

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

**SAM YOYO MASANG,**  
*Appellant,*  
v.  
**ESTATE OF MARIANO TELLEI, rep. by LEON TELLEI,**  
*Appellee.*

Cite as: 2023 Palau 17  
Civil Appeal No. 22-014  
Appeal from Civil Action No. 13-132

Decided: August 21, 2023

Counsel for Appellant ..... Yukiwo P. Dengokl  
Counsel for Appellee ..... Lalii Chin Sakuma

BEFORE: JOHN K. RECHUCHER, Associate Justice, presiding  
FRED M. ISAACS, Associate Justice  
KEVIN BENNARDO, Associate Justice

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

**OPINION<sup>1</sup>**

PER CURIAM:

[¶ 1] This dispute concerns the ownership of a land called *Holly* or *Hollyland*, located in Ngerkesoaol hamlet in Koror. Appellant Sam Yoyo Masang successfully collaterally attacked a Land Court judgment awarding ownership of *Holly* to Mariano Tellei, arguing that he had filed a previous claim for a parcel of *Holly* but was not given proper notice of the proceedings. After

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<sup>1</sup> Although Appellant requests oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

finding that Masang’s constitutional right to due process had been violated, the Trial Division then determined that Masang had not produced sufficient evidence to support his claim to *Holly*, and that the land remained with Tellei.

[¶ 2] Because we find that the trial court misallocated the burden of proof and improperly relied on inadmissible evidence, we **VACATE** and **REMAND** for a new trial.

### **BACKGROUND**

[¶ 3] This dispute concerns the ownership of a land called *Holly* or *Hollyland*, located in Ngerkesoaol hamlet in Koror, now Cadastral Lot No. 119 B 10 and Cadastral Lot No. 11. Specifically, a parcel of around 6,850 square meters contained within *Holly* is the subject of competing claims from two claimants: Masang, who asserts the parcel is former Tochi Daicho Lots 415 and 416, and Tellei, who maintains that the parcel was included within former Worksheet Lots 181-12056 and 181-12061.

[¶ 4] The Tochi Daicho lists an individual named Sally as the owner of Lots 415 and 416. There is uncontested evidence in the record that this refers to Ngiraikelau Salii. Salii is the maternal uncle of Masang Marcil, the father of Appellant Sam Yoyo Masang. In 2006, Masang filed a timely claim for Tochi Daicho lots 411, 415 and 416. He later released his claim to Tochi Daicho lot 411, and only retained his claim for Lot 415, measuring 65.5 *tsubo*, and Lot 416, measuring 1,030.2 *tsubo*.<sup>2</sup>

[¶ 5] In 1988, Mariano Tellei initially filed a claim under a return of public lands theory for “Tochi Daicho Lot 167”. Tellei based this claim on a May 30, 1974 claim by his father, Joseph Tellei, to Tochi Daicho Lot 239-1, which claimed that Joseph had purchased the land from a man named Yaoch ra Metuker in 1936. Tellei asserted during trial that “Lot 167” was the pre-Tochi Daicho number for *Holly*. Tellei initially claimed Tochi Daicho 240, then on September 20, 2011, Tellei filed a Notice of Additional Claim in which he sought to include Worksheet Lots 181-12056 and 181-12061 in his initial claim. On May 7th, 2012, the Land Court awarded Worksheet Lots 181-12056

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<sup>2</sup> Japanese *tsubo* are the measurement used in the Tochi Daicho. They represent approximately 3.3 square meters.

and 181-12061 to Tellei, finding that he met the requirements for a return of public land.

[¶ 6] Masang learned that two of the lots he claimed in 2006, Tochi Daicho Lots 415 and 416, were encompassed in the Worksheet Lots issued to Tellei. He then filed Civil Action No. 13-132, asserting that his right to due process had been violated because his claims on Tochi Daicho Lots 415 and 416 were never heard and he did not receive notice of the proceeding.

[¶ 7] The Trial Division bifurcated the trial to determine in a first phase the due process issue, and if it found that Masang’s due process rights were indeed violated, to determine the merits of Masang’s claim to the lots in a second phase. On June 6, 2018, the Trial Division issued partial findings of facts and decision, and ruled that Appellant's right to due process had been violated. The Trial Division found that under 35 PNC § 1309, Masang was an interested party who should have received notice of the monumentation. The trial court concluded that this matter “should move forward to Masang’s collateral challenge of Tellei’s Determinations of Ownership.”

