IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

IN RE: ESTATE OF JOHN BAPTIST RECHESENGEL,
Deceased.

IBAU TISSA RECHESENGEL,
Appellant,
v.
ANN LUND,
Appellee.

Cite as: 2019 Palau 32
Civil Appeal No. 18-050
Appeal from Civil Action No. 17-323

Decided: September 18, 2019

Counsel for Appellant ..... Johnson Toribiong
Counsel for Appellee ..... C. Quay Polloi

BEFORE: JOHN K. RECHUCHER, Associate Justice
DANIEL R. FOLEY, Associate Justice
ALEXANDRO C. CASTRO, Associate Justice

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

OPINION

PER CURIAM:

[¶1] This is an appeal of an order to amend or alter the Trial Division's judgment in the matter of the Estate of John Baptist Rechesengel, in which the Trial Division appointed Appellee Ann Lund to be the Permanent Adminstrator of Decedent's Estate, awarded interest in the land known as Limbo/Eritem to Lund and her sister, and awarded Decedent's house located on Limbo/Eritem to his three children.

[¶2] For the following reasons, we **VACATE** the Trial Division's order denying the motion to amend or alter the judgment and **REMAND** for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL BACKGROUND

[¶3] Decedent John Baptist Rechesengel died unmarried and intestate on April 26, 2014. Decedent's daughter, Ibau Tissa Rechesengel, filed a petition to settle her father's Estate on October 16, 2017, after which Decedent's sister, Ann Lund, and Claimant Mark Rudimch filed objections and claims against the Estate. Lund objected to Ibau's request to be appointed administrator of the Estate because such duties would involve administration of the land known as Limbo/Eritem, in which Lund claims Decedent's interests, if any.

[¶4] The land known as Limbo/Eritem, located in Ngetkib, Airai, and identified as Cadastral Lot No. 022 N 11, was inherited by Decedent and his two sisters, Lund and Angelica Rechesengel when their father died in 1975. The Certificate of Title for the property lists the three siblings as owners in fee simple. The property as inherited consisted of 20,447 square meters.

[¶5] On December 1, 1998, Decedent, with the authorization of his sisters, sold 5,000 square meters of the property to Mark Rudimch. Previously, Angie Rechesengel had put up 1,000 square meters as collateral for a mortgage on which she later defaulted. That portion was foreclosed and sold. In 2007, Decedent leased 668 square meters to a Japanese national, Yoshiko Ogo.

[¶6] Following Decedent's death, a funeral was held on May 9, 2014. A customary eldecheduch was not held, because Decedent was unmarried at the time of his death, but his relatives fulfilled customary obligations to take care of his children and settle his debts. To that end, they held an eldecheduch-like proceeding one week after the funeral, at which they presented representatives of Decedent's children and ex-wife with Palauan money, American money, and toluk. Decedent's three children were also given Decedent's house on Limbo/Eritem. The representatives accepted the gifts and did not object.

[¶7] Prior to this presentation of money and property to his heirs, Decedent's relatives had discussed that no real property would be given to his children. No distribution of real property was discussed at the eldecheduch-like proceeding.

[¶8] At trial, the Trial Division heard expert testimony on the general Palauan custom upon the death of a man. Two experts testified, and neither party contested, that a decedent's children would usually inherit his individual property. The Trial Division heard testimony that certain exceptions to this custom may exist, such as when the proper relatives determine that the decedent had no remaining interest to give his children.

[¶9] The Trial Division found that Decedent had "conveyed his interests in Limbo/Eritem while he was still alive, leaving him with no remaining interest." Decision 9. If there was any remaining interest in the land, Lund, who was appointed Permanent Administrator of the Estate, and her sister were awarded such interest in accordance with the custom that the proper relatives to distribute land to a decedent's heirs determined that Decedent had no interest left and therefore none was to be given to his children.

[¶10] Petitioner Ibau filed a Motion to Amend or Alter the Judgment pursuant to ROP Rule of Civil Procedure 59(e) on September 17, 2018. Petitioner asserted that the Trial Division had committed manifest errors of fact and law when it found that Decedent had conveyed all of his interest in the property while he was alive, despite the fact that he had merely leased, not sold, the 668 square meters to Yoshiko Ogo. In addition, Decedent had sold 5,000 square meters to Mark Rudimch, which, Petitioner claimed, was not equal to Decedent's one-third interest of the total area of Limbo/Eritem. Decedent, therefore, had remaining interest in the land when he died, and that interest should have been awarded to his heirs.

