

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

UCHELKEYUKL CLAN by MINORU UEKI,
Appellant,
v.
BENJAMIN YOBECH, DAVE ORAK, and TOMMY
NGIRBEDUL,
Appellees.

Cite as: 2022 Palau 17
Civil Appeal No. 21-025
Appeal from Civil Action No. 18-086

Decided: August 9, 2022

Counsel for Appellants..... Lali Chin Sakuma
Counsel for Appellees..... Raynold B. Oilouch

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
 KATHERINE A. MARAMAN, Associate Justice
 KEVIN BENNARDO, Associate Justice

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

OPINION

PER CURIAM:

[¶ 1] Uchelkeyukl Clan, by Minoru Ueki (“Ueki”) appeals the Trial Division’s October 20, 2021 Order Granting Motion to Dismiss Without Prejudice, on the sole argument that the Trial Division erred in applying the “beyond a reasonable doubt” standard in granting the Motion to Dismiss. Because the Court finds the language of the trial court unclear, we **VACATE** the Trial Division’s Order Granting the Motion to Dismiss Without Prejudice and Judgment, and **REMAND** the case to the Trial Division with the instruction that the trial court address the language at issue and take the appropriate steps to correct the language.

BACKGROUND

[¶ 2] On May 28, 2018, Minoru Ueki and then-party to the case Demei Otobed filed a Complaint in which Ueki claimed to hold the title *Recheyungel* in Uchelkeyukl Clan, and Demei Otobed sought to stop Benjamin Yobech, Herman Orak, and Tommy Ngirbedul Jr. from trespassing on certain Uchelkeyukl lands.

[¶ 3] After multiple delays, the trial was scheduled to begin on July 26, 2021. That morning, before trial began, Minoru Ueki passed away. Counsel immediately filed a Notice of Death and a Motion for Brief Continuance, requesting that the trial begin in the afternoon rather than the morning.

[¶ 4] Also on the morning of July 26, 2021, counsel for Defendants (now Appellees) filed two motions to dismiss, one prior to learning of Ueki's death, and one after. The first Motion to Dismiss called the trial court to dismiss all remaining claims (Ueki's claim to the *Recheyungel* title, Ueki's claim that he is a strong senior member of the Clan, and Ueki's claim for trespass). The second Motion to Dismiss claimed that the Complaint and remaining claims of the case became moot at Ueki's passing.

[¶ 5] In lieu of ruling on these written motions, the trial court issued a Scheduling Order on July 26, 2021, stating that "the two Motions to Dismiss, filed July 26, 2021, are hereby DENIED, in substitution of the pretrial hearing on dismissing the case." Sched. Order at 2. The Scheduling Order stated that the trial court would use the hearing "to determine who the parties are" and "determine whether the Plaintiffs, or depending on the success of the first part of the hearing the Clan, have managed to state a claim upon which relief can be granted." *Id.* at 1-2. The trial court also expressly stated that "[a]s this is a Motion to Dismiss, the Plaintiffs need not show success on the merits in these claims, merely that they are able to 'state a claim' or in other words, possess enough of a legal and factual claim as to permit the Court to hear the arguments." *Id.* at 2.

[¶ 6] The hearing was held on September 23, 2021. On October 20, 2021, the trial court issued its Order Granting Motion to Dismiss Without Prejudice. In the Order, the court reiterated the standard for a 12(b)(6) motion to dismiss:

In considering a motion to dismiss under ROP R. Civ. P. Rule 12 (b)(6), all allegations in the complaint are accepted as true, and the Court's inquiry is limited to "whether the allegations are sufficient to make out a valid claim." *Temengil v. Palau Nat'l Comm'ns Corp.* 13 ROP 224, 227 (Tr. Div. 2005). A "complaint should not be dismissed unless it appears beyond reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *PPLA v. KSPLA*, 19 ROP 24, 27 (2011).

Order Gr. Mot. Dismiss at 1-2. Finally, the trial court stated, "[t]he Court finds, based on the oral hearing and briefing, that Plaintiffs cannot prove, beyond a reasonable doubt, any set of facts in support of their claim that would entitle them to relief." *Id.* at 2.

STANDARD OF REVIEW

[¶ 7] We review the Trial Division’s motion to dismiss de novo. *Giraked v. Estate of Rechucher*, 12 ROP 133, 145 (2005). All legal conclusions are also reviewed de novo. *Etpison v. Ngeruluobel Hamlet*, 2020 Palau 10 ¶ 16.

DISCUSSION

[¶ 8] Appellant Ueki raises one argument on appeal: the trial court erred when it applied the “beyond a reasonable doubt” standard in granting the Motion to Dismiss. Ueki cites the court’s language from the Order stating that “Plaintiffs cannot prove, beyond a reasonable doubt, any set of facts in support of their claim that would entitle them to relief.” Order Gr. Mot. Dismiss at 2. The question before the Court is not whether Ueki presented sufficient evidence to overcome a motion to dismiss, but rather whether the trial court applied the correct legal standard in its evaluation of that question.

