IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

TOBIAS F. AQUON,
Appellant,
v.
MARIA A. ULECHONG, SADARIA AQUON,
and DANIEL AQUON,
Appellees.

Cite as: 2021 Palau 31
Civil Appeal No. 20-030
Appeal from LC/F 17-00181, LC/F 17-00182, and LC/F 17-00186

Argued: August 31, 2021
Decided: October 13, 2021

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

BEFORE: GREGORY DOLIN, Associate Justice
KATHERINE A. MARAMAN, Associate Justice
DANIEL R. FOLEY, Associate Justice

Appeal from the Land Court, the Honorable Salvador Ingereklii, Associate Judge, presiding.

OPINION

DOLIN, Associate Justice:

[¶ 1] This case involves a father's dueling deeds allegedly transferring the same land to different children. Because the Land Court did not analyze the earlier deed in reaching its ownership determination, we **VACATE** the Land Court's decision and **REMAND** for further proceedings.

BACKGROUND

[¶ 2] The Tochi Daicho lists the land at issue here—lots 1381, 1382, 1383, 1404, and 1405 in Ngarchelong State—as being owned by either Korlos or

Timang Aquon. Francisco Aquon is Korlos and Timang's son. Appellant Tobias Acquon is Francisco's son from his first marriage, and Appellees Maria Ulechong, Sadaria Aquon, and Daniel Aquon are Francisco's children from his second marriage.

[¶ 3] In 1974, after both of Francisco's parents died, a number of his relatives executed a deed transferring ownership of lands known as *Ngertelingel*, *Melekei*, *Ngerchur Island*, *Ubesang*, and *Kedengelngebei* (which allegedly correspond in relevant parts to the Tochi Daicho lot listings) to Francisco so that he would have "full authority to own the lands." The deed further provided that Tobias "shall acquire these lands to be his own … after his father dies." Francisco and Tobias each signed the deed indicating that they "consented." On the same day in 1974, Francisco executed a will, acknowledged by Tobias, stating that the lands in the deed of transfer were Francisco's "individual property" and that the lands—with the exception of *Kedengelngebei*—would be "assigned to be the property of Tobias."

[¶ 4] More than two decades later, in 1997, Francisco executed a deed transferring his ownership in the relevant Tochi Daicho lots to Maria, Sadaria, and Daniel.

[¶ 5] Francisco died in 2001. Following his death, a dispute over the ownership of the subject lands arose between Tobias, on the one hand, and Maria, Sadaria, and Daniel, on the other. Tobias bases his claim to the land on the 1974 deed and will. Maria, Sadaria, and Daniel, by contrast, claim ownership based on the 1997 deed. The Land Court held that Francisco's 1974 will could not transfer the land to Tobias until Francisco died in 2001 and, by that point, Francisco had already transferred the land via the 1997 deed to Maria, Sadaria, and Daniel. Thus, the Land Court concluded that Maria, Sadaria, and Daniel own the land at issue. Tobias appeals the Land Court's decision.

STANDARD OF REVIEW

[¶ 6] We review the Land Court's factual findings for clear error and its legal conclusions de novo. *Esuroi Clan v. Olngellel Lineage*, 2019 Palau 19 ¶ 5. The Land Court clearly errs when it fails to consider directly relevant evidence. *Airai State Pub. Lands Auth. v. Baules II*, 2020 Palau 6 ¶ 9.

DISCUSSION

[¶ 7] We begin by quickly disposing of the argument that Francisco's 1974 will has any legal significance. It is well established that "a will confers no rights upon a legatee until the death of the testator." *In re Est. of Henry*, 919 N.E.2d 33, 40 (Ill. App. 2009). "A will is a revocable instrument which does not take effect until the death of its maker. It may be modified or revoked at any time prior to the testator's death and passes no interest until that time." *McReynolds v. McReynolds*, 414 P.2d 531, 533 (Mont. 1966). Thus, Francisco could, up until the point of his death, modify the 1974 will, including by divesting himself of property that the will specified would go to Tobias.

[¶ 8] A deed, by contrast, "passes a present interest. Once the deed is delivered the property passes from the grantor and he cannot reacquire it or any interest in it by a subsequently executed instrument." *Id.* The question then is whether the 1974 deed passed any legal interest to Tobias. Before turning to that question though, we consider whether the 1974 deed was admitted as evidence in the Land Court. We then address whether, if the 1974 deed is in evidence, the Land Court erred in failing to consider that deed.

I.

[¶ 9] Maria, Sadaria, and Daniel argue that since the 1974 deed was never introduced as evidence in the Land Court, it cannot be considered on appeal. Our review of the record, however, shows that Tobias included the 1974 deed as an exhibit to his closing argument. So the deed was at least introduced as evidence, although the Land Court never explicitly ruled whether it was actually admitted.

