

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU **FILED**^{CAK}
APPELLATE DIVISION

2024 MAY 21 A 9 18

<p>BUTELBAI CLAN, <i>Appellant,</i> v. ONGALK RA NGIRAILILD, <i>Appellee.</i></p>

SUPREME COURT
OF THE
REPUBLIC OF PALAU

Cite as: 2024 Palau 15
Civil Appeal No. 23-025
Appeal from Cases Nos. LC/F 19-00075; LC/F 19-00080; LC/F 19-00082;
and LC/F 19-00086.

Decided: May 21, 2024

Counsel for Appellant	Vameline Singeo
Counsel for Appellee	William Ridpath

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
JOHN K. RECHUCHER, Associate Justice
FRED M. ISAACS, Associate Justice

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

OPINION¹

PER CURIAM:

[¶ 1] Appellant Butelbai Clan maintains that the Land Court judge erred in refusing to recuse herself from a matter in which she had previously represented one of the parties pursuant to Palau’s Code of Judicial Conduct.

[¶ 2] For the reasons set forth below, we **AFFIRM**.

¹ The parties did not request oral argument in this appeal. No party having requested oral argument, the appeal is submitted on the briefs. See ROP R. App. P. 34(a).

BACKGROUND

[¶ 3] The matter below concerned four properties in Mengellang, Ngarchelong, including Lot No. 19 F 04-001 (TD Lot 1235), Lot No. 19 F 04-006 (TD Lot 1244), Lot No. 19 F 04-013 (TD Lots 1251), and Lot No. 19 F 04-009 (TD Lot 1243) (collectively, “the Lots”). The Tochi Daicho lists Bitlaol as the owner of the first three Lots. There are three claimants to the Lots: Appellant Butelbai Clan, Ongalk ra Bukurrou (the Children of Bukurrou), and Ongalk ra Ngirailild (the Children of Ngirailid, hereinafter “the Children”).

[¶ 4] The Land Court held a hearing on May 11, 2023, during which Butelbai Clan filed a motion to recuse based on Senior Judge Rose Mary Skebong’s representation of the Children of Ngirailild in *Children of Dirrabang v. Children of Ngirailild*, 10 ROP 150 (2003). *Dirrabang* involved TD Lot No. 1330, which is located in Mengellang and listed as a property of Bitlaol in the Tochi Daicho. The Land Court denied this motion, explaining that it had been twenty years since the representation, that she had no recollection of the 2003 case, and that the circumstances of the Land Court were such that if she were to recuse herself, further proceedings would be substantially delayed to the detriment of the parties.

[¶ 5] On June 19, 2023, the Land Court determined that the properties belonged to the Children, and reiterated its oral ruling on the recusal motion. Butelbai Clan filed this timely appeal.

STANDARD OF RECUSAL

[¶ 6] Under Palau’s Code of Judicial Conduct, a judge “shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.” ROP Code of Judicial Conduct, Canon 2.5. The Canon also states a corresponding exception where “disqualification of a judge shall not be required if constituting another tribunal to deal with the case is not practical or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.”

DISCUSSION

[¶ 7] Butelbai Clan raises two separate arguments: that the Land Court erred in denying the Clan’s motion for recusal, and that it committed error in finding that a prior adjudication was binding on this case. We summarily address the latter issue by reminding the parties that appellate briefs should adequately identify and brief the asserted errors in the decision below, and that we may summarily dispose of an appeal for a party’s failure to do so. *Techubel Clan v. Debkar Clan*, 2017 Palau 15 ¶ 17. Our Appellate Rules set out that the Opening Brief should contain a statement of the issues presented for review set forth in separately numbered paragraphs. *See* ROP R. App. P. 28(a)(5). Butelbai Clan’s Opening Brief contains an issue it failed to properly present pursuant to Appellate Rule 28 and does so without citation to supporting case law. “Unsupported legal arguments need not be considered by the Court on appeal.” *Suzuky v. Gulibert*, 20 ROP 19, 23 (2012). Thus, we decline to address this argument and turn to the issue of recusal.²

[¶ 8] Butelbai Clan argues that Senior Judge Skebong should have recused herself because of her previous representation of the Children of Ngirailild in the 2003 case. Butelbai Clan points to the Canon, which lists some non-exhaustive instances where a judge should recuse herself, including instances where “the judge has personal knowledge . . . of disputed evidentiary facts concerning the proceedings” or “the judge previously served as a lawyer or was a material witness in the matter in controversy.” ROP Code of Judicial Conduct Canon 2.5.1; 2.5.2.

