IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

MODESTO PETRUS, Appellant, v. ABEL SUZUKY, Appellee.	CIVIL APPEAL NO. 12-002 (Civil Action No. 09-050) (Civil Appeal No. 10-004) (D.O. 12-796) **ORDER OF DISMISSAL**

Decided: June 21st, 2012

Counsel for Appellant: Mariano Carlos
Counsel for Appellee: *Pro se*

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; ALEXANDRA F. FOSTER, Associate Justice; and 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 from the Land Court of a Determination of Ownership of *Ngedengir*, located in Ngerkebesang in Koror State. The land at issue is described as Cadastral Lot No. 028 A 10, located on Cadastral Plat No. 028 A 00.

I. Background

The Determination of Ownership was issued following extensive litigation in the Trial Division (Civil Action No. 09-050), and the Appellate Division (Civil Appeal No. 10-004). The Appellate Division remanded the case to the Trial Division, and the court issued a judgment on October 27, 2010, in favor of Suzuky as the owner of "that portion of Cadastral Lot No. 028 A 10, which he occupies." Petrus appealed, and we affirmed on November 23, 2011, in Civil Appeal 10-044. Petrus also filed a petition for rehearing, which we denied on April 12, 2012, but remanded with instructions to the Trial Division to determine the boundary of the land Suzuky occupies under the doctrine of adverse possession.

This appeal concerns the Land Court's Determination of Ownership, issued by Judge Skebong, following adjudication in the Trial Division by Justice Salii (Civil Action No. 09-050). On December 22, 2011, the Land Court issued Determination of Ownership No. 12-796, pursuant to the judgment of the Trial Division in Civil Action No. 09-050. The Land Court awarded Lot No. 028 A 10 on Cadastral Plat 028 A 00 to Suzuky. On January 11, 2012, Petrus filed a timely notice of appeal with the Appellate Division. Suzuky, who is appearing *pro se*, filed a brief "statement of the case" in opposition, and Petrus then filed a reply brief.

II. Standard of Review

A lower court's factual finding will be deemed clearly erroneous only when it is so lacking in evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion. *Dmiu Clan v. Edaruchei Clan*, 17 ROP 134, 136 (2010). We review a lower court's legal conclusions *de novo*. *Nakamura v. Uchelbang Clan*, 15 ROP 55, 57 (2008).

III. Analysis

Petrus presents a number of arguments, many of which he raised in his earlier appeal. For instance, he argues that Suzuky is not entitled to any portion of the land because he did not meet the requirements of adverse possession. He also presents a number of reasons supporting his view that the Appellate Division should review the Trial Division's decision in Civil Action No. 09-050. These arguments are improper and without merit, as we have already determined in Civil Appeal No. 10-044 that Suzuky is entitled to some portion of Lot No. 028 A 10. We also opined on Suzuky's rightful ownership in the opinion on the petition for rehearing.

Raising arguments we have already addressed is frivolous and could warrant sanctions. Palau's Rule of Appellate Procedure 38 provides that if the Appellate Division determines an appeal is frivolous, it may award "just" damages, including attorney's fees. Courts in the United States have interpreted the analogue to this rule, United States Federal Rule of Appellate Procedure 38, to mean that "[a]n appeal is frivolous if the

result is obvious, or the arguments of error are wholly without merit." *Wilcox v. Comm'r of Internal Revenue*, 848 F.2d 1007, 1009 (9th Cir. 1988).

Here, the result of this appeal is obvious: The arguments concerning adverse possession are not persuasive, as we concluded in Civil Appeal No. 10-044. However, as discussed below, because the only issue properly before this court is whether the Determination of Ownership is correct, we find that not all of Petrus' arguments are frivolous. Therefore, we will not issue sanctions at this time, but we advise Petrus that we will be highly inclined to do so should he attempt again to bring arguments before this court that we have already decided.

The only argument properly before us in this appeal of the Determination of Ownership is whether the Land Court erred in the scope of its award. Petrus argues that it is "very bad that the trial court erroneously gave away part of Modesto's land, but it is worse when the Land Court thereafter gave the entire land away." Petrus believes the Land Court erred in its Determination of Ownership, and he seeks to retain that portion of the disputed land that he rightfully owns. We have already addressed this issue in our order denying Petrus' petition for rehearing in Civil Appeal No. 10-044.

The Appellate Division does not address moot issues. *Pac. Sav. Bank v. Llecholch*, 15 ROP 124, 126 (2008). "A case is 'moot' when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Id.* (quotation omitted). We addressed the relief Petrus seeks in our April 12, 2012, order on

the petition for rehearing in Civil Appeal No. 10-044 by remanding to the Trial Division for a boundary determination.

We note that because we remanded with specific instructions, "those instructions are not subject to interpretation and must be followed exactly to ensure that the lower court's decision is in accord with the appellate court"; in other words, "a lower court must strictly comply with the appellate court's mandate on remand." *Tengoll v. Tbang Clan*, 11 ROP 61, 64 (2004). What is more, we have held before that "[a] mandate brings the proceedings in a case on appeal to a close and returns jurisdiction to the lower court, but the lower court is vested with jurisdiction only to the extent conferred by the dictates of the appellate court's mandate." *Id.* We emphasize that the scope of the Trial Division's determination will be restricted only to the size of the land owned by Suzuky, and nothing more.

IV. Conclusion

In light of the foregoing, this appeal is **DISMISSED**.

SO ORDERED, this 21st day of June, 2012.

ARTHUR NGIRAKLSONG
Chief Justice

ALEXANDRA F. FOSTER
Associate Justice

HONORA E. REMENGESAU RUDIMCH
Associate Justice Pro Tem