IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

SHALLUM ETPISON,
Appellant,
v.
GEORGE RECHUCHER,[1]
Appellee.

Cite as: 2021 Palau 8
Civil Appeal No. 20-020
Appeal from SP/B 19-00265 (Ref. Case No. LC/B 00-259)

Argued: December 23, 2020
Decided: February 26, 2021

Counsel for Appellant ..... Lalii Chin Sakuma, Steven R. Marks, and R. Ashby Pate

Counsel for Appellee ..... Kevin N. Kirk and Rachel A. Dimitruk

BEFORE: KATHERINE A. MARAMAN, Associate Justice[2]
DANIEL R. FOLEY, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Land Court, the Honorable Salvador Ingereklii, Associate Judge, presiding.

OPINION

FOLEY, Associate Justice:

[¶ 1] This case is before us following remand to the Land Court. In our remand order, we directed the Land Court (once the case was reassigned to a new judge so as to avoid the appearance of bias identified in our decision) to

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[1] We have altered the caption so as to align it with the real parties-in-interest and our prior decision in this matter.

[2] Associate Justice Maraman was appointed to the panel after oral argument and was not present for it. She has reviewed the recording of the oral argument and consulted with the other members of the panel.

"consider the legitimacy of [Shallum] Etpison's claim along with his motion's timeliness and any prejudice that granting it would impose" on George Rechucher, and then balance these factors. *Etpison v. Rechucher*, 2020 Palau 14 ¶ 23. Because the Land Court's opinion on remand indicates a failure to engage in the process we mandated, we **VACATE** the decision below and **REMAND** for additional proceedings consistent with both this and our prior decision in this matter.

BACKGROUND

[¶ 2] The background facts of this case are set out at some length in two prior opinions of this Court. *See id.* ¶¶ 3-9; *see also Rechucher v. Etpison*, 2019 Palau 25 ¶¶ 7-13. Following our (not "on the merits") vacatur of the Land Court's January 2020 decision, Etpison again returned to the Land Court. Except for a Supplemental Brief, filed by Etpison (over Appellee's objection), the parties relied on their 2019 pleadings. Those pleadings in turn relied in large part on evidence previously introduced in Civil Action No. 16-044. Thus, in addition to the case file in LC/B 00-259, the record before the Land Court comprised, *inter alia*, the testimony of the witnesses from the Trial Division hearings, witness affidavits, maps from the Bureau of Lands and Surveys and the Koror Land Registration team, drone footage of the disputed land, correspondence between Etpison and the Land Court in 2000, correspondence regarding the disputed land between the parties and their predecessors-in-interest, death certificates, and land-use rights agreements between the parties.

[¶ 3] The Land Court did not hold a hearing and denied Etpison's motion to intervene by written order on July 29, 2020. The court anchored its denial in several considerations. Specifically, it found that "Etpison had been presented opportunities to present his claim but he has decided that to sit on his claim for decades," thus apparently concluding that the motion is untimely. Order Denying Mot. to Intervene at 2-3. The court also found that "Rechucher purchased and developed the land," and that "[g]ranting Etpison's motion to intervene after all these years would cause prejudice to Rechucher [because m]any witnesses who had firsthand information regarding this matter have passed and evidence has degraded." *Id.* at 3. For

these reasons, the Land Court concluded that Etpison's motion to intervene should be denied.

[¶ 4] This appeal followed. On appeal, Etpison argues that the Land Court's decision failed to comply with our mandate to "consider the legitimacy of the would-be intervenor's claim," and to weigh it against the motion's timeliness and "prejudice to the current rights-holder." *Etpison*, 2020 Palau 14 ¶¶ 20, 22.

STANDARD OF REVIEW

[¶ 5] We review the Land Court's denial of a motion to intervene for abuse of discretion. *See KSPLA v. PPLA*, 22 ROP 30, 35 (2015). "Generally, '[a] discretionary act or ruling under review is presumptively correct, and the burden is on the party seeking reversal to demonstrate an abuse of discretion.'" *Island Paradise Resort Club v. Ngarametal Ass'n*, 2020 Palau 27 ¶ 12 (quoting *Ngoriakl v. Gulibert*, 16 ROP 105, 107 (2008)). However, a court abuses its discretion "when a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper and no improper factors are considered, but the court in weighing those factors commits a clear error of judgment." *Id.* (quoting *Eller v. ROP*, 10 ROP 122, 128-29 (2003)). Finally, "[a] trial court decision must contain sufficient findings supporting its conclusions to allow for appellate review." *Yano v. Yano*, 20 ROP 190, 199 (2013) (quoting *Ngirutang v. Ngirutang*, 11 ROP 208, 211 (2004)).

DISCUSSION

[¶ 6] As we have previously explained, in evaluating a motion to intervene, the Land Court must consider three factors—the timeliness of the motion, the underlying merits of the motion, and the prejudice to the current rights-holder. *Etpison*, 2020 Palau 14 ¶ 23. Our review of the appealed decision convinces us that the Land Court failed to engage in the full-scale analysis required by our prior opinion. Indeed, the only factor analyzed with any detail was the timeliness of the motion, whereas the findings of prejudice were conclusory, and an evaluation of the motion's merits is entirely absent. Given the absence of any analysis with respect to the merits of the motion, it

is perhaps not surprising that the Land Court also failed to engage in balancing the factors. Because it is not the role of this Court to analyze and balance the factors in the first instance, a remand is necessary.