[¶ 10] Closing argument generally is not the proper time for a party to introduce evidence for the first time. *See State v. McGhee*, 398 P.3d 702, 708 (Haw. 2017) ("[C]losing argument is not the time in trial to introduce new evidence."). But Tobias was proceeding pro se below, and we have frequently stated the "long standing, and oftentimes unspoken, tradition in the United States and here in Palau of courts employing a heightened duty to its pro se litigants." *Whipps v. Nabeyama*, 17 ROP 9, 12 n.2 (2009); *see* Land Ct. R. P. 2 (noting that Land Court Rules "shall be construed to ensure fairness in the conduct of hearings and presentation of claims with or without assistance of

legal counsel"). We note that the Land Court apparently admitted Francisco's 1974 will into evidence, despite the fact that Tobias also submitted the will for the first time with his closing argument. *See* Determination at 7 n.3. We also note that the 1974 will explicitly referenced the deed, and thus it would seem that if the Land Court were admitting the former document, it would likely have admitted the latter one.

[¶ 11] The Land Court, however, never made a clear ruling whether the deed was admitted into evidence. The uncertainty over the Land Court's process leaves us "unable to conduct a full and fair review of [that] decision," making "remand for further elaboration … appropriate." *Estate of Tmilchol v. Kumangai*, 13 ROP 179, 182 (2006). We leave it for the Land Court on remand to determine—taking into account the leeway granted to pro se litigants—whether to admit the 1974 deed into evidence in this case. The Land Court has "extraordinarily broad discretion to consider 'all relevant evidence which would be helpful … in reaching a fair and just determination of claims,'" *Idid Clan v. Nagata*, 2016 Palau 18 ¶ 17 (quoting Land Ct. R. P. 6), and on remand it should exercise its discretion accordingly.

II.

[¶ 12] If, on remand, the Land Court concludes that the 1974 deed should be (or was already) admitted into evidence, the Land Court must consider that deed in its ownership determination. Although the Land Court analyzed the 1974 *will* and the 1997 deed, the Land Court's decision contains no discussion of the 1974 *deed* outside of a couple of passing references. *See* Decision at 2, 5.

[¶ 13] The 1974 deed—which states that Francisco has "full authority to own the lands" and that Tobias "shall acquire these lands to be his own … after his father dies"—is directly relevant to the ownership of the land. The deed can be interpreted in one of two ways. One plausible interpretation of the 1974 deed is that it granted Francisco the land in fee simple, with a mere promise that at his death the land would be transferred to Tobias. On that theory, Tobias acquired nothing because

> [a]n expectancy or chance is a mere hope, unfounded in any limitation, provision, trust or legal act whatever; such as the

> hope which an heir apparent has of succeeding to the ancestor's estate.... [I]t is no right at all, in contemplation of law, even by possibility; because, in the case of a mere expectancy, nothing has been done to create an obligation in any event; and where there is no obligation, there can be no right because right and obligation are correlative terms.

In re Estate of Finlay, 424 N.W.2d 272, 277 (Mich. 1988) (quoting J. Smith, *An Original View of Executory Interest in Real & Personal Property* § 71, at 23 (1845)).

[¶ 14] If all Tobias received in the 1974 deed is "a mere hope" that the land would eventually become his, then he acquired no right in the land, and his father was not weighed with an obligation to transfer the land to him at any point. To the contrary, that would mean that Francisco, as a fee simple owner, retained absolute control over the property and could utilize and dispose of it as he saw fit. *See Prichard v. Dep't of Revenue*, 164 N.W.2d 113, 121 (Iowa 1969); *Davis v. Kendall*, 107 S.E. 751, 756 (Va. 1921). If so, then Francisco was free to ignore the promises made to Tobias and could, in 1997, transfer the land to Maria, Sadaria, and Daniel.

[¶ 15] On the other hand, the 1974 deed could be viewed as granting a life estate to Francisco and an indefeasibly vested remainder in fee simple to Tobias. In that situation, Francisco, as a life tenant, could control the land only during his lifetime, but could not undermine Tobias's remainder interest because that interest had already vested in Tobias. *See Gruen v. Gruen*, 496 N.E.2d 869, 874 (N.Y. 1986) ("[T]he gift of a remainder title vests immediately in the donee and any possession is postponed until the donor's death whereas under a will neither title nor possession vests immediately."). If Francisco was only granted a life estate, his right to own these lands terminated on his death. Following a fundamental principle of property law that "one cannot sell [or transfer] what one does not own," *Rubasech v. Rechesengel*, 2020 Palau 12 ¶ 14 (quoting *Ongalk Ra Teblak v. Santos*, 7 ROP Intrm. 1, 2 (1998)), this would mean that the 1997 transfer to Maria, Sadaria, and Daniel would be ineffective insofar as it attempted to permit them to hold the lands after Francisco's death.

[¶ 16] We leave for the Land Court to resolve, in the first instance, the legal meaning and effect of the 1974 deed. It is enough to say that—assuming the deed is properly in evidence—the Land Court erred by failing to consider the deed in its ownership determination. *See Airai State Pub. Lands Auth*, 2020 Palau 6 ¶ 9 (holding that Land Court's decision was clearly erroneous because it "failed to consider evidence that was directly relevant").[1]

CONCLUSION

[¶ 17] For the reasons set forth above, we **VACATE** the decision and judgment of the Land Court and **REMAND** for further proceedings consistent with this opinion.

[1] Maria, Sadaria, and Daniel argue that Tobias submitted no evidence showing that the parcels of land mentioned in the 1974 deed correspond to the relevant Tochi Daicho lots. We leave this issue for the Land Court to address in the first instance on remand.