

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

**FELIX FRANCISCO,<sup>1</sup>**  
*Appellant,*  
**v.**  
**NGEUCH CLAN,**  
*Appellee.*

Cite as: 2024 Palau 24  
Civil Appeal No. 24-004  
Appeal from Civil Action No. 18-079

Decided: August 22, 2024

Counsel for Appellant ..... Vameline Singeo  
Counsel for Appellee ..... C. Quay Polloi

BEFORE: FRED M. ISAACS, Associate Justice, presiding  
KATHERINE A. MARAMAN, Associate Justice  
DANIEL R. FOLEY, Associate Justice

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

**OPINION<sup>2</sup>**

PER CURIAM:

[¶ 1] This is the fourth appeal of the underlying Civil Action No. 18-079 in which both Appellant Justino Ngikleb, now deceased, and Appellee Lothain Sadao claimed to be the rightful *Omuik*, chief of Ngeuch Clan in Ngermasech Hamlet in Angaur State. After our latest appellate opinion in 2022, the Trial

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<sup>1</sup> We amend the caption to reflect that Justino Ngikleb passed away before this appeal was filed.

<sup>2</sup> The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

Division issued a Judgment on Remand and an Order Dismissing Counterclaims, the latter of which is now on appeal.

[¶ 2] For the reasons set forth below, we **VACATE** and **REMAND**.

### **BACKGROUND**

[¶ 3] This dispute initially started after Appellant Felix Francisco purchased and felled valuable *dort* (ironwood) trees on Ngeuch Clan land with Ngikleb's permission. On May 2, 2018, Sadao filed suit seeking a temporary restraining order to stop the felling of the trees, then filed a Complaint asserting that he holds the title *Omuik* and requesting a declaratory judgment stating as such. Ngikleb filed a counterclaim asserting that he himself holds the *Omuik* title.

[¶ 4] In the first Decision and Findings of Fact issued on September 6, 2018, the trial court determined that Sadao properly held the chief title. The trial court made several findings of fact, including that the *ourrot* of Ngeuch Clan appointed Sadao as chief and that under Ngeuch Clan custom, approval of the *klobak* was not necessary. We remanded in *Ngikleb v. Sadao*, 2021 Palau 5 and *Francisco v. Ngeuch Clan by Omuik*, 2022 Palau 22 for the trial court to apply the proper analysis to this finding pursuant to *Beouch v. Sasao*, 20 ROP 41 (2013). Shortly after our second appellate opinion, Ngikleb passed away on November 7, 2022. Upon its Judgment on Remand, dated September 21, 2023, the trial court reaffirmed that Sadao holds the chief title for Ngeuch Clan, and therefore has control over Clan lands. In a later order dated January 23, 2024, the trial court dismissed the counterclaims filed by Ngikleb and Francisco, in which they sought a declaratory judgment declaring Ngikleb as the *Omuik* and claiming damages.

### **STANDARD OF REVIEW**

[¶ 5] We have delineated the appellate standards of review as follows:

A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. Matters of law we decide de novo. We review findings of fact for

clear error. Exercises of discretion are reviewed for abuse of that discretion.

*Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 4 (internal citations omitted)

¶ 6 “A court has the power and duty to examine and determine whether it has jurisdiction over the matter presented to it. That power includes the authority to resolve factual and legal disputes that bear on the question of jurisdiction.” *Roman Tmetuchl Family Trust v. Ordomei Hamlet*, 11 ROP 158, 160 (2004).

### DISCUSSION

¶ 7 Francisco now appeals from the Trial Division’s Order Dismissing Counterclaims. This appeal comes shortly after Civil Appeal 23-031, in which Ngikleb and Francisco appealed the Trial Division’s Judgment on Remand. Appellant presents four arguments: first, the trial court did not follow the appellate mandate in applying *Beouch v. Sasao*, 20 ROP 41 (2013). Second, the trial court erred in dismissing the counterclaims, as these were not extinguished by Ngikleb’s death. Third, Ngikleb’s death did not extinguish the claim but that his sister, Juliana Ngikleb, should have been substituted for him. Finally, the trial court could not dismiss a case which was already on appeal.

