

IN THE  
SUPREME COURT OF THE REPUBLIC OF PALAU  
APPELLATE DIVISION

FILED

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SUPREME COURT  
OF THE  
REPUBLIC OF PALAU

MARIANO W. CARLOS,  
*Appellant,*  
v.  
ESTATE OF CECILIA PEDRO,  
REP. BY LEO PEDRO,  
*Appellee.*

Cite as: 2019 Palau 34  
Civil Appeal No. 18-054  
Appeal from Land Court Action LC/T 08-00955

Decided: October 22, 2019

Counsel for Appellant ..... Mariano W. Carlos, *pro se*  
Counsel for Appellee ..... Kena N. Njoya

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice  
JOHN K. RECHUCHER, Associate Justice  
ALEXANDRO C. CASTRO, Associate Justice

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

**OPINION<sup>1</sup>**

PER CURIAM:

[¶ 1] This appeal arises out of the Land Court's determination of ownership for a parcel of land in Sonsorol State. Appellant contends, *inter alia*, that the Land Court's determination of ownership should be set aside because the court violated his due process rights. We agree. We therefore **VACATE** the Land Court's determination and **REMAND** for further proceedings consistent with this opinion.

<sup>1</sup> No party having requested oral argument, the appeal is submitted on the briefs. *See* ROP R. App. P. 34(a).

“Warifaduriheting,” in Dongosaro Municipality, Sonsorol State.<sup>2</sup> Of relevance to this appeal, Carlos claimed ownership of phosphate piles on various parcels of land in Sonsorol State. Pursuant to a claim dated December 22, 1999, Carlos also claimed ownership of a parcel known as “Mata Dabowau.”

[¶ 3] After lengthy proceedings not relevant to this appeal, ownership disputes over Lot T-294 and various parcels of land in Sonsorol State, but not the parcel known as “Mata Dabowau,” were scheduled for a consolidated hearing before the Land Court. The dispute over Lot T-294 was assigned case number LC/T 08-00955. At a status conference in advance of the final hearing, the court stated its intention to dismiss all claims to phosphate piles on the parcels for lack of jurisdiction. The day before the hearing, Carlos moved the court to not dismiss the phosphate pile claims. At the final hearing, the court denied the motion from the bench and dismissed all phosphate pile claims.

[¶ 4] The following exchange then occurred:

CARLOS: Judge, before I leave the courtroom . . .

COURT: Mm-hmm. I mean, you can sit down . . . you know, this is a public forum . . .

CARLOS: No, I don’t want to spend my time listening to lands that I don’t own.

COURT: Okay, no, you’re . . . that’s your right but, uh . . .

CARLOS: Okay, I need . . . I have a question about the 3 (three) Lots or 3 cases, 09-00202, and 0 . . .

COURT: Again-again? 09-00?

CARLOS: 00202, and . . .

COURT: Okay.

CARLOS: And 0 . . . 11-00272, and . . .

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<sup>2</sup> Carlos has attached to his appeal a claim of land ownership, dated October 30, 1998, for “Mata Tawahur.” Although bearing the Land Court Clerk’s signature, the claim form does not bear a file number and the form does not appear to be in the Land Court record before this Court. However, there is no dispute that Carlos did in fact make a claim to “Mata Tawahur” or “Tawahur,” and his claim is noted on various attachment calendars. In 1998, Carlos filed a motion requesting that the name of the land in his claim be changed to appear as “Tawahur ma Mata Tawahur.” It is unclear if this motion was ever acted on.

COURT: Wait a minute. The last . . . you're . . . looking . . . oh, okay. I'm looking for them. 02-00202. 0202 and 11 . . . 11-00272, and 14-00189, what about them?

CARLOS: Uh, I gotta . . . my question is, are those phosphates . . . are they involved with phosphate on separate lands?

COURT: I wouldn't know Mr. Carlos, but I would note that you have no claim on those three lots.

CARLOS: I have none, correct?

COURT: You had no claims in them. I'm not . . . you know, I think you got the same appendix that I'm looking at now and I . . . I reviewed the files. If you didn't, I did, and my review that's . . . the claims listed on those three (3) lots that you mentioned are the claims that I saw in the files.

CARLOS: Yes.

COURT: But that's me.

CARLOS: The reason I ask, Judge, it's here in your Order as one of the headings that is in line for a hearing, so I worry if I get up and leave . . .

COURT: Well, Mr. Carlos, those orders, actually there are two (2) Orders that are slated for hearing today, and that's . . . with the Orders, there were two of them, I attached [an] appendix to each Order.

CARLOS: I see.

COURT: So that's what I'm looking at as . . . the appendix case notes, I mean, notes[,] Worksheet Lot numbers . . .

