

**In the matter of the determination of ownership of real property in Ngekeklau County of Ngaraard State depicted on BLS Worksheet Map No. 06E003 as Worksheet Lot No. 06E003-029 and formerly described as Tochi Daicho Lot No. 2122 listed under Vicentei and called *Idelui*,**

**SANTOS BORJA,  
Appellant.**

CIVIL APPEAL NO. 10-013  
SP/E No. 10-001

Supreme Court, Appellate Division  
Republic of Palau

Decided: September 24, 2010

[1] **Appeal and Error:** Standard of Review

Although a trial court's decision to reconsider a previous decision is ordinarily reviewed on appeal for abuse of discretion, lower courts are duty-bound to strike void judgment and therefore no discretion should be exercised.

[2] **Land Commission/LCHO/Land Court:** Reconsideration

The Land Court possesses no statutory or rule-based authority to reconsider its own decisions.

[3] **Judgments:** Void Judgments

The 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.

[4] **Judgments:** Void Judgments

Void judgments are legally ineffective from inception and courts may exercise inherent authority beyond court rules in expunging them.

[5] **Courts:** Inherent Powers

The power to purge itself of a void judgment is included within a court’s bundle of inherent authority, including those judgments stemming from a plain usurpation of power constituting a violation of due process.

[6] **Land Commission/LCHO/Land Court:** Due Process

Determining ownership of a property without providing notice of the hearing to some of the claimants to the land deprives those claimants of their rights to due process under Article IV, section 6 of the Constitution.

[7] **Land Commission/LCHO/Land Court:** Reconsideration

The Land Court possesses the inherent authority to cancel a determination of ownership and certificate of title issued after holding a hearing for the land without providing notice to all of the claimants to the land.

[8] **Civil Procedure:** Sua Sponte Dismissals

A court’s decision to raise (or dispose of) an issue on its own motion, even where the ruling favors one party over another, does not inherently display that the court has stepped into an impermissible advocacy role.

[9] **Judgments:** Void Judgments

It is appropriate for a court to *sua sponte* cancel a void judgment upon providing the adversely-affected party notice and an opportunity to be heard in opposition.

Counsel for Appellant: J. Uduch Sengebau Senior

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; RICHARD H. BENSON, Part-Time Associate Justice.

Appeal from the Land Court, the Honorable C. QUAY POLLOI, Senior Judge, presiding.

PER CURIAM:

Appellant Santos Borja challenges the Land Court’s authority to *sua sponte* cancel its own previously-issued determination of ownership and certificate of title. Because, given the facts before us, the Land Court acted within its powers, we affirm the decision below. Pursuant to ROP R. App. P. 34(a), we deem oral argument unnecessary and therefore deny Borja’s request for oral argument.

**BACKGROUND**

Based on the information contained in the relevant Bureau of Lands and Surveys Attachment Calendar, it appeared to the Land Court that appellant Santos Borja was the sole claimant to the land commonly known as *Idelui* located in Ngekeklau County of Ngaraard State bearing Worksheet Lot number 06 E 003-29 on Worksheet number 06 E 003.

The Land Court was in error: four other claimants also claimed *Idelui*.<sup>1</sup>

Laboring under its mistake, the Land Court issued a Notice of Hearing for *Idelui* on September 25, 2008. This notice was issued only to Borja—none of the other four claimants were informed of the upcoming hearing. On October 9, 2008, the Land Court conducted the hearing for *Idelui* and only Borja appeared at the hearing to claim the land. The Land Court issued a determination of ownership for *Idelui* in favor of Borja on that same day followed by a certificate of title on December 23, 2008.

The Land Court Case Management Coordinator alerted the Land Court on January 15, 2010 that, in fact, Borja's claim to *Idelui* was contested and the other claimants had not been given notice of the hearing. The Land Court issued a *sua sponte* show-cause order three days later explaining the error and ordering Borja to show cause why the determination of ownership and certificate of title should not be voided. Borja filed a written response and appeared through counsel at the show cause hearing. In its Decision and Order, the Land Court declared Borja's determination of ownership and certificate of title void *ab initio*. See Land Ct. Case SP/E No. 10-001, Decision and Order (Land Ct. Mar. 8, 2010). The Land Court found it had inherent authority to reconsider its decision where a mistake led to its misapprehension of the number of claimants

resulting in a premature determination that may have prejudiced the other claimants and deprived them of due process of law.

Borja timely appealed the Land Court's voiding of his determination of ownership and certificate of title. Because none of the four un-noticed claimants participated in the Land Court's *sua sponte* proceedings, no appellees were named.