[¶ 8] Trial on the second issue of the merits of Appellant's claim was held on November 18, 19, and 22, 2021. On June 29, 2022, the Trial Division issued a decision finding that “[Masang’s] claim for lots 181-12056 and 181-12061 must fail” and that “the lands remain with the Estate of Mariano Tell[e]i.” The trial court found that the evidence in favor of Masang was “weak at best” as it relies on an unproduced claim and map by his father Masang Marsil. The court noted that Masang testified that he was shown the location of Lots 415 and 416 by his brother, who had received the information from their father. The locations of these lots were purportedly identified in a claim and map filed by Masang Marsil, but neither were produced at trial. The trial court further noted that Masang gave conflicting answers as to how he learned of the lots’ location (stating that he learned it from his father’s claim or from his older brother), and that while he heavily relies on the purported name of the land, *Hollyland*, such name does not appear in the claims he filed for Lots 415 and 416.

[¶ 9] On the other hand, the Estate of Mariano Tellei relied on Joseph Tellei’s claim and monumentation of the disputed lots in 1972, and supported this claim with documents written in Japanese allegedly evidencing a sale of land in 1936 between Joseph Tellei and Yaoch.

### STANDARD OF REVIEW

[¶ 10] The appellate review standard for factual determinations is for clear error. *See, e.g., Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4. Under the clear error standard of review, “[t]he factual determinations of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion.” *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009).

[¶ 11] Nonetheless, while we defer to the trial court with respect to fact-finding, this presumes that the court applied the correct burden of proof. *Mikel v. Saito*, 19 ROP 113, 116 (2012). Evaluating the facts under the incorrect burden amounts to legal error, which is reviewed *de novo*. *Id.*

### DISCUSSION

[¶ 12] Masang makes four separate arguments. First, that the Trial Division misapprehended the scope of Masang’s claim below. Second, that the trial court erred in finding that lots 415 and 416 were not located as stated by Masang. Third, that the trial court erred in admitting certain documents in evidence. Fourth, that Masang properly carried his burden of proof.

[¶ 13] The last of these arguments merits our analysis. Masang argues that he introduced sufficient evidence to meet his burden of proof. We disagree insofar as we find that the trial court misallocated the burden of proof by requiring Masang to carry the burden.

[¶ 14] The person attacking a Land Court determination by alleging lack of due process bears the burden of demonstrating the constitutional violation. *Pedro v. Carlos*, 9 ROP 101 (2002); *Uchellas v. Etpison*, 5 ROP Intrm. 86, 89 (1995). In fact, the party challenging Land Court notice procedures via collateral attack must do so by clear and convincing evidence. *Becheserrak v. Eritem Lineage*, 14 ROP 80, 83 (2007).

[¶ 15] Accordingly, a collateral attack for a constitutional violation has often been understood as a two-step process, where the party asserting the violation must first prove it, then proceed to trial on the merits. Whereas it is well settled that the constitutional violation must be proven by clear and convincing evidence by the party asserting it, our case law has not

meaningfully addressed whether the same standard applies to the subsequent proceedings on the merits.

[¶ 16] Notwithstanding, this Court has found that “[t]he deprivation of a party’s constitutional due process right to notice and an opportunity to be heard renders a court’s judgment on that issue void.” *In re Idelui*, 17 ROP 300, 304 (2010). Void judgments are legally ineffective from inception. *Id.*; *Ngerketiit Lineage v. Ngirarsaol*, 8 ROP Intrm. 126, 127 (2000).

[¶ 17] In *Idelui*, the Land Court determined the ownership of the land called *Idelui* without providing notice of the hearing to four of the claimants. *Idelui*, 17 ROP at 302. Recognizing this due process violation, the Land Court *sua sponte* decided to cancel the determination of ownership and certificate of title and find them to be void *ab initio*. *Id.* Borja, who had been initially granted ownership of the land, argued that the Land Court did not have the authority to *sua sponte* reconsider a determination of ownership and certificate of title. *Id.* This Court affirmed the Land Court’s decision, stating,

The *sua sponte* nature of the Land Court’s actions were appropriate because its determination of ownership was not merely voidable, but was wholly void. As a void determination, it lacked legal effect. Thus, upon providing Borja notice and an opportunity to be heard in opposition to protect his due process rights, the Land Court acted properly—and within its powers—in canceling the determination of ownership and certificate of title.

