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IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

HOKKONS BAULES, Appellant, v. JOHNSON TORIBIONG, Appellee.	CIVIL APPEAL NO. 14-033 LC/N No. 08-1125 **OPINION**

Decided: January 28, 2016

Counsel for Appellant: S. Nakamura
Counsel for Appellee: K. Kirk

BEFORE: KATHLEEN M. SALII, Associate Justice; R. ASHBY PATE, Associate Justice; and HONORA E. REMENGESAU RUDIMCH, Associate Justice Pro Tem.

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

PER CURIAM:

Each party to this case alleges that he is the rightful inheritor of a plot of land in Airai known as *Ngerimel*. Each claims to inherit *Ngerimel* through the estate of Palau's first Jesuit priest, Father Felix Yaoch, who died in 2002 without a will and without children. Two different courts have now decided which of these parties should inherit *Ngerimel* and have done so upon the same basic legal theory—but with a different heir each time. Now, Appellant Hokkons Baules appeals the Land Court judge's award of

Ngerimel to Appellee Johnson Toribiong.[1] For the following reasons, the decision of the Land Court is **AFFIRMED**, but only with respect to the boundaries of *Ngerimel*, which the Trial Division's judgment did not address. The Land Court's determination regarding the rightful inheritor of Father Yaoch's interest in *Ngerimel* was statutorily precluded by the Trial Division's prior decision, and is therefore **VACATED**. This case is **REMANDED** to the Land Court with instructions to effectuate the holdings of this Opinion.

BACKGROUND

I. The history of the parallel cases

Each of the parties contends that he is an heir to Jesuit priest Father Felix Yaoch. As a result each claims the same parcel of land in Airai State known as *Ngerimel*. Two different courts have applied the same legal theory (inheritance under Palauan custom) to award ownership of *Ngerimel*, but each court awarded *Ngerimel* to a different claimant. The conflicting adjudications arose because the two cases proceeded along parallel tracks and neither of the parties to the present appeal notified either of the judges about the dual cases before the Trial Division case was decided. In the estate case[2] the Trial Division decided ownership of *Ngerimel* in favor of Hokkons Baules. But in the second case decided, the one appealed here, the Land Court held that a notice failure, and Johnson

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[1] Appellant requested oral argument. After reviewing the trial court file and appellate briefing, however, we determine, pursuant to ROP R. App. P. 34(a), that oral argument is unnecessary to resolve this appeal. The request for oral argument is therefore **DENIED**.

[2] The estate case was comprised of two estate petitions that were consolidated.

Toribiong's absence from the estate case, rendered the estate decision non-preclusive as to Toribiong. The Land Court went on to re-adjudicate inheritance of *Ngerimel*, and awarded it to Toribiong. This Opinion is an appeal of that Land Court case, but requires discussion of the estate case as well.

It is undisputed that Jesuit priest Father Felix Yaoch owned a plot of land called *Ngerimel* in Ngeruluobel Hamlet, Airai State. In 1960 the Trust Territory District Land Officer issued Determination and Release Nos. 178 & 180 awarding *Ngerimel* to Father Yaoch, whose claim to the land was derived from his father, Yaoch.[3] There are no surviving Tochi Daicho records for Airai State, so land registration has lagged behind registration in other states, and Father Yaoch, despite being the owner of *Ngerimel*, never had a certificate of title to the land.[4] *See Adelbeluu v. Tuchermel*, 4 TTR 410, 410 (1969). Father Yaoch died, intestate and without children, in 2002.

Uong Elibosang Eungel, Toribiong, and Baules filed their respective claims to *Ngerimel* in 1988,[5] 2005, and 2006, but the Notice of Monumentation and Survey for

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[3] The 1960 determination of ownership is unchallenged, and in any event would be due preclusive effect under *Secharmidal v. Techemding Clan.* 6 ROP Intrm. 245, 247-48 (1997) (holding 1960 land ownership determination had preclusive effect: "[W]e believe that both before and after the Secretarial Order's makeover of [67 TTC] section 112, Land Title Officer determinations were entitled to res judicata effect.")

[4] According to the Land Court Rules and Regulations, "'Registered land' means land recorded in the permanent register in the custody of and under the supervision of the Clerk of Courts." L.C. Reg. 3(c). Of course, registration was simply a matter of time here because there was no question that *Ngerimel* would be registered to Father Yaoch or his heir(s).

[5] Eungel renewed the claim in 2008 by filing a new Land Claim Monumentation Record form, then withdrew his claim after mediation in March 2009.

