IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

TMEWANG RENGULBAI,

Appellant,

v.

KLAI CLAN,

Appellee.

CIVIL APPEAL NO. 14-006
(SP/N 09-024)

OPINION

Decided: April 14, 2015

Counsel for Appellant: J.U. Sengebau Senior
Counsel for Appellee: O. Ngiraikelau

BEFORE: KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice; R. ASHBY PATE, Associate Justice.

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

PER CURIAM:

Before the Court is Appellant Tmewang Rengulbai's challenge to the decision of the Land Court precluding him from presenting his claim to ownership of land known as *Ngerimel*. The Land Court held that a previous Trial Division order in this case constituted a specific remand to the Land Claims Hearing Office which precluded the intervention of new parties. Because we hold that the order constituted a general remand, we will reverse.[1]

[1] The parties have requested oral argument, which this Court initially scheduled as part of an order requiring supplemental briefing on an apparent jurisdictional question. The supplemental

BACKGROUND

The facts relevant to this appeal are not in dispute but reach back nearly thirty years. In 1986, the Land Claims Hearing Office (LCHO) issued a Determination of Ownership for land known as *Ngerimel*, Lot No. 013 N 02, determining that it was owned by Baules Sechelong. Airai State Public Land Authority and the Airai State Government, both claimants below, appealed the decision to the Trial Division of the Supreme Court, which had direct appellate authority over the LCHO. In April of 1989, while that appeal was pending, Klai Clan (a party to the case resulting in the original 1986 Determination) moved to intervene in the appeal because of an alleged failure by the LCHO to provide notice of the issuance of the Determination, which failure prevented Klai Clan from filing its own timely appeal. The Court granted Klai Clan's motion to intervene in June of 1989.

Following some apparent negotiation or discussion, of which little appears in the record before the Court, Justice Sutton issued the following September 11, 1990 order in the Trial Division appeal:

> All counsel are in agreement that this matter should be returned to the Land Claims Hearing Office for a re-survey and re-determination regarding that portion of Cadastral Lot 013 N02 claimed by Klai Clan.
>
> It is SO ORDERED. This matter is dismissed. The Clerk of Courts is ORDERED to copy the file and transmit it to the Land Claims Hearing Office for use in the event that re-hearing is set.

---

briefing was sufficient to resolve the Court's concerns and oral argument subsequently was cancelled. The case is submitted on the papers. *See* ROP R. App. P. 34(a).

What occurred following this 1990 Order (and over the next nineteen years) is, like much of this case, unexplained in the record and not before the Court.

Some time later, in 2009, the Land Court (subsequent to the Land Claims Reorganization Act of 1996, which transferred this case to the newly created Land Court) reassigned and revived this long dormant case. A status conference was held on October 21, 2010, at which time Appellant Tmewang Rengulbai appeared as a participant despite not having been a party of record prior to that date. Subsequent to the status conference, the Land Court issued one or more scheduling orders that were served on Appellant Rengulbai, and Appellant's attorney filed a notice of appearance in the case in February of 2011. The Land Court subsequently issued a procedural order that noted the addition of Appellant as a claimant in the case caption.

After some scheduling delays and a request for a continuance by Airai State Public Lands Authority, a hearing on this case was eventually held on December 9 and December 10, 2013. Appellant, through counsel, participated in this hearing and cross-examined several witnesses without incident. On the second day of that hearing, however, Appellee Klai Clan orally objected to the presence of Appellant in the case, arguing that Appellant was not an original party to the case, that his intervention in the case was barred by the mandate rule because the Trial Division's 1990 Order constituted a specific remand from which the Land Court could not deviate, and that intervention of Appellant Rengulbai constituted such a deviation.

The Land Court agreed, finding that Appellant had not, as a matter of fact, been granted leave to intervene (*sua sponte* or otherwise). It further held that the Trial Division's order included specific instructions sufficient to constitute a specific remand, not a general remand that the Land Court could expand upon. As such, the Land Court prohibited Appellant from presenting his case-in-chief despite the fact that his attorney had appeared in February of 2011, that Appellant had been included in the case caption and served with nearly two years of orders and court documents, that he had appeared at and participated in the hearing, and that he had cross-examined each witness presented by the other claimants.

