IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

KLOULUBAK MARK RUBASECH
and **WUEL FUANA BENHART,**
Appellants,
v.
TOMASA DELTANG RECHESENGEL,
Appellee.

Cite as: 2020 Palau 12
Civil Appeal 19-023
(Civil Action No. 16-045)

Argued: May 13, 2020
Decided: May 18, 2020

Counsel for Appellants ..... Yukiwo P. Dengokl

Counsel for Appellee ..... Vameline R. Singeo

BEFORE: JOHN K. RECHUCHER, Acting Chief Justice
GREGORY DOLIN, Associate Justice
DENNIS K. YAMASE, Associate Justice

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

OPINION

RECHUCHER, Acting Chief Justice:

[¶ 1] At issue in this case is the ownership of Cadastral Lots 056 E 29 and 056 E 32, part of a larger parcel known as *Ngeluul* (Tochi Daicho Lot Number 1849). This is the second time this case has been before us; in *Rechesengel v. Mikel*, 2018 Palau 20 ¶ 23, we remanded the case to the Trial Division so that it could determine, in the first instance, "whether, in the context of Palauan customary law regarding inheritance of land, the

phrase '*Ongalk ra Ngiraked*' includes a child who was customarily adopted by Ngiraked." On remand, the Trial Division held that under Palauan customary law "*Ongalk ra Ngiraked*" did not include Ngiraked's adopted child Kelau Gabriel. In light of that conclusion, the Trial Division made several further determinations with respect to various property transactions over the preceding years, and entered judgment accordingly. Finding no errors in Trial Division's legal or factual determinations, we **AFFIRM**.

FACTS[1]

[¶ 2] We are now called on to resolve the question of ownership of two lots—Cadastral Lot 056 E 29 and Cadastral Lot 056 E 32. These lots were previously part of a larger parcel—Cadastral Lot 056 E 08—which was later subdivided into four smaller lots.[2] A Certificate of Title for the original lot was issued on February 8, 1996, based on a May 19, 1992, Determination of Ownership. *See Rechesengel*, 2018 Palau 20 ¶ 2. The original Certificate of Title was registered May 2, 1996, and states that the property is owned by "*Ongalk ra Ngiraked*, Trustee by John O. Ngiraked." *Id.* On March 25, 1993, a power of attorney was issued by all of Ngiraked's surviving biological children (John O. Ngiraked, Christian Ngiraked, Maria Paulis, Moses Sam, Rosania Olkeriil, and Irene Obeketang) giving John O. Ngiraked (hereinafter John) the authority to act for them with regards to their father Ngiraked's properties.[3] *Id.* ¶ 4. Ngiraked also had an adopted child, Kelau Gabriel, who did not sign the Power of Attorney. *Id.* ¶ 8.

[¶ 3] On October 29, 1996, Appellee Tomasa Deltang Rechesengel purchased a portion of Cadastral Lot No. Lot 056 E 08 (presently numbered Lot 056 E 32) from John, and recorded it the following day in accordance with 39 PNC § 402. Then on January 12, 1998, Rechesengel purchased another part of Lot 056 E 08 (presently numbered 056 E
29) and again recorded it the following day.

[¶ 4] In the meantime, Moses Sam (one of Nigraked's biological children) incurred debt to the Bank of Guam that he became unable to repay. Bank of Guam obtained a judgment, *see Bank of Guam v. Moses Sam*, Civil Action No. 01-123 (Aug. 27, 2001), and eventually sought to execute on it through, *inter alia*, the forced sale of Sam's interest in Cadastral Lot 056 E 08. *Rechesengel*, 2018 Palau 20 ¶ 6. On June 16, 2005, a Notice of Sale of Interest in Lands was filed and served on the remaining biological children of Ngiraked, the administrator of John's estate,[4] and Gabriel.

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[1] The Trial Division, in its opinion on remand, found that "the state of the record" in this case was "appalling." Because the issue in this appeal is quite narrow, however, the relevant facts are both apparent and undisputed.

[2] The status of the other two lots is not before us.

[3] Disputes later arose between the siblings, although they are not directly relevant here.

[4] John's son, John O. Ngiraked, Jr. filed an objection to the sale of one of the properties, but not 056 E 08.

[¶ 5] On July 21, 2005, Tiou Ngirasob—maternal aunt to Appellants Kloulubak Mark Rubasech and Wuel Fuana Benhart[5]—(together with some other relatives) attended the Bank of Guam's public auction, and purchased Ngeluul.[6] *Id.* On July 25, 2005, the Bank duly executed a quitclaim deed for the property in favor of Tiou Ngirasob. A new Certificate of Title in the names of *Ongalk ra Ngiraked* and Tiou Ngirasob (owning Moses Sam's interest) was issued on August 3, 2005, and recorded on August 8th of the same year.

