IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

PAUL DAKUBONG,
Appellant,
v.
AIMELIIK STATE GOVERNMENT, *et al.*,
Appellees.

Cite as: 2021 Palau 19
Civil Appeal No. 20-031
Appeal from Civil Action No. 18-082

Decided: July 12, 2021

Counsel for Appellant ..... Johnson Toribiong
Counsel for Appellees ..... Siegfried B. Nakamura

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
GREGORY DOLIN, Associate Justice

Appeal from the Trial Division, the Honorable Lourdes F. Materne, Associate Justice, presiding.

OPINION[1]

PER CURIAM:

[¶ 1] Appellant Paul Dakubong brought an action in the Trial Division seeking a declaration that he is Chief *Uchel* of Ongall Clan (the first ranking clan of Medorm Hamlet) and that "[t]he decision by the Medorm Council of Chiefs decision to expel [him] from his seat in the Medorm Hamlet Council of Chiefs is ineffectual, null and void *ab initio*." Complaint at 6. He also sought payment of "his compensation and stipend, including payments for the amount

[1] Although the parties requested oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

of the unpaid compensation and stipend since May of 2017." *Id.* After the Trial Division denied all relief, Dakubong timely appealed. However, because his appeal in part seeks relief entirely different from that sought below, and because his briefs fail to comply with the Rules of Appellate Procedure, we **DISMISS**.

BACKGROUND

[¶ 2] On July 4, 1998, Appellant was appointed by the *ourrot* of Ongall Clan to hold the *Uchel* title. He was thereafter accepted as the titleholder by the *klobak* of Medorm Hamlet. Under the Constitution of Aimeliik State, Appellant's chiefly title entitled him to a seat on the Aimeliik State Council of Traditional Chiefs and the Aimeliik State Public Land Authority. *See* Aimeliik Const. art. III, §§ 1, 3(b). He was also entitled to a monthly compensation of $300 per month plus a stipend of about $15.00 per meeting.

[¶ 3] Sometimes between 2004 and 2005, Dakubong executed a Lease Agreement with a Chinese investor with respect to property known as *Klou-Ngeyil* or Cadastral Lot No. 022 M 01 — a coastal small island in Medorm Hamlet's lagoon. The land in question belongs to the Hamlet, with the holder of the *Uchel* title serving as a trustee. *See* Certificate of Title, LC 1221-04. This action caused some discord between Appellant and the Medorm Council of Chiefs and the Council ultimately removed Dakubong from his position as *Uchel*. On April 10, 2017, the Medorm Council notified the Aimeliik Council of Chiefs that Dakubong was no longer *sechelirir* ("their friend"), and therefore was no longer a member of the Medorm Council. Having lost his membership at the Medorm Council, Dakubong also lost his seats on the Aimeliik Council of Chiefs and the Aimeliik SPLA, as well as the emoluments associated with those positions.

[¶ 4] It also appears from the record that Dakubong attempted to reconcile with the Medorm Council, but apparently to no effect. There is some dispute as to what transpired during those attempts, with Appellant claiming that he paid $100 reconciliation money to each member of the Medorm Council which he claims was accepted thus signifying his restoration to the chief title. In contrast, Appellee contends that the money that was paid was not for the purposes of reconciliation, but as a fee paid by Appellant's spokesperson

merely for the right to enter the *bai* and plead Appellant's case before the Council.

[¶ 5] The Trial Division found that "[t]he senior strong members of Ongall [Clan] including the female title bearer acknowledged and accepted [Medorm Council's] decision to remove" Dakubong from his position. Accordingly, the Trial Division concluded that Appellant's expulsion "from the *klobak* is not null and void *ab initio* and therefore, he is not entitled to be paid his compensation and stipend from Aimeliik State Government."

[¶ 6] The present appeal followed.

DISCUSSION

[¶ 7] On appeal, Dakubong raises three issues. First, he contends that "as trustee of *Klou-Ngeyil* [he] has the legal authority to lease it." Op. Br. at 6. Relatedly, he argued that "the *klobak* of Medorm Hamlet may be trustees/administrators for other properties of Medorm Hamlet, but not *Klou-Ngeyil*." *Id.* at 7-12. Finally, he contends that even if he were properly removed from his seat on the Medorm Council of Chiefs, "his title was restored to him when the *Ngaratulau* (Medorm Hamlet Council of Chiefs) accepted the reconciliation money and partook of the feast held for him." *Id.* at 12-13.

[¶ 8] We do not reach the merits of Appellant's first two arguments, because they are not properly before us.