Appellant timely appeals.

STANDARDS OF REVIEW

We review the Land Court's conclusions of law de novo and its findings of fact for clear error. *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009). Clear error means a factual finding of the lower court that leaves this Court with "a definite and firm conviction that an error has been made." *Ngaraard State Pub. Lands Auth. v. Tengadik Clan*, 16 ROP 222, 223 (2009). We do not reweigh the evidence and impose our own view of it and, "when there are two permissible views of the evidence, the Land Court's choice between them cannot be clearly erroneous." *Id.*

DISCUSSION

Following briefing on this case, this Court ordered supplemental briefing to

address a threshold jurisdictional question the parties had not raised: whether a remand from the Trial Division to the LCHO bound the Land Court, which is not subject to appeal to the Trial Division. We now answer that question in the affirmative but, because we hold that the 1990 Order constituted a general remand, we will still reverse.

I. Whether the 1990 Order Dismissed or Remanded the Case

As the Land Court correctly noted, there is a fundamental distinction between dismissing and remanding a case on appeal, and the two are mutually exclusive. Dismissal of an appeal leaves the underlying decision intact and in effect, as if the appeal had never been brought in the first place, so nothing further occurs. Remand does just the opposite—a case is remanded only when the decision below, in part or in its entirety, must be reversed or vacated and reconsidered either because of an error in the lower court decision or an intervening change of law or circumstances.[2]

We agree with the Land Court that the 1990 Order must be construed, despite its plain language, as a remand. The underlying purpose of the order was to require further fact-finding proceedings—the exact opposite of what occurs if an appeal is dismissed and the case is terminated. The order expressly requires new evidence be considered, in this case a resurvey, and allows for the possibility of a further hearing in the event that one is required. None of these events may occur when an appeal is dismissed, because dismissal

[2] *Compare* "dismissal," *Black's Law Dictionary* 569 (10th. Ed. 2014) ("Termination of an action or claim without further hearing, esp. before the trial of the issues involved; esp. a judge's decision to stop a court case."), *with* "remand," *id.* 1484 ("The act or instance of sending something (such as a case, claim, or person) back for further action.").

of an appeal leaves the final judgment below intact. The Trial Division order was poorly worded, but its intent and legal effect is clear.

While the specific reasons for the remand are not part of the order, the record and Order suggest some discussion about the posture of the case was had between the Court and the parties resulting in what was effectively a stipulated remand. Clearly, at least some procedural defects occurred during the LCHO proceeding, as Klai Clan was never given notice of the decision. The Trial Division, announcing no error but nonetheless requiring the LCHO to effectively review the case in light of the new situation, heard the appeal, vacated the underlying decision, and remanded the case for further proceedings in light of the Trial Division's singular, particular mandate—to resurvey the land and then reconsider the determination. Were the appeal dismissed, the Trial Division would have had no authority to issue such an instruction, so we agree that the 1990 Order constitutes a remand.

II. Whether the Land Court is Bound by a Trial Division Mandate

Every court, before ruling on a claim, motion, case, or other issue, must possess and be satisfied of its jurisdiction. "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." *Gibbons v. Seventh Koror State Legislature*, 11 ROP 97, 103 (2004) (quoting 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1393 (2d Ed. 1990)). On appeal, this extends to review of the jurisdiction of lower courts, because an

order entered without jurisdiction is without force and must be vacated. It is with this in mind that we address the Trial Division's jurisdiction to issue a mandate that binds the Land Court, despite the fact that the parties did not raise or dispute it, because if the Trial Division mandate does not apply to the Land Court then the dispute on appeal as to whether the mandate was specific or general is a moot point.