Ngeruluobel Hamlet was not published until January 2008, at which point the claimants in this case were each served with the Notice thereof. The Notice actually indicated that the hamlet had already been monumented and surveyed, and that it would not be done again. Toribiong's claim listed *Ngerimel* as Bureau of Land & Survey lot no. 013N04, and he claimed the land in fee simple (a) as Father Yaoch's closest relative and (b) based upon Father Yaoch's oral statement to him shortly before Father Yaoch died. Baules's claim, on the other hand, described Baules as "the rightful inheritant [*sic*]" of Father Yaoch's individual property, and did not list any lot number for *Ngerimel*. Eungel's 2008 claim described the land as comprising lots 013N01 and 013N04. The Land Court determination on appeal here states that Toribiong's and Baules's land claims to *Ngerimel* "were finally transmitted to the Land Court" in late 2008. After the Notice of Monumentation was served, the record indicates no activity in the Land Court regarding *Ngerimel* until the March 2009 mediation. During mediation or immediately thereafter, Uong Elibosang Eungel withdrew his claim. There is nothing more in the Land Court case file until late 2012, when Baules's attorney gave the Land Court notice of the Trial Division's Decision from March 2011, and its affirmance on appeal.

Moving to the Trial Division's estate cases, the estate petition in CA No. 07-163 was filed in the Trial Division in June 2007 by petitioners Pasqual Elbuchel and Pasquala Swei, close relatives of Father Yaoch. There is no indication in the record that notice was published or served in CA No. 07-163 until CA No. 08-253 was filed and the two estate cases were consolidated. In fact, the record for CA No. 07-163 contains no filings at all

between the case's filing and October 9, 2008, when CA No. 07-163 and CA No. 08-253 were consolidated (upon motion by both sets of estate petitioners). CA No. 08-253 was filed in September 2008 as a petition to settle the estate of Father Yaoch by petitioner Cordino Soalablai, a maternal relative of Father Yaoch. Importantly, Soalablai's petition requested, among other distributions, that ownership of *Ngerimel* be transferred to Johnson Toribiong. Soalablai was appointed temporary administrator of the estate in CA No. 08-253 in September 2008, and was ordered to publish notice of the estate case and serve notice on Father Yaoch's close relatives. There is a newspaper clipping in the record publishing notice,[6] although the record indicates that publication was not done as it should have been, and there is no indication of personal service to known interested parties or close relatives. In October the two estate cases were consolidated. Baules filed a notice in CA No. 08-253 in October 2008 objecting to the appointment of Soalablai as administrator, and claiming all of Father Yaoch's assets. The objection to Soalablai's appointment appears never to have been mentioned again by any party or by the court.

Ultimately, in a March 2011 Decision, the Trial Division applied Palauan custom to "dispose decedent's properties according to the wishes of the appropriate relatives who are claimants here." The Trial Division found that Baules's claim to *Ngerimel* was superior to that of the only other *Ngerimel* claimants, the Children of Kesiil Soalablai,

[6] The notice, dated September 10, 2008, states that Soalablai was appointed Temporary Administrator of the estate of Felix Yaoch, claims against the estate were to be filed by October 13, 2008, and failure to file a timely claim may forever bar a claimant "from making any claim, against the estate, either as a creditor or an heir." Baules Ex. 4 (attached to Opening Br. on appeal).

and held that "[t]he decedent's interests in *Ngerimel* . . . shall go to Hokkons Baules." The decision was based on the holding that "Baules is the only claimant in this case who has relations to decedent's father." Toribiong was not mentioned in the Trial Division's Decision. No written closing argument made Toribiong's case for ownership of *Ngerimel*, although administrator Soalablai mentioned Toribiong's claim as attested to by a witness who also bolstered Soalablai's claims, and Elbuchel's and Swei's closing statement described that same testimony and its reference to Toribiong "be[ing] in charge of Ngerimel." (Elbuchel and Swei Written Cl. Arg. in CA No. 07-0163 case file at 5.)

The Trial Division's decision was only appealed on one narrow issue involving the applicability of the intestacy statute, and was affirmed in February 2012.[7] *See Soalablai v. Swei*, 19 ROP 51 (2012). That is, Soalablai did not appeal the Trial Division's conclusion that Baules was "the only Claimant in this case who has relations to decedent's father." Later, in October 2012, counsel for Baules sent a copy of the Trial Division's Decision and the Appellate Division's affirmance to the Land Court, requesting that a Certificate of Title be issued in Baules's name. The Land Court responded by letter in October 2012, explaining that *Ngerimel* had not yet been registered, and also that a case involving *Ngerimel* was "presently pending" before the Land Court, referencing LC/N 08-1125. The Land Court apparently did not at that time consider preclusion. There was no further action in the Land Court case until a notice

[7] This Court affirmed the Trial Division's decision that the intestacy statute, 25 PNC § 301(b), did not apply to the estate of Father Yaoch. That remains true for the purpose of deciding this appeal.

setting a status conference for February 2013. The original Land Court judge assigned to the case recused himself, another Land Court judge took the case, and the status conference was eventually held in November 2013. The Land Court held a hearing on the claims in July 2014 and the Land Court's Decision was filed in September 2014.