[¶ 9] "It is well settled that this Court will not consider arguments that are raised for the first time on appeal." *Ngerdelolk Hamlet v. Peleliu State Pub. Lands Auth.*, 2021 Palau 15 ¶ 7. While Dakubong's complaint referenced the lease of *Klou-Ngeyil* as one of the circumstances surrounding his removal from the Medorm Council of Chiefs, he never sought a declaration from the Trial Division either that his actions were lawful or that the remaining members of the Council had no standing to object to his decision. All Dakubong sought was the recognition of his chief title, not of his authority to lease the land. Complaint at 6. In contrast, before us, Dakubong seeks a judgment confirming, *inter alia*, that he "was and continues to be the trustee for *Klou-Ngeyil*, authorized to make fiduciary decisions in connection therewith which are in the best financial interests to the people of Medorm and Aimeliik." Op. Br. at

15. As this request for relief was neither presented to, nor passed on by the Trial Division, we do not entertain it either.[2]

[¶ 10] Appellant's third argument with respect to him continuing to hold the *Uchel* title, though presented to the Trial Division, fares no better because the presentation of that issue fails to comply with ROP R. App. P. 28(a)(8) and 28(e).

[¶ 11] "The Republic of Palau Rules of Appellate Procedure and the Court's case law impose both formal and substantive requirements for adequate appellate briefing." *Suzuky v. Gulibert*, 20 ROP 19, 21 (2012). Rule 28 requires that "[i]n the body of all briefs shall be the argument" and that "[r]eferences to evidence must be followed by a pinpoint citation to the page, transcript line, or recording time in the record." A legal argument is a connected series of statements intended to establish a definite legal proposition. It involves more than mere citations to a case without explaining why or how that case is relevant to the facts of the case at hand. *See Aimeliik State Pub. Lands. Auth. v. Rengchol*, 17 ROP 276, 282 (2010) ("Litigants may not, without proper support, recite a laundry list of alleged defects in a lower court's opinion and leave it to this Court to undertake the research."). "It is not enough to merely mention or allude to a legal theory." *United States v. Scroggins*, 599 F.3d 433, 446 (5th Cir. 2010). Compliance with Rule 28(a)(8), "[a]t the very least [] means clearly identifying a theory as a proposed basis for deciding the case . . . ." *Id.* Doing so requires more than just identifying what the litigant believes to be a governing legal principle and listing various facts in the records. Rather, an adequate argument is one where a litigant applies the governing law to the facts of his case. This means that litigant must show how and why a particular fact or set of facts meets the relevant legal standard. Failure to do so means that the litigant did not *adequately* brief an issue and has therefore waived it. *See Anastacio v. Eriich*, 2016 Palau 17 ¶ 9, *Suzuky*, 20 ROP at 23. We have "repeatedly refused to consider claims brought before [us] that are not well developed and supported by facts on the record or law." *Aderkeroi v. Francisco*, 2019 Palau 29 ¶ 12. That is because "[i]t is not the

[2] We acknowledge that Dakubong made these arguments at the Trial Division in his written Closing Argument brief. However, that does not change the fact that the *relief* he asked for did not include a request for a declaration that he has unilateral authority to lease *Klou-Ngeyil.*

Court's duty to interpret this sort of broad, sweeping argument, to conduct legal research for the parties, or to scour the record for any facts to which the argument might apply." *Idid Clan v. Demei*, 17 ROP 221, 229 n.4 (2010).

[¶ 12] Appellant's brief fails to develop his legal arguments as to why his removal was improper. The most we can gather from it (and his submissions to the Court below) is that he alleges that he was given neither an adequate notice regarding the meeting where his continuance in office were to be decided nor an opportunity to defend himself against the charges. These factual complaints, in turn, are not supported by any citation to the record, in contravention of ROP R. App. P. 28(e), and for that reason we will not consider them. *See Suzuky*, 20 ROP at 22-23.[3]

[¶ 13] Finally, Appellant's assertions that the $700 paid to the member of the Medorm Council of Chief was "reconciliation" money, the acceptance of which entitled Appellant to be restored to his title, also fail to meet Rule 28 standards. Appellant's brief fails to cite to any portion of the record which would confirm that proposition. Instead, he merely asserts that "under Palauan customary law . . . [the acceptance of the money] was an expression of acceptance of Appellant back to retake his seat as *Uchel* of Medorm Hamlet." Op. Br. at 13. While that may well be a true statement of Palauan customary law (though we express no opinion on this point), Appellant fails to point to any facts in the record that support his contention that the payment was actually treated as "reconciliation" money. We, therefore, decline to review this argument.[4] *See Ngetchab Lineage v. Klewei*, 16 ROP 219, 221 (2009) ("[A]n appellant must 'point out specifically where the findings are clearly erroneous.'") (quoting *Pachmayr Gun Works, Inc. v. Olin Mathieson Chem. Corp.*, 502 F.2d 802, 807 (9th Cir. 1974)).

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[3] Even if we were to consider Appellant's contentions, we do not perceive anything clearly erroneous in the Trial Division's factual determinations, and therefore would affirm its judgment. *See Shih Bin-Fang v. Mobel*, 2020 Palau 7 ¶ 30.

[4] As with the prior argument, were we to adjudicate this issue on the merits, we would affirm the judgment below, because Dakubong's *ipse dixit* assertions are insufficient to establish that the Trial Division erred in its factual determinations, much less clearly so. *Id.*

CONCLUSION

[¶ 14] Because all arguments advanced by Appellant have been waived either through failure to present them to the Trial Division or as a result of inadequate briefing, the appeal is **DISMISSED**.