IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

NGIRASUONG TECHUR,
Appellant,
v.
Telungalek ra KERNGEL,
Appellee.

PRUDENCE TECHUR,
Appellant,
v.
Telungalek ra NGERKUI, Telungalek ra TECHUR, and Telungalek ra KERNGEL,
Appellees.

Cite as: 2016 Palau 20
Civil Appeal No. 16-011
Appeal from LC/M Nos. 16-028, 16-030, 16-039

Decided: August 23, 2016

Counsel for Appellant
Ngirasuong Techur.....Pro Se
Prudence Techur .....Masami Elbelau, Jr.
Counsel for Appellee
Telungalek ra Kerngel.....Yukiwo P. Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
KATHLEEN M. SALII, Associate Justice
LOURDES F. MATERNE, Associate Justice

Appeal from the Land Court, the Honorable Salvador Ingereklii, Associate Judge, presiding.

OPINION

PER CURIAM:[1]

[¶ 1] Below, the Land Court issued determinations of ownership for certain lands to several telungalek,[2] without identifying a representative for each telungalek. Because of the peculiarities of the case below, we dismiss the appeal and remand the case to the Land Court for the limited purpose of issuing new determinations of ownership that identify a representative for each of the prevailing telungalek.

BACKGROUND

[¶ 2] In its decision, the Land Court listed as among the claimants (1) Telungalek ra Kerngel, which was represented by Hanako Ngeltengat, (2) Iblai O. Rimirch, (3) Telungalek ra Techur, which was represented by Ngirasuong Techur ("Ngirasuong"), and (4) Prudence Techur ("Prudence"). In the course of assessing the claimants' claims to the four lots at issue,[3] the Land Court explained that three of them had been owned at one time by a man named Ngerkui. The predominant disputes at trial were whether some of the lots had come to be owned by Techur, Ngerkui's son or, instead, had remained owned by Ngerkui; whether, if Techur owned some of the lots, he had passed them on to his son, Prudence; and whether, if the lots remained owned by Ngerkui at his death, they should now be owned by his telungalek or, instead, his son Techur's telungalek.

[¶ 3] The Land Court noted that claimant Iblai O. Rimirch was represented by her daughter, Grace Rimirch, who had explained to the court that, although her mother had filed claims for individual ownership of the

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[1] We determine that oral argument is unnecessary to resolve this matter. ROP R. App. P. 34(a).

[2] The word "telungalek" means "extended family." Lewis S. Josephs, *New Palauan-English Dictionary* 324 (1990).

[3] The four lots are Lot 130 M 19, Lot 130 M 20, Lot 130 M 21B, and Lot 130 M 22B, as shown on BLS Worksheet Lot No. 13 M 00, and located in Ngchemiangel Hamlet, Aimeliik State.

lots, her claims were in fact for Ngerkui Lineage.[4] The Land Court also noted that Ngirasuong, who represented Telungalek ra Techur in the matter, claimed only one of the lots for Telungalek ra Techur, and he had informed the court that he claimed the other lots for Telungalek ra Ngerkui.

[¶ 4] Ultimately, the Land Court decided that Telungalek ra Ngerkui should own two of the lots, while Telungalek ra Techur and Telungalek ra Kerngel should each own one of the remaining lots. It issued determinations of ownership accordingly. Notably, the determinations of ownership do not list representatives for the telungalek to which the lots were awarded. Following entry of Land Court's decision, copies were served on all claimants. The proof of service shows that, for Telungalek ra Ngerkui, service was made on Prudence, who apparently was designated as Telungalek ra Ngerkui's representative. The record does not disclose who made this designation or for what reasons.

[¶ 5] After issuance of the determinations of ownership, Ngirasuong, in his personal capacity, filed a pro se notice of appeal, naming Telungalek ra Kerngel as the appellee. Prudence, in his personal capacity, also filed a notice of appeal, naming Telungalek ra Ngerkui, Telungalek ra Techur, and Telungalek ra Kerngel as appellees.

