

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

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**NGARAMEKETII/RUBEKUL KLDEU, HIROMI NABEYAMA,  
OCHOB NGIRACHEDENG, and ROIS CLAN,**  
*Appellants,*  
**v.**  
**KOROR STATE PUBLIC LANDS AUTHORITY,**  
*Appellee.*

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Cite as: 2017 Palau 19  
Civil Appeal No. 15-009  
Appeal from LC/B Nos. 14-001 through 14-080

Decided: April 10, 2017

Counsel for NRK.....Mariano Carlos  
Counsel for KSPLA.....Natalie Durflinger

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice  
JOHN K. RECHUCHER, Associate Justice  
DENNIS K. YAMASE, Associate Justice

Appeal from the Land Court, the Honorable C. Quay Polloi, Senior Judge, presiding.

**ORDER DENYING REHEARING**

PER CURIAM:

[¶ 1] Before the Court is Appellant Ngarameketii/Rubekul Kldeu’s (“NRK”) petition for rehearing pursuant to ROP R. App. P. 40. 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)). 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).

[¶ 2] It appears that NRK’s petition for rehearing misapprehends the basis on which the Land Court rejected its superior title claim. NRK states that it

is bringing this petition because it “believes that this Court misapprehend the facts of this case, and therefore, refused to review its argument relating to the Land Court’s erroneous use of the 1989 deadline for the return of public lands claim to deny its claim of superior title to Ngerchong.” However, the Land Court did not use the 1989 deadline to deny NRK’s superior title claim. Instead, it held that none of the claimants pressing superior title claims could prevail because Ngerchong became public land through a wrongful taking. NRK argued on appeal that Ngerchong had never become public land and that, even though it was wrongfully taken, NRK had never lost fee simple title to the island. We rejected those arguments and affirmed the Land Court’s dismissal of NRK’s superior title claim on the merits.

[¶ 3] After addressing the various claimant’s superior title claims under 35 PNC § 1304 (a), the Land Court considered return of public lands claims under 35 PNC § 1304 (b) for all claimants, not just those who had filed timely return of public lands claims. The Land Court found that Ngerchong had been wrongfully taken by previous occupying powers and that the people of Koror, as represented by their traditional leaders the NRK, were the original owners of Ngerchong when it was wrongfully taken. Based on these findings, the Land Court stated in *dicta* that it likely would have awarded ownership of Ngerchong to NRK on a return of public lands theory if NRK had filed a return of public lands claim prior to the 1989 deadline. The Land Court then held that Ngerchong remains public land because it found that no timely return of public lands claimants succeeded.

[¶ 4] On appeal, NRK argued that its claim was not barred by the 1989 deadline to file claims for the return of public lands because that deadline only applies to natural persons who are citizens of Palau, not artificial entities such as itself, and that the Land Court does not have jurisdiction to decide return of public lands claims brought by artificial entities. It further argued that 35 PNC § 1304 (b) fell short of what Art. XIII, § 10 of the Constitution required because it did not provide a way for artificial entities to bring their return of public land claims, and asked that we reverse and remand this case to the Land Court with instruction to hold the award of ownership of Ngerchong in abeyance until the OEK passes new legislation which would allow NRK to bring a return of public lands claim. Since NRK’s superior title claim had been denied on the merits, we understood NRK to be asserting

a return of public lands theory and seeking a ruling that this claim is not affected by the 1989 deadline because the period under which NRK may bring a return of public lands claim has not yet begun to run. We noted that NRK did not make a return of public lands claim or raise these arguments before the Land Court in the first instance, that the appropriate time for NRK to ask for this novel result was during the proceedings before the Land Court, and held that these arguments were waived on appeal for the same reasons we discussed in *Ngarameketii/Rubekul Kldeu v. Koror State Pub. Lands Auth.*, 2016 Palau 19 ¶¶ 12-16.

[¶ 5] In short, we agree that the 1989 deadline is not relevant to NRK's superior title claim. However, the Land Court did not deny NRK's superior title claim because it was filed after the 1989 deadline, it denied that claim on the merits. We fully considered, and denied on the merits, the arguments NRK made as to why the Land Court erred in its adjudication of NRK's superior title claim. We did not consider NRK's arguments regarding the applicability of the 1989 deadline to return of public lands claims by NRK, the Land Court's jurisdiction over those claims, or the merits of any return of public lands claim which NRK hypothetically could have, but did not, bring before the Land Court with regards to Ngerchong.

[¶ 6] After appropriate consideration, the petition for rehearing is **DENIED**.

**SO ORDERED**, this 10th day of April, 2017.