

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

TERRY ELEDUI NGIRAIN GAS,
Appellant/Cross-Appellee,
v.
EDELENE ALBERT,
Appellee/Cross-Appellant,
LAURENTINO ULECHONG,
Intervenor.

Cite as: 2025 Palau 11
Civil Appeal No. 24-018
Appeal from Civil Action No. 11-056

Decided: July 15, 2025

Counsel for Appellant	Johnson Toribiong
Counsel for Appellee	James W. Kennedy
Counsel for Intervenor	Tamara D. Hutzler

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

OPINION¹

PER CURIAM:

[¶ 1] This appeal involves an attempt by Terry Ngiraingas to reopen her brother Adalbert Edelui's estate eight years after it had first been probated,

¹ Although the parties request oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

stating that some assets (Adalbert's interest in Cadastral Lot Nos. 077 B 04, 05, 06, 07, and 08, collectively known as *Tukiuid*, in Ngerkesoaol Hamlet, Koror State) had been inadvertently omitted from the inventory. The trial court concluded that the two-year statute of limitations bars (1) the reopening of the estate and (2) Edelene Albert's claim to her father's estate.

[¶ 2] For the reasons set forth below, we **AFFIRM**.

BACKGROUND

[¶ 3] Several Certificates of Title had been issued in 2007 *Tukiuid*, awarding ownership to "[t]he children Omeliakl Eledui, namely Adalbert Eledui, William Eledui, Terry Eledui Ngiraingas, Doris Eledui, and Kenny Eledui."

[¶ 4] Decedent Adalbert Eledui died on December 14, 2010. On March 10, 2011, his sister Terry Ngiraingas filed a petition to probate Decedent's oral will and settle his estate. Elena Tellei, Decedent's wife, filed a claim to the Estate, naming her and Adalbert's daughter Edelene Albert. Elena and Terry were named co-administrators of the Estate. Elena submitted an inventory that included the *Tukiuid* lots, as well as the house located on it. Terry filed a separate inventory that did not list the *Tukiuid* lots.

[¶ 5] The trial court issued an Interim Decision and a Final Decision finding that "In 1995, Willy built a house on family land named *Tukiuid* in Ngerkesoaol . . . the land under the house remained family land." *See* Interim Decision, *in re Estate of Adalbert Eledui*, C.A. No. 11-056 (Dec 28, 2011 Tr. Div.). It further stated that "the land underlying the Ngerkesoaol House was never properly transferred [to Decedent] and therefore belong[ed] to the Children of Omeliakl Eledui [and]. . . the Ngerkesoaol House (and its mortgage) belonged] to Tellei as jointly-owned property which devolves to the surviving spouse." *See* Final Decision, *in re Estate of Adalbert Eledui*, C.A. No. 11-056 (Feb. 7, 2012 Tr. Div.).

[¶ 6] On or about June 28, 2019, Terry, Doris, and Kenny sold part of their interest in the *Tukiuid* lots to Intervenor Laurentino Ulechong. More specifically, the trio sold to Laurentino all their rights and interests in Cadastral Lot Nos. 077 B 05, 077 B 06, 077 B 07, and a bigger portion of Cadastral Lot

No. 077 B 04 designated as Temporary Lot Nos. 077 B 04A with an area of 138 square meters and 077 B 04C with an area of 2,205 square meters.

[¶ 7] On December 16, 2019, approximately four months after the sale to Laurentino and some eight years after the original case that distributed Decedent's assets, Terry sought to reopen the Estate to distribute the *Tukiuid* lots, stating that they were inadvertently omitted from Decedent's assets. The estate was thus reopened. Edelene Albert petitioned to file a claim to the estate, on the basis that she had never been served notice of the original action.