CARLOS: Mm-hmm.

COURT: . . . and individuals claiming those Lots, and the case numbers of individuals who have claims in those Lots. So, those cases that you have . . . like I said, I could be mistaken. You know, I could have made an error because this is based . . . the appendix I made, it was based on my review. But of course everyone has an . . . you know, you should have reviewed if you believe you have claims on the land. You should have reviewed the file; you were free to do so. But based on my review, the appendix which is attached to . . . beginning at the LCT 08-0993 case number. Based on my review, there was no Mariano Carlos claim to those three (3) cases that

you have mentioned, which involve Lot Number T287, and Lot Number T525, and Lot Numbers T-922 and 934.

CARLOS: Thank you, Your Honor. I can't, I could not find those files so that's why I asked. Not my one (1) file; I could not find my file on that, and uh, in case . . . I'm going to leave. In case it pops up that I have a claim, I did not wa[i]ve my claim.

COURT: Okay Mr. Carlos, and that was . . . is to the land or to the Lot? To the Lot?

CARLOS: It's to the land.

COURT: See those maps? You're welcome to those maps over there if you wish to review them.

CARLOS: I think those maps probably don't have my claim on them.

COURT: Okay, thank you very much, Mr. Carlos, we don't want to waste your time.

CARLOS: Thank you.

[¶ 5] At this point, Carlos apparently left the courtroom.<sup>3</sup> After addressing other lots, the court eventually heard claims to Lot T-294 by Josepha Kintoki, Kalisto Nestor, Cecilia Pedro, and Joe Nestor. When the court arrived at Carlos's claim to Lot T-294, the following exchange occurred:

COURT: Mariano Carlos has a claim but he is absent, although he did not waive his claim. In which case, why don't you come up Ms. uh . . . . For the record, you the witness are Saturnina Mario, is that correct?

MARIO: Yes.

COURT: And you represent this claim of Mariano Carlos. Mariano Carlos states that the name of this land is "Mata Dabowai." Dabowai? Dabowau? Mata Dabowai?

UNKNOWN MALE: We've lost that land already.

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<sup>3</sup> It is unclear from the partial transcript exactly when Carlos left the courtroom. However, in his appellate brief, Carlos does not rely on or otherwise mention a subsequent exchange between the court and another litigant in which the court stated, "[a]s of now, Mr. Carlos has no claims in this hearing." We therefore assume Carlos left the courtroom directly after his quoted exchange with the court, and that the places where the court subsequently appears to address "Mr. Carlos" while speaking to another litigant are a transcription error.

COURT: Oh?

UNKNOWN MALE: I think there was a case (indiscernible). We lost it to (indiscernible).

COURT: To who?

UNKNOWN MALE: Oh, this is (indiscernible) I don't know who . . .

COURT: To Cecilia Pedro?

UNKNOWN MALE: Mmm.

COURT: Leo?

UNKNOWN MALE: (Indiscernible) Cecilia [P]edro.

COURT: Do you concede that . . . you are supporting the claim of Cecilia Pedro?

UNKNOWN MALE: (Indiscernible).

UNKNOWN FEMALE: (Indiscernible) because of your claim . . . (indiscernible).

COURT: What are you saying? What are you saying? What are you saying?

UNKNOWN MALE: (Indiscernible) but there was a court hearing and they have lost (indiscernible).

COURT: There was a court hearing here?

UNKNOWN MALE: Yes.

COURT: In what court, do you know?

UNKNOWN MALE: (No audible response).

COURT: Okay. So on this you're saying you lost in court to Cecilia Pedro, is that correct?

[Response by two (2) persons simultaneously is indiscernible.]

COURT: What is the name of the land?

UNKNOWN MALE: Mata Dabowau.

COURT: What was that?

UNKNOWN MALE: Mata Dabowau.

COURT: Yes. Mata D-a-b-o-w-a-u.

UNKNOWN MALE: Yes.

COURT: Thank you. This seems to have a different name from the names you yourselves use. So this Tawahur is one and the same? No, this other . . . here is yet another name used by . . . Mata Dabo . . . it's the same as the one that spells D-a-b-o-w-a-l-o? Is it the same?

UNKNOWN MALE: (Indiscernible response).

COURT: Dabowalo, l-o-.

UNKNOWN MALE: The court is not (indiscernible).

COURT: Okay, but it's this Lot 294, correct? Lot T-294. Okay, thank you. Now it's just between the Nestors and . . . Kalisto and Josepha Kintoki, right? Moving on to the next[.]

The court then adjourned for the day. The next morning, the court recapped the claims made regarding Lot T-294 and stated, "Mariano Carlos also had a claim, but according to the sister of Mariano Carlos, they had ceded it to Cecilia. They lost to Cecilia Pedro." It does not appear that Carlos was present at the second day of the hearing.