[¶ 6] Thus, by 2016, there were several claimants to Cadastral Lot 056 E 08. On one hand Rechesengel claimed the land on the basis of her 1996 and 1998 purchases from John (who acted on behalf of all of Ngiraked's biological children), and on the other, Appellants Rubasech and Benhart claimed ownership on the basis of Ngirasob's deed from the Bank of Guam. To complicate matters further, Gabriel, relying on her status as Ngiraked's adopted child, also claimed an interest in Cadastral Lot 056 E 08, but on February 4, 2017, after the underlying action was filed, she transferred that interest via a quitclaim deed to Peter Mikel—Paulis' son and Ngiraked's grandson.[7]

[¶ 7] In 2016, Rechesengel filed a petition in the Trial Division to quiet title to Cadastral Lots 056 E 29 and 056 E 32 (formerly parts of Cadastral Lot 056 E 08), and Mikel and Appellants filed competing claims. The Trial Division concluded that John's sale of the property to Rechesengel was invalid because Gabriel did not join in the Power of Attorney to John. The Trial Division rested its decision on its determination that, because the phrase "*ongalk ra*" means "children of," Gabriel must have been included in *Ongalk ra Ngiraked* and therefore had an interest in the land in question. Accordingly, the Trial Division held that the property continued to be owned by all the children of Ngiraked until Moses Sam's interest was sold at auction, and then Gabriel's interest was sold to Mikel. Since none of the other successors in interest of the Children of Ngiraked had filed claims, the Trial Division quieted title in Rubasech and Benhart (representing Sam's interest that was purchased at the auction) and Mikel (who continued to own the interest of *Ongalk ra Ngiraked*). *See Rechesengel*, 2018 Palau at ¶ 12.

[¶ 8] On appeal, we vacated the Trial Division's judgment, faulting that court for relying "on the plain meaning of '*ongalk*,' . . . instead [of] refer[ing] to customary law regarding inheritance of real property to determine the individual members of the ownership group." *Id.* at ¶ 16 (citing *Mikel v. Saito*, 20 ROP 95 (2013)). We remanded the case to the Trial

[5] For simplicity, we will continue to refer to Appellee's interest as Ngirasob for the remainder of this opinion.

[6] Though we make no findings on this issue, there appears to have been an agreement between Ngirasob and her siblings, together known as the "Children of Ilberang Ebelbal," that she would purchase the property for all of them and they would reimburse her, which it appears they did. However, the relationship between the purchasers is not before us nor is it necessary to the resolution of the case at hand.

[7] Mikel is not a party to the present appeal.

Division so that it could determine "whether, in the context of Palauan customary law regarding inheritance of land, the phrase '*Ongalk ra Ngiraked*' includes a child who was customarily adopted by Ngiraked." On remand, the Trial Division determined that, under the circumstances of this case where Gabriel was provided for at the *eldecheduch* ceremony after Ngiraked's death, Palauan customary law would not have included her as part of the *Ongalk*.

[¶ 9] Because it concluded that Gabriel was not part of *Ongalk ra Ngiraked*, the Trial Division held that Gabriel held no interest in Cadastral Lot 056 E 08 (or its subdivisions), and therefore her consent was not required in order to sell it. Consequently, the Power of Attorney signed by all of Ngiraked's biological children, and the 1996 and 1998 sales John made to Rechesengel pursuant to that authority, were valid. It also necessarily followed that since, by 2005 when Moses Sam's interest was sold at the auction, he actually no longer had any interest in the two smaller lots carved out of Lot 056 E 08 (as they were transferred to Rechesengel several years prior), the interest on which the Bank executed judgment was nonexistent, and therefore the Bank had nothing to subsequently convey to Ngirasob. Accordingly, Ngirasob received nothing and could pass nothing to her niece and nephew. The Trial Division found that "Ngirasob cannot be said to be a bona fide purchaser because Petitioner's deeds were duly recorded before the judicial sale."

[¶ 10] The Trial Division entered judgment accordingly, issuing a new Certificate of Title to Rechesengel. This timely appeal followed.

STANDARD OF REVIEW

[¶ 11] "We review trial court's legal determinations *de novo*, findings of fact for clear error, and exercises of discretion for abuse of that discretion." *Etpison v. Ngeruluobel Hamlet*, 2020 Palau 10 ¶ 16.