II. The history of this appeal

The two broad points of contention in this appeal are (1) the boundaries of *Ngerimel*, and (2) which party is heir to Father Yaoch's interest in *Ngerimel*. The question of boundaries was addressed only in the Land Court. The question of the inheritance of *Ngerimel* was addressed in the Trial Division and the Land Court, albeit without Toribiong's direct participation in the Trial Division. The parties' arguments rely on certain disputed facts, as well as on disputes of law, which we will now briefly outline.

In the Land Court's Decision, the Land Court found the following relevant facts. First, it found that Toribiong never became involved in the estate proceeding, although he had some notice of it. That is, the Land Court credited the exhibit showing publication of notice about the estate case in a newspaper with respect to constructive notice. The Land Court also credited the testimony of Soalablai that, while the estate case was pending, Soalablai encountered Toribiong at the Rock Island Cafe, and Toribiong approached Soalablai to ask if Soalablai was "on the case" of Father Yaoch's estate, and to tell Soalablai that he was willing to be subpoenaed if his testimony was needed. (*See* Tr. of Hrg. in LC/N 08-1125 at 92-94.) This exchange clearly evidences actual notice, although

the Land Court did not refer to it as such. The Land Court also found that, at a family gathering in 2002, Father Yaoch told Toribiong that *Ngerimel* would go to Toribiong, while lands that Father Yaoch had gotten through his mother would go to his maternal relatives. Soalablai, the estate administrator, was related to Father Yaoch on Father Yaoch's mother Kyarii's side, and Soalablai's petition requested that *Ngerimel* go to Toribiong, who was connected to Father Yaoch's father Yaoch's side. The Land Court also found that *Ngerimel* consisted of only lot 013N04, and not 013N01 (agreeing with Toribiong's position on the matter rather than Baules's).

With respect to its resolution of the legal disputes, the Land Court held that the Trial Division's award of *Ngerimel* to Baules did not decide the issue of inheritance as to Toribiong, and therefore did not preclude the Land Court from deciding inheritance of *Ngerimel* as between Toribiong and Baules. The Land Court offered two connected explanations for its decision. First, *res judicata* requires identity of parties between the preclusive case and the successive case, and the Land Court held there was no identity of parties here because Toribiong was not a party in the estate case. The Land Court also held that Toribiong's continued pursuit of his claim to *Ngerimel* was not precluded because Toribiong did not receive personal service of the notice of the estate case.

Baules appeals the Land Court's decision, arguing that the earlier-decided estate case had preclusive effect against the later Land Court decision, and that Toribiong should have filed a timely demand in the estate case. Baules also argues that, since he

claimed *Ngerimel* as lots 013N01 and 013N04, and Toribiong only claimed the latter, Baules should at least have been awarded the former.

STANDARD OF REVIEW

Matters of law we decide *de novo*. *Uchelkumer Clan v. Sowei Clan*, 15 ROP 11, 13 (2008); *Koror State Pub. Lands Auth. v. Ngirmang*, 14 ROP 29, 31 (2006). We review findings of fact for clear error, and will overturn them only if they have no evidentiary support in the record, such that no reasonable fact finder could have made them. That means where the evidence could plausibly support different interpretations, we will affirm the Land Court's interpretation so long as it is among them. *Urebau Clan v. Bukl Clan*, 21 ROP 47, 48 (2014).

ANALYSIS

We have two contrary holdings about inheritance from two different trial-level courts, and we must unravel the knot into which the threads of the two cases are tangled.[8]

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[8] This case brings to mind another case, *Estate of Tmetuchl v. Siksei*, 18 ROP 1 (2010), which was years in the making, and which involved multiple trial level courts and conflicting decisions. Roman Tmetuchl cut down several mahogany trees with the permission of Aimeliik State, which he believed were on State land. Masaziro Siksei sued Tmetuchl, saying the land, and the trees, were actually Siksei's and not Aimeliik State's. The first trial court found for Siksei against Tmetuchl, and Tmetuchl's Estate paid a substantial sum in damages installments. The Estate then filed a new case against Aimeliik State seeking indemnity, a trial ensued, and the second trial court found that the land and the trees *had* belonged to Aimeliik State. Siksei opposed repaying the money he had already received, arguing that he hadn't been a party to the second suit. A third trial was eventually held, and Aimeliik State was conclusively determined to be the owner of the land. Ultimately, after the various motions and decisions and appeals, the Tmetuchl Estate did not have to pay Siksei anything additional, but was not reimbursed the amount it had already paid because Siksei had received the money in reliance on the first judgment. While *Siksei* is facially similar to the present situation, it is distinguishable for a number of reasons relating to timing and venue. The reasons most important to the holding in this case are that the preclusive

It turns out that pulling on the preclusion strand will un-do it.[9] Before we do that, however, we will address the more straightforward issue of the boundary dispute.