[¶ 8] On March 3, 2021, Tellei transferred her interest in the house to her daughter, Edelene. On August 1, 2022, Edelene filed a Motion for Contempt against Terry, arguing that Terry wrongfully leased the Ngerkesoaol house from October 2014 to September 2023 to a third party despite the Court's decision that the house belongs to Elena Tellei. Because Ngiraingas failed to file a timely response to the motion, the trial court deemed the matter confessed and ordered Ngiraingas "to relinquish all profits collected from the Ngerkesoaol house of at least \$86,000." *See Order, in re Estate of Adalbert Eledui*, C.A. No. 11-056 (Feb 6, 2023 Tr. Div.). Terry then filed a motion for reconsideration on February 9, 2023, simply arguing that the sanctions should be computed from March 2018 to March 2021 instead of since November 2013, stating that Edelene's interest in the house only accrued when she acquired ownership of the house through a deed of transfer from her mother. The trial court ordered supplemental briefing on the issue.

[¶ 9] Trial was held on February 14, 2023, and the trial court issued its findings and decision on June 10, 2024. On June 12th, 2024, the trial court further issued an Order on Contempt declining Terry's motion to reconsider and ordering Terry to relinquish \$95,640.00, calculated on the perceived rentals.

STANDARD OF REVIEW

[¶ 10] "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).

[¶ 11] A trial court's decision to deem a motion confessed by the nonmoving party and to grant the requested relief is a matter of discretion for the trial court, which we review under an abuse of discretion standard. ROP R.Civ.P. 7(c)(1); *Haruo v. 14th Peleliu State Legislature*, 2023 Palau 19 ¶ 13. We review a court's imposition of sanctions pursuant to its inherent powers, such as holding a litigant in contempt of court, under an abuse of discretion standard. *Cushnie v. Oiterong*, 4 ROP Intrm. 216, 218 (1994).

[¶ 12] “An abuse of discretion occurs when a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper and no improper factors are considered, but the court in weighting those factors commits a clear error of judgment.” *Salvador v. Angel*, 2018 Palau 14 ¶ 6 (quoting *Eller v. ROP*, 10 ROP 122, 128- 29 (2003)).

DISCUSSION

I. June 10, 2024 Decision

[¶ 13] Laurentino and Edelene appeal the June 10, 2024 Decision. Laurentino maintains that the trial court erred in failing to distribute Adalbert's interest in the *Tukiuid* lots, while Edelene argues that the trial court erred when it refused to let her file a claim, stating that Edelene had notice of the 2012 action.

[¶ 14] First, we note that Laurentino's appeal of the decision was untimely. “Rule 4(a) of the Rules of Appellate Procedure states, “[t]he notice of appeal must be filed within 30 days after . . . entry of judgment or order appealed from a civil case, unless otherwise provided by law.” The judgment in this case was issued on June 10, 2024, and Laurentino filed his Notice of Appeal on July 11, 2024, one day after the expiration of the deadline. Therefore, his Notice of Appeal was untimely, which bars our review. Regardless, we agree with the trial court's determination that nothing precludes Laurentino from filing a quiet title action to determine his interest in *Tukiuid*.

[¶ 15] Second, we turn to Edelene’s argument that the trial court erred in denying her claim to Adalbert’s estate. Pursuant to 14 PNC § 404,

[a]ny action by or against the executor, administrator or other representative of a deceased person for a cause of action in favor of, or against, the deceased shall be brought only within two (2) years after the executor, administrator or other representative is appointed or first takes possession of the assets of the deceased.

[¶ 16] In this case, the trial court appointed Terry and Elena Tellei as co-administrators of the Estate on June 20, 2011, issued its Final Decision on February 7, 2012, and the appellate decision was published on February 11, 2013. Therefore, the two-year statute of limitations elapsed on February 11, 2015. Edelene does not dispute that she did not file a claim before the statute of limitations elapsed. Instead, she maintains that the trial court should have allowed her to file a claim in 2019, because Terry had not properly served her with notice of the 2012 proceedings.