A mandate is "an order from an appellate court directing a lower court to take a specified action." *Tengoll v. Tbang Clan*, 11 ROP 61, 64 (2004) (quoting *Black's Law Dictionary* 973 (7th ed. 1999) (alteration omitted). The Trial Division, when the 1990 order was issued, had direct appellate jurisdiction over the LCHO, but appeals from the Land Court lie with the Appellate Division. *See West v. Ongalek ra Iyong*, 15 ROP 4, 9 (2007). A Trial Division remand and mandate, issued in 1990, clearly would have bound the LCHO, but it is similarly clear that if the Trial Division issued an order "remanding" a case to the Land Court today, that order would be "null and void *vis-à-vis* the Land Court [] because all authority discussing mandates and the mandate rule presuppose[s] an appellate court/lower court relationship." *Id.* at 9–10. Previously unanswered was whether a mandate to the LCHO stays with the case and binds the Land Court.

We hold today that it does. The Land Court is a court of limited jurisdiction, established by statute pursuant to Article X section 1 of the Palau Constitution. *See* Land Claims Reorganization Act of 1996, RPPL 4-43 § 22; *Rebluud v. Palau Land Court*, 7 ROP Intrm. 249, 249–50 (Tr. Div. 1998). The Land Court exists parallel to the Trial

Division with regard to cases involving the adjudication of title to land, with one notable statutory exception. The Act provides that "[a]ll appeals from decisions of the Land Claims Hearing Office which the court hearing the appeal decides must be remanded shall be remanded to the Land Court for further proceedings." RPPL 4-43 § 21(b). This creates a specific, limited appellate relationship between the Trial Division and the Land Court in cases such as this one, where the case was on appeal in the Trial Division prior to or at the time of the Land Court coming into existence. Given that the legislature specifically subjected the Land Court to the jurisdiction of the Trial Division for these few remands, the mandate rule—an inherent part of remand—must apply, and the Land Court was correct that it was bound by the mandate of the Trial Division in this case.

III. Whether the Trial Division's Remand was General or Specific

While "mandates" are not specifically issued under our Rules of Appellate Procedure the same way they are under the United States Federal Rules of Appellate Procedure, this Court has adopted and applied the "mandate rule" on numerous occasions. *See, e.g.*, *West v. Ongalk Ra Iyong*, 16 ROP 141, 143 (2009); *Tengoll*, 11 ROP at 64; *Alik v. Ueki*, 6 ROP Intrm 148 (1997). While we have previously described the mandate rule by saying "a lower court is not free to deviate from the appellate court's mandate" on remand, we recognize that using the word "mandate" to define the "mandate rule" is both circular and somewhat unhelpful, so we shall endeavor to clarify this definition. *See Tengoll*, 11 ROP at 64; *Heirs of Drairoro v. Yangilmau*, 9 ROP 131, 133

(2002); *Alik*, 6 ROP Intrm. at 151.

The mandate rule derives from the law-of-the-case doctrine, which requires that "determinations of the court of appeals of issues of law are binding on both the [lower] court on remand and the court of appeals on subsequent appeal." *Tengoll*, 11 ROP at 64; *Campbell*, 168 F.3d at 265. As such, the mandate rule reaches only those issues which the appellate court *actually* decided because, as previously noted, mandates are "order[s] from an appellate court directing a lower court to take a specific action." *See Tengoll*, 11 ROP at 64. But not all appeals decide, or even consider, every issue presented, and as such, some mandates result in general remands while others result in specific remands.

Despite the fact that all mandates contain at least some specific direction, most mandates are general in scope. General mandates and remands "give[] a lower court broad discretion in handling a case on remand [and do] not contain clear and specific instructions limiting what the lower court is authorized to do." *Id.* (citing *United States v. Campbell*, 168 F.3d 263, 265 (6th Cir. 1999)). "On remand, a lower court may generally consider and decide any matter left open by the appellate court, as long as that decision is not inconsistent with the appellate court's opinion." *Id* at 65 (citing *Caldwell v. Puget Sound Elc. Appren. & Train. Tr.*, 824 F.2d 765, 767 (9th Cir. 1987)). Such general remands are common where, for example, the appellate court reverses the trial court on a single issue of law and remands for reconsideration or further consideration of the case under the correct standard—in that case, the mandate reaches only the issue of law

actually decided, and the trial court has broad jurisdiction on remand.

