

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

**FILED** 

2026 FEB 17 P 4:05

<p><b>PALAU NATIONAL COMMUNICATIONS CORPORATION,</b> <i>Appellant,</i> v. <b>WILLY WALLY,</b> <i>Appellee.</i></p>	<p>SUPREME COURT OF THE REPUBLIC OF PALAU</p>
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Cite as: 2026 Palau 3  
Civil Appeal No. 25-009  
Appeal from Civil Action No. 21-219

Decided: February 17, 2026

Counsel for Appellant .....	Kevin N. Kirk
Counsel for Appellee .....	Yukiwo P. Dengokl

BEFORE: FRED M. ISAACS, Associate Justice, presiding  
DANIEL R. FOLEY, Associate Justice  
ALEXANDRO C. CASTRO, Associate Justice

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

**OPINION**

PER CURIAM:

[¶ 1] This appeal concerns the jurisdiction of the Trial Division and the mandate given by the Appellate Division. The issues presented are (1) whether the trial court complied with the appellate court's remand instructions and mandate to conduct further proceedings and determine whether a servitude exists; and (2) whether the trial court's relocation order constitutes reversible error because it is a remedy that presupposes the existence of an ongoing servitude.

[¶ 2] For the reasons set forth below, we **REMAND** the case for the specific consideration of the other forms of servitude and **VACATE** the trial court’s judgment ordering relocation of the western pedestal to another location on the same lot.

### **BACKGROUND**

[¶ 3] This case originally arose from a dispute over Cadastral Lot No. 064 B 13, a parcel from the land known as *Lemel* located in Ngerchemai Hamlet, Koror State. In 1996, Palau National Communications Corporation (“PNCC”) installed two communications pedestals on Cadastral Lot No. 064 B 13 to connect customers to the PNCC internet network. To install the pedestals, PNCC obtained a purported easement agreement from Philip and Pastora Kloulubak, leaseholders of *Lemel*.<sup>1</sup>

[¶ 4] In 2015, Willy Wally (“Wally”) was awarded a Certificate of Title to Cadastral Lot No. 064 B 13 and on December 23, 2021, Wally filed Civil Action No. 21-219 to eject PNCC from his land. Wally argued that any easement granted to PNCC terminated once he obtained title to the land in 2015. On December 22, 2022, the Trial Division granted PNCC’s Motion for Summary Judgment, finding that according to 35 PNC § 1314(c), PNCC had a valid easement over Cadastral Lot No. 064 B 13. Wally appealed from this judgment. On November 17, 2023, the Appellate Division vacated the Trial Division’s Order on the ground that PNCC was not entitled to judgment as a matter of law. *Wally v. PNCC*, 2023 Palau 24. In setting aside the lower court’s decision, we stated the following:

[W]e remand for further proceedings so that the trial court may determine whether an easement or other form of servitude was created. In doing so, we note that trial courts have wide flexibility in designing remedies to enforce easements and may do so as necessitated by and in the public interest. *See Estate of Asanuma*, 13 ROP at 87–88.

*Id.*, ¶ 14.

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<sup>1</sup> PNCC provided a copy of the easement for one pedestal but was unable to locate the easement obtained for the other pedestal.

[¶ 5] On January 15, 2024, the trial court filed its Decision and Orders on Remand, granting Wally’s Motion for Partial Summary Judgment. The trial court found that “[w]hatever interest or easement PNCC had in the land in 1996 came to an end when the land was returned” to Wally. *Wally v. PNCC*, Civ. No. 21-219 (Decision and Orders on Remand, ¶ 7) (Tr. Div. Jan. 15, 2024). PNCC now appeals the trial court’s decision and relocation order.

### STANDARD OF REVIEW

[¶ 6] We review matters of law *de novo*, findings of fact for clear error, and exercises of discretion for abuse of that discretion. *Obechou Lineage v. Ngeruangel Lineage of Mochouang Clan*, 2024 Palau 2 ¶ 5.