I. The boundaries of *Ngerimel*

We will begin substantively with review of the Land Court's determination of fact regarding the boundaries of *Ngerimel*, which Baules challenges on appeal. We analyze determinations of fact for clear error, and will affirm so long as the Land Court's determinations were plausible and based on sufficient evidence in the record such that a reasonable fact finder could have reached the same conclusion. *See supra*, Standard of Review section; *see also Ngirausui v. Koror State Pub. Lands Auth.*, 18 ROP 200, 203 (2011) (affirming Land Court's boundary determination/lot identification).

As the Land Court noted, there is not even a hint of preclusion with respect to the boundary determination because no entity has previously determined the boundaries of

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decision in this case was in an estate case deciding land inheritance, and the second decision was in Land Court, while both *Siksei* decisions were in the Trial Division and were unrelated to estate issues.

[9] The fact is, this current entanglement is predominately one of the parties' own making. Had any of the aforementioned parties to either the estate case or the Land Court case informed the respective presiding judges in a timely fashion, it could have been avoided. Had the estate administrator or his attorney done as the trial court ordered, and personally served Father Yaoch's close relatives with notice of the estate proceeding, it could have been avoided. Indeed, the estate administrator appears to have done little to pursue Toribiong's entitlement to *Ngerimel* after listing it in the petition, as was his duty if he continued to believe Toribiong was the rightful heir. Toribiong was claiming as an heir and knew there was an estate proceeding going on, yet he didn't pursue his interests in the estate proceeding or ensure that Soalablai adequately pursued his interests, and he has never directly or collaterally attacked the Trial Court's judgment outside of an oblique attack effected through the Land Court case appealed here. Baules knew there were other claimants to *Ngerimel* and other land claims pending, yet he didn't mention any of this to the Trial Division judge. He objected to the administrator's proposed distribution, but did not seek to join Toribiong as an indispensable party to the estate case.

Ngerimel. This is not atypical: "Because District Land Office determinations in the 1950's were made without the benefit of professional surveys, it follows that not all potential issues regarding those parcels could have been definitively resolved during the earlier proceedings." *Ngerketiit Lineage v. Ngerukebid Clan*, 7 ROP Intrm. 38, 41 (1998).

The Land Court's decision that *Ngerimel* consists of only 013N04, and not 013N01, was reasonable. It was based on four grounds: (1) the fact that the size of the land as stated in the 1960 Determination and Release was substantially smaller than 013N04 alone, and adding 013N01 widens the size gap beyond plausibility; (2) the fact that the two claimants agree that one of the two plots at issue is part of *Ngerimel*, corroborating one another, and only disagree about the other plot; (3) a fairly simplistic sketch showing Father Yaoch's *Ngerimel*, the contours of which line up reasonably well with lot 013N04, but not with 013N04 and 013N01 combined; and (4) the fact that Baules provided no evidence that *Ngerimel* includes 013N01.

Baules contends that the Land Court was mistaken in awarding lot 013N04 as *Ngerimel*, and declining to award lot 013N01. In support for this argument, Baules argues that his position that *Ngerimel* includes 013N01 has been consistent over the life of his claim. But Baules's argument then veers from the unsupported into the bizarre when he contends that, despite the holding that *Ngerimel* does not include 013N01, the Land Court should have at least given Baules 013N01 because he was the only party claiming it (even though the case only purported to determine ownership of *Ngerimel*, whatever that comprised). No part of Baules's argument seriously calls into question the reasonableness

of the Land Court's determination. The Land Court did not find that Toribiong was simply the most deserving of lot 013N04, but rather that Toribiong was the heir to Father Yaoch's ownership interest in *Ngerimel*, and *Ngerimel* comprises only lot 013N04, and for that reason Toribiong inherited 013N04. The boundary issue before the Land Court was not who claimed what lot, but what lot or lots comprise *Ngerimel*. In other words, lot 013N01 was simply not before the Land Court once the Land Court found that it was not part of *Ngerimel*, because only *Ngerimel* was before the Land Court. The fact that no one else has claimed 013N01 *as part of Ngerimel* does not necessarily mean it is unclaimed on some other basis, nor does it mean it is up for grabs in the *Ngerimel* case, to be awarded to the party calling dibs. Baules seems to be offering a compromise: he will take 013N01 if Toribiong gets 013N04. But that is not how inheritance works, and the relevant determination is the boundary of Father Yaoch's plot of land. A party claiming as an heir cannot inherit something that is not part of the estate, even if it is unclaimed, and even if that will make division of the estate easier. *See* Restatement (Third) of Property, Wills and Other Donative Transfers, § 1.1 cmt. a (1998).

