

**KUMER CLAN/LINEAGE and ESTATE
OF NGIRDEMEI NGIRAMERES,
Appellant,**

v.

**KOROR STATE PUBLIC LANDS
AUTHORITY,
Appellee.**

CIVIL APPEAL NO. 12-016
LC/B 09-0114

Supreme Court, Appellate Division
Republic of Palau

Decided: March 1, 2013

[1] **Appeal and Error:** Preserving Issues

Generally, arguments not raised in the Land Court proceedings are deemed waived on appeal.

[2] **Appeal and Error:** Preserving Issues

The waiver rule is particularly important in land litigation because in order to bring stability to land titles and finality to disputes, parties to litigation are obligated to make all of their arguments, and to raise all of their objections in one proceeding.

[3] **Appeal and Error:** Preserving Issues

The Court may decline to deem an issue waived where: (1) addressing the issue would prevent the denial of a fundamental right, especially in criminal cases where the life or liberty of an accused is at stake; or (2) the general welfare of the people is at stake.

[4] **Appeal and Error:** Preserving Issues

The public welfare exception applies only when the case itself implicates the public welfare—not where the only interest at stake is the right of a civil litigant to recover.

[5] **Appeal and Error:** Preserving Issues

To invoke the constitutional exception to the waiver rule, a litigant must show something more than the existence of a fundamental right, such as the risk of losing life or liberty.

[6] **Appeal and Error:** Preserving Issues

Constitutional challenges to statutes of limitations are insufficient to trigger application of the fundamental right exception.

[7] **Return of Public Lands:** Elements of Proof

Although we have referred to 1304(b) as having three elements (previous ownership, wrongful taking, and timely filing), the text of the statute requires a claimant make only the first two showings to establish a right of ownership to public lands. Under the plain reading of the statute, a litigant who meets these two requirements has a potential claim of ownership to the land in question. However, the provision requires that all claims for public land by citizens of the Republic must have been filed on or before January 1, 1989.

[8] **Return of Public Lands:** Elements of Proof

1304(b)'s time limitation provision encompasses only claims created by the

Constitution. The corollary of this holding is that a claim filed before the ratification of the Constitution is not a claim for public land within the meaning of 1304(b)'s limiting sentence.

[9] **Return of Public Lands:** Claimants

When a person presents a claim as the representative for a clan or lineage, the clan is the party, not its representative.

[10] **Return of Public Lands:** Claimants

A person may claim land for a clan and for himself so long as the alternative claims are presented and preserved as if they were presented by different persons.

Counsel for Appellant: Raynold Oilouch
Counsel for Appellees: Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem

Appeal from the Land Court, the Honorable ROSE MARY SKEBONG, Associate Judge, presiding.

PER CURIAM:

This is an appeal of a Land Court Determination awarding ownership of land known as *Emmaus* to Koror State Public Lands Authority (“KSPLA”), Appellee in this matter. For the following reasons, the determination of the Land Court is **AFFIRMED**.

PROCEDURAL HISTORY

This appeal concerns a Land Court Determination resolving competing claims of ownership of a parcel of land known as *Ngerkeaielked* or *Emmaus*,¹ located in Ngerchemai Hamlet, Koror State.

Prior to the Land Court proceedings, *Emmaus* was subject to five relevant² claims of ownership: (1) a 1955 claim filed by Ngirdemei Ngirameres in the Palau District Land office, which was denied; and (2) four claims from the 1980s filed by Kikuo Remeskang, the son of Ngirameres, on behalf of Kumer Clan.

In its Determination, the Land Court rejected return of public lands claims brought by Kumer Clan and by the Heirs of Ngirdemei Ngirameres. Specifically, the Land Court found that *Emmaus* had been wrongfully taken from Ngirameres but concluded that the claim made on behalf of his heirs was untimely. Conversely, the Land Court found Kumer Clan had filed a timely claim for return of *Emmaus*, but that the Clan failed to show proof of ownership.