DISCUSSION

[¶ 12] We begin by noting what is *not* before us. Appellant does not challenge the Trial Division's determination that Gabriel was not part of *Ongalk ra Ngiraked* as a matter of Palauan customary law. Therefore, at least for the purposes of this case, we treat that determination as correct. *See, e.g.*, *Thompson-Hayward Chem. Co. v. Rohm & Haas Co.*, 745 F.2d 27, 32 (Fed. Cir. 1984) (noting the "general proposition that conceded or unappealed issues are not reviewable."). The only issue before us is how Gabriel's status impacts the ultimate determination of ownership of Cadastral Lots 056 E 29 and 056 E 32.

[¶ 13] One of Appellant's arguments is that our remand to the Trial Division was only to determine the answer to the question we posed and nothing else. That is incorrect. The Trial Division's "duty [was] to resolve the parties' disputes." *Beouch v. Sasao*, 16 ROP

116, 119 (2009). In this case, the parties disputed ownership of Cadastral Lots 056 E 29 and 056 E 32, not Gabriel's status as such. *See Rechesengel*, 2018 Palau 20 ¶ 3 (noting that the underlying action is one to quiet title). For Ngirasob's argument to be correct, it would mean that the Trial Division was required to issue an advisory opinion as to Gabriel's status, but fail to resolve the parties' actual dispute. To be sure, Gabriel's status is the relevant—indeed determinative—question as to the ultimate issue, but the ultimate issue in this case is land ownership, not the Ngiraked family's intra-familial relationships.

[¶ 14] Appellant also takes issue with the Trial Division's holding that Ngirasob took nothing at the bank sale because by 2005 Moses Sam had no interest to convey. *See Ongalk Ra Teblak v. Santos*, 7 ROP Intrm. 1, 2 (1998) (discussing "the common law principle that one cannot sell what one does not own."). Appellant points to the Trial Division's first opinion, which stated that Rechesengel was "barred from bringing a claim at this time" because she did not object to the bank sale despite having notice of it.

[¶ 15] As an initial matter, our *vacatur* of the Trial Division's first opinion makes Appellant's reliance on that opinion puzzling, since "[a] judgment vacated on appeal is of no further force and effect." *E.g. Riha v. Int'l Tel. & Tel. Corp.*, 533 F.2d 1053, 1054 (8th Cir. 1976). [8] Furthermore, the reason the Trial Division concluded that Rechesengel's claim was barred was its holding that the transfers to Rechesengel were void because Gabriel did not consent to them. Thus, Rechesengel's actions (or inactions) in 2005, or at any other point in time, would be of little relevance because (under the Trial Division's vacated reasoning) she never had any rights to the land in question. Under the correct analysis that followed our remand—and which is the only one presently before us—there was no need for Rechesengel to file an objection to the 2005 bank sale. The sale was not a Land Court proceeding, in which the failure to file a claim results in the waiver of it, *see* 35 PNC § 1309(a).[9] The Bank executed on Sam's interest in land and sold whatever interest Sam had (which was none). Purchasers like Ngirasob were warned that they were buying the land "as is," and she received only a quitclaim deed.[10] As Sam had no interest in this property, the purchaser received nothing, which was a risk she took.

[¶ 16] Ngirasob's appeal to our recording statute, 39 PNC § 402, is baffling. The recording statute protects subsequent *bona fide* purchasers who take land without notice

[8] This is not a case where we issued a limited mandate and the Trial Division exceeded it, for the reasons discussed in ¶ 13, *supra*. *Cf. Tengoll v. Tbang Clan*, 11 ROP 61, 64 (2004) (discussing the mandate rule in detail).

[9] Appellant cites no statute or case holding that the failure of a fee simple owner of a piece of property to file a claim in a bank sale which purports to sell a non-existent interest in that property somehow loses their ownership rights.

[10] Indeed, if the property owner was required to monitor public notices related to their property and file an objection to the sale or risk losing their interest, the phrase "as is" would be entirely superfluous.

of prior transfers. *Id.* ("No transfer of . . . title to real estate or any interest therein, . . . shall be valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer . . . if the transfer to the subsequent purchaser or mortgagee is first duly recorded."). But in this case, the earlier transfer to Rechesengel was recorded and Ngirasob was on constructive notice of that transfer when she bid on the Sam's interest in the land several years after the sale of the property to Rechesengel.

CONCLUSION

[¶ 17] For all of the foregoing reasons, the judgment of the Trial Division is **AFFIRMED**.