Specific mandates and remands, however, are the result of limiting appellate decisions. *See id.* "Limited remands explicitly outline the issues to be addressed by the [lower] court and create a narrow framework in which the [lower] court must operate." *Campbell*, 168 F.3d at 265. A court might issue such a mandate if it affirmed the result of a case but remanded for limited reconsideration of damages or sentencing. "The point of the limited remand is to inform the [lower court] that a discrete issue has caused the need for review, but that complete reconsideration [] is unnecessary and unwarranted." *Campbell*, 168 F.3d at 266. Limited remands serve judicial economy and encourage efficient resolution of cases without rearguing issues already decided. *Id.*[3]

No universal language, nor any universal standard, exists to distinguish between a general and a specific mandate. However, the difference in the result of a general or a specific mandate is illustrative: "[a] general mandate gives a lower court broad discretion in handling a case on remand," and a specific mandate does not. *See Tengoll*, 11 ROP at 64. Judicial discretion is one of the fundamental and distinguishing features of a trial court. The law-of-the-case doctrine limits that discretion in part, so, absent a clear directive and order from an appellate court, we do not believe it is appropriate to limit

[3] "The goal of achieving judicial economy through the use of limited remands becomes futile if appellate court drafting imprecision too frequently results in parties appealing the scope of the remand itself. The purpose of the opinion and order is to inform and instruct the [lower] court and the parties and to outline the future intended chain of events. It is the job of the appellate court adequately to articulate instructions to the [lower] court on remand." *Campbell*, 168 F.3d at 268. Faced with just such an appeal here, we endeavor to clarify the standard going forward.

that discretion. Accordingly, we hold that, for a mandate to be deemed specific, it "must convey clearly the intent to limit the scope of the [lower] court's review." *Campbell*, 168 F.3d at 267. "In the absence of an explicit limitation, the remand order is presumptively a general one." *Id.* (quoting *United States v. Moore*, 131 F.3d 595, 598 (6th Cir. 1997)).

Applying this holding, derived from our precedents applying the mandate rule as it exists in United States case law, it is clear that the Trial Division's 1990 Order constitutes a general remand. One, and only one, specific instruction is contained in the order: that the LCHO, the lower court in this case, was to resurvey the land in question.[4] No framework or roadmap is laid out—indeed, the Trial Division used discretionary language when considering whether a hearing would be set, and did not even instruct the LCHO about what the resurvey was intended to determine, other than to provide instructions about which land was to be resurveyed—"that portion of Cadastral Lot 013 N02 claimed by Klai Clan."[5] Other than identifying the specific land to be resurveyed, no limitation is placed on the LCHO, and no issues of fact or law are decided beyond the

[4] A redetermination is an inevitable requirement of that instruction, not an instruction itself, because the 1990 Order implicitly vacated the previous determination.

[5] To be fair, one could read the instruction to resurvey the portion of land claimed by Klai Clan to implicitly limit future claimants *only* to Klai Clan and others already in the case. Such a reading, however, would ignore the fundamental nature of a resurvey and the postural and procedural changes that often flow therefrom. That is, resurveying a portion of land could very easily result in the bringing in of hitherto unaddressed lands and boundaries, and, as such, hitherto unknown claimants. It is in the very nature of a resurvey to countenance the inclusion or exclusion of the lands that were involved in the original survey. Accordingly, we read the instruction to resurvey the portion of land claimed by Klai Clan not as a limitation on future claimants, but as simply a short-hand identifier of the specific land to be resurveyed.

decision that a resurvey was necessary. Critically, the issue in question that led to this appeal—whether an additional party might intervene—is not discussed, alluded to, or even contemplated in this order, and as such a Land Court decision to allow an intervener would not conflict with the appellate decision. As such, we hold that the remand order was a general one that did not prohibit the LCHO or the Land Court, its successor in interest, from exercising its broad discretion and allowing the intervention of an additional party.[6]

IV. Whether the Appellant Was Granted Leave to Intervene

Finally, having held that the Land Court was within its discretion to grant leave for Appellant Rengulbai to intervene in this case, we must address his challenge to the Land Court's finding that this did not occur. This finding of fact is reviewed for clear error and, because we find such error, is reversed.