DISCUSSION

[¶ 6] As the captions for many of our opinions amply illustrate, the Land Court often issues determinations of ownership to groups of individuals using descriptive categories that express the individuals' relation to each other, i.e., "clan," "lineage," "descendants," "children," "heirs," "ongalek," or "telungalek," to name a few.[5] *See* 35 PNC § 1314(b) ("[T]he Land Court shall issue a certificate of title setting forth the names of all persons *or groups of persons* holding interest in the land pursuant to the determination [of ownership.]" (emphasis added)). Determinations of ownership issued to a group of individuals identified by a descriptive category "may create

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[4] Iblai is the daughter of Ngkud who was the daughter of Ngerkui.

[5] The words "ongalek" and "telungalek" alternatively are spelled "ongalk" and "telungalk," respectively.

'individual ownership interests in the various members of the class or may designate a form of communal ownership . . . .'" *Mikel v. Saito*, 20 ROP 95, 100 (2013) (brackets omitted) (quoting *Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150, 152-53 (2003)).

I. Determinations of ownership issued to other descriptive categories

[¶ 7] If determinations of ownership are intended to create communal ownership in certain groups of individuals, we have ruled that "the Land Court's determination of ownership must identify the owners by name and not [only] by descriptive category." *Children of Dirrabang*, 10 ROP at 153. We have applied this rule only when the category at issue was "descendants," "children," or "ongalk." *See Rechirikl v. Descendants of Telbadel*, 13 ROP 167, 170 (2006); *Ongesii v. Children of Silmai*, 12 ROP 131, 133 (2005); *Ngermechesong Lineage v. Children of Oiph*, 11 ROP 196, 196 n.1 (2004); *Diaz v. Children of Merep*, 11 ROP 28, 31 (2003); *Children of Dirrabang*, 10 ROP at 152-53; *Anastacio*, 10 ROP at 91; *see also Heirs of Drairoro v. Dalton*, 7 ROP Intrm. 162, 168 (1999) (expressing similar rule when group identified only as "heirs" claims title to land). This rule equally applies to determinations of ownership intended to create individual ownership interests in the members of these groups. *Cf. Heirs of Drairoro*, 7 ROP Intrm. at 168 (remanding to lower court to identify which, if any, of descendants held title superior to others), *cited with approval in Anastacio v. Yoshida*, 10 ROP 88, 91 (2003). Thus, in a number of appeals, when confronted with a determination of ownership that identifies a group of owners solely by one of these descriptive categories, we have remanded to the Land Court with instructions to issue a new determination of ownership that identifies the individual members of the group. *Rechirikl*, 13 ROP at 170; *Ongesii*, 12 ROP at 133; *Ngermechesong Lineage*, 11 ROP at 196 n.1, 198; *Diaz*, 11 ROP at 31; *Children of Dirrabang*, 10 ROP at 152-53; *Anastacio*, 10 ROP at 91.

[¶ 8] To date, in every appeal in which such remand was warranted, we have first received full briefing and addressed the appeal's merits before remanding to the Land Court. Thus, on the one hand, if the appeal lacked merit, we have affirmed the underlying decision to award the land to the group and have remanded for the limited purpose of identifying the members

of the group in a newly issued determination of ownership. If, on the other hand, the appeal had merit, we have reversed or remanded for other reasons while simply reminding the Land Court that, if a subsequent determination of ownership is issued to a group in a descriptive category, it should identify the members of the group in the determination of ownership. The reason we address the merits first before such a remand is obvious: doing so tends to avoid unnecessary procedural steps. If the appeal lacks merit, then affirmance and limited remand makes a subsequent appeal after the remand less likely. If the appeal has merit, then our reminder to the Land Court to identify the individual members, in addition to our decision to reverse or remand on the merits, also makes a subsequent appeal less likely.

