

FILED W.

IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

ELLENDER NGIRAMEKETII,
Appellant,
v.
**JEFF R. NGIRARSAOL, GUSTAV NGOTEL, ASARIA
TIMARONG, JOSEPH TIOBECH, STEPHANUS GABRIEL,
ALFONSO LLECHOLCH, LEO RULUKED, JR., ASAP
BUKURROU, ELLIOT UDUI, LLABSIS NGIRAKESAU,
HIDEKI TAKATARO, BOLTON TENGOLL, MARINA I.
UDUI, and the EIGHTEENTH (18TH) KELULUL A
KIULUUL,**
Appellees.

Cite as: 2021 Palau 1
Civil Appeal No. 20-022
Appeal from Civil Action No. 20-066

Decided: January 5, 2021

Counsel for Appellant Brien Sers Nicholas
Counsel for Appellees Pro Se

BEFORE: JOHN K. RECHUCHER, Associate Justice
GREGORY DOLIN, Associate Justice
DANIEL R. FOLEY, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Presiding Justice, presiding.

ORDER VACATING AND REMANDING FOR DISMISSAL

PER CURIAM:

[¶ 1] Ellender Ngirameketii appeals from the trial court's dismissal of his complaint alleging that Appellees, all members of the 18th Kelulul a Kiuluul (Ngiwal State Legislature), violated the Palau Constitution when they adopted

impeachment resolutions against him during his tenure as Governor of Ngiwal State. It is undisputed that, since Ngirameketii filed his complaint, Ngiwal State held a general election and, as a result, he is no longer governor. *See* Order Granting Defs.’ Mot. and Dismissing Compl. (Sept. 2, 2020) at 5; Appellant’s Opening Br. at 14. After Ngirameketii filed this appeal, this Court issued an order expressing “genuine concern that any dispute over the impeachment of Governor Ngirameketii may be moot in light of the expiration of his term of office.” Order (Dec. 11, 2020) at 1. We therefore ordered Appellees to file a letter brief “stating (1) whether impeachment proceedings against Appellant are ongoing in any way; and (2) whether Appellees are planning or foresee any future proceedings on the extant impeachment resolutions passed by the Eighteenth (18th) Kelulul a Kiuluul.” *Id.*

[¶ 2] On December 28, 2020, Appellees responded that

the impeachment proceeding against Appellant is now moot since the Appellant is no longer a governor, and Appellees are no longer members of the Ngiwal State Legislative body since the installment of the new members of the Ngiwal State Legislature, the 19th Kelulul [a] Kiuluul. Appellees further inform this Court that they do not plan nor do they foresee any future proceedings on the now obsolete impeachment resolutions passed during their term as members of the 18th [Kelulul a Kiuluul].

Appellees’ Letter Br. at 1.¹ We accept Appellees’ representation that they do not plan or foresee future proceedings on the impeachment resolutions adopted by the 18th Kelulul a Kiuluul. We also take judicial notice of the fact that an election for the 19th Kelulul a Kiuluul was held in July 2020, and that at least some of the Appellees are not members of the new body. *See* Official Results:

¹ We note that Stephanus Gabriel has not signed any of Appellees’ filings on appeal. However, given that there is no indication that Gabriel was not properly served by Appellant, we take his silence as acquiescence in the representations made by his fellow Appellees. *Cf. LN Mgmt., LLC v. JPMorgan Chase Bank, N.A.*, 957 F.3d 943, 950 (9th Cir. 2020) (“Failure to respond meaningfully in an answering brief to an appellee’s argument waives any point to the contrary.”). To the extent Gabriel’s position differs from that of the other Appellees, he should have so stated in a filing with this Court. Since he failed to do so, we hold him to the position expressed by the other Appellees.

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Ngiwal State 10th General Election (July 14, 2020), Republic of Palau Office of the Election Commission.

[¶ 3] It is well established that “[t]his Court does not address moot issues,” *Micronesian Yachts Co. v. Palau Foreign Inv. Bd.*, 7 ROP Intrm. 128, 131 (1998), because “if it is not necessary to decide more, it is necessary not to decide more,” *Leleng Lineage v. Rekisiwang*, 2020 Palau 5 ¶ 10 (quoting *PDK Labs. Inc. v. DEA*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in the judgment)). See also 20 Am. Jur. 2d Courts § 43 (2015) (“Unnecessary decisions by a court are to be avoided.”). We have explained that “a case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Salii v. House of Delegates*, 1 ROP Intrm. 708, 711 (1989) (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969)). We conclude that events subsequent to the filing of the complaint in the present case have caused it to become moot. See, e.g., *Mesubed v. Ninth Kelulul a Kiuluul*, 10 ROP 104, 105 (2003). Specifically, Ngirameketii is no longer governor, and there is no ongoing impeachment process. Further, the 18th Kelulul a Kiuluul no longer even exists as a body and at least some of the Appellees are not members of the new legislature, suggesting that they are no longer proper parties to this case. See *Salii*, 1 ROP Intrm. at 711 (“[W]e hold that the issues in this appeal are no longer live, and also that the Second Olbiil Era Kelulau[] is no longer in existence. It is not a proper party to the appeal. We therefore dismiss this appeal because it has become moot.”). Not only is this Court unable to grant meaningful injunctive relief, see *Pac. Sav. Bank v. Officers Mgmt. Corp.*, 15 ROP 117, 119 (2008), but declaratory relief would also be inappropriate, see *Nebre v. Uludong*, 15 ROP 15, 22-23 (2008) (“A declaratory judgment is not appropriate where the dispute between the parties has been rendered moot.”).


[¶ 4] Faced with a moot appeal, “the general practice is for the appellate court to reverse or vacate the judgment below and dismiss the case.” *Mesubed*, 10 ROP at 105; see also *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950) (stating that the general practice in the federal system is to “reverse or vacate the judgment below and remand with a direction to dismiss”). We will follow the practice of the United States federal courts here. Therefore, we **VACATE** the trial court’s judgment to the extent it addressed the substance of

Ngirameketii's claims and **REMAND WITH INSTRUCTIONS** to **DISMISS** the case.²


SO ORDERED, this 5th day of January, 2021.



JOHN K. RECHUCHER
Associate Justice



GREGORY DOLIN
Associate Justice



DANIEL R. FOLEY
Associate Justice

² Assuming, without deciding, that our courts recognize the “voluntary cessation” and “capable of repetition, yet evading review” exceptions to mootness doctrine, *see Friends of the Earth, Inc. v. Laidlaw Ertvl. Servs. (TOC), Inc.*, 528 U.S. 167, 189-91 (2000), we are unpersuaded by Appellant’s suggestion that they apply in this situation. Appellees did not voluntarily cease the impeachment proceedings—the clock simply ran out on the proceedings when a new governor was elected. And we believe that recurrence of the precise issues presented by this case is too speculative and would, in any event, best be addressed on the facts as they occur in any future suit.