

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

<p><b>NGARDMAU STATE PUBLIC LANDS AUTHORITY,</b> <i>Appellant,</i> <b>v.</b> <b>FRANCIS TORIBIONG,</b> <i>Appellee.</i></p>
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Cite as: 2021 Palau 20  
Civil Appeal No. 21-006  
Appeal from Civil Action No. 19-052

Decided: July 15, 2021

Counsel for Appellant .....	Vameline Singeo
Counsel for Appellees .....	Johnson Toribiong

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice  
GREGORY DOLIN, Associate Justice  
KEVIN BENNARDO, Associate Justice

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

**OPINION**

DOLIN, Associate Justice:

[¶ 1] This is the third appeal improperly filed by Appellant Ngardmau State Public Lands Authority (“NSPLA”) in Civil Action 19-052. The underlying case is a quiet title, trespass, and eviction action filed by the NSPLA against Francis Toribiong. Because the appeal is taken from a dismissal without prejudice that accomplished the very outcome that NSPLA sought from the Trial Division, we **DISMISS**.

**BACKGROUND**

[¶ 2] In April 2019, NSPLA filed a complaint to eject Francis Toribiong from a certain parcel of land located in Ngardmau State, alternatively known

as “Siako Area,” or Lease Lot No. 42476, or Lot no. 15-207. Toribiong defended against the action by submitting into evidence a Quitclaim Deed from the High Commissioner of the Trust Territories which allegedly conveyed the lot as containing “358 hectares” to Ngedilingel Clan (of which Toribiong is a member). On the basis of this deed, Toribiong filed a Motion to Dismiss. Toribiong also filed a counterclaim against NSPLA alleging trespass, fraud, and tortious interference with contract. On July 10, 2019, the Trial Division granted Toribiong’s Motion for Judgment on the Pleadings with respect to Plaintiff’s complaint, but did not address Toribiong’s counterclaims. On August 8, 2019, NSPLA noticed an appeal from Trial Division’s Order dismissing its complaint. We dismissed the appeal on January 3, 2020, holding that “there is no final judgment in this case because Toribiong’s counterclaims have not yet been adjudicated.” *Ngardmau State Pub. Lands Auth. v. Toribiong*, Civ. App. No. 19-017 (Jan. 3, 2020) (Order Dismissing Appeal).

[¶ 3] On January 14, 2020, the Trial Division entered a judgment on the pleadings as to Toribiong’s counterclaim for trespass. The Trial Division did not fix damages for trespass nor adjudicated Toribiong’s two remaining counterclaims for fraud and tortious interference with contract. Once again, NSPLA noticed an appeal without waiting for final judgment, and once again we dismissed. *Ngardmau State Pub. Lands Auth. v. Toribiong*, Civ. App. No. 20-007 (May 14, 2020) (Order Dismissing Appeal). This time we imposed sanctions in the amount of \$450 representing reasonable attorney fees that Toribiong had to expend in replying to a frivolous appeal. *Ngardmau State Pub. Lands Auth. v. Toribiong*, Civ. App. No. 20-007 (June 5, 2020) (Order Imposing Sanctions).

[¶ 4] On September 3, 2020, the Trial Division entered a final judgment in this case, but declined to award any damages. On September 14, 2020, NSPLA filed a timely Rule 59(a) motion arguing that there is an error in the size of the awarded lot to Ngediling Clan, because a document from the Bureau of Lands and Surveys “shows that Ngediling Clan only owns 3.58 hectares and not 358 hectares as shown on the quitclaim deed.” In light of the discrepancy between the two documents, the Trial Division granted NSPLA’s motion, vacated its prior judgment, and ordered that the matter proceed to trial. *Ngardmau State Pub. Lands Auth. v. Toribiong*, Civ. Action No. 19-052 (Oct. 7, 2020) (Order Granting Motion for a New Trial).

[¶ 5] In its Rule 59(a) motion, NSPLA admitted that the question of ownership of at least part of the Siako Area remains pending before the Land Court. On the basis of this admission, the Trial Division concluded that NSPLA “cannot maintain an action for ejectment if it is presently litigating ownership of at least some of the land in question,” because to maintain such an action, “a plaintiff must allege either possession or legal title” to the land. *Ngardmau State Pub. Lands Auth. v. Toribiong*, Civ. Action No. 19-052 (April 1, 2021) (Order to Show Cause) (quoting 25 Am. Jur. 2d Ejectment § 6). Accordingly, the Trial Division entered an Order to Show Cause why the case should not be dismissed without prejudice or in the alternative, stayed, pending the completion of the Land Court proceedings. *Id.*

[¶ 6] On April 20, 2021, NSPLA responded to the Show Cause Order consenting to a stay of “all proceedings in this matter until the resolution of the Land Court hearing on ownership issue of the subject lands.” The next day, the Trial Division, noting that the hearing before the Land Court has not yet been scheduled, dismissed the matter without prejudice. On May 20, 2021, NSPLA noticed an appeal from the order dismissing the case without prejudice, as well as the April 1, 2021 Show Cause Order.