### STANDARD OF REVIEW

[1] The extent to which a lower court possesses inherent authority to reconsider its prior orders is a question of law. Therefore, we review such rulings of the Land Court *de novo*. See, e.g., *Sumang v. Skibang Lineage*, 16 ROP 4, 5 (2008). Although a trial court's decision to reconsider a previous decision is ordinarily reviewed for abuse of discretion, lower courts are duty-bound to strike void judgments and therefore no exercise of discretion is warranted. See *Gibbons v. Cushnie*, 8 ROP Intrm. 3, 5 n.4 (1999) (“[W]here a judgment is void, the trial court has no discretion; it must grant relief.”).

### DISCUSSION

Borja argues that, although the Land Court has some inherent authority to reconsider its own decisions, the Land Court cannot act *sua sponte* to invalidate an issued determination of ownership and certificate of title. Because none of the other claimants requested the invalidation, Borja argues that the Land Court impermissibly acted in an advocacy rule in *sua sponte* vacating his determination of ownership and certificate of title. Borja contends that, because the other claimants still retained the remedy of

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<sup>1</sup> The reason for the confusion, as we understand it, is that Borja claimed *Idelui* under one Tochi Daicho number and the other four claimants claimed the same worksheet lot under a different Tochi Daicho number.

collaterally attacking his determination of ownership and certificate of title, no *sua sponte* reconsideration of the issue was necessary to safeguard justice.

[2] The Land Court possesses no statutory or rule-based authority to reconsider its own decisions. Our Rules of Civil Procedure do not apply to Land Court proceedings. *See* ROP R. Civ. P. 1(a) (“These rules govern procedure in all suits of a civil nature whether cognizable as cases at law or in equity in the Republic of Palau Supreme Court Trial Division, National Court, and in the Court of Common Pleas . . .”). Our Rules of Land Court Procedure provide no mechanism for review of a decision other than appeal. *See* ROP R. Land Ct. P. 16 (“Any claimant aggrieved by a Land Court determination of ownership may appeal such determination directly to the Appellate Division of the Supreme Court within thirty (30) days of service of the determination.”).

Looking beyond rule-based law, we have previously found an authority inherent in the Land Court to reconsider its own decisions to some degree:

[A] court has the inherent authority to reconsider its previous decision when there is an intervening change in the law, a discovery of new evidence that was previously unavailable, or a need to correct clear error or prevent manifest injustice due to the court’s misapprehension of the facts, a party’s position, or the controlling law.

*Shmull v. Ngirirs Clan*, 11 ROP 198, 202 (2004); *see also id.* (“Where, as here, a court misapprehends the evidence or commits an inadvertent mistake, that court historically has had the inherent authority to correct its own erroneous decision.”).

In *Shmull*, a clan representative filed a claim to land on behalf of the clan but at the hearing argued his own individual ownership of the land (despite never filing an individual claim to the land). *See id.* at 200. The Land Court awarded the land to the representative as individual property and, upon discovering what had happened, the clan moved for reconsideration. *See id.* On reconsideration and after a second hearing, the Land Court awarded the land to the clan and canceled the determination of ownership in favor of the clan representative as individual property. *See id.* The representative appealed, claiming that the Land Court lacked any authority to reconsider or cancel its own issued determinations of ownership. *See id.* at 201. Citing the “ancient doctrine of inherent authority,” we upheld the Land Court’s actions, finding that the Land Court possessed some inherent authority to reconsider the issuance of a determination of ownership. *See id.* at 202.

The Land Court below found Borja’s determination of ownership and certificate of title to be void *ab initio*. One source of reference for a lower court’s power to cancel a void decision is ROP R. Civ. P. 60(b)(4). This rule provides litigants the opportunity to move the lower court for reconsideration of a void decision:

On motion and upon such terms as are just, the court may

relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

...

(4) the judgment is void;

ROP R. Civ. P. 60(b)(4). In the context of this rule, we have stated that “[a] judgment is void only if the court that rendered the judgment lacked jurisdiction or where the court’s action amounted to a ‘plain usurpation of power constituting a violation of due process.’” *Ngerketiit Lineage v. Ngirarsaol*, 8 ROP Intrm. 126, 127 (2000) (quoting *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661 (1st Cir. 1990)). This statement is in accord with prevailing United States law. *See* 46 Am. Jur. 2d *Judgments* § 29 (2006) (“A judgment can be void not only for lack of jurisdiction, but also where the court acts in a manner contrary to due process.”); 11 Charles Alan Wright, et al., *Federal Practice and Procedure* § 2862 (2d ed. 1995) (same).

