IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

BENJAMIN YOBECH, UONG DAVE ORAK, and TOMMY NGIRBEDUL,
Petitioners,
v.
LOURDES F. MATERNE, ASSOCIATE JUSTICE OF THE SUPREME COURT, TRIAL DIVISION, FOR THE REPUBLIC OF PALAU and MINORU UEKI,
Respondents.

Cite as: 2021 Palau 22
Special Proceeding No. 21-013
Civil Case Nos. 18-086

Decided: July 23, 2021

Counsel for Petitioners ..... Raynold B. Oilouch

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

ORDER DENYING WRIT OF MANDAMUS

DOLIN, Associate Justice:

[¶ 1] Before the Court is Petitioners Benjamin Yobech, Uong Dave Orak, and Tommy Ngirbedul's Petition for a *Writ of Mandamus* seeking an order directing the Trial Division to vacate the trial in Civil Action No. 18-086 and to dismiss the case. Petitioners allege that by holding the trial, the court below ignores prior judgments of this Court in *Orak v. Ueki*, 17 ROP 42 (2009) and *Ngarbachesis Klobak v. Ueki*, 2018 Palau 17. Specifically, Petitioners argue that by permitting Minoru Ueki to argue that he is *Recheiungel* (a chief of the

Uchelkeyukl Clan)[1] the Trial Division is exceeding its lawful authority because in *Orak* we have concluded that Ueki does not bear that title. Petitioners are also seeking a stay of trial pending the resolution of their *mandamus* petition.

BACKGROUND

[¶ 2] In 2004, Ueki brought suit against Orak and others disputing the control of a parcel of land called *Ngerunguikl*. In that suit, both Ueki and Orak claimed to be *Recheiungel*. That litigation culminated in our decision in *Orak v. Ueki*, 17 ROP 42 (2009). There we concluded that neither Ueki nor Orak established that they are the rightful *Recheiungel*. We reversed the Trial Division's determination that Ueki is a *de facto Recheiungel* with the authority and responsibility for "conven[ing] a meeting whereby all the strong members of the clan, including Orak, should be a part of determining the use of the disputed land." *Id.* at 51.

[¶ 3] Thereafter, in 2018, we decided another dispute between the same two factions of the Uchelkeyukl Clan. *See Ngarbechesis Klobak v. Ueki*, 2018 Palau 17. There, parties disputed whether a deceased individual was a previous titleholder and entitled to have a funeral in the Ngerbachesis Bai. Ueki again claimed to have been a strong member of the Uchelkeyukl Clan. *Id.* ¶ 16. The Trial Division refused to consider this argument as foreclosed by our decision in *Orak*. *Id.* We ultimately remanded the matter to the Trial Division "for limited proceedings . . . on the issue of use and control of Ngerbachesis Bai." *Id.* ¶ 28. We cautioned the trial court "to refrain from entertaining arguments by the parties concerning issues of clan membership and strength of membership, to the extent that they have already been determined in *Orak*."[2]

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[1] The title is alternatively spelled "*Recheyungel*." For the sake of consistency, we use the same spelling as is found in Trial Division's orders.

[2] *Ngarbechesis Klobak* did not turn on whether anyone was a titlebearer and rather focused on whether, due to strength in the clan (of which being a chief could be a significant, but not the only indicator, *see Kebliil ra Uchelkeyukl v. Ngiraingas*, 2018 Palau 15 ¶ 3 (noting that a "title bearer *usually* comes from the strongest lineage.")), one or another faction was entitled to control the Ngerbachesis Bai. Thus, it's not clear that *Ngerbachesis Klobak* has any preclusive effect on the present litigation.

Ultimately, the Trial Division concluded that neither faction has unilateral control the bai, and we affirmed that determination in *Ngerbachesis Klobak v. Ueki*, 2020 Palau 22.

[¶ 4] The dispute between the various factions of the Uchelkeyukl Clan did not end there. Instead, in 2018, Ueki initiated Civil Action No. 18-086 seeking declaratory judgment that he is *Recheiungel*, and as such is responsible for administering Clan's lands, and that Defendants (Petitioners herein) are trespassing on said lands because they have not obtained Ueki's consent to use them. Defendants filed a number of counterclaims seeking 1) a declaration that Ueki is not *Recheiungel*, 2) an order enjoining him from using that title, and 3) damages in the amount of "not less than $50,000."

[¶ 5] Various motions for summary judgment followed. As relevant here, the Trial Division denied Defendants' motion to find that Ueki is not *Recheiungel* and that he is "a low ranking member of the Uchelkeukl Clan and therefore his permission is not required in order to use clan lands." The Trial Division explained that although "*res judicata* prevents [Ueki] from being able to claim the title of *Recheiungel* in this case," his claims will be considered insofar as they may shed some light on Yobech's (one of the Defendants/Counter-Plaintiffs) own claim to be a titleholder.

