

FILED 

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

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SUPREME COURT
OF THE
REPUBLIC OF PALAU

SHALLUM ETPISON,
Appellant,
v.
GEORGE RECHUCHER,
Appellee.

Cite as: 2022 Palau 2
Civil Appeal No. 21-016
Appeal from SP/B 19-00265 (Ref. Case No. LC/B 00-259)

Decided: March 04, 2022

Counsel for Appellant Lalii Chin Sakuma, Steven R. Marks, and R. Ashby Pate

Counsel for Appellee Kevin N. Kirk and Rachel A. Dimitruk

BEFORE: KATHERINE A. MARAMAN, Associate Justice
DANIEL R. FOLEY, Associate Justice
KEVIN BENNARDO, Associate Justice

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

OPINION¹

PER CURIAM:

[¶ 1] This case is before us following a second remand to the Land Court. In our latest remand order, we directed the Land Court to “conduct a proper analysis” when evaluating Appellant’s motion to intervene, *Etpison v. Rechucher*, 2021 Palau 8 ¶ 9, in line with our 2020 remand opinion that directed the Land Court to “consider the legitimacy of [Shallum] Etpison’s

¹ Although Appellant requests oral argument, we resolve this matter on the briefs pursuant to ROP R. App. P. 34(a).

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claim along with his motion's timeliness and any prejudice that granting it would impose" on George Rechucher, and then balance these factors. *Etpison v. Rechucher*, 2020 Palau 14 ¶ 23. Because the Land Court's opinion on remand indicates sufficient engagement in the process we mandated, we **AFFIRM** the decision below.

BACKGROUND

[¶ 2] The background facts of this case are set out at some length in three prior opinions of this Court. *See id.* ¶¶ 3-9; *see also Rechucher v. Etpison*, 2019 Palau 25 ¶¶ 7-13; *Etpison*, 2021 Palau 8 ¶¶ 2-4. Following our second vacatur of the Land Court's decision, the Land Court denied a motion to submit supplemental briefing with findings of fact and conclusions of law, relying on the "already considerable record" before it. Order Denying Motion (May 19, 2021). We do not reiterate the content of the record before the Land Court, which we already set out in our prior Opinion, *see Etpison*, 2021 Palau 8 ¶ 2, but we note that the Land Court also accepted relevant additional evidence, including an affidavit by the former national surveyor, Mario Retamal, as well as more recent drone footage.

[¶ 3] Following our remand, the matter was decided on July 19, 2021, without any further evidentiary hearing. The Land Court again denied Etpison's motion to intervene in an eight-page opinion.

[¶ 4] The Land Court provided the considerations behind each of the three factors analyzed, namely "Etpison's Claim on the Merits," "timeliness," and "prejudice" before "balancing the factors." While the court found that "Etpison's claim appears meritorious", it found that the two other factors "strongly" weighed in favor of denying the motion. Order Denying Mot. to Intervene at 4-7 (Jul. 19, 2021).

[¶ 5] This appeal followed. On appeal, Etpison argues that the Land Court's decision "has not had all the relevant evidence properly considered, weighed, and balanced."

STANDARD OF REVIEW

[¶ 6] We review the Land Court's denial of a motion to intervene for abuse of discretion. *See KSPLA v. PPLA*, 22 ROP 30, 35 (2015). "Generally,

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‘[a] discretionary act or ruling under review is presumptively correct, and the burden is on the party seeking reversal to demonstrate an abuse of discretion.’” *Island Paradise Resort Club v. Ngarametal Ass’n*, 2020 Palau 27 ¶ 12 (quoting *Ngoriakl v. Gulibert*, 16 ROP 105, 107 (2008)). However, a court abuses its discretion “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.” *Id.* (quoting *Eller v. ROP*, 10 ROP 122, 128-29 (2003)).

[¶ 7] The conclusions on the factors themselves will also not be overturned absent an abuse of discretion. See *Ngatpang State v. Rebluud*, 11 ROP 48, 52 (2004). An abuse of discretion will be found in this case if the court grounds its decision upon a mistaken view of the evidence or an erroneous view of the law. See *Kiuluul v. Elilai Clan*, 2017 Palau 14 ¶ 10 (internal quotation marks and alterations omitted).