[¶ 7] On remand, the Land Court must distinctly and explicitly conduct an analysis of each of the three factors: (1) the "legitimacy" of Etpison's claim—that is, whether his claim on its merits is "frivolous or has little chance of success," or rather "raises substantial arguments"; (2) whether Etpison's motion is timely; and (3) what prejudice Rechucher, as the current rights-holder, would suffer should he have to defend against the claims underlying Etpison's motion to intervene as well as should the disputed land be allocated to Etpison.[3] *See Etpison*, 2020 Palau 14 ¶¶ 20-23. In doing so, the Land Court must consider the evidence in the record, including the evidence underlying the Trial Division's vacated decision, and resolve any material issues of fact that are present in the record and necessary to making a determination on each of the three factors.[4]

[¶ 8] The Land Court must then conduct a balancing analysis and decide if the weight of the factors on either side militates for or against permitting intervention. We note that at some point the prejudice to the current rights-holder and considerations of timeliness, which encompass the importance of finality in legal disputes and recognition of a litigant's responsibility to diligently pursue his rights, will "outweigh even the most meritorious motion to intervene." *Id.* ¶ 22. Unlike a bright line rule, however, the circumstances of each particular case must be given due consideration when balancing the competing factors. We continue to offer no opinion on whether, once the factors are properly considered, Etpison's

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[3] We take this opportunity to remind the Land Court that the mere burden and inconvenience of litigation is not, under our system of justice, considered prejudice. *See Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982) ("[I]t is clear that the mere inconvenience of defending another lawsuit does not constitute plain legal prejudice.").

[4] This case presents a unique scenario for a motion to intervene, where the Land Court has been presented with an extensively developed record containing a large array of material factual disputes going to the merits, timeliness, and prejudice factors. Without suggesting this as a requirement for every motion to intervene, we suggest that the Land Court consider holding an evidentiary hearing to resolve any dispute of material fact key to the analysis of each factor.

BENNARDO, Associate Justice, dissenting:

[¶ 10] The majority does not cut the Land Court enough slack. This is, after all, supposed to be abuse of discretion review, and, as the majority rightly noted, "[a] discretionary act or ruling under review is presumptively correct." *Island Paradise Resort Club v. Ngarametal Ass'n*, 2020 Palau 27 ¶ 12. Despite this acknowledgement, the majority chooses to read the Land Court's opinion in an unnecessarily unfavorable light.

[¶ 11] The majority opines that remand is necessary because it is convinced that the Land Court failed to analyze the three necessary factors and failed to balance the factors against each other. Majority Opinion ¶ 6. As a refresher, the three factors that we instructed the Land Court to consider and balance on remand were the timeliness of the motion to intervene, the prejudice that intervention would cause to the current rights-holder, and the potential merits of the movant's claim. *Etpison v. Rechucher*, 2020 Palau 14 ¶¶ 19-23.

[¶ 12] Admittedly, the majority's reading of the Land Court's opinion is a possible one. The Land Court's opinion fails to communicate the scope of its analysis in an ideal way. After reading the Land Court's opinion, I am less than absolutely certain that the Land Court considered and balanced the three factors that we instructed it to.

[¶ 13] But the majority's interpretation of the Land Court's opinion is not the only possible one. In my view, there is another, equally plausible way to read the Land Court's opinion. The final sentence of the Land Court's opinion says the following: "And while the Land Court recognizes its inherent authority to correct errors in closed matters, the Land Court declines to exercise this inherent authority in this matter when Etpison had prior opportunities to raise his claim for the alleged error, but decided otherwise." Order Denying Mot. to Intervene at 4 (July 29, 2020). One interpretation of that passage is that the Land Court found that the first two factors—timeliness and prejudice—weighed so heavily against intervention in this case that the third factor—the potential merits of Etpison's claim—essentially became irrelevant. Finding that even the most meritorious claim cannot overcome the untimeliness and prejudice of intervention is a permissible analysis. After all, we contemplated that exact possibility in our opinion

remanding this matter to the Land Court when we said that "at some point the prejudice to the current rights-holder would outweigh even the most meritorious motion to intervene." *Etpison*, 2020 Palau 14 ¶ 22.

[¶ 14] To me, this appeal comes down to the standard of review. The Land Court's opinion is not as clear as I would prefer. From the face of the opinion, I don't know for certain whether the Land Court did its job sloppily or properly. Would it have been better for the Land Court to separate its analysis with section headings to clarify exactly where it was considering each of the three factors and balancing them against each other? Of course.

[¶ 15] But perfection is not the standard here. Rather, review for abuse of discretion requires that I approach the Land Court's opinion with a presumption of correctness. *Island Paradise Resort Club*, 2020 Palau 27 ¶ 12. When such presumption is applied, I do not believe that the majority gave the Land Court's opinion a fair shake. Thus, I would vote to affirm. Not because the Land Court's opinion is ideal, but because, when read in light of a presumption of correctness, it is good enough.

KEVIN BENNARDO
Associate Justice