[¶ 6] The court subsequently issued an Adjudication and Determination of Land Ownership, in which it concluded that Lot T-294 is owned in fee simple by the Estate of Cecilia Pedro. The court described Carlos's claim as "a claim dated December 22, 1999, for land described as 'Mata Dabowau.'" Adjudication and Determination of Land Ownership at 2 (Nov. 7, 2018). The court also stated that Carlos "left on the morning of the first day of the hearing, and was not present when his case was called. His sister, Saturnina Mario, informed the court that his claim has been settled in favor of Cecilia Pedro's claim." *Id.* at 3. Finally, the court stated, "Saturnina Mario's statement that [Carlos's] claim was ceded to Cecilia [Pedro] added weight to Cecilia's claim." *Id.* This appeal followed.

#### STANDARD OF REVIEW

[¶ 7] "Where factual issues are not in dispute, issues of procedural due process are purely questions of law, reviewed *de novo*." *ROP v. Salii*, 2017 Palau 20 ¶ 2 (quoting *Lewill Clan v. Edaruchei Clan*, 13 ROP 62, 66 (2006)).

#### DISCUSSION

[¶ 8] Carlos contends that the Land Court’s final judgment denying his claim to Lot T-294 and awarding ownership to Appellee violated his due process rights to notice and a hearing.<sup>4</sup> See *Ngerketiit Lineage v. Seid*, 8 ROP Intrm. 44, 47 (1999) (“Procedural due process always guarantees notice and an opportunity to be heard.”). Specifically, he contends that the Land Court erred by entering a final judgment after “assur[ing] [him] that [he] had no claim within the cases to be heard that day” and asking Mario, his sister, and others to speak to his claim when the court realized that he was absent from the courtroom.

[¶ 9] At the outset, we address Appellee’s contention that we should dismiss this appeal because Carlos did not file a post-judgment motion asserting his claims of error. Although Carlos is correct that Rules of Civil Procedure 59 and 60 do not apply in the Land Court, see ROP R. Civ. P. 1(a) (“These rules govern procedure . . . in the Republic of Palau Supreme Court Trial Division, National Court, and in the Court of Common Pleas . . .”), we have recognized the Land Court’s inherent authority to correct its own decisions upon a post-judgment motion, see *Shmull v. Ngirirs Clan*, 11 ROP 198, 202-03 (2004). It also is well established, generally, that we will not consider arguments that a litigant failed to raise in the trial court. See, e.g., *Basilus v. Basilus*, 12 ROP 106, 110 (2005) (noting that a litigant waived her bloodline argument on appeal by not raising it before the Land Court). This principle helps ensure that a litigant provides the trial court an opportunity to address any arguments, potentially obviating the need for an appeal, and prevents the litigant from “sand-bagging” the opposing party if an appeal is taken. Carlos did not file a post-judgment motion or otherwise assert his claims of error before the Land Court.<sup>5</sup>

[¶ 10] However, the principle that we will not hear a claim of error that was not presented to the trial court does not apply in situations, such as this one, where the litigant is claiming error arising from the trial court’s final judgment. When the asserted error arises from the trial court’s final judgment, a litigant cannot be faulted for failing to previously raise the error in the trial court; one cannot raise an error before it exists. In this case, once the trial court entered a judgment that denied Carlos’s claim based on representations made at the hearing outside his presence, he had two options. He could have (1) moved in the Land Court for

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<sup>4</sup> Because we decide this appeal on the basis of Carlos’s claim that his due process rights were violated, we do not reach his argument that the Land Court’s factual findings regarding Lot T-294 were clearly erroneous.

<sup>5</sup> Carlos claims he heard about what transpired at the hearing in his absence and “wrote to” the Land Court “to have his claim to Mata Tawahur heard again” before the court issued the Determination of Land Ownership. However, such correspondence is not in the record before this Court and Carlos has not included it with his briefing.