[¶ 7] Mandate compliance is a matter of law, and we review *de novo* a post-mandate judgment of the trial court. Summary judgment is only proper when the pleadings, affidavits, and other papers show no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. ROP R. Civ. P. 56(c). When considering a motion for summary judgment, the court must consider all evidence and inferences in the light most favorable to the nonmoving party. *ROP v. Reklai*, 11 ROP 18, 21 (2003). We review an appeal from summary judgment *de novo*. *Id.* In doing so, our review is plenary, considering both whether there is no genuine issue of material fact and whether the substantive law was correctly applied. *Mesubed v. ROP*, 10 ROP 62, 64 (2003).

### DISCUSSION

[¶ 8] Appellant PNCC presents two issues on appeal to support its request for a vacatur and remand. The first is whether the trial court complied with the appellate court’s remand instructions and mandate to conduct further proceedings and determine whether a servitude exists before resolving liability. The second is whether the trial court’s relocation order constitutes reversible error because it is a remedy that presupposes an ongoing servitude.

[¶ 9] Appellee Wally raises an additional issue for consideration, which is whether PNCC failed to preserve its arguments on appeal by not raising them below.

### I. Waiver of the Right to Appeal

[¶ 10] We have consistently held that arguments raised for the first time on appeal will not be considered. *See Rechucher v. Lomisang*, 13 ROP 143, 149 (2006); *see also Kotaro v. Ngirchechol*, 11 ROP 235, 237 (2004) (“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. . .”).

[¶ 11] Wally argues that PNCC failed to preserve the mandate issue as it did not file any ROP R. Civ. P. 7(c)(13) motion for reconsideration, ROP R. Civ. P. 60(b) motion for relief from the summary judgment, or ROP R. App. P. 21 petition for a writ of prohibition. As explained below, Wally’s arguments are misplaced as none of these are mandatory for the preservation of an issue for appeal.

[¶ 12] First, ROP R. Civ. P. 7(c)(13) explicitly states that motions for reconsideration are disfavored and are ordinarily denied. Requiring appellants to file a motion for reconsideration at the trial court level prior to filing a notice of appeal would generally be inefficient and a waste of judicial resources. Second, ROP R. Civ. P. 60(b) lays down a limited set of circumstances which justify relief from a final judgment, order, or proceeding. These are extraordinary circumstances and a motion filed under this rule is not—and should not—be a prerequisite for appellate review. Third, a writ of prohibition pursuant to ROP R. App. P. 21 is issued only in cases of extreme necessity and is ordinarily denied if there is a complete remedy by appeal. *See Kruger v. Mokoll*, 5 ROP Intrm. 121, 122 (1995). Therefore, Wally’s argument for waiver, as rooted in these three rules, must fail.

[¶ 13] Wally next argues that PNCC should be deemed to have waived its right to assert the arguments now presented on appeal, as none of the three exceptions to the waiver rule apply in this case. Exceptions to this general rule include situations where (1) the failure to address the issue would result in a denial of fundamental rights, especially in criminal cases where the life or liberty of an accused is at stake; (2) the general welfare of the people is at stake; or (3) the court lacks subject matter jurisdiction of the matter. *See Ulechong v. Morrico Equip. Co.*, 13 ROP 98, 100 (2006). The Court agrees that none of these exceptions apply.

[¶ 14] Nevertheless, the law—and plain logic—suggests that the issue of appellate mandate compliance cannot be waived. Parties cannot be barred from raising issues at the appellate level when they were not afforded the opportunity to address them at the trial level. Generally, issues must be preserved at the trial level as the record would otherwise be devoid of a factual basis for determining the issues on appeal, and the appellees will not be put on notice that such proof is required. *See Gibbons v. Seventh Koror State Legislature*, 11 ROP 97, 111 (2004) (Ngiraklsong, CJ., dissenting). This ensures that the appellate court does not subvert the trial court’s role as the finder of fact and encourages judicial economy and fairness. *See Napoleon v. Children of Masang Marsil*, 17 ROP 28, 32 (2009).

[¶ 15] Moreover, the issue of mandate noncompliance is one that does not have any recourse at the trial level. A mandate brings the proceedings in a case on appeal to a close and returns jurisdiction to the lower court, but the lower court is vested with jurisdiction only to the extent conferred by the dictates of the appellate court’s opinion and mandate. *See Tengoll v. Tbang Clan*, 11 ROP 61, 64 (2004). It is, therefore, appropriate that the issue be first raised at the appellate level to clarify the scope of the jurisdiction conferred on the trial court.