[3] The 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. *See New York Life Ins. Co. v. Brown*, 84 F.3d 137, 142-43 (5th Cir. 1996) (holding that lower court erred in not granting litigant’s Rule 60(b)(4) motion to vacate judgment based on voidness where the district court granted summary judgment against the litigant without notice of the summary judgment motion); *In re Center Wholesale, Inc.*, 759 F.2d 1440, 1448-50 (9th Cir. 1985) (holding that lower court erred in not granting litigant’s Rule 60(b)(4) motion to vacate an order based on voidness where the

litigant received inadequate notice of the hearing).

[4] Void judgments are said to be legally ineffective from inception. *See, e.g., United States v. Zima*, 766 F.2d 1153, 1159 (7th Cir. 1985) (“A void judgment is one which, from inception, was a complete nullity and without legal effect.”); *Jones v. Giles*, 741 F.2d 245, 248 (9th Cir. 1984) (“A void judgment, as opposed to an erroneous one, is legally ineffective from inception.”). Courts may exercise inherent authority beyond court rules in expunging void judgments. *See* 47 Am. Jur. 2d *Judgments* § 701 (“In some jurisdictions, a motion for relief from a void order or judgment arises from the inherent powers of the court to expunge acts from its records, rather than from a court rule. Thus, motions to vacate void judgments need not satisfy the requirements of the relief-from-judgment rule.”).

[5] We have no trouble with the notion that, even in the absence of rule-based authority, the power to purge itself of void judgments is included in a lower court’s bundle of “inherent authority.”<sup>2</sup> Void judgments are nullities from their inception, and a court possesses the ability to expunge such nullities. And, in the context of this inherent authority, we see no reason to refrain from importing “a plain usurpation of power constituting a violation of due process” from

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<sup>2</sup> We previously recognized this power in our statement that “a court has the inherent authority to reconsider its previous decision when there is . . . a need to correct clear error or prevent manifest injustice due to the court’s misapprehension of the facts, a party’s position, or the controlling law.” *Shmull*, 11 ROP at 202.

our ROP R. Civ. P. 60(b)(4) jurisprudence as a basis for a finding of voidness.<sup>3</sup>

**[6, 7]** Turning back to the case at hand, the Land Court determined the ownership of *Idelui* without providing notice of the hearing to four of the claimants to the land. This blatant deprivation of notice (and, by extension, inclusion in the hearing) amounts to a patent violation of the other claimants' rights to due process under Article IV, Section 6 of the Constitution. See, e.g., *April v. Palau Pub. Utils. Corp.*, 17 ROP 18, 22 (2009) ("The hallmark of procedural due process is the requirement that the government provide notice and an opportunity to be heard before depriving a person of life, liberty, or property."). Such a due process violation renders the Land Court's determination of ownership and subsequent certificate of title void.

The specific question posed by Borja on appeal is whether the Land Court could act *sua sponte* in canceling the determination of ownership and certificate of title. Under the ROP R. Civ. P. 60(b)(4), for instance, a party must motion for relief from a void judgment. United States authorities, however, have stated that a court may set aside a void judgment on its own motion. See 11 Wright, et al., *Federal Practice and Procedure* § 2862 ("Although the rule [60(b)(4)] requires a motion for relief from judgment, it has been held that the court on its own motion may set aside a void judgment provided notice has been given of its contemplated action and the

party adversely affected has been given an opportunity to be heard."); see also *Schuster v. Schuster*, 251 P.2d 631, 638 (Ariz. 1952) ("[T]he judgment being a nullity may be set aside by the court upon the motion of any interested party, or upon its own motion."); *Ballard Sav. & Loan Ass'n v. Linden*, 62 P.2d 1364, 1365 (Wash. 1936) ("There is no question but that a court has inherent power to purge its records of void judgments. It may do so of its own motion."). This *sua sponte* authority—unfound in court rules—derives from a court's inherent authority to purge its records of void judgments.

**[8, 9]** A court's decision to raise (or dispose of) an issue on its own motion, even where the ruling favors one party over another, does not inherently display that the court has stepped into an impermissible advocatory role. See, e.g., *Melekeok Gov't Bank Corp. v. Adelbai*, 13 ROP 183, 187 & n.5 (2006) (recognizing a trial court's power to grant summary judgment on a ground not raised by the moving party provided that the losing party's due process rights are protected); *Silmai v. Land Claims Hearing Office*, 3 ROP Intrm. 225, 227 (1992) ("A trial court may dismiss an action on the pleadings *sua sponte* provided the parties have had an opportunity to be heard."). 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.

<sup>3</sup> To prevent deciding issues not before us, we leave open for future consideration other potential bases of voidness sufficient to trigger a lower court's inherent power of reconsideration.

**CONCLUSION**

We AFFIRM the Land Court's Decision and Order canceling the determination of ownership and certificate of title in the proceeding below. The Land Court may proceed with its re-hearing and re-determination of ownership of *Idelui*.