II. Determinations of ownership issued to a telungalek or lineage

[¶ 9] Ownership by telungalek, or lineage, is treated differently than ownership by groups defined by other descriptive categories.[6] In a number of appeals, we have noted that a determination of ownership issued to a lineage creates communal ownership by the lineage, rather than individual ownership by its members. *See Mikel*, 20 ROP at 100-01; *Children of Matchiau v. Klai Lineage*, 12 ROP 124, 126 (2005); *Renguul v. Elidechedong*, 11 ROP 11, 14 (2003); *Children of Dirrabang*, 10 ROP at 152-53. We have also noted that, when issuing determinations of ownership to lineages in which communal ownership is intended, it is the Land Court's practice to identify a representative of the lineage in the determination of ownership, usually by designating that person as the lineage's trustee. *See Mikel*, 20 ROP at 100 (citing *Estate of Remed v. Ucheliou Clan*, 17 ROP 255, 260, 265 (2010) *Estate of Rdiall v. Adelbai*, 16 ROP 135, 136 (2009)). For the reasons we set forth in the remainder of this opinion, we now hold that, when issuing a determination of ownership to a telungalek or lineage, the Land Court must identify a representative for the telungalek or lineage in the determination of ownership.

[¶ 10] The instant appeal illustrates why the Land Court must name a representative. Simply put, we are unable to identify from the record below

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[6] The term "telungalek" is synonymous with the term "lineage." *See Wong v. Obichang*, 16 ROP 209, 210 n.2 (2009).

any person who would represent Telungalek ra Ngerkui's interests in this appeal. First, Telungalek ra Ngerkui was not listed as a claimant in the caption of the Land Court's decision, and, outside of the body of the Land Court's decision, we do not discern from the face of the record an instance in which any person filed a claim on its behalf. Second, the body of the Land Court's decision does not clearly identify a representative. It states that Grace Rimirch, on behalf of her mother, claimed several lots for Ngerkui Lineage, but it is far from clear (and is, in fact, rather doubtful) that the Land Court intended its reference to Ngerkui Lineage to be synonymous with Telungalek ra Ngerkui, and we decline to decide in the first instance that it is. Confusing the issue further, the body of the decision also notes that Ngirasuong claimed one lot for Telungalek ra Techur and claimed other lots for Telungalek ra Ngerkui. This sort of claim-splitting by a single representative strikes us as fraught with problems of conflicting interests, so we are hesitant to endorse Ngirasuong as the representative of Telungalek ra Ngerkui on appeal when it is not clear that he was the representative below. Our hesitance is sharpened by the fact that Ngirasuong filed his notice of appeal without designating whether, in doing so, he represented Telungalek ra Techur, Telungalek ra Ngerkui, both of them, or neither of them. Ngirasuong's failure to designate himself as a representative in his notice of appeal increases our reservation in conclusively determining that he is the proper representative of Telungalek ra Ngerkui on appeal. Finally, if the foregoing were not enough to confuse even the most perspicacious reviewer, when the Land Court's decision was served on the claimants, the proof of service named Prudence—who subsequently filed an appeal naming Telungalek ra Ngerkui as an appellee—as Telungalek ra Ngerkui's representative. In sum, the Land Court failed to clearly identify a representative for Telungalek ra Ngerkui.

[¶ 11] The Land Court's failure leaves Prudence, the appellant who named Telungalek ra Ngerkui as an appellee, and the Court unable to properly serve Telungalek ra Ngerkui as required by the ROP Rules of Appellate Procedure.[7] *See* ROP R. App. P. 25(b) (requiring parties to serve

[7] The inability to identify a party on whom service properly could be made likely explains Prudence's unusual method of service in this appeal. For his notice of appeal, the certificate of service stated that a copy "will be served upon the representatives of Appellee[] Telungalek [r]a Ngerkui," Certificate

copies of papers filed in the appeal on other parties to the appeal); ROP R. App. P. 45(c) (requiring Clerk of Courts to serve copies of orders and opinions upon each party to appeal). Aside from causing the Court and an appellant to be unable to serve an appellee as required by the Rules, the omission of a named representative for Telungalek ra Ngerkui also raises questions regarding the ability to satisfy the due process concern that animate the Rules' service requirements.