For these reasons, the Land Court's determination of the boundaries of *Ngerimel*, limiting it to lot 013N04, is **AFFIRMED**. To the extent Baules intended to assert some claim to lot 013N01 apart from his claim as heir to Father Yaoch, and now intends to appeal the denial of that claim, such appeal is **DISMISSED** because Baules's claim to lot 013N01 was only advanced via inheritance through Father Yaoch, and because lot 013N01—not being part of *Ngerimel*—was not before the Land Court for adjudication.

II. The Land Court was statutorily required to accept as binding the Trial Division's prior determination

The parties to this case raise several legal issues. Ultimately, however, the Court need only reach the issue of preclusion.[10] Baules argues that the Trial Division's judgment addressing inheritance of Father Yaoch's interest in *Ngerimel* precluded the Land Court from re-determining the heir to *Ngerimel*. The Land Court disagreed, holding that the Trial Division's judgment awarding Father Yaoch's interest in *Ngerimel* to Baules did not preclude the Land Court from deciding inheritance of *Ngerimel* as between Baules and Toribiong. The Land Court based this holding on two grounds:

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[10] Because we are applying statutory preclusion in favor of the Trial Division's prior decision and against the Land Court's redetermination of inheritance, it is unnecessary to broach the subject raised by Toribiong on appeal regarding jurisdictional priority in situations of concurrent jurisdiction. (*See* Resp. Br. at 9-16.) This is because, where *res judicata* properly applies, "[t]he rules of res judicata are applicable . . . [in a case] where the action was brought before the bringing of the action in which the judgment was rendered. Where two actions are pending between the same parties which are based upon the same cause of action or which involve the same issue, it is the first final judgment rendered in one of the actions which becomes conclusive in the other action, regardless of which action was brought first." Restatement of the Law of Judgments § 43 (1942). (Where statute or our own case law does not directly apply, we look to the law of other jurisdictions as persuasive authority. *Kazuo v. ROP*, 1 ROP Intrm. 154, 172 n.43 (1984). Specifically, we look to common law as expressed in the restatements where available, and as generally understood and applied in the United States where no restatement is available. 1 PNC § 303; *see also, e.g.*, *Shmull v. Hanpa Indus. Dev. Corp.*, 21 ROP 35 (2014).) The Court also notes that the application of preclusion here is specific to the situation of a prior Trial Division judgment precluding a subsequent Land Court decision pursuant to 35 PNC § 1310(b). Section 1310(b) expresses the legislature's preference for the preclusive effect. This renders inapplicable the U.S. common law proposition that the doctrine of priority jurisdiction typically applies when courts are exercising jurisdiction over property rather than over people. *See, e.g.*, *Princess Lida of Thurn & Taxis v. Thompson*, 305 U.S. 456, 465-66 (1939). Finally, the Court further notes that Palau courts have not yet addressed the doctrine of priority jurisdiction, and the facts of this case do not present a good platform for doing so because of the significant gaps of time and relevant filings in the Trial Division, the Land Court, *and* the Bureau of Lands and Surveys records. That is, the timeline is simply too muddled to discern a clear answer that would serve as good precedent with respect to priority jurisdiction.

(1) Toribiong was not a party to the Trial Division case; so, the parties in the two cases were not identical; and (2) Toribiong was entitled to personal service of notice of the estate case, and the lack of personal service rendered the decision of *Ngerimel*'s ownership non-preclusive as to Toribiong. The Land Court's decision is not wholly clear about the applicability of preclusion, but based on the language of the decision it appears that the first rationale applies to claim preclusion, and the second applies to issue preclusion.