Having rejected the return of public lands claims, the Land Court concluded title to *Emmaus* was properly held by KSPLA, Kumer Clan, the Estate of Ngirameres (“the Estate”), and the Heirs of Ngirameres (“the Heirs”) appealed.³

¹ The land is identified as Worksheet Lot B06-101 (40346).

² Claims to *Emmaus* made by Metuker Clan and Okelang Clan were denied below but were not appealed.

³ Although the caption of the case identifies only the Estate of Ngirameres and Kumer Clan, the brief states the appeal was filed on behalf of Kumer Clan, the Estate and the Heirs. See *Becker v. Montgomery*,

STANDARD OF REVIEW

We review the Land Court’s legal conclusions de novo and its factual findings for clear error. *Children of Dirrabang v. Children of Ngirailid*, 10 ROP 150, 151 (2003).

DISCUSSION

Appellants raise two issues on appeal: (1) the filing deadline set by the return of public lands statute, 35 PNC § 1304(b), is unconstitutional; and (2) the Land Court erred when it found the Heirs failed to file a timely claim. Appellee opposes these enumerations of error and contends that the Estate is not a proper party to this appeal.

I. Is the Estate Entitled to Appeal the Land Court Determination?

Rule 16 of the Land Court Rules of Procedure provides: “[a]ny claimant aggrieved by a Land Court determination of ownership may appeal such determination directly to the Appellate Division of the Supreme Court within 30 days of service of the determination.” Appellee submits the Estate is not a claimant within the meaning of Rule 16 because Job Kikuo, the representative of the Heirs who appeared in the Land Court proceedings, “did not file a separate claim . . . either individually as an heir of Ngirdemei Ngirameres or as an administrator or representative of the Estate of Ngirdemei Ngirameres, or any claim whatsoever.”

532 U.S. 757, 767 (2001) (“[I]mperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing . . .”). Accordingly, we will treat the Estate, the Clan and the Heirs as distinct appellants.

Even if the Estate had a right to appeal under Rule 16, it would not be entitled to relief from the decision. “In the absence of a statute or a will giving the executor or administrator the right to maintain actions affecting the realty, such right is vested solely in the decedent's heirs.” 31 Am. Jur. 2d Executors and Administrators § 1132 (2012). The general rule that heirs (rather than estates) maintain the rights to bring actions affecting realty is reflected in the text of the return of public lands statute, which requires a litigant show he owned the land or is “the proper heir[] to the land.” 35 PNC § 1304(b).

In Palau, there is no statute which gives the executor or administrator of an estate the right to maintain an action affecting realty. Accordingly, in the absence of a will granting the rights to realty to a decedent's estate, such estate may not bring a return of public lands action; the action must be brought by the deceased's heirs. *Id.* No such will is present here. Therefore, the Heirs, not the Estate, are the proper litigants in this return of public lands action.

II. Is the Filing Deadline of 35 PNC § 1304(b) Unconstitutional?

Appellants submit the filing deadline of 1304(b) conflicts with the express command of the Constitution that all wrongfully taken public lands must be returned and is, therefore, invalid. Appellee opposes this contention on substantive and procedural grounds. First, Appellee contends Appellants may not challenge the constitutionality of the filing deadline because they are estopped from doing so and because such argument was waived below. Appellants respond they were not required

to raise the argument below and, that even if they were, they are not barred from raising the constitutional claim here. Appellants have not responded to the assertion of judicial estoppel.

[1-3] Generally, arguments not raised in the Land Court proceedings are deemed waived on appeal. *Ngiratereked v. Erbai*, 18 ROP 44, 46 (2011). “The waiver rule is particularly important in land litigation because in order to bring stability to land titles and finality to disputes, parties to litigation are obligated to make all of their arguments, and to raise all of their objections in one proceeding.” *Id.* (internal punctuation and quotation marks omitted). Despite the foregoing, we may decline to deem an issue waived where: (1) addressing the issue would “prevent the denial of a fundamental right, especially in criminal cases where the life or liberty of an accused is at stake;” or (2) the general welfare of the people is at stake. *Kotaro v. Ngirchchol*, 11 ROP 235, 237 (2004).

