IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

BESECHEL KIULUUL and NGESENGES NAKAMURA, Appellants/ Cross-Appellees, v. ELILAI CLAN, MELACHELBELUU WILHELM RENGIIL, and OBAKLUBIL REIKL ALBERTA RECHIREI, Appellees/ Cross-Appellants.	CIVIL APPEAL NO. 15-011 (Civil Action No. 13-018) **OPINION**

Decided: March 16, 2017

Counsel for Appellants: S. Nakamura
Counsel for Appellees: M. Uludong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
DENNIS K. YAMASE, Associate Justice

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

RECHUCHER, Justice:

The Trial Division in this action refused to entertain the parties' competing claims for declaratory relief, and the parties on both sides cross-appealed. Because the Trial Division departed from the standard governing whether to hear claims for

declaratory judgment, we **REVERSE** and **REMAND** for consideration under the proper standard.

BACKGROUND

In 2013, Appellees/Cross-Appellants (Plaintiffs below) filed a complaint in the Trial Division, asserting that a dispute exists regarding the proper holders of the Melachelbeluu and Obaklubil Reikl titles within Elilai Clan. The complaint also alleges that Defendant Kiuluul, under color of authority as bearer of the Melachelbeluu title, had purported to alienate certain Elilai Clan lands in Ngchemiayangel Hamlet. Based on these allegations, Plaintiffs asserted claims for compensatory and punitive damages, as well as claims for an injunction and for declaratory relief regarding the proper titleholders of Elilai Clan. Appellants/Cross-Appellees (Defendants below) filed counterclaims for compensatory and punitive damages, as well as claims for an injunction and for declaratory relief regarding the proper titleholders.

After a five-day trial, the court found that neither side had proved—or even meaningfully pursued—its claims for damages. This finding is not challenged on appeal.[1] Having disposed of these claims on the merits for lack of evidence, the trial court rejected the parties' remaining claims for a declaration of the proper titleholders of Elilai Clan, finding that these claims failed to "present[] a justiciable controversy

[1] There is no mention of the parties' claims for injunctive relief in either the trial decision or the parties' briefs on appeal. Because there is nothing in the record below to suggest that either side attempted to make the requisite showing for obtaining equitable relief, it appears that the parties' claims for equitable relief were abandoned along with their claims for monetary relief.

that is ripe for adjudication." The parties cross-appealed, arguing that the case should be remanded with instructions to enter judgment for one side or the other.

STANDARD OF REVIEW

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. *Salvador v. Renguul*, Civil Appeal No. 15-008, slip op. at 3-4 (June 16, 2016). Matters of law we decide de novo. *Id.* at 4. We review findings of fact for clear error. *Id.* Exercises of discretion are reviewed for abuse of that discretion. *Id.*

Although the decision whether to entertain claims for declaratory relief is "committed to the sound discretion of the trial court," *Filibert v. Ngirmang*, 8 ROP Intrm. 273, 276 (2001), at least one of our prior decisions suggests that such exercises of discretion are to be reviewed de novo, rather than under the usual abuse-of-discretion standard. *See Matlab v. Melimarang*, 9 ROP 93, 96 (2002) (reviewing de novo the Trial Division's decision to grant declaratory relief). However, "*Matlab* represents a seemingly inexplicable departure from the holding of *Filibert* ... which adopted an abuse of discretion standard for review of a declaratory judgment." *Ngarmesikd Council of Chiefs v. Rechucher*, 15 ROP 46, 47 n.2 (2008).

Because *Matlab* inexplicably departed from our prior case law, and did so only on the basis of U.S. case law that had already been overturned, we hereby reaffirm our conclusion in *Filibert*: "a decision by a trial court [whether] to intervene in a

customary matter and issue a declaratory judgment that a person holds a position of traditional leadership is a matter committed to the sound discretion of the trial court and cannot be reversed absent an abuse of that discretion." 8 ROP Intrm. at 276 (citing *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995)). To the extent *Matlab* suggests a departure from this standard, it is overruled.