[¶ 9] In considering whether a misstatement was a substantive or a mere typographical error (typing mistake), courts in the United States evaluate the language on a case-by-case basis. The Court may evaluate “whether the typographical error could be logically reconciled with” the rest of the lower court’s language. *Peters v. Astrue*, No. 3:09-CV-319, 2010 WL 3087418, at *4 (E.D. Tenn. July 16, 2010) (citing *Calkins v. Sec’y of Health and Human Serv.*, 793 F.2d 1290 (Table) (6th Cir. May 7, 1986)) (holding that, where certain language does not make sense in the context of the rest of the sentence unless the apparent error is corrected, there has been a typographical error that the Court may fix). Further, if the typographical error does not prejudice a party in any way, the Court may find that the error is harmless.¹ *See, e.g., United States v. Sandeen*, No. CR 19-00167 JAO, 2021 WL 1711364, at *2 (D. Haw. Apr. 29, 2021) (holding that an “innocuous typographical error does not support dismissal” of a grand jury proceeding where the error did not cause prejudice to the defendant).

[¶ 10] The correct legal standard for evaluating whether to grant a motion to dismiss under ROP Rules of Civil Procedure Rule 12(b)(6) is whether the plaintiff has stated a claim upon which relief can be granted. In so reviewing, the Court accepts all live allegations in the Complaint as true and “is left to determine whether those allegations are sufficient to justify relief.” *Giraked*, 12 ROP at 146; *see also Temengil*, 13 ROP at 227; *Baules v. Nakamura*, 6 ROP Intrm. 317 (Tr. Div. 1996). “A complaint should not be dismissed unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Palau Pub. Lands Auth. v. Koror State Pub. Lands Auth.*, 19 ROP 24, 27 (2011).

¹ Harmless errors are those that do not affect the substantial rights of a party or prejudice a party’s case. *Ngiraiwet v. Telungalk ra Emadaob*, 16 ROP 163, 165 (2009). The Court will not reverse a decision of the lower court due to an error where that error is harmless. *Ngetchedong Clan v. Haruo*, 19, 143 ROP 139, 143 (2012).

[¶ 11] Here, it is clear on its face that the language at issue incorrectly states the standard that must be met to overcome a motion to dismiss. The sentence *appears* to place a much higher burden on the Plaintiff: proving their facts beyond a reasonable doubt. Taken alone, this statement would convince this Court that the trial court applied the wrong legal standard in its evaluation. However, taken with the rest of the language of the Order Granting the Motion to Dismiss Without Prejudice and the preceding Scheduling Order, the misstated standard reveals itself to be anomalous.

[¶ 12] The trial court, on multiple occasions both before and after the hearing, identified the *correct* legal standard for considering a Rule 12(b)(6) motion to dismiss. First, in the July 26, 2021 Scheduling Order, the court said of its impending evaluation that “[a]s this is a Motion to Dismiss, the Plaintiffs need not show success on the merits in these claims, merely that they are able to ‘state a claim’ or in other words, possess enough of a legal and factual claim as to permit the Court to hear the arguments.” Sched. Order at 2.

[¶ 13] After the hearing was held, the trial court issued its Order Granting Motion to Dismiss Without Prejudice on October 20, 2021. In the Order, the court once again stated the correct legal standard for a motion to dismiss when it stated:

In considering a motion to dismiss under ROP R. Civ. P Rule 12 (b)(6), all allegations in the complaint are accepted as true, and the Court's inquiry is limited to “whether the allegations are sufficient to make out a valid claim.” *Temengil v. Palau Nat'l Comm'ns Corp.* 13 ROP 224, 227 (Tr. Div. 2005). A “complaint should not be dismissed unless it appears beyond reasonable doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *PPLA v. KSPLA*, 19 ROP 24, 27 (2011).

Order Gr. Mot. Dismiss at 1-2. This language precedes and is partially on the same page as the language at issue: “The Court finds, based on the oral hearing and briefing, that Plaintiffs cannot prove, *beyond a reasonable doubt*, any set of facts in support of their claim that would entitle them to relief.” *Id.* at 2 (emphasis added).

[¶ 14] The trial court identified the motion to dismiss as a Rule 12(b)(6) motion, and proffered the legal standard for such a motion. However, in action, the trial court held an evidentiary hearing and heard testimony before deciding. This appears to run contrary to the liberal standard for a Rule 12(b)(6) motion. In accordance with Rule 12(b), if, under a 12(b)(6) motion, “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.” ROP R. Civ. P Rule 12 (b). The trial court does not clarify, either in the Scheduling Order or the Order Granting the Motion to Dismiss Without Prejudice, why it opted to hold a hearing on a Rule 12(b)(6) motion.

[¶ 15] Because of these discrepancies, it is not clear to the Court whether this was merely a typographical error or an application of the incorrect legal standard. We therefore vacate the Order and remand the case to the Trial Division. There, if the trial court determines that the error was typographical, it can simply correct and re-issue the Order. If, rather, it determines that it applied the incorrect legal standard, the trial court can re-conduct the analysis under the correct standard, as set forth above.

CONCLUSION

[¶ 16] For the reasons set forth above, we **VACATE** the Trial Division's Order Granting the Motion to Dismiss Without Prejudice and Judgment, and **REMAND** the case to the Trial Division with the instruction that the trial court address the language at issue and take the appropriate steps to correct the Order.