On appeal, Appellants submit “35 PNC § 1304(b)(2) is invalid to the extent it imposes deadline[s] for filing of claims to public lands.” It is undisputed this argument was not raised below. Nevertheless, to escape the waiver rule Appellants seek to recast their constitutional argument as a “disagree[ment] with the Land Court's interpretation of 35 PNC § 1304(b)” with regard to the application of the statute's requirements. This is a mischaracterization of Appellants' argument in their opening brief, which argues explicitly that the filing deadline is invalid on constitutional grounds. We will treat the argument on appeal as stated in the opening brief: that the

timeliness requirement of section 1304(b) is unconstitutional.

At the Land Court proceedings, Appellants claimed *Emmaus* under section 1304(b) and presented arguments regarding the provision's timely filing requirement without once challenging the validity of the statute. Absent an exception to the waiver rule, they may not now claim the very statute they sought to litigate under was invalid. *See* 5 Am. Jur. 2d Appellate Review § 618 (The waiver "rule is based on the principle that it is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider.").

[4] Appellants further assert that even if the constitutional argument should have been raised below, they are not barred from raising it here because the argument implicates a fundamental right and "represents a major issue affecting the general welfare of the people of Palau." As to the latter contention, Appellants argue "the constitutionality of 35 PNC § 1304(b) is not only an issue for Appellants in the case at bar but rather represents a major concern for the general public in Palau." In this argument, Appellants misunderstand the application of the public welfare exception which applies only when the case itself implicates the public welfare—not where "the only interest at stake is the right of a civil litigant to recover" *Tell v. Rengiil*, 4 ROP Intrm. 224, 226 (1994). Here, the only interest at stake is the right of Appellants to recover *Emmaus*. This interest is insufficient to invoke the public welfare exception to the waiver rule.

Turning to the fundamental right inquiry, as explained above, we have declined to deem an issue waived where addressing the issue would "prevent the denial of a fundamental right, especially in criminal cases where the life or liberty of an accused is at stake." *Kotaro*, 11 ROP at 237. "This exception to the waiver rule is only to be applied in exceptional circumstances" *Tell*, 4 ROP Intrm. at 226.

[5, 6] To invoke the constitutional exception, a litigant must show something more than the existence of a fundamental right, such as the risk of losing life or liberty. *Id.*; *see also Neil S. v. Mary L.*, 131 Cal. Rptr. 3d 51, 62 (Cal. App. 4th Dist. 2011) ("Typically, constitutional issues not raised in earlier civil proceedings are waived on appeal."). Constitutional challenges to statutes of limitations are insufficient to trigger application of this exception. *Bettencourt v. City and County of San Francisco*, 53 Cal. Rptr. 3d 402, 410 (Cal. App. 1st Dist. 2007) (The waiver "rule has been specifically applied to bar consideration of issues involving constitutional challenges to statutes of limitations.").

Here, Appellants assert a constitutional challenge to a statute of limitations. Thus, even assuming the right to return of public lands is a fundamental right, Appellants have not shown sufficient grounds to warrant an abrogation of the waiver rule. Accordingly, because neither of the two exceptions advanced by Appellant justify setting aside the waiver rule, we decline to address Appellants' constitutional argument.

III. Did the Appellants Meet the Requirements of § 1304(b)?

Appellants contend that the Land Court erred when it found no party had met the requirements of the return of public lands statute.

The right to return of public lands derives from Article XIII, § 10 of the Constitution, which provides, “[t]he national government shall, within five (5) years of the effective date of this Constitution, provide for the return to the original owners or their heirs of any land which became part of the public lands as a result of the acquisition by previous occupying powers or their nationals through force, coercion, fraud, or without just compensation or adequate consideration.” Because the provision is self-executing, it created a right whereby “original owners of land which became public land through force or coercion are entitled to the return of their lands.” *Ngerungel Clan v. Eriich*, 15 ROP 96, 99 (2008). The constitutional provision was implemented by 35 PNC § 1304(b), which provides:

The Land Court shall award ownership of public land, or land claimed as public land, to any citizen or citizens of the Republic who prove:

