occupied and used by the Meyungs Uchelkumer Clan. Unless it is adequately demonstrated that there is this retention of interest, the Peliliu people are not injured by the determination of individual ownership. Without injury they are not "aggrieved" and have no standing to appeal.

The solution of the problem is properly in the first instance with the Land Commission. Accordingly, it is

Ordered, adjudged and decreed that this appeal (and all others as may be specifically shown in the case record) shall be remanded to the Land Commission for further proceedings, at which appellants will be given an opportunity to be heard, and for redetermination of land ownership in accordance with this decision and the evidence received on rehearing.

SANTOS NGIRASECHEDUI, Plaintiff

v.

PALAU COMMUNITY ACTION AGENCY AND PETER SUGIYAMA, Defendants

Civil Action No. 4-73

Trial Division of the High Court

Palau District

June 11, 1973

Action by complaint, but in nature of mandamus, for reinstatement of terminated employee and payment of back pay. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held officers of community action agency were bound by their board of directors' reinstatement order and could not successfully claim failure to exhaust administrative remedies where those remedies were permissive only.

1. **Civil Procedure—Captions**

   That pleading was labeled "complaint" rather than "mandamus", which it was more nearly in the nature of, was not significant.

2. **Administrative Law—Review—Conclusiveness of Decision**

   Where officers of community action agency terminated plaintiff's employment and executive director refused to reinstate him following

hearing before the board of directors which resulted in a board order that agency reinstate plaintiff, and, upon being sent a copy of letter by plaintiff to board regarding plaintiff's nonreinstatement, executive director sent board a letter purporting to appeal the board's decision and board considered the letter, upheld its original decision and notified executive director that further appeals be directed to newly seated board or the Office of Economic Opportunity, board's decision on appeal was conclusive and final and plaintiff, who was again refused reinstatement, would be ordered reinstated and paid the salary he lost during his period of unemployment.

3. **Administrative Law—Remedies—Exhaustion of Administrative Remedies**

Where community action agency's manual made use of various administrative remedies permissive, terminated employee was not required to exhaust them prior to taking the matter to the agency's board of directors, and from there, to the courts upon agency's refusal to honor board's reinstatement order.

Assessor:	PABLO RINGANG, *Presiding Judge, District Court*
Interpreter:	PETER NGIRAIBIOCHEL
Reporter:	ELSIE T. CERISIER
Counsel for Plaintiff:	ROMAN TMETUCHL
Counsel for Defendants:	PRO SE; JOHN O. NGIRAKED on memorandum of points and authorities

Turner, *Associate Justice*

Plaintiff filed a complaint for reinstatement in his employment with the Palau Community Action Agency and for lost salary from the time of his dismissal, April 14, 1972, until he is reinstated. The case is more than just judicial review of an administrative action.

[1] As is disclosed by the facts, this is more nearly in the nature of a petition for mandamus to require the executive director of the agency to comply with the order of the Board of Directors to reinstate the plaintiff. That the pleading is labeled "complaint" rather than "mandamus" is not significant. The cause of the action is the same, regardless of its label.

The facts reveal an astonishing course of events based upon misconceived authority by the executive director of the agency. In March, 1972, the two Economic Development co-directors of the Palau Community Action Agency sent a notice of discharge to the plaintiff. It began:—

"The PCAA takes deep sorrow in informing you as follows:

Commencing on Friday (March 31, 1972) you are requested to seek another employment, this to end on Friday, April 14, 1972. You will be no longer employed by the PCAA after this date, April 14, 1972."

Then followed five charges, cryptic in nature. What happened after delivery of this letter is not entirely clear but two events may be gleaned from the evidence. (1) A personnel action form of termination, dated April 10, 1972, was prepared and signed by the two supervisors, the personnel officer, the fiscal officer and the defendant, the executive director. (2) The plaintiff communicated, obviously in protest, with the Board of Directors of the Palau Community Action Agency. The evidence did not disclose whether the protest was oral or in writing.

The termination notice and action created a spirited protest in the plaintiff's behalf. After plaintiff had been discharged, the women's group of Aimeliik, with whom plaintiff had been working, wrote to the Palau Community Action Agency executive director April 19, 1972. One of the five dismissal charges was that:—

"Magistrates of Aimeliik and Airai have complained about your works in their municipalities."

The women of Aimeliik responded by telling the Palau Community Action Agency director that they wanted no part of him and his organization in the future. They said:—

"With great sorrow and wonder that have developed in the minds of all members of Ngarayolt Organization by learning of this termination, we are now made aware of the fact that, the future

trips by PCAA representatives to visit us will not include Mr. Santos Ngirasechedui, a very dear person to us and his work benefited us and so, we would like to take this opportunity to inform the Executive Director and all the employees working under him that, please be informed that in your coming to visit us is not agreeable to us and will never be and we will not wish to see you for we cannot bear the burden and so let that be it.

* * *

And before we come to the conclusions, we would like you to know that we are very thankful for what you have assisted and given us and that if we will need anything in the future, we will approach other Government agencies."

The record is not clear whether the Board saw this letter, but it does appear that the Board held an extensive hearing on the plaintiff's protest of his dismissal. In addition to the plaintiff, the executive director, who also is an ex-officio member of the board, the deputy director and other named persons, members of the Aimeliik women's organization, Ngarayolt, attended the meeting on May 24, 1972.