A. The legislature intended statutory preclusion to apply

To be fair, the Land Court is correct that traditional common law *res judicata* might not apply here with respect to claim preclusion, but the Court need not get mired in the complexities of applying common law claim preclusion to the present situation. [11] This is because statutorily prescribed issue preclusion does apply here, based on the legislative preference, both for preclusion in the Land Court of already-decided issues and for the Trial Court being the preferred venue for inheritance adjudication. In coming to this decision, the Court applies clear dicta from *Koror State Pub. Lands Auth. v.*

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[11] Incidentally, the matter of common law claim preclusion is not as simple as the Land Court suggests. (Land Ct. Dec'n at 6.) To be sure, Toribiong was not involved in the estate case as a named party, but his claim was advanced in administrator Soalablai's estate petition. For a court to decide adequate identity of parties for the purpose of applying preclusion would necessarily require an examination of the administrator's fiduciary duties to those named in his estate petition, and to any others claiming as heirs. Indeed, Toribiong himself characterized the cases in the two courts as being the *same dispute* in his argument regarding priority jurisdiction. Though not necessarily controlling, this could well be considered a concession that the two cases were the same for the purposes of preclusion because there would be no need for one court to yield to another on a particular dispute where there is no overlap.

Ngirmang, 14 ROP 29, 31-32 (2006), which the Land Court below recognized, but misapplied with respect to the notice issue.

That is, the Land Court is required to accept prior determinations of ownership under 35 PNC § 1310(b) and Rule 18 of the Land Court Rules and Regulations. Section 1310(b) says:

> Except for claims still pending to public lands, the Land Court shall not hear claims or disputes as to right or title to land between parties or their successors or assigns where such claim or dispute was finally determined by the Land Claims Hearing Office, the former Land Commission, or by a court of competent jurisdiction. The Land Court shall, for purposes of this chapter, accept such prior determinations as binding on such parties and their successors and assigns without further evidence than the judgment or determination of ownership.

Land Court Rule 18 says the same thing in effect, using almost the same words:

> Except for claims still pending to public lands, the Land Court shall not hear claims or disputes to land between parties or their successors or assigns, where such claims or disputes were finally determined by the Land Claims Hearing Office, the Land Commission or a court of competent jurisdiction. The Land Court shall accept such prior determinations as binding on such parties without further evidence than the judgment or determination of ownership.

The Land Court has described § 1310(b) preclusion as a form of statutory *res judicata* with respect to land determinations. *See In re Mesei*, 16 ROP 338, 343 n.8 (Land Ct. 2009). While we agree with the Land Court that § 1310(b) is not a limit on the Land Court's jurisdiction, and instead refers only to preclusion, we do not agree that § 1310(b)

preclusion works exactly like common law *res judicata* with respect to prior Trial Division decisions in estate cases.

This is because the law is clear that, where post-World War II land ownership has previously been decided, as evidenced by a determination of ownership, the transfer of a land interest through inheritance is an estate matter which must be heard by the Trial Division. The Land Claims Reorganization Act of 1996 includes a section entitled, in part, "probate matters transferring or affecting land to be determined by Trial Division." 35 PNC § 1317. A subsection states unequivocally 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(c). That Trial Division determination "regarding transfers of interests in land by will or by intestate succession may be appealed to the Appellate Division as provided by the Rules of Appellate Procedure." 35 PNC § 1317(d). The Rules and Regulations of the Land Court confirm that "[t]ransfers of interests in land by will or by inheritance shall be determined by the Trial Division of the Supreme Court." L.C. Reg. 24(C).

The idea that estates are to be distributed conclusively and efficiently, in a single court and within a set time period, *see* 14 PNC § 404, is in keeping with the government's interest in "facilitating the administration and expeditious closing of estates." *Tulsa Prof'l Coll'n Svcs., Inc. v. Pope*, 485 U.S. 478, 479-80 (1988).[12] *See also*

[12] "The precise duty of the Trial Division in closing and supervising probate [and estate] matters is largely undefined by the decisional law in the Republic." *Kee v. Ngiraingas*, 20 ROP 277, 283

Kee v. Ngiraingas, 20 ROP 277, 283 (2013) (Trial Division must determine heirs and interests in order to "close an estate").

We recognize that, in discussing the law applicable to the distribution of estates in this case and others, we have freely used the terms "heir" and "inherit." For the sake of precision and clarity, those terms should be briefly addressed to avoid misunderstanding, especially given that we look to common law principles as applied in the United States, although there are some notable differences in estate distribution between Palau and the United States. Father Yaoch had no will, and this Court previously affirmed the Trial Division's holding that the intestacy statute did not apply. *See Soalablai v. Swei*, 19 ROP 51 (2012). Because Palau does not have a probate code, there is limited statutory guidance with respect to intestate inheritance, and the framework of intestate inheritance is instead determined largely by Palauan custom. This necessarily leads to some differences in terminology between Palau and jurisdictions with probate codes. In the latter, an "heir" is "[s]omeone who, under the *laws* of intestacy, is entitled to receive an intestate decedent's property." BLACK'S LAW DICTIONARY 839 (2004) (*emphasis* added). An heir would take under the laws of intestacy when there is no devisee, i.e., "[a] recipient of property by will." *Id.* at 548. Palau does not have a comprehensive set of intestacy laws, but its courts have recognized as heirs those who are entitled under

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(2013). We therefore look to the law of other jurisdictions for guidance, as non-binding, persuasive authority. *Kazuo v. ROP*, 1 ROP Intrm. 154, 172 n.43 (1984). Specifically, we look to common law as expressed in the restatements where available, and as generally understood and applied in the United States where no restatement is available. 1 PNC § 303; *see also, e.g.*, *Shmull v. Hanpa Indus. Dev. Corp.*, 21 ROP 35 (2014).