[¶ 9] “The perceived impartiality of a judge is an essential ingredient to a judiciary’s legitimacy.” *Etpison v. Rechmicher*, 2020 Palau 14 ¶ 15; *see also Yano v. Yano*, 20 ROP 24, 26 (2012). The Code of Judicial Conduct is clear that the appearance of impartiality is affected where the judge had prior

² Even if we were to address this improper argument, we find no merit to it. Butelbai Clan maintains that one of the exhibits introduced below, the Summary and Adjudication dated February 21, 1992, is not conclusive on the current case. The 1992 Adjudication dealt with the ownership of another lot owned by Bitlaol and awarded the lot to the Children of Ngirailild. However, at no point did the Land Court imply that the 1992 Adjudication compelled it to find in favor of the Children. The Land Court merely acknowledged that this exhibit, introduced by Butelbai Clan itself, showed that the parties had repeatedly competed for Bitlaol’s properties. We find no error in this analysis.

involvement *in the matter in controversy*. “A claim to one piece of land cannot be considered the same as a claim to a different lot.” *West v. Don*, 2023 Palau 15 ¶ 12 (citing *Osarch v. Bai*, 5 ROP Intrm. 327, 328 (Tr. Div. 1995)). The 2003 case involved an inheritance dispute over the ownership of a lot in Mengellang, Ngarchelong state, which belonged to Bitlaol. While similar in some measure, the two cases did not concern the same lot and as such, concern a different matter in controversy. Therefore, the Canon does not explicitly require recusal under these circumstances.

[¶ 10] The applicable standard remains whether a “reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality . . . then the judge must recuse.” *Cura v. Momen*, 2022 Palau 6 ¶ 11. Senior Judge Skebong represented the Children of Ngirailild twenty years prior, in a case which did not involve Butelbai Clan; she did not gain any personal knowledge of disputed facts. More importantly, she stated on the record that she had “no actual bias, had completely forgotten about her representation, and is able to and will decide the matters impartially based on the evidence presented.” See Adjudication and Determination, *in re Mengellang*, LC/F 19-00075, LC/F 19-00080, LC/F 19-00082, LC/F 19-00086 (L.C. June 19, 2023). This is quite distinguishable from our reasoning in *Cura*, where the judge relied in part on an unfavorable impression of the appellant's credibility formed at a prior proceeding. 2022 Palau at ¶ 13. Additionally, we have previously expressed that Palau has a limited supply of businesses and professionals and that our notion of reasonableness operates within these parameters. “To hold that a judge could be disqualified automatically based on any business (or personal) relationship with a party, particularly one which ended years ago, would be to severely limit a judge's ability to function in the community, to function as a judge, or both.” *Yano*, 20 ROP at 28. We do not find that a reasonable man would harbor doubts about Senior Judge Skebong's impartiality under these circumstances.

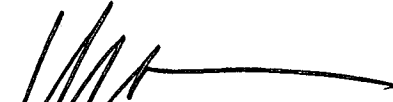
[¶ 11] Even if we were to find a perceived bias, the Judiciary retains its “obligation to resolve the material issues before it.” *Beouch v. Sasao*, 16 ROP 116, 118 (2009). The rule of necessity is thus invoked as an exception to disqualification “if constituting another tribunal to deal with the case is not practical or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.” See ROP Code of Judicial Conduct, Canon 2.5;

see also In re Rois Kebesang, 2021 Palau 38 (Tr. Div.). The Land Court currently has only one active Senior Judge, and creating another tribunal to hear Butelbai Clan's claims would be highly impractical and would cause certain delay. Accordingly, the rule of necessity would most likely mandate the same result.


CONCLUSION

[¶ 12] We **AFFIRM** the Land Court's judgment.


SO ORDERED, this 21st day of May 2024.



OLDAMIS NGIRAIKELAU
Chief Justice, presiding



JOHN K. RECHUCHER
Associate Justice



FRED M. ISAACS
Associate Justice