[¶ 16] On the facts in this case, the parties were unable to address any errors before the trial court on remand, as the trial court entered a dispositive ruling on the pleadings previously filed. As such, PNCC cannot be said to have waived the issue of mandate compliance and can raise it on appeal.

## **II. Summary Judgment**

[¶ 17] PNCC argues that the trial court did not comply with the appellate court’s specific remand as the trial court did not conduct any “further proceedings” and simply re-entered summary judgment, albeit this time in favor of Wally. The mandate rule derives from the law of the case doctrine and means that a lower court is not free to deviate from the appellate court’s mandate, which is an order from an appellate court directing a lower court to take a specified action. *See Tengoll v. Tbang Clan*, 11 ROP 61, 64 (2004).

[¶ 18] Where an appellate court remands for further proceedings without limiting what those proceedings are to be, the lower court generally has the

right to consider and rule on the entire case on remand. *Id.* The lower court may also correct an error in its original findings as to a matter not passed on by the appellate court, even without hearing new evidence. *Id.* On the other hand, if a matter is remanded with specific instructions, those instructions are not subject to interpretation and must be followed exactly to ensure that the lower court's decision is in accord with the appellate court; in other words, a lower court must strictly comply with the appellate court's mandate on remand. *Id.*; see also *West v. Ongalk Ra Iyong*, 16 ROP 141, 144 (2009).

[¶ 19] In this case, we remanded “for further proceedings so that the trial court may determine whether an easement or other form of servitude was created.” *Wally*, 2023 Palau 24 ¶ 14. This language is more specific than that of a general, vague remand, albeit still more general than the specific mandate language for, e.g., limited reconsiderations for damages or sentencing. See *Rengulbai v. Klai Clan*, 22 ROP 56, 62 (2015). Therefore, while the mandate did not require further evidentiary hearings, it did require the trial court to specifically consider “whether an easement or other form of servitude was created.” *Wally*, 2023 Palau 24 ¶ 14.

[¶ 20] The trial court, in its Decision and Orders on Remand filed on January 15, 2024, relied solely on the facts as established in this case from the first proceeding. Applying the definition for easements we provided in our decision, the trial court found that since the easement was not tied to any specific parcel of land, the only legally possible easement was an easement in gross. Since Wally became a co-owner of the land after the Kloulubaks granted PNCC an easement, the trial court determined that the Kloulubaks could not have granted an easement which exceeded their interest in the land. Therefore, any easement created was extinguished since PNCC never obtained Wally's permission for the pedestals to remain on the land.

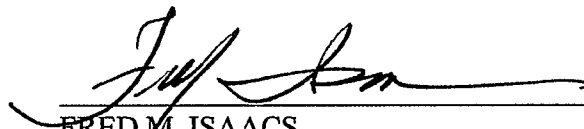
[¶ 21] By ruling as it did, the trial court failed to specifically consider whether any “other form of servitude was created.” In our decision, we noted that “[a]s the Restatement aptly points out, the creation of a servitude by estoppel, implication, necessity, prescription, or for the public benefit, have different requirements that may very well have been met in this case.” *Id.* The trial court briefly mentioned these alternative servitudes as laid out in the Restatement but did not discuss, much less decide, whether any of them were


created. Therefore, the trial court did not comply with the specific mandate and simply entered summary judgment without providing the parties with a full and fair opportunity to brief on alternative theories of servitude.<sup>2</sup>


**CONCLUSION**

[¶ 1] For the foregoing reasons, we **REMAND** the case for the limited consideration of whether the other forms of servitude (estoppel, implication, necessity, prescription, or for the public benefit) exist and **VACATE** the trial court’s judgment ordering relocation.<sup>3</sup>

**SO ORDERED**, this 17th day of February 2026.

  
FRED M. ISAACS  
Associate Justice, presiding

  
DANIEL R. FOLEY  
Associate Justice

  
ALEXANDRO G. CASTRO  
Associate Justice

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<sup>2</sup> Going forward, the trial court may hold evidentiary hearings on these alternatives.

<sup>3</sup> This Court need not address Wally’s second, alternative argument on whether the trial court’s relocation order constitutes reversible error.