Palauan custom to take private property, including fee simple land interests, and the mechanism by which they take is still called inheritance. *See, e.g.*, *Kee v. Ngiraingas*, 20 ROP 277, 284 (2013) ("[I]n order for the Trial Division to execute its charge under 35 PNC §1317 to 'make a determination of the . . . heir(s),' it must be able to identify whether the decedent was a bona fide purchaser, or, in the alternative, it must consider evidence of Palauan custom." (citation omitted, ellipsis in original)); *Ngirmang*, 14 ROP at 31, 33 ("[A]s no inheritance statute would apply to the case, custom fills the gaps and would determine the ownership of the land[,]" here resulting in award of the land to the claimant as heir.); *Heirs of Drairoro v. Yangilmau*, 9 ROP 131, 133 and n.2 (2002). This practice of using custom to fill gaps in the law is not novel: historically, in England, for example, an "heir by custom" was "a person whose right of inheritance depends on a particular and local custom." BLACK'S LAW DICTIONARY 840; *see also* Alan Roth, *He Thought He Was Right (but Wasn't): Property Law in Anthony Trollope's* The Eustace Diamonds, 44 Stan. L. Rev. 879, 896 (1992) (historically, in England, transfer of heirlooms occurred by custom, and trumped transfer by devise). The upshot is that, in Palau, statutes referring to heirs or inheritance encompass heirs inheriting by custom.

B. Neither a lack of personal service nor Toribiong's absence from the estate case overcomes statutory preclusion

We now turn directly to the Land Court's second reason for holding it was not precluded from deciding the inheritance. The Land Court determined that the Trial Division's decision about inheritance of *Ngerimel* was not binding as to Toribiong

because due process and the Trial Division's own Order required that Toribiong receive personal service of notice of the estate case, which never happened. The Land Court distinguished its decision from this Court's dictum in a similar situation that "[h]ad it been duly noticed, [] the estate proceeding *could* have barred Ngirmang from claiming *Idelui* as the heir of Kikuch, which is precisely the basis upon which it was awarded to her [by the Land Court]." *Koror State Pub. Lands Auth. v. Ngirmang*, 14 ROP 29, 31-32 (2006). The Land Court decided that, like Ngirmang, Toribiong received inadequate notice, and thus held that the estate case did not preclude the Land Court from deciding the heir to *Ngerimel*. The Land Court erred in stopping its analysis at the fact that Toribiong, like Ngirmang, did not receive personal service, thereby missing a crucial distinction between the two cases. In *Ngirmang*, the only notice of the earlier proceeding was published (i.e., constructive) notice, despite the fact that Ngirmang was known to be an interested party, while here, even though there was no personal service of notice and only inadequate constructive notice, there was something even better with respect to Toribiong—actual notice.

Indeed, the Land Court's own findings of fact conclude that Toribiong had actual notice. The Land Court calls it "constructive notice," but cites and apparently credits Soalablai's testimony that Toribiong approached Soalablai when they both happened to be at the Rock Island Cafe to ask if Soalablai was "on the case" of Father Yaoch's estate. "Mr. Toribiong mentioned to him in passing at the Rock Island Cafe that if he wished to

do so, Mr. Soalablai could have his attorney subpoena Mr. Toribiong as a witness in the estate case." (Land Ct. Dec'n Finding of Fact No. 11 and n.6.)

