IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

FILED
2021 SEP 14 AM 10:10
SUPREME COURT
OF THE
REPUBLIC OF PALAU

UCHOL L. MEDALARAK, represented by Julius Echang and Rebechoraidung Joel Toribiong, and ISAAC SOALADAOB,
Appellants,
v.
NGARAARD STATE PUBLIC LANDS AUTHORITY,
Appellee.

Cite as: 2021 Palau 28
Civil Appeal No. 21-007
Appeal from LC/E 17-00107, 17-00108, 17-00109

Decided: September 14, 2021

Counsel for Appellants ..... Johnson Toribiong
Counsel for Appellee ..... Brengyei R. Katosang

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
GREGORY DOLIN, Associate Justice

Appeal from the Land Court, the Honorable Rose Mary Skebong, Acting Senior Judge, presiding.

OPINION[1]

DOLIN, Associate Justice:

[¶ 1] This case is before us for the second time. Previously, we affirmed the Land Court's determination that Appellants' claim to the land in question is not meritorious because they failed to prove all the elements of a return-of-public-lands claim. *Medalarak v. Ngaraard State Pub. Lands Auth.*, 2021 Palau 10 ¶ 1 ("*Medalarak I*"). Following our decision in *Medalarak I*,

[1] Although Appellants request oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

Appellants filed a "Rule 59(e) Motion to Alter or Amend Judgment," which the Land Court denied on April 29, 2021. We once again **AFFIRM**.

[¶ 2] As an initial matter, we note that Appellants' Rule 59(e) Motion to alter or amend the judgment is procedurally improper.[2] Any motion under that rule must be made within 10 days of the judgment. The Land Court entered its judgment in the underlying case on July 2, 2020. We affirmed that judgment on April 7, 2021. *See Medalarak I*, 2021 Palau 10. Appellants did not make their Motion until April 19, 2021. Apparently, Appellants believe that the relevant date for when the 10-day clock started ticking was the date of our opinion. But that just is not so. The judgment that Appellant is seeking to alter is not *our* judgment, but the judgment of the Land Court. Therefore, the 10-day clock began running on the date that the Land Court entered its judgment, rather than on the date we entered ours. The rules refer to a "motion to alter or amend *the* judgment," and that must mean that the timing of the motion must be tied to *the* judgment the motion seeks to alter. ROP R. Civ. P. 59(e). April 19, 2021, was therefore the last day to seek to alter *our* judgment, not that of the Land Court. *Cf. Andrews v. E.I. Du Pont De Nemours & Co.*, 447 F.3d 510, 515–16 (7th Cir. 2006) ("The point of Rule 59 is to increase efficiency, allowing *[trial] courts* a chance to correct their own errors rather than saddling the parties and appellate courts with otherwise unnecessary appeals.") (emphasis added); ROP R. App. P. 4(a) (specifying that filing "a motion to alter or amend the judgment" terminates the 30-day clock to file an appeal). Therefore, the Appellants' motion under Rule 59(e) was untimely.

[¶ 3] However, our Rules of Civil Procedure permit a motion for relief from judgment. *See* ROP R. Civ. P. 60. That rule permits the trial courts to grant relief from judgment when there is "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)," ROP R. Civ. P. 60(b)(2), or for "any other reason justifying relief from the operation of the judgment," *id.* 60(b)(6). Appellants argue that Trust Territory Policy Letter P-1 of December 29, 1947 (the "Policy Letter") — a document Appellants claim to have discovered only after our opinion in

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[2] Technically, the Rules of Civil Procedure do not govern the proceedings before the Land Court. *See Klai Clan v. Airai State Public Lands Authority*, 20 ROP 253, 256 (2013). However, they serve as a useful guideline and, like the Land Court in this case, we proceed on that understanding.

Medalarak I issued — is such "newly discovered evidence." We reject this argument because the Policy Letter is neither "new" nor is it "evidence."