[¶11] The Trial Division denied Petitioner's motion, holding that there was no manifest error of law or fact in its findings that Decedent had no interest in real property that would be inherited by his children. It further found that the application of the Palauan custom that Decedent's closest relatives are the proper people to make this determination was not in error.

[¶12] Petitioner then appealed the Trial Division's denial of its motion, asserting on appeal that there remained at least 1,147 square meters of Limbo/Eritem left after Decedent had conveyed portions of it to Mark Rudimch, and that the Trial Division erred in not awarding that property to his surviving children.

STANDARD OF REVIEW

[¶13] This Court has delineated the appellate standards of review:

> A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. *Salvador v. Renguul*, 2016 Palau 14 ¶ 7. Matters of law we decide *de novo*. *Id.* at 4. We review findings of fact for clear error. *Id.* Exercises of discretion are reviewed for abuse of that discretion. *Id.*

Kiuluul v. Elilai Clan, 2017 Palau 14 ¶ 4 (internal citations omitted).

[¶14] A lower court's grant or denial of a Rule 59(e) motion to alter or amend a judgment is reviewed for abuse of discretion. An abuse of discretion will only be found if the Trial Division's decision was "arbitrary, capricious, or manifestly unreasonable, or because it stemmed from an improper motive." *Pettit v. ROP*, 2016 Palau 6 (internal quotation marks omitted); *also see Rechebei v. Ngiralmau*, 17 ROP 140, 144 (2010) (a trial court's decision reviewed for abuse of discretion "will not be overturned unless it was clearly wrong" (internal quotes omitted)). "An abuse of discretion occurs when a relevant factor that should have been given significant weight is not considered, when an irrelevant or improper factor is considered and given significant weight, or when all proper and no improper factors are considered, but the court in weighing those factors commits a clear error of judgment." *Ngeremlengui State Pub. Lands Auth. v. Telungalk ra Melilt*, 18 ROP 80, 83 (2011).

ANALYSIS

[¶15] The purpose of a motion to amend or alter a judgment is to give the lower court an opportunity to reconsider potential mistakes it may have

made in the course of entering judgment and allows a party "to direct the trial court's attention to newly discovered material evidence or a manifest error of law or fact." *Isechal v. Umerang Clan*, 18 ROP 136, 148–49.

[¶16] Though this Court will not overturn a lower court's decision to deny a motion to alter or amend a judgment unless that decision was "clearly wrong," we conclude that the Trial Division's denial of the motion was based on manifest errors of law and fact.

[¶17] The Trial Division misapprehended the doctrine of co-ownership when, as here, land owners inherited the land and are listed on the Certificate of Title as equal owners in fee simple.

[¶18] It also erred in its application of customary law when it found that Decedent's children could not inherit his interest in Limbo/Eritem because (1) Decedent had no interest to give and (2) his relatives had discussed the distribution of his interest and decided that no portion would be given to his children. We address each issue in turn.

I. Decedent's Interest in Limbo/Eritem

[¶19] This Court has found that co-holders of a piece of land, pursuant to Palauan customary law, each have an undivided interest "which may not be divested absent the knowledge and consent of all the others." *Riumd v. Mobel*, 2017 Palau 4, ¶ 29 (internal quotation marks omitted). When, as here, siblings inherit land from a deceased parent, for example, and are listed on the Certificate of Title as owners in fee simple, the Court has treated such ownership as undivided and co-owned with no right of survivorship. When one owner dies, his heirs inherit his interest in the property. *See id.* ¶ 25, ¶ 33, ¶ 36.

[¶20] Here, Appellee argues that the Trial Division did not err because Decedent conveyed all his interests in the land and had no remaining interest to give to his children. This reasoning, however, requires that Decedent and his sisters be treated as owners with divisible interests in the land, rather than each having one-third interest in the land as a whole. Because co-owners in situations such as this have been held to have an undivided interest in land that can be conveyed or alienated only with the knowledge and consent of the other owners, it does not follow that when Decedent conveyed 5,000 square

meters to Mark Rudimch, with the consent of his sisters, he conveyed that portion only out of his own interest. Rather, the land sold to Mark Rudimch represents 5,000 square meters of co-owned land, i.e., all three siblings conveyed 5,000 square meters of their jointly owned land.