[¶ 18] Therefore, *Idelui* sets out that once the due process violation is proven, the Certificates of Title and the Determination of Ownership are voided. The burden of persuasion should consequently be restored as if the void proceedings never happened. To do so, the trial court must analyze the competing claims under the preponderance of evidence standard. *See Ucherremasech*, 5 ROP at 147.

[¶ 19] In this case, Masang appropriately carried his burden to prove the due process violation by clear and convincing evidence. Thus, once the violation was proven, the judgment awarding the Worksheet Lots to Tellei was

void from inception, and so were the resulting Certificates of Title.<sup>3</sup> However, in its decision, the Trial Division specifically found that Masang shouldered the burden of persuasion, stating that “[t]he burden of proof is generally placed on the party who would lose if no evidence were presented on either side of the issue.” Decision, *Masang v. Tellei*, Civil Action No. 13-132 (Jun. 29, 2022) at 2. It further stated in its conclusion that “the lands remain with the Estate of Mariano Tell[e]i.” *Id.* at 3. This demonstrates that the Land Court judgment was not properly evinced from the proceedings.

[¶ 20] A remand is necessary to put the parties on an equal footing to prove their superior title to each other by the preponderance of the evidence. In addition, to properly expunge the evidence from the void Land Court proceedings, a new trial must be held.

[¶ 21] During the second phase of the bifurcated trial, Tellei’s estate introduced recordings from the Land Court proceedings, including testimony from the late Mariano Tellei and Merol Ngirmeriil. Because void judgments are nullities from their inception, the evidence from the Land Court proceedings should not have been admitted.

[¶ 22] We also note that the recordings were inadmissible hearsay evidence. In general, the right to cross examine witnesses is “an essential element of a fair trial.” *Kelmal v. Page*, 18 ROP 128, 130 (2011) (quoting 81 Am. Jur. 2d Witnesses § 771). Our Rules of Evidence<sup>4</sup> define the admissibility of hearsay evidence, and dictate some exceptions where hearsay evidence is not excluded if the declarant is unavailable because of death. *See* ROP R. Evid. 804(a)-(b). Under Rule 804, “[t]estimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against

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<sup>3</sup> The Land Court determined the ownership of many lots in the same May 7, 2012 judgment. Only the parts of the judgment pertaining to Worksheet Lots 181-12056 and 181-12061 are void.

<sup>4</sup> We note that while the Rules of Evidence are not applicable to Land Court proceedings, they apply to the Trial Division, including a collateral attack of Land Court proceedings in the Trial Division. *See* LCR Proc. 6 (“All relevant evidence which would be helpful to the Land Court in reaching a fair and just determination of claims is admissible; provided that relevant evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”).

whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.” ROP R. Evid. 804(b).

[¶ 23] During the Land Court proceedings, Masang did not have the opportunity to develop the testimony. The transcript does not reveal that a predecessor in interest had such opportunity either. The recordings from the Land Court proceedings were not admissible under these circumstances. Hence, a new trial is necessary for the trial court to purge itself of any evidence obtained in violation of Masang’s right to due process.

[¶ 24] Masang’s remaining arguments are accordingly moot. Nevertheless, for the sake of judicial economy, we address one inasmuch as it may provide helpful guidance for the new trial. Masang avers that the Trial Division misapprehended the scope of his claim. Masang points to the June 29, 2022 decision, which stated that “[Masang] claims Lots 181-12056 and 181-12061 correspond to the location of Tochi Daicho Lots 415 and 416.” The parties’ briefing, both below and at the appellate level, make clear that Masang only claimed *part* of Worksheet Lots 181-12056 and 181-12061. Our review of the record reveals that the Trial Division did not misunderstand the full scope of Masang’s claim. Nevertheless, for the sake of clarity, the Trial Division should properly delineate the scope of Masang’s claim upon remand.

### CONCLUSION

[¶ 25] We **VACATE** and **REMAND** the Trial Division’s judgment for a new trial, with specific instructions to weigh the evidence with the proper burden of persuasion.