reconsideration or for the judgment to be corrected or set aside; or (2) sought review from this Court. He chose the latter option, and our precedent does not require that he first file a post-judgment motion in the Land Court before bringing an appeal. Indeed, we routinely entertain appeals asserting errors in the trial court's judgment without requiring that the appellant first move for relief from the judgment in the trial court. For example, although we apply stringent clear error review to claims of factual error in a trial court's judgment, we routinely consider such claims and do not dismiss an appeal simply because the litigant failed to file a post-judgment motion in the trial court. *See, e.g., Imetuker v. Ked Clan*, 2019 Palau 30 ¶¶ 11, 18-20 (reviewing the trial court's factual findings with no mention of a post-judgment motion having been filed). We note that other jurisdictions also do not require the filing of a post-judgment motion in the trial court before an appeal may be taken. For example, in *Mutual Assignment and Indemnification Company v. Lind-Waldock & Company, LLC*, 364 F.3d 858, 860 (7th Cir. 2004), the appellant claimed that the trial court erroneously dismissed its suit based on another party's stipulation of dismissal. The appellant had not filed a post-judgment motion to correct the trial court's error. In addressing the appeal on its merits, the U.S. Court of Appeals for the Seventh Circuit stated, "Perhaps a motion under Fed. R. Civ. P. 59, pointing out to the district judge that [the party stipulating to dismissal] could not bind [the party on appeal], would have solved the problem, but post-judgment motions . . . are not essential to preserve a right to assert error [on appeal]." *Id.* at 860-61. Appellee has pointed to no authority for the proposition that Carlos's appeal must be dismissed simply because he did not first move for relief before the Land Court.

[¶ 11] Of course, there may be instances where reviewing an alleged error in the trial court's judgment requires further development of the factual record. In such a situation, we would remand the matter for that further factual development in the trial court. But such a remand is not necessary where the error can be readily determined from the record on appeal. This is such a case. We therefore proceed to review Carlos's due process claim.

[¶ 12] Based on the transcript, it cannot be disputed that the following occurred at the hearing. After discussing his dismissed phosphate claims, Carlos expressed some confusion as to whether he had any pending land ownership claims that would be heard that day. The court accurately answered his specific question about three parcels and then arguably suggested that he had no other pending claims. However, the court also advised Carlos to *confirm for himself*, using publicly available notices and maps, that he had no pending claims set for hearing. After Carlos nonetheless left the courtroom, the claims to Lot T-294 came up for hearing. At this point, while recognizing that Carlos has not "waived" his claim, the court *sua sponte* appointed his sister to speak to his claim.



The court then solicited factual representations from the sister and unknown persons and ultimately used those factual representations to deny Carlos's claim.

[¶ 13] The court did not err in its colloquy with Carlos before he left the hearing. Contrary to Carlos's representation, the court did not "assure[] [him] that [he] had no claim," and, to the contrary, suggested that Carlos should confirm for himself whether he had a claim scheduled for hearing. The court did not have a responsibility to determine for Carlos what he could have determined for himself. What is more, once Carlos decided to leave the hearing, the court did not have a duty to stop the hearing, to find Carlos, and to inform him that his claim was being heard, or to give him extra time to prepare witnesses or otherwise support his claim. In general, it is a litigant's duty, not the duty of the court, to prosecute a claim. *See Ringgold Corp. v. Worrall*, 880 F.2d 1138, 1141 (9th Cir. 1989) (noting litigants' duty to "keep track of the progress of their lawsuit"). We think this principle is especially apt in the Land Court, where judges have to expeditiously manage complex, multi-claim hearings. In light of Carlos's responsibility to keep track of his own claim, the court would have been justified in dismissing his claim when he was not present to prosecute it.

[¶ 14] However, the court erred when it proceeded to hear Carlos's claim without him present, and when it further appointed Carlos's sister as a representative for his claim, without any apparent authority from Carlos to do so, and relied on representations by various parties not identified in the record. This hearing of Carlos's claim in his absence, and the court's reliance on representations made by other people about Carlos's claim in the absence of any authority for them to speak on his behalf, was a fundamental violation of his right to be heard on his claim. *See Ngerketiit Lineage*, 8 ROP Intrm. at 47. Further, the court's adjudication of Carlos's claim based on the hearing was an integral component of its final judgment determining ownership of Lot T-294. A judgment rendered without due process is void. *In re Idelui*, 17 ROP 300, 304 (2010). We therefore vacate the Land Court's judgment regarding Lot T-294 and remand so that the court can provide Carlos an opportunity to be heard on his claim.

#### CONCLUSION


[¶ 15] We **VACATE** and **REMAND** the Land Court's judgment.

**SO ORDERED**, this 22nd day of October, 2019.



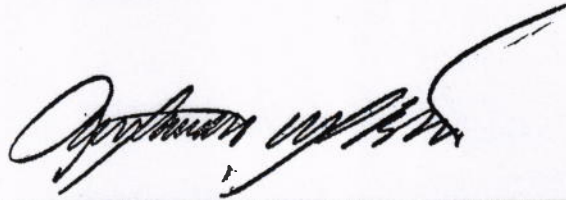
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**ARTHUR NGIRAKLSONG**  
Chief Justice



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**JOHN K. RECHUCHER**  
Associate Justice

A handwritten signature in black ink, appearing to read "Alexandro C. Castro", written in a cursive style. The signature is positioned above a horizontal line.

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ALEXANDRO C. CASTRO  
Associate Justice