DISCUSSION

[¶ 8] An appeal is not an opportunity for the Appellant to have a “second bite at the apple.” Appellant cannot simply re-present all the evidence and ask this Court to come to a different outcome. This is the exact reason the case was remanded in Appellant’s prior appeal, rather than this Court making a final determination on the merits. *Etpison*, 2021 Palau 8 ¶ 6 (“[I]t is not the role of this Court to analyze and balance the factors in the first instance.”).

[¶ 9] Our remand instructions were very clear that it is for the Land Court to provide the analysis and balance of the factors based on the facts in the record before it.² As a counterpart to the lower court’s tasks, we are deferential to its findings of fact and only intervene if such findings are based on mistaken views of such facts. See *Children of Benjamin Oiterong v. Sumang*, 2021 Palau 30 ¶ 6.

[¶ 10] The appeal is based on the claim that the Land Court has not fully complied with this Court’s Remand Order. The Appellant believes that the

² While we did suggest that an evidentiary hearing could be helpful to “resolve any dispute of material fact key to the analysis of each factor,” *Etpison*, 2021 Palau 8 ¶7 n.4, this did not prevent the Land Court from deciding the matter on the briefs.

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Land Court failed to consider certain evidence, which led the Land Court to undervalue the weight of the merits factor in its ultimate balancing of the three factors. The argument implies that the Land Court needs to address every piece of evidence when issuing a decision. While the Land Court must indeed consider the whole record and the relevant evidence contained within, it need not articulate how every piece of evidence fits into its analysis. Rather, “[a] trial court decision must contain sufficient findings supporting its conclusions to allow for appellate review.” *Yano v. Yano*, 20 ROP 190, 199 (2013) (quoting *Ngirutang v. Ngirutang*, 11 ROP 208, 211 (2004)).

[¶ 11] For each factor, the Land Court did exactly this. While the Land Court did not expressly address all the evidence that Appellant claims weighs in his favor, the Land Court clearly identified the facts supporting its findings – which for the merits factor is the same position as Appellant in this matter.

[¶ 12] Regarding the weight given to the merits factor, the Land Court expressly finds this to be in favor of Appellant but also echoes our prior decisions that “even the most meritorious motion to intervene” may be outweighed by the two other factors. *Etpison*, 2020 Palau 14 ¶ 22; *see also Etpison*, 2021 Palau 8 ¶ 8. The Land Court found that this was one such case.

[¶ 13] Turning to the two other factors of timeliness and prejudice, Appellant attacks the outcome based on alleged misstatements of law and facts. While we agree that “a [lower] court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence,” *Kiuluul*, 2017 Palau 14 ¶ 10 (internal quotation marks and alterations omitted), the Land Court’s analysis is not materially changed by its alleged misstatements.

[¶ 14] Regarding the lack of timeliness, as an appellate court, we review the sufficiency of the evidence and will only set aside the findings if the decision “lack[s] evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion.” *Ngotel*, 2018 Palau 21 ¶ 8 (citing *Rengiil v. Debkar Clan*, 16 ROP 185, 188 (2009)). The Land Court specifically lists various instances over a 20-year period where “Etpison did not formally seek redress,” each of which could have been sufficient to support the Land Court’s finding and, regardless of Appellant’s

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nitpicking, the passage of time and multiple missed opportunities support the Land Court's outcome on this factor.

[¶ 15] As for prejudice, Appellant attacks the findings on the basis that the "Land Court simply assumes prejudices." This is simply not true. Again, the Land Court has gone to considerable length to provide factual support, including the sale of the land as well as "the business activities conducted thereon," and does not merely rely on the passage of time to identify prejudice.

[¶ 16] Appellant ultimately is unhappy with the outcome of this case. While we are sympathetic to Appellant's dissatisfaction, our role is to review for abuse of discretion. We do not detect one here.

CONCLUSION

[¶ 17] The Land Court's July 19, 2021 Order denying Etpison's motion to intervene is **AFFIRMED**.

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SO ORDERED, this 4th day of March, 2022.



KATHERINE A. MARAMAN
Associate Justice



DANIEL R. FOLEY
Associate Justice



KEVIN BENNARDO
Associate Justice