In requiring notice of an estate proceeding to a known interested party, notice is intended to vindicate a substantive right to have the opportunity to join the estate case—it is not merely a matter of form. In requiring notice to potential claimants, the court is not relying on service to obtain personal jurisdiction—if it were, this would be a very different matter. Instead, in an estate case, the court is concerned about fairness and the idea that interested parties should know a case is happening and have the chance to get involved if they so choose. 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. *See, e.g.*, *Etpison v. Skilang*, 16 ROP 191, 193 (2009) ("'[T]he person attacking a Land Court determination by alleging lack of due process bears the burden of demonstrating the constitutional violation.' [] Etpison has failed to make this showing; he has not even alleged that he did not receive actual notice of the hearing. He asserts only that the service on Karen Etpison at the NECO Building was improper." (quoting *Pedro v. Carlos*, 9 ROP 101, 102 (2002).)); *Ngerungel Clan v. Eriich*, 15 ROP 96, 100 (2008) ("Appellant also claims it was denied due process. This argument can be summarily dismissed. Appellant does not dispute that it was provided with actual notice of the 1982 hearing, as it entered an appearance and asserted its claim to the land."); *Malsol v. Ngiratechekii*, 7 ROP Intrm. 70, 72 (1998) ("Due process is

calculated to guarantee that a litigant receives notice of proceedings involving his life, liberty or property. It is not designed to allow a litigant to parlay an alleged technical miscue into a new trial when all indications are that the litigant had notice of the first trial and simply chose not to appear."). Here, even without personal service, Toribiong knew that the estate was being distributed, and knew that *Ngerimel* was part of the estate, but chose not to look into whether he should formally join the estate case or adequately ensure that the administrator protect his interests.

The U.S. Supreme Court case that Toribiong cites in support of his argument that the estate case was not preclusive due to his absence does not actually stand for the proposition that personal service is required to vindicate due process rights of estate claimants. Instead, it holds that where "due process is directly implicated [by a statute setting a limitation period for claims against an estate][13] . . . actual notice generally is required. . . . Actual notice need not be inefficient or burdensome. We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice." *Tulsa Prof'l Coll'n Svcs., Inc. v. Pope*, 485 U.S. 478, 487-90 (1988). Actual notice or sufficient constructive notice is required to satisfy due process in estate distribution; mail service is one safe and easy way to effect actual

[13] Under *Tulsa*, Palau's nonclaim time bar in estate cases would directly implicate due process because government action starts the time bar running, rather than some event unconnected to government action, like the death of the decedent. *See* 14 PNC § 404 ("Any 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.")

notice, but is not independently, formalistically required. In this case, even without mailed notice or other personal service of notice, Toribiong did actually know the estate case was happening; he had the chance to get involved; and he even raised the topic and suggested that Soalablai subpoena him if needed. The fact is, he ultimately chose not to show up and advocate for his right to inherit *Ngerimel* from the estate when the estate was being distributed.

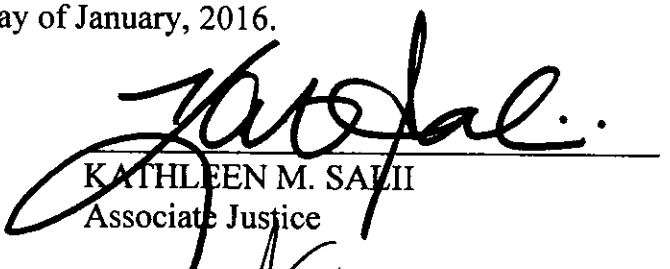
This Court therefore holds that Toribiong had due and adequate notice, in the form of actual notice, such that the decision on the inheritance issue in the estate proceeding was binding on Toribiong in the Land Court, in keeping with the dictum in *Koror State Pub. Lands Auth. v. Ngirmang*, 14 ROP 29, 31-32 (2006). This is consistent with the holding of *Ngirmang* because there was actual notice here, while Ngirmang had only constructive notice by publication. For these reasons, the Court holds that the Land Court was indeed statutorily bound by the Trial Division's decision on the issue of the inheritance of Father Yaoch's interest in *Ngerimel*.

CONCLUSION

For the foregoing reasons, the decision of the Land Court is **AFFIRMED IN PART** and **VACATED IN PART**. The Land Court was correct in its determination of the proper boundaries of Ngerimel and was not precluded from doing so. It was, however, precluded from re-deciding inheritance from Father Yaoch by the prior determination in the Trial Division. Accordingly, this case is **REMANDED** to the Land Court with instructions to effectuate the holdings of this Opinion and the judgment of the

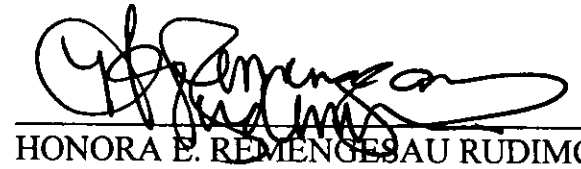
Trial Division in consolidated civil cases CA No. 07-163 and CA No. 08-253, applying the Land Court's boundary determination.

SO ORDERED, this 28th day of January, 2016.



KATHLEEN M. SALII
Associate Justice

R. ASHBY PATE
Associate Justice



HONORA E. REMENGESAU RUDIMCH
Associate Justice Pro Tem