DISCUSSION

Rule 57 of the Rules of Civil Procedure provides that in cases of actual controversy within its jurisdiction, "the court ... *may* declare the rights and other legal relations of any interested party seeking such declaration...." ROP R. Civ. P. 57 (*emphasis* added). We begin by noting that nothing in the language of Rule 57 purports to create an absolute right in any party to such a declaration. Rather, under its plain language, it places discretion in the trial court, creating an opportunity—not a duty—to grant relief to qualifying litigants. However, the trial court in this case failed to apply the Rule 57 discretionary standard at all. Instead, relying on the fact that the declarations sought by the parties involve a customary title dispute, the court found that the parties' claims for declaratory judgment were non-justiciable.

The trial court specifically cited lack of ripeness as the reason for its finding the dispute non-justiciable.[2] "[T]he ripeness doctrine seeks to separate matters that are

[2] Justiciability is a prudential doctrine comprising five basic requirements: "the case must not present an advisory opinion; there must be standing; the case must be ripe; it must not be moot; and it must not present a political question." Erwin Chemerinsky, *A Unified Approach to Justiciability*, 22 Conn. L. Rev. 677, 677 (1990).

premature for review because the injury is speculative and may never occur from those cases that are appropriate for ... court action." Erwin Chemerinsky, *Federal Jurisdiction* § 2.4.1 (6th ed. 2012). Thus, "Palau courts have previously declined to reach issues that ... concern a future injury that may happen, but the possible factual circumstances are so indefinite that the questions raised are hypothetical or abstract." *Trolii v. Gibbons*, 11 ROP 23, 24-25 (2003) (citing *Toribiong v. Gibbons*, 3 ROP Intrm. 419 (Tr. Div. 1993)); *accord Kotaro v. ROP*, 7 ROP Intrm. 57, 60 n.2 (1998).

Although Palau's ripeness jurisprudence is not extensive, the U.S. Supreme Court "looks primarily to two considerations: 'the hardship to the parties of withholding court consideration' and 'the fitness of the issues for judicial decision.'" Chemerinsky, *Federal Jurisdiction*, § 2.4.1 (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149 (1967)). Such an analysis requires inquiry on a case-by-case basis. *Accord PCSPP v. Udui*, 22 ROP 11, 14-15 (2014). To the extent the trial court conducted such an inquiry under the particular facts of this case, it failed to explain its analysis as necessary for appellate review. *See Esebei v. Sadang*, 13 ROP 79, 82 (2006) ("A lower court must issue findings of fact and conclusions of law that make clear the basis for its determination.").

On the other hand, to the extent the trial court concluded that customary title disputes are categorically non-justiciable, this conclusion contradicts decades of precedent in which Palauan courts have resolved title disputes. *See, e.g., Arbedul v. Diaz*, 9 ROP 218 (Tr. Div. 1989); *Espangel v. Diaz*, 3 ROP Intrm. 240 (1992); *Filibert*

v. Ngirmang, 8 ROP Intrm. 273 (2001); *Obak v. Ngirturong*, Civil Appeal No. 16-001 (March 8, 2017). Such a sweeping pronouncement is not only an incorrect statement of the law, but also a departure from the standard governing declaratory judgments under Rule 57, *see Senate v. Nakamura*, 8 ROP Intrm. 190, 192-93 (2000), making it an abuse of discretion as well, *see Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990) ("A [trial] court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.").