At the outset, we note the distinction between Appellee Klai Clan's intervention by motion and Appellant Rengulbai's purported intervention by appearance. Simply put, the distinction rests in where the intervention occurred: Klai Clan intervened in the Trial Division, which requires such a motion, but Rengulbai purportedly intervened in the Land Court, which does not. *Compare* ROP R. Civil. P. 24 (requiring timely application

[6] Our holding, that the order is a general remand, also is in keeping with basic notions of fundamental fairness. Part of the purpose behind the Land Claims Reorganization Act was to address that the goals of Article XIII section 10 of the Palau Constitution, "Return of Public Lands," were not being carried out successfully. The point of the Act was to get these decisions right, and we see no reason that should not be the compelling interest here. This is especially true here, where at least one fundamental defect in this case—the notice failure to Klai Clan—has already been identified, and little to no explanation exists in the Order remanding the case.

to intervene) *with* Land Ct. Rs. (containing no such rule); *see also In re Mesei*, 16 ROP 338, 346 (Land Ct. 2009) ("[T]he Land Court has no procedural rules for third-party interventions."). Consequently, intervention of parties is left to the general discretion of the Land Court judge to manage the proceedings, and Appellant's lack of a motion to intervene is irrelevant. *See, e.g.* Land Ct. R. 10 (providing the Court authority and discretion over the mode and order of interrogation and presentation).

We acknowledge that the Land Court did not explicitly grant Appellant leave to intervene, but we find substantial and undeniable evidence of that intervention throughout the record of the final years of this case.[7] It is undisputed that the Land Court added Appellant to the case caption after his appearance at a status conference as an interested party. The Land Court further noted Appellant's addition, accepted the appearance of Appellant's counsel, served multiple papers, including the decision, on Appellant, and, most critically, allowed Appellant to cross-examine witnesses during the evidentiary hearing on this matter. Simply put, a person must be a party to a case to cross-examine a witness, and to become a party to a case that is already ongoing a person must intervene. *See, e.g.,* Land Ct. R. 11 ("All *parties* are entitled to cross-examine witnesses . . . .") (emphasis added); *Id.* R. 15 ("[The] determination and a summary of the proceedings, including the findings of fact and conclusions of law, shall be promptly served on all *parties* of record.") (emphasis added). The Court treated Appellant as a party until it

[7] The Land Court may have granted intervention *sub silentio*, but certainly did not do so *sua sponte*. Appellant's request to intervene is implicit in his appearance, both at the status conference where his presence was first noted and by counsel in her filing of an appearance.

granted Appellee's motion.

Having determined that the Land Court had the authority to grant Appellant leave to intervene because the 1990 Order did not prohibit it, the evidence in the record leaves us with the definite and firm conviction that such intervention was in fact permitted. As such, the Land Court's finding that Appellant was not granted leave to intervene was clearly erroneous, and is reversed.

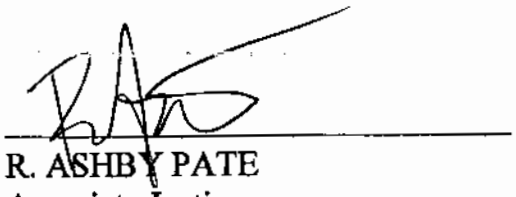
CONCLUSION

Because the 1990 Order constituted a general remand that did not bind the Land Court's ability to allow intervention in the case, and because Appellant Rengulbai did in fact intervene in this case, the decision of the Land Court is REVERSED. All issues regarding Appellant's participation in the case having been resolved or hereby being deemed waived, the case is remanded so that Appellant may present his case and for any further proceedings consistent with this opinion that the Land Court deems necessary. A new determination shall issue following the conclusion of such proceedings and the evaluation of Appellant's case.

SO ORDERED this 14th day of April 2015.

KATHLEEN M. SALII
Associate Justice

LOURDES F. MATERNE
Associate Justice



R. ASHBY PATE
Associate Justice