IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

NGEREMLENGUI STATE GOVERNMENT and
NGEREMLENGUI STATE PUBLIC LANDS AUTHORITY,
Appellants/Cross-Appellees,
v.
NGARDMAU STATE GOVERNMENT and
NGARDMAU STATE PUBLIC LANDS AUTHORITY,
Appellees/Cross-Appellants.

Cite as: 2016 Palau 28
Civil Appeal No. 15-014
Appeal from Civil Action No. 13-020

Decided: December 19, 2016

Counsel for Petitioners .....Yukiwo P. Dengokl

BEFORE: KATHLEEN M. SALII, Associate Justice
LOURDES F. MATERNE, Associate Justice
C. QUAY POLLOI, Associate Justice Pro Tem

Appeal from the Trial Division, the Honorable R. Ashby Pate, Associate Justice, presiding.

ORDER DENYING REHEARING

PER CURIAM:

[¶ 1] Before the Court is Appellees' petition for rehearing pursuant to ROP R. App. P. 40. Petitions for rehearing "shall be granted exceedingly sparingly, and only where the Court's original decision obviously and demonstrably contains an error of fact or law that draws into question the result of the appeal." *See, e.g.*, *Kebekol v. KSPLA*, 22 ROP 74, 74 (2015) (collecting cases); *see also, e.g.*, *Henry v. Shizushi*, 21 ROP 79, 79 (2014) (same). Because the petition fails to meet this standard, it will be denied. *See Kebekol*, 22 ROP at 74.

[¶ 2] Petitions for rehearing must "'state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended.'" *Rengiil v. Republic of Palau*, 20 ROP 257, 258 (2013) (quoting ROP R. App. P. 40(a)). The instant petition argues that the Court: (1)

"overlooked the facts" concerning "the exact location of the southeast boundary point[s]" at Ngel or Ngelsum; and (2) "overlooked the fact that it is necessary to remand" for a survey. *See* Petition, Statement of Issues on Rehearing, Civil Appeal No. 15-014 (filed November 30, 2016) ("Pet.").

[¶ 3] With respect to the latter, the necessity of a remand for survey is not a "fact" in the sense contemplated by Rule 40.[1] With respect to the former, Appellees note—with admirable candor—that the "exact locations" of Ngel and Ngelsum determined in this case were the locations "proposed by Appellees." *See* Pet., at 5. Appellees suggest, however, that they would have proposed different "exact locations" for Ngel and Ngelsum had they known that they would not prevail in having the boundary set as described in the Ngardmau Constitution. This argument does not provide a basis for rehearing. Among other things, the argument is new, and a new argument that was not made in appellate briefing "do[es] not form a proper basis for a petition for rehearing." *See Henry*, 21 ROP at 79 n.1.

[¶ 4] Even assuming the argument is not new, we find it unpersuasive. The petition states, for example, that the Ngel that Appellees litigated an exact location for was "simply . . . an area within Ngardmau by that name," and not a point on either a constitutional or charter boundary. *See* Pet., at 5. The petition does not explain why Appellees litigated the location of a point irrelevant to any boundary. The location of Ngel was at issue because it is mentioned in both charters. Although Appellees "proceeded primarily on its constitutional boundaries and not on the charter boundaries," *see* Pet., at 5, the charter boundaries were litigated because Appellants argued for them. In other words, Appellees had a fair opportunity to litigate the chartered boundary.

[¶ 5] After careful consideration, the petition for rehearing is **DENIED**.

SO ORDERED, this 19th day of December, 2016.

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[1] Construing this argument to suggest a misapprehended point of law, the petition does not provide a legal basis that a remand is required.