[¶ 4] "Evidence" is "[a]ny species of proof, or probative matter, legally presented at the trial of an issue . . ., by the act [of the parties and through the medium] of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury *as to their contention*." *United States v. Cimera*, 459 F.3d 452, 460 n.9 (3d Cir. 2006) (citing Black's Law Dictionary (4th ed. 1951)) (emphasis added). In other words, "evidence" is something that makes the existence of a fact more or less likely. *See KSPLA v. Idid Clan*, 22 ROP 66, 72 (2015). Appellants' contentions before the Land Court were that "Isaac Soaladaob's . . . father (or grandfather) truly owned these lots before they became public land," and that "Ngereklrongel Clan (now maybe Idung Clan) owned the land that was properly claimed by Uchol." Land Ct. Summary of the Claims; Findings of Fact; and Determinations at 9, 10. It is these contentions that the Land Court rejected in its initial determination. Nothing in the Policy Letter sheds or can possibly shed light on who owned what land prior to the Japanese Government asserting ownership.

[¶ 5] Nor is the Policy Letter "new." Though Appellants state that until very recently they have not been able to get a hold of the entire document, the portions of the Policy Letter that they rely on have been quoted at length in prior cases. *See, e.g.*, *Esebei v. Trust Territory*, 1 TTR 495, 502 (1958); *Ngiraibiochel vs. Trust Territory*, 1 TTR 485, 489-90 (1958); *Sechelong v. Trust Territory*, 2 TTR 526, 531 (1964). Thus, the absence of the actual letter (even assuming that "by due diligence [it] could not have been discovered in time to move for a new trial under Rule 59(b)," ROP R. Civ. P. 60(b)(2)), should not have prevented Appellants from making the very argument they are trying to advance now.

[¶ 6] Finally, the Policy Letter is not a legal document that would "justify[] relief from the operation of the judgment." ROP R. Civ. P. 60(b). Simply put, the Policy Letter is just that — a statement of policy by a former sovereign. It is not law. As the Appellate Division of the High Court for the Mariana District stated in *Ogarto v. Johnston*, "Policy Letter P-1 appears to be no more than a guideline, a mere memorandum issued by the then Deputy High Commissioner

to all the civil administrators of the Trust Territory. It was neither a proclamation by the High Commissioner nor an interim regulation by the Deputy High Commissioner." 8 TTR 62, 75 (1979). The Policy Letter did not vest any rights at the time of its issuance, and does not vest any rights now.

[¶ 7] Because Appellants have failed to show any fact that would "justify[] relief from the operation of the judgment," ROP R. Civ. P. 60(b), we **AFFIRM** the Land Court's denial of their Motion.

SO ORDERED, this 14th day of September, 2021.

JOHN K. RECHUCHER
Associate Justice

GREGORY DOLIN
Associate Justice

NGIRAIKELAU, Chief Justice, concurring in the judgment:

[¶ 8] I concur with the majority's judgment in affirming the Land Court's denial of appellants' post-trial motion. I write separately to state my reasons, slightly different from the majority's, for upholding the Land Court's denial. The standard of review applicable here is abuse of discretion. See *W. Caroline Trading Co. v. Leonard*, 16 ROP 110, 113 (2009). "Under this standard, a trial court's decision will not be overturned unless it was arbitrary, capricious, or manifestly unreasonable, or because it stemmed from improper motive." *Id.* (internal quotations and citations omitted).

[¶ 9] In denying the motion, the Land Court essentially ruled that the evidence was not newly discovered and was not likely to affect the outcome of the case. Order at 3 (April 29, 2021). I would have affirmed the Land Court's order based on its finding that the evidence was not newly discovered and ended the discussion there. The use of post-trial motions in Land Court proceedings, such as motions under Rule 59(e) or Rule 60(b)(2), to secure a second opportunity to present a better case is simply improper and not allowed. *See In the Matter of Land Identified as Lot No. 2006 B 12-002*, 19 ROP 128, 134 (2012); *Masang v. Ngerkesouaol Hamlet*, 13 ROP 51, 53–54 (2006); *Shmull v. Ngirirs Clan*, 11 ROP 198, 201–02 (2004). This is precisely what Medalarak and Soaladaob sought to do below in filing their Rule 59(e) and/or 60(b) motion. Such a procedural tactic is neither proper nor permitted under the Land Court rules. Therefore, the Land Court did not abuse its discretion when it denied the motion. For this reason, I concur with the majority's judgment.

OLDIAIS NGIRAIKELAU
Chief Justice