¶ 8 Taking the last argument first, we find that the trial court did not have jurisdiction to dismiss the counterclaims while the appeal in Civil Appeal 23-031 was pending. As we have previously recognized, “a number of courts have ruled that a trial court loses all jurisdiction over a case once an appeal is taken.” *Tmetuchl v. Ngerketiit Lineage*, 6 ROP Intrm. 29, 29 (1996). “[T]he timely taking of an appeal generally transfers jurisdiction of a matter from the lower court to the appellate court, divesting the trial court of jurisdiction over the case and of authority to vacate, amend, modify, or reconsider its judgment.” 5 Am. Jur. 2d *Appellate Review* § 359. Although we have specifically authorized trial courts to consider Rule 60(b) motions filed after a notice of appeal has been filed, this is very much a carved-out exception and not the rule. *Tmetuchl*, 6 ROP Intrm. at 29.

¶ 9 “Where a lower court lacks jurisdiction to reach the merits of a claim, [the Appellate] Court has appellate jurisdiction only to correct the lower court’s

error in adjudicating the claim, not to review the merits of the claim itself.” *Idid Clan v. Palau Pub. Lands Auth.*, 2016 Palau 7 ¶ 27; *Rechucher v. Etpison*, 2019 Palau 25 ¶ 17. Furthermore, “an order entered without jurisdiction is without force and must be vacated,” *Rengulbai v. Klai Clan*, 22 ROP 56, 60 (2015). Nevertheless, we are keenly aware that this is the fourth appeal in a case ongoing since 2018. We must address a few concerns we already raised in Civil Appeal 23-031, both in fairness to the parties and in the interest of judicial economy.

[¶ 10] Civil Appeal 23-031 sought to determine the validity of the trial court’s September 21, 2023 Judgment on Remand. A single issue was presented on appeal: whether the trial court failed to follow the appellate mandate and erred in determining the customary law applicable to the *Omuik* title. The trial court could not rule on the counterclaims asserting that Ngikleb was the rightful *Omuik*—or other substantive matters—until we issued our determination. Accordingly, the trial court order which purported to dispose of the counterclaims is a nullity.

[¶ 11] We dismissed Civil Appeal 23-031 because the single issue presented was rendered moot by Ngikleb’s death.<sup>3</sup> In doing so, we noted several issues with the posture of the appeal. First, Francisco’s role in this appeal and whether he has standing is unclear when Francisco is not a member of Ngeuch Clan and the main issue to be resolved is the identity of a Ngeuch Clan titleholder. Second, whether Ngikleb’s sister Juliana could be substituted as a party for Ngikleb as the claimant to a title reserved for males. Because we were aware of the instant appeal, we noted in our dismissal of Civil Appeal 23-031 that Appellants would have the opportunity to argue these two issues in Civil Appeal 24-004.

[¶ 12] Despite our clear directions on what to discuss, Francisco’s briefing does not argue standing and presents no relevant legal authority as to why Ngikleb’s sister should be substituted. As a general matter, the burden of

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<sup>3</sup> An issue is moot “when it no longer presents a live controversy with respect to which the court can give meaningful relief.” *Rekemel v. Remelik*, 2022 Palau 12 ¶ 2 (quoting *Pac. Say. Bank v. Llecholch*, 15 ROP 124 (2008)). We have further found that where the claimants to a title pass away during the pendency of the case, there are no live disputes, and the case is moot. *Antonio v. Koto*, 9 ROP 116, 117 (2002); *Whipps v. Idesmang*, 2017 Palau 24 ¶ 18.

demonstrating error on the part of a lower court is on the appellant, and unsupported legal arguments will not be considered by the Court on appeal. *Suzuky v. Gulibert*, 20 ROP 19, 23 (2012). In addition, appellate courts generally should not address legal issues that the parties have not developed through proper briefing. It is not the Court's duty to interpret broad, sweeping arguments, 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). Therefore, Francisco waived these issues. We see no reason why Francisco, who is not a member of Ngeuch Clan, would have standing to seek a declaratory judgment concerning a Ngeuch Clan title, or why Juliana Ngikleb, who is not the successor-in-interest to Ngikleb's alleged status as *Omuik*, should be substituted for that claim.<sup>4</sup>

### CONCLUSION

[¶ 13] We **VACATE** the Trial Division's Order Dismissing Counterclaims and **REMAND** for further proceedings consistent with this opinion.

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<sup>4</sup> A party's counsel has the obligation to inform the Court of the death of a client, *see Estate of Asanuma v. Blailes*, 13 ROP 84, 84 n.1 (2006), but Appellant's counsel failed to do so following Ngikleb's death in November 2022. Thus, the trial court issued the Judgment on Remand when Ngikleb's death had already rendered moot the issue. "Declaratory relief is appropriate where it will serve a useful purpose in clarifying the legal relations of the parties or terminate the uncertainty and controversy giving rise to the proceeding." *Matlab v. Melimarang*, 9 ROP 93, 96 (2002).