clan v. Skebong*, 2019 Palau 39 ¶ 10. Accordingly, the constitutional nature of the claim does not prevent the statute of limitations from applying. Therefore, the trial court did not err in finding that the claim was barred by the statute of limitations.

[¶ 13] We finally note that “[a] fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.” *Koror State Pub. Lands Auth. v. Ngermellong Clan*, 21 ROP 1, 3 (2012). Because the claim is barred by the statute of limitations, it is unnecessary to address the argument pertaining to the interpretation of the Palau and Angaur Constitutions.⁵

³ We also note that a collateral attack may be brought “on the grounds that statutory or constitutional procedural requirements were not complied with” *Nakamura v. Isechal*, 10 ROP 134, 136 (2003). Governor Salii argues neither a violation of statutory nor constitutional procedural requirements.

⁴ The trial court found that the 1982 Agreement did not transfer any lands itself but planned for the future transfer of the lands while agreeing upon a study of all the public lands in Angaur. See Trial Court Decision at 7. Although we disagree with this reading of the 1982 Agreement, the resulting error is harmless because of the statute of limitations.

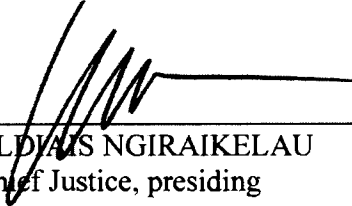
⁵ However, we do remind the parties that “the burden is on the party asserting error to cite relevant legal authority in support of his or her argument.” *Aimeliik State Pub. Lands. Auth. v. Rengchol*, 17 ROP 276, 282 (2010). “Unsupported legal arguments need not be considered by

CONCLUSION

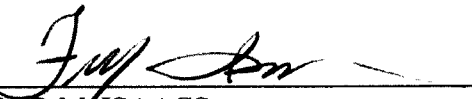
[¶ 14] We **AFFIRM** the Trial Division’s Judgment and Order Granting the Motion to Dismiss.

the Court on appeal.” *Suzuky v. Guliberti*, 20 ROP 19, 23 (2012). The Opening Brief fails to present case law that justifies such an interpretation of the Palau and Angaur Constitutions. On this basis alone, we could decline to entertain this argument.

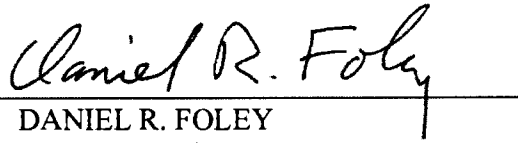
SO ORDERED, this 26th day of September 2024.



OLYAS NGIRAIKELAU
Chief Justice, presiding



FRED M. ISAACS
Associate Justice



DANIEL R. FOLEY
Associate Justice