(1) that the land became part of the public land, or became claimed as part of the public land, as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud, or without just

compensation or adequate consideration, and

(2) that prior to that acquisition the land was owned by the citizen or citizens or that the citizen or citizens are the proper heirs to the land. . . . All claims for public land by citizens of the Republic must have been filed on or before January 1, 1989

35 PNC § 1304(b).

We have held a claimant under this section must show: “(1) she is a citizen who has filed a timely claim; (2) she is either the original owner of the land, or one of the original owner’s ‘proper heirs’; and (3) the claimed property is public land previously acquired by a government through force or fraud, or without just compensation or adequate consideration.” *Ngarameketii v. Koror State Pub. Lands. Auth.*, 18 ROP 59, 63 (2011); *see also Omechelang v. Ngchesar State Pub. Lands Auth.*, 18 ROP 131, 134 (2011).

The Land Court rejected the 1304(b) claim of Kumer Clan because “not a single [piece of] evidence supported Kumer Clan’s claim that it owned *Emmaus* before it became public land.” Conversely, although the Land Court found the Heirs met the second and third prongs of 1304(b), it denied their claim because “[t]he heirs . . . did not file a claim by the January 1, 1989, deadline as required by 1304(b).” Specifically, the Land Court found the four claims filed by Kikuo Remeskang (Remeskang Claims) were claims for Kumer Clan and thus could not satisfy the Heirs’ timely filing requirement. Similarly, the Land Court held the 1955 claim of

Ngirameres was not a “claim” within the meaning of 1304(b), and that even if it were, it was a claim of Ngirameres, not his heirs. Appellants challenge both conclusions.

A. Ngirameres Claim

[7, 8] Although we have referred to 1304(b) as having three elements (previous ownership, wrongful taking, and timely filing), the text of the statute requires a claimant make only two showings to establish a right of ownership to public lands. Under the plain reading of the statute, a litigant who meets these two requirements has a potential claim of ownership to the land in question. However, the provision requires that “[a]ll claims for public land by citizens of the Republic must have been filed on or before January 1, 1989.” *Id.* We have held 1304(b)’s time limitation provision encompasses only claims created by the Constitution. *Kerradel v. Ngaraard State Pub. Lands Auth.*, 9 ROP 185, 185 (2002); *Carlos v. Ngarchelong SPLA*, 8 ROP Intrm. 270 (2001). The corollary of this holding is that a claim filed before the ratification of the Constitution is not a “claim for public land” within the meaning of 1304(b)’s limiting sentence.

The Ngirameres Claim was filed approximately twenty-five years before the enactment of the Constitution and may not, therefore, be considered a “claim for public land” under section 1304(b). Thus, the claim may not be used to satisfy the timely filing requirement of a section 1304(b) claim.

B. The Remeskang Claims

As set forth above, Job Kikuo, acting as a representative of Kumer Clan, filed four

claims for *Emmaus*. Although Appellants concede the Remeskang Claims were filed on behalf of Kumer Clan, they contend they may now pursue an alternative claim of ownership on behalf of the Heirs.

[9, 10] “[W]hen a person presents a claim as the representative for a clan or lineage, the clan is the party, not its representative.” *Idid Clan v. Koror State Public Lands Auth.*, 9 ROP 12, 14 (2001). Despite this rule, a person may claim land for a clan and for himself so long as the alternative claims “are presented and preserved as if they were presented by different persons.” *Id.* at 14 n. 3. Put differently, while an individual may pursue alternative claims of ownership, such pursuit does not alter the claimant’s responsibility to ensure that *each* claim is presented and preserved properly. *See id.*

There is no indication any of the Remeskang Claims were filed on behalf of any entity other than Kumer Clan. Accordingly, although Kikuo was entitled to file alternative claims on behalf of Kumer Clan and the Heirs of Ngirameres, it is clear on this record that he did not. The Land Court did not err when it found Kikuo’s claims could not be considered claims made on behalf of the Heirs of Ngirameres.

CONCLUSION

For the foregoing reasons, the determination of the Land Court is **AFFIRMED**.