In concluding that title disputes are non-justiciable, the trial court may have been led astray by statements from prior appellate decisions suggesting that courts should only intervene in customary disputes when it is "necessary to 'quiet controversy, bring peace, and settle differences.'"[3] *See, e.g.*, *Filibert*, 8 ROP Intrm. at 276 (quoting *Espangel*, 3 ROP Intrm. at 244); *Orak v. Ueki*, 17 ROP 42, 52 (2009); *Ngarmesikd Council of Chiefs v. Rechucher*, 15 ROP 46, 48 (2008); *Blesam v. Tamakong*, 1 ROP Intrm. 578, 581 (1989). To the extent such statements purport to impose additional requirements on litigants seeking adjudication of customary disputes, above and beyond the usual standard for declaratory judgments, we note that they find no basis in the text of Rule 57. Rule 57 makes no distinction between customary disputes and controversies involving non-customary law.

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[3] Indeed, both sides' arguments on appeal focus almost exclusively on asserting that "[i]ntervention by the court is necessary to quiet controversy, bring peace, and settle differences among the parties."

Instead, such statements appear to reflect a belief that courts are not a proper forum for resolving customary disputes. Until recently, a similar reluctance was reflected in our jurisprudence requiring clear and convincing evidence to show the existence of a customary law. *See, e.g.*, *Udui v. Dirrecheteet*, 1 ROP Intrm. 114 (1984). However, in 2013, we overturned that jurisprudence in order "to give the customary rule of law its rightful place in Palauan national jurisprudence." *Beouch v. Sasao*, 20 ROP 41, 50 (2013).

To the extent *Filibert*, *Espangel*, and their progeny purport to impose additional barriers to seeking declaratory judgments grounded in customary law, above and beyond the usual requirements for seeking a declaratory judgment under Rule 57, those additional barriers can no longer be sustained in light of this Court's decision in *Beouch*. In Palau, "custom exists as a *source* of law," and "traditional or customary law stands as 'equally authoritative' to statutes." *Beouch*, 20 ROP at 47 (quoting Palau Const. art. V, § 2). Under the rationale of *Beouch*, parties seeking declaratory judgments based on customary law should enjoy the same access to courts as those seeking declaratory judgments based on other sources of law. Indeed, declaratory judgment actions may be ideal for resolving customary title disputes, since they allow the court to focus solely on the nuances of customary law without the distraction of collateral issues such as land ownership or damages.

Nor do we think such heightened barriers to declaratory judgment can be sustained simply on the basis that "disputes over customary matters are best resolved

by the parties involved rather than the courts." *Filibert*, 8 ROP Intrm. at 276; *see also Matlab v. Melimarang*, 9 ROP 93, 96 (2002); *Sambal v. Ngiramolau*, 14 ROP 125 (2007); *Imeong v. Yobech*, 17 ROP 210, 220 (2010); *Edward v. Suzuky*, 19 ROP 187, 194 (2012). While this is certainly true, it is equally true of disputes involving non-customary law. For example, in a contract dispute, an agreed-upon settlement between the parties will almost certainly yield more mutually agreeable results than a court judgment, which is likely to leave one or both sides exceedingly unhappy. But the superiority of cooperative dispute resolution would never be thought sufficient reason for denying parties a declaratory judgment regarding their contract dispute, so long as the dispute otherwise meets the usual requirements for declaratory judgment under Rule 57.

Courts of Palau are not permitted to give second-class status to customary law, and declaratory relief should become no less available to a litigant simply because resolving his dispute requires an adjudication under customary law. The trial court therefore erred on two levels: (1) it incorrectly declared title disputes to be non-justiciable, and (2) it applied a more rigorous standard to the parties' declaratory judgment claims based on the fact that they involve customary law. To the extent either error finds support in statements from prior appellate decisions, those statements are disapproved.

CONCLUSION

The trial court did not apply the correct standard in deciding whether to entertain the parties' claims for declaratory judgment. Its decision is therefore **REVERSED**, and the matter is **REMANDED** for consideration under the proper Rule 57 standard.

SO ORDERED, this 16th day of March, 2017.

ARTHUR NGIRAKLSONG
Chief Justice

JOHN K. RECHUCHER
Associate Justice

DENNIS K. YAMASE
Associate Justice