

IN THE  
SUPREME COURT OF THE REPUBLIC OF PALAU  
APPELLATE DIVISION

FILED

2012 JUN 21 11 13 25

SUPREME COURT  
OF THE  
REPUBLIC OF PALAU

CIVIL APPEAL NO. 11-029  
(LC/P 06-198)

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ZACHEUS KOTARO,

Appellant,

v.

ITAOCH CLAN,

Appellee.  
-----x

ORDER OF DISMISSAL

Decided: June 21, 2012

Counsel for Appellant: *Pro se*

Counsel for Appellee: Siegfried Nakamura

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; and ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Land Court, the Honorable ROSE MARY SKEBONG, Associate Judge, presiding.

PER CURIAM:

Zacheus Kotaro appeals the Land Court's July 14, 2011, order vacating a settlement agreement between Appellee Itaoch Clan and him. Because the order is not final, we do not have jurisdiction, and we therefore dismiss this appeal.

## I. BACKGROUND

This case concerns claims to land located in Ngersuul Hamlet, Ngechesar State. The land is identified as Tochi Daicho Lot Nos. 839, 870, and 871, and it is depicted on Worksheet Lot No. 05P001-016. Both parties filed claims to this lot, and the claims were submitted to mediation pursuant to 35 PNC § 1308 (providing for mandatory mediation in certain cases).

On August 15, 2006, the parties executed a settlement agreement and stipulation for entry of judgment. In the settlement agreement, the parties agreed that Kotaro would acquire Lot No. 871 and Itaoch Clan, represented by Remdachel Rechebei Udui, would acquire Lot Nos. 839 and 870. The Land Court issued an order for parcel split on September 29, 2006, but the split was not complete as of May of 2011. The Land Court issued an order on May 24, 2011, with specific dates for monumentation and parcel split of the land. The Land Court also scheduled a status conference for July 7, 2011. According to the Land Court, during that status conference, it became clear that the parties disputed the division of the property. Because of this dispute, the Land Court refused to enforce the settlement agreement. The court then issued the July 14, 2011, order rejecting the settlement agreement<sup>1</sup> and scheduling a status conference. On August 26, 2011, Kotaro filed his notice of appeal.

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<sup>1</sup> The order refers to a settlement agreement dated August 1, 2006. We believe this is a typographical error; the agreement at issue is dated August 15, 2006.

## II. STANDARD OF REVIEW

A lower court's conclusions of law are reviewed *de novo*. *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001). Factual findings of the lower court are reviewed using the clearly erroneous standard. *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002).

## III. ANALYSIS

Appellee argues that we lack jurisdiction to hear this appeal because the July 14, 2011, order is not final. Appellee also believes that if the Appellate Division hears this appeal, it would be tantamount to this Court holding a factual "hearing to determine the ownership and boundaries of the Lots that are being claimed by both parties." Appellant Kotaro does not discuss jurisdiction in his opening brief and instead requests a hearing on the boundary issue.

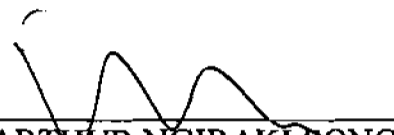
We have jurisdiction over orders that are final. *Ueda v. Ngiwal State*, 7 ROP Intrm. 132, 133 (1998). An order is final and appealable "[w]hen there is no further judicial action required to determine the rights of parties." *Feichtinger v. Udui*, 16 ROP 173, 175 (2009). The July 14, 2011, order is not final and therefore not appealable. It rejects the settlement agreement as unenforceable and establishes a date and time for further discussion on this dispute. Rather than wait for the status conference, Kotaro

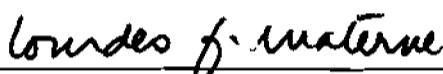
simply appealed the order. By requesting a hearing on the boundary issue, Kotaro in essence acknowledges that the order leaves issues open for further Land Court action.

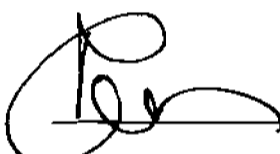
#### IV. CONCLUSION

For the foregoing reasons, we do not have jurisdiction over the present appeal, and it is therefore **DISMISSED**.

SO ORDERED, this 21<sup>st</sup> day of June, 2012.

  
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ARTHUR NGIRAKLSONG  
Chief Justice

  
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LOURDES F. MATERNE  
Associate Justice

  
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ALEXANDRA F. FOSTER  
Associate Justice