[¶ 17] “Formal adherence to notice requirements is always advisable, but an estate case is one situation where actual notice will suffice if the court finds that actual notice, even without full and proper notice, sufficed to give an individual or entity a fair chance to pursue his interests.” *Baules v. Toribiong*, 2016 Palau 5 ¶ 29 (collecting cases). “Actual notice is notice expressly and actually given, it does not require specific formalities to be met.” *Chiang Shui-Lang v. Chiu Hung-Chao*, 2023 Palau 13 ¶ 30 n.3. Edelene admits that she was present at the 2012 proceedings, but maintains that because Terry failed to serve her, Edelene did not understand the procedural significance of the trial. However, even without personal service, Edelene had actual notice that the estate was being distributed. Thus, the trial court did not err in considering that her claim was barred by the statute of limitations.

[¶ 18] Although neither party presents us with sufficient grounds for remand, we do address one matter insofar as it concerns the subsequent handling of this case. “The precise duty of the Trial Division in closing and supervising probate matters is largely undefined by the decisional law in the Republic.” *Kee v. Ngiraingas*, 20 ROP 277, 283 (2013). However, we have

determined that the Trial Division has a statutory duty “to make *some* ‘determination’ of the heirs and their interests.” *Id.* The Palau National Code addresses the transfer of land in probate matters, declaring that “[t]he Trial Division of the Supreme Court shall make a determination of the devisee(s) or heir(s), and the interest or respective interests to which each is entitled.” 35 PNC §1317 (b)–(c). Although the statute does not state explicitly that the Trial Division is required to list individual devisees or heirs in order to close an estate, it mandates that the Trial Division make some “determination” of the heirs and their interests. “Once the specific property and a class of heirs has been identified, the administrator, acting in a fiduciary capacity, is charged with distributing the estate in accordance with the Trial Division’s determinations.”

[¶ 19] Unlike the filing of claims, 14 PNC § 404 puts no time limit on the distribution of the estate’s assets. The trial court’s 2012 decision concerned itself with an attempted transfer of the land underlying the Ngerkesoaol house between the Eledui siblings. Thus, its findings were limited to determining that the transfer was invalid and that the land “remain[ed] in the hands of the Children of Omeliakl Eledui” and that the house “is the property of [Elena] Tellei.” Therefore, the 2012 court never distributed the *Tukiuid* lots, although they had been inventoried by Elena Tellei as part of the Estate. The trial court’s 2024 decision recognized that the lots had been inventoried at the time, declined Edelene’s claim, and stated that the estate had been incorrectly reopened. No distribution of the *Tukiuid* lots occurred.

[¶ 20] Although we affirm the trial court judgment today, we note that because Decedent’s interest in *Tukiuid* remains undistributed despite the trial court’s 2012 and 2024 decisions, a proper closure of Adalbert’s Estate cannot be had. Thus, our opinion today should not be read to foreclose the proper distribution of Decedent’s interest in *Tukiuid*.

II. Order of Contempt

[¶ 21] Terry appeals the Order issued by the trial court on June 12, 2024, which held her in contempt for leasing the Ngerkesoaol house to a third party. Terry maintains that the sanctions were improper as a matter of law because civil contempt is not intended to vindicate a private right of action; that the sanctions were excessive under the Constitution and do not take into consideration that the house sits on land owned by Terry and her siblings; and

that Edelene had a duty under Palauan custom to meet with Terry to seek an amicable resolution of the issue.

[¶ 22] Terry failed to present these arguments to the trial court, even after she was ordered to file additional briefing on the issue, and as such, we consider them waived. *See Ochedaruchei Clan v. Oilouch*, 2021 Palau 33 ¶ 11 (“No axiom of law is better settled than that a party who raises an issue for the first time on appeal will be deemed to have forfeited that issue.”).

[¶ 23] In addition, ROP R.Civ.P. 7(c)(1) provides that “[f]ailure to timely file an opposing brief or opposition authorizes the court, in its discretion, to deem the matter confessed and to enter the requested relief.” “[I]t is firmly established that the power to punish for contempt is inherent in all courts.” *Cushine v. Oiterong*, 4 ROP Intrm. 216, 219 (1994). Because Terry failed to timely respond to Edelene’s motion, the trial court did not abuse its discretion in deeming the matter confessed and entering Edelene’s requested relief.

CONCLUSION

[¶ 24] We **AFFIRM** the Trial Division’s judgment.