[¶ 12] Moreover, although our practice in appeals involving groups of other descriptive categories is to address similar deficiencies in a determination of ownership only after we have reviewed the merits of an appeal, we conclude that we cannot wait for full briefing and the assessment of the merits of in an appeal, like this one, that involves a lineage for which no representative has been identified. Unlike in appeals involving groups of other descriptive categories, the Land Court's decision and determinations of ownership here leave us unable to determine on whom service should be made. Without knowing who the proper representative is, we can never be certain that the merits have been fully briefed, so we cannot address the merits with any confidence that we are not violating the due process rights of some un-notified party. We conclude that the solution for this dilemma is to remand so that the Land Court may issue a new determination of ownership that identifies the representative of Telungalek ra Ngerkui and that this should be done before we reach the merits of any appeal from the Land Court's decision.

[¶ 13] A pre-briefing remand here will not only avoid the due process concerns associated with an appeal in which there is doubt concerning an appellee's identity, but it will also serve the interests of judicial economy,

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at 1 (Jul. 11, 2016), which strongly suggests a method out of keeping with our Rules, *see* ROP R. App. P. 25(b) ("[A] party must, *at or before the time of filing a paper*, serve a copy on the other parties to the appeal . . . ." (emphasis added)). In a subsequent motion for an extension of time, Prudence again certified that a copy of the motion "will be served upon . . . representatives of Appellee[] Telungalek ra Ngerkui," Certificate at 1 (Jul. 15, 2016), and only later did he serve Grace Rimirch, whom he purported to designate, without explanation, as the representative of Telungalek ra Ngerkui, *see* Certificate at 1 (Jul. 21, 2016).

even though these interests normally call for remand only after a decision on the merits. Remanding the appeal at this early stage prevents the parties from becoming any more heavily invested in an appeal that has the potential for protracted litigation in the Appellate Division over the identity of proper parties to the appeal and whether they were properly served. Remanding now also clears the path for a subsequent appeal in which the representative of Telungalek ra Ngerkui is definite.

[¶ 14] Because remand is needed for the Land Court to identify a representative for Telungalek ra Ngerkui in the determinations of ownership issued in its favor, we believe it is also in the interests of judicial economy for the Land Court, on remand, to identify representatives for Telungalek ra Techur and Telungalek ra Kerngel in the determinations of ownership issued to them. Doing so now decreases the likelihood of the need for a second remand after a determination on the merits in a subsequent appeal.

[¶ 15] Finally, we wish to note that we are acutely aware of the unusual nature of this opinion. In the normal course, we eschew issuing an opinion before briefing is complete, and, if we decide to address an issue prior to briefing, we generally ask for the parties' input. Here, however, we think that the appeal should not continue to briefing and that the parties' input should not be sought precisely because we cannot determine from the record who should be submitting briefs on appeal. Opinions like this can be avoided in the future if the Land Court follows the rule stated here that determinations of ownership in favor of a group must identify the individual members of the group and if, when the Land Court fails to do so, the parties move the Land Court to correct the error before proceeding to their appeals. We trust that this unusual opinion will prove to be *sui generis*.

CONCLUSION

[¶ 16] For the reasons set forth above, this appeal is **DISMISSED WITHOUT PREJUDICE** and **REMANDED** to the Land Court for the limited purpose of issuing new determinations of ownership that identify representatives for Telungalek ra Ngerkui, Telungalek ra Techur, and Telungalek ra Kerngel. All pending motions in this appeal are **DENIED** as moot.

SO ORDERED, this 23rd day of August, 2016.