[¶21] Limbo/Eritem, as inherited by Decedent and his sisters, consisted of 20,447 square meters. Each sibling held interest in one-third of the property. After Angie Rechesengel put up 1,000 square meters that was later foreclosed and sold, and after Decedent sold 5,000 square meters to Mark Rudimch, the three siblings each held a one-third interest in 14,447 square meters.[1] Decedent's interest in the land, therefore, remained at the time of his death.

II. Customary Law on Inheritance

[¶22] In the event a landowner dies intestate, the statute governing inheritance found at 25 PNC § 301 applies.

[¶23] Subsection (a) of Section 301 is inapplicable here because it applies to lands that were acquired by the owner as a bona fide purchaser. Subsection (b) applies only to owners who died without issue or a will. Decedent here was not a bona fide purchaser, and he died with issue. In the absence of an applicable descent and distribution statute, customary law applies. *Marsil v. Telungalk ra Iterkerkill*, 15 ROP 33, 36 (2008).

[¶24] The prevailing customary law is that when no statute is applicable to determine the distribution of a decedent's property and no eldecheduch was held regarding such distribution, property should be given to the decedent's children, as they are the customary heirs. *Id.* The testimony of the expert witness in lower court proceedings in *Riumd v. Mobel* illustrates this principle:

> Q. [J]ust to make sure the record is clear. So if there's no [che]ldecheduch to discuss the subject matter then according to Palauan custom, your share of the land which you and your siblings

[1] Decedent's lease of 668 square meters to Yoshiko Ogo is not a conveyance of the land. It is simply an encumbrance upon it, and the land remains in the ownership of all three co-owners, subject to the terms of the lease.

> jointly own will automatically according to Palau custom, will go to the surviving people in your stead, your children? Is that correct?
>
> A. The surviving people in my stead are my children, it will go to them.
>
> Q. Okay. It's not your siblings who are your surviving people in your stead, according to Palauan custom?
>
> A. No, no. They surviving children of a person are in his stead/in his place.
>
> Q. Okay. Now the land owned by four siblings. Let's say you, your brothers and your sister. If one [of] you dies, and no [che]ldecheduch was . . . held to discuss the disposition of your interest, the deceased, it is the children of the deceased who will take it. Those who are said to be in his stead or to replace him who are survived, your children?
>
> A. Yes, as they are replacing me who are living and alive.
>
> Q. And those will get their father's or their mother's interest, the deceased owner of the land? Is that correct?
>
> A. That is correct.

Riumd, 2017 Palau ¶ 36.

[¶25] This Court has upheld the principle that decisions and distributions made at an eldecheduch are final "if the disposition of a personal asset of the deceased is discussed publically and the other participants do not object before the cheldecheduch concludes." *Nakamura v. Nakamura*, 2016 Palau 23 ¶ 30; *see also In re Estate of Debelbot*, 3 ROP Intrm. 364, 369 (Tr. Div. 1990) (holding that matters that are not discussed at an eldecheduch are not settled).

[¶26] Here, the Trial Division acknowledged that no official eldecheduch was held because Decedent was unmarried at the time of his death. His relatives did convene to discuss the distribution of his assets and what should be given to his children. This discussion, however, took place outside of the ambit of an eldecheduch. The discussion of the distribution of

Decedent's real property in this case was not public; indeed, Decedent's eldecheduch was not even an official eldecheduch.

[¶27] As the intestacy statute does not apply and Decedent's relatives' decisions regarding the distribution of his property were not made according to custom (publicly and at an eldecheduch during which objections would have been possible), those distributions are not settled and his land should be distributed according to custom, i.e., to his heirs. Custom dictates that the proper heirs are Decedent's children.

[¶28] We conclude that the Trial Division abused its discretion when it denied Appellant's motion to amend or alter the judgment based on manifest errors of law and fact.

CONCLUSION

[¶29] For the foregoing reasons, we **VACATE** the Trial Division's order denying the motion to alter or amend the judgment and **REMAND** this case to the Trial Division with instructions to issue a new order granting the motion to amend or alter the judgment and enter an amended judgment pursuant to said order.

SO ORDERED, this 18th day of September 2019.

JOHN K. RECHUCHER
Associate Justice

DANIEL R. FOLEY
Associate Justice

ALEXANDRO C. CASTRO
Associate Justice