## DISCUSSION

[¶ 7] We have “long adhered to the premise that the proper time to consider appeals is after final judgment.” *KSPLA v. Ngarameketii/Rubekul Kldeu*, 22 ROP 1, 2 (2014). We “follow[] the final judgment rule because ‘[p]iecemeal appeals disrupt the trial process, extend the time required to litigate a case, and burden appellate courts[, such that i]t is far better to consolidate all alleged trial court errors into one appeal.’” *Koror State Legis. v. KSPLA*, 2019 Palau 38 ¶ 4 (quoting *Pac. Call Invs., Inc. v. Palau Marine Indus. Corp.*, 16 ROP 89, 90 (2008)). It is for this reason that we have twice before dismissed premature appeals in this case. Though Appellant is once more seeking to appeal Trial Division’s orders, it is again doing so without the benefit of a final appealable judgment.

[¶ 8] Although a final judgment was entered on September 3, 2020, that judgment was vacated on Appellant’s own motion. “[T]he finality of a judgment is terminated by a timely motion for a new trial under Rule 59(a) . . .

In such a case the judgment becomes final, and hence appealable, only upon denial of the motion under Rule 59.” *Napier v. Delaware, Lackawanna & W. R. Co.*, 223 F.2d 28, 30 (2d Cir. 1955). And once the Trial Division granted Appellant’s motion, the prior judgment ceased to exist. *See United States v. Ayres*, 76 U.S. 608, 610 (1869) (“[T]he order granting the new trial has the effect of vacating the former judgment, and to render it null and void, and the parties are left in the same situation as if no trial had ever taken place in the cause.”). Accordingly, there is nothing for Appellant to appeal unless and until a final judgment fixing the rights of all parties to the present litigation is entered by the court below.

[¶ 9] The only plausible argument left open to Appellant is that the court’s April 20, 2021 Order of Dismissal without Prejudice is an appealable final judgment. Some support may be found for that proposition in U.S. caselaw. *See, e.g., Schering-Plough Healthcare Prod., Inc. v. Schwarz Pharma, Inc.*, 586 F.3d 500, 507 (7th Cir. 2009) (“[D]ismissals for lack of ripeness are appealable . . . even though they are likely to be refiled at some future date . . .”). *But see United States v. Yeager*, 303 F.3d 661, 665 (6th Cir. 2002) (“For a dismissal without prejudice to be inherently final, it must, as a practical matter, prevent the parties from further litigating the merits of the case in federal court. . . But [] where the dismissal without prejudice did not prevent [a party] from prosecuting [its case] through another [complaint], the dismissal without prejudice is not an inherently final decision.”) (cleaned up). However, in this case Appellant “request[ed] the [Trial Division] to enter a judgment staying all proceedings in this matter until the resolution of the Land Court hearing on ownership issue of the subject lands.” *Ngardmau State Pub. Lands Auth. v. Toribiong*, Civ. Action No. 19-052 (April 20, 2021) (NSPLA’s Response to the Order to Show Cause) (emphasis added). The dismissal of the claims and counter-claims without prejudice and with an opportunity to refile once the Land Court process is completed accomplished exactly what NSPLA itself requested. And now, Appellant seeks to appeal the order which granted it the very relief it sought. On these facts, in which the dismissal without prejudice was essentially the very outcome that was sought by NSPLA, we hold that a dismissal without prejudice is not appealable as a final judgment.

### CONCLUSION

[¶ 10] This is a third appeal improperly brought by the same litigant in the same case. Once before in this case we have sanctioned Appellant for bringing a frivolous appeal. Yet, it appears that Appellant did not learn from its mistakes.

Accordingly, it is hereby **ORDERED**:

- 1) This appeal is **DISMISSED**; however, we retain jurisdiction to consider whether sanctions are appropriate; and
- 2) Appellant shall, within 14 days of this Order, **SHOW CAUSE**, if any exists, as to why sanctions for improperly bringing this third appeal should not be imposed.