[¶ 6] Believing that the Trial Division's refusal to grant summary judgment on the issue of Ueki's claim to being a titleholder and a strong member of the Clan violated the mandate rule of *Orak* and *Ngerbachesis Klobak* sought a *writ of mandamus* from our Court which would direct the Trial Division to vacate the trial and dismiss the pending Civil Action.

DISCUSSION

[¶ 7] A *writ of mandamus* will not issue unless "there is: 1) a specific, incontrovertible right in the petitioner to have the act in question performed; 2) a corresponding ministerial duty to be performed by the respondent; and 3) no other specific and adequate relief, such as appeal, available." *Ngirameketii v. Materne*, 2020 Palau 23 ¶ 2 (quoting *ROP v. Asanuma & Malsol*, 3 ROP Intrm. 48, 49 (1991)). "A writ of mandamus is an extraordinary remedy, not lightly invoked, but it is available in an appropriate case for a litigant who can show that it has no other adequate means to attain relief to which it is clearly entitled." *In re A.F. Moore & Assocs., Inc.*, 974 F.3d 836, 839 (7th Cir. 2020).

[¶ 8] At its core, Petitioners' argument is that by failing to dismiss the Civ. Action No. 18-086, the Trial Division overstepped its lawful authority and that

mandamus is an appropriate mechanism "to confine [it] to a lawful exercise of its prescribed jurisdiction." *Nayem v. Sengebau*, 2017 Palau 35 ¶ 13 (quoting *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943)). There are several problems with Petitioners' argument.

[¶ 9] First, although *mandamus* does lie against an inferior court that refuses to carry out, on remand, direct orders of a superior tribunal, *see, e.g.*, *A.F. Moore & Assocs.*, 974 F.3d at 839-40, here, the Trial Division is not "interposing unauthorized obstructions to enforcement of a judgment of a higher court." *United States v. U.S. District Court*, 334 U.S. 258, 263–64 (1948). Our judgments in both *Orak* and *Ngerbachesis Klobak* are final and have not been interfered with. Thus, no violation of the mandate rule has occurred, because the mandate rule is applicable only within the context of the same case. *See Indep. Petroleum Ass'n of Am. v. Babbitt*, 235 F.3d 588, 597 (D.C. Cir. 2001) ("The mandate rule is a 'more powerful version' of the law-of-the-case doctrine, which prevents courts from reconsidering issues that have already been decided in *the same case*.") (emphasis added).

[¶ 10] Furthermore, the Trial Division explicitly acknowledged that our prior determinations bar Ueki from arguing that he is *Recheiungel*. According to the Trial Division, Ueki's claim will only be relevant insofar as it might be evidence that Yobech was not appointed consistent with Palauan customary law (*e.g.*, perhaps because not all of the *ourrot* of the Uchelkeyukl Clan participated in the appointment). Admittedly, it is not clear why the Trial Division intends to adjudicate Yobech's claim to the *Recheiungel* title, since neither party asked for a judgment on this matter.[3] Nevertheless, the extraordinary remedy of *mandamus* is not an appropriate vehicle for an appellate court to micromanage the Trial Division's docket.

[¶ 11] We are not unsympathetic to Petitioners' claim that they shouldn't have to relitigate the same issue over and over again. After all, back in 2009 when we decided *Orak*, we noted that the dispute is over 20 years old. 17 ROP at 42. Now, over a decade later, the legal fight is still ongoing. That situation is certainly far from ideal. *See Andres v. Aimeliik State Pub. Lands Auth.*, 2020

[3] We acknowledge that given the press of time, our review of the filings below was not exceedingly searching. A regular appellate process will permit us to review the record in more detail when, and if, an appeal is filed.

Palau 18 ¶ 1 ("[W]hile litigants may be disappointed with the judicial resolution of their disputes, such disappointment is not sufficient cause to continue a fight that the referee has called long ago."). However, as we have previously held, mere "burdens of litigation" are not a cognizable legal injury, *see Ngarametal Ass'n v. Office of the Attorney General*, 2021 Palau 13 ¶ 12, and therefore there is no "incontrovertible right" to avoid such burdens.[4] Consequently, Petitioners are unable to meet the first prong of the test of obtaining relief via *mandamus*.

[¶ 12] Nor are Petitioners able to satisfy the third prong, because to the extent the trial will result in an erroneous judgment adverse to Petitioners, they will be able to obtain relief via regular appellate process.

CONCLUSION

[¶ 13] Because Petitioners are unable to meet the stringent requirements for the issuance of the *writ*, their application for *mandamus* is **DENIED**.[5]

[4] Petitioners also mischaracterize the breadth of *Orak* which merely held that Ueki's claim was "premature," and that the Trial Division erred in treating Ueki as a *de facto* titleholder because such a designation "seems to have appeared from the judicial ether," and lacks any support in customary law. 17 ROP at 51. Contrary to Petitioners' assertions, *Orak* did not hold that due to Ueki's relatively low ranking in the Clan he can never be *Recheiungel*.

[5] The application for a stay is DENIED as moot.