On May 26, 1972, the Board met for two and one-half hours to consider the plaintiff's case and upon a secret written ballot unanimously agreed to reinstate him in his job. The information was sent to the defendant executive director by letter dated May 26, 1972, which, inter alia, said:—

"The resulting decision/position of the Board of Directors is that the PCAA Administration be directed to reinstate Mr. Santos Ngirasechedui with his pay retroactive to his last pay check."

This reinstatement order the executive director refused to accept. The plaintiff waited until November and then wrote to the chairman of the Board, asking "what happened", on May 25, 1972. The executive director received a copy of the inquiry, and then wrote to the chairman of the Board (Exhibit No. 4), December 19, 1972, and said:—

"The Senior Staff and I especially do not agree on Mr. Ngirasechedui's re-instatement into the agency. At this point, I would like to clarify our position that we are not attempting to challenge the board's decision, but to request an 'appeal' for reconsideration on the case."

The letter went on to say, in an illustration of how not to win friends and influence people, that one of the grounds for "appeal" to the Board was that:—

"The Board meeting at Blue Lagoon on May 25, 1972, at 11:30 a.m. failed to acknowledge attendance of PCAA Executive Director, an Ex-Office (sic) of the Board. Thus the meeting is generally rated by my staff and myself as biased and can be well taken as one sided."

The next step shown in the record was the reply of the chairman to the executive director's letter of appeal. He said:—

"Although I am no longer a member and Chairman of the Board of Directors of the Agency, as my terms of office have expired (February 9, 1973), it is incumbent of me as the former chairman to formally report to the Executive Director of the Agency as the response to your letter previously mentioned, the decision of the Board made during its meeting held on February 9 re the case of Mr. Ngirasechedui and the appeal by PCAA that even after considering the five points for appeal contained in your letter of December 19 the Board came up with its official decision that it would uphold its original position regarding the case, as per its deliberation on May 25, 1972, and that any further appeals including one by your letter of December 19 may be made to the new Board or to OEO Regional Office but the Board which I was the chairman, by its decision, would not accept to change its decision or accept to hear any further appeal."

[2] This, the Court is compelled to believe, was a conclusive and final determination by the Board of Directors. The plaintiff should be reinstated. But the executive director did not agree with his bosses again. In his memorandum to the Clerk of Courts, after he had been served with

plaintiff's complaint, which memorandum the Court deems to be an answer, the defendant director undertook to appeal to what he considered to be higher authority. He said in answer to the complaint:—

"Enclosed letter from the former Chairman of PCAA Board of Directors presents refusal to honor our appeal. Thus, I am compelled to present my appeal to OEO legal counsel through our Division Chief, Mr. William Smith."

There was no word at time of trial from either Mr. Smith or "OEO legal counsel." The record does show the Micronesian Legal Services, another OEO corporate entity, declined to represent the defendant director at the trial. In fact, the director did not retain counsel until a few days before the Court ordered memorandum of points and authorities was due.

The defendant director suggested to the Court at the trial that this case was not ripe for judicial review because the plaintiff had not exhausted his administrative remedies. Counsel for defendant who prepared the memorandum of law urged the same proposition, arguing that the elaborate appeal procedure found in the personnel manual (Defendant's Exhibit D) had not been followed. The director's position at trial, and after, was at variance with his answer, in which he asserted he was appealing to the OEO legal counsel or Mr. Smith, whomever they might be.

The Palau Community Action Agency, like its counterparts elsewhere in the Trust Territory, is a duly organized and registered corporation, formed pursuant to the United States Economic Opportunity Act of 1964. As a corporate entity, its affairs are managed and controlled by the Board of Directors. The Board is authorized to elect the usual corporate officers of president, vice-president, secretary and treasurer. There also is provided an executive-personnel committee of at least five members of the Board. The

personnel manual provides that the ultimate review of personnel matters shall be by this executive committee.

Defendant's memorandum argues that administrative remedies, which must be exhausted before judicial review is permissible, require the aggrieved employee to take each of the detailed procedural steps through the chain of command until a final decision. Defendant complains now because the plaintiff shortcut the steps designed to protect his employment interests and went directly to the ultimate authority, the Board.

The Board ordered him reinstated. Despite the Board's authority to "exercise, control and manage" the affairs of the corporation, the defendant director refused to comply with "management" order, not only the first time, but on his "appeal" to the Board which was in the nature of a rehearing.

What result could have been achieved if the plaintiff had taken his appeal through the chain of command to the Board other than obtaining a final decision from the Board as a result of a direct appeal? It is contrary to all principals of administrative law to require observance of procedural niceties to obtain a final order when such an order is obtainable on direct approach.

[3] Nor do we agree with defendant in this instance that any "administrative remedy" need have been sought by plaintiff. He could have ignored his "remedies" in the personnel manual and resorted immediately to this Court. The language of the Palau Community Action Agency manual is entirely permissive, i.e., the employee "*may* refer it either orally or in writing to the next highest supervisor in line of authority"; he "*may* then go to the Executive Director", and "if a grievance relating to adverse action . . . is not resolved through the complaint procedure . . . the employee *may* make a formal appeal."

The Court is persuaded by the ruling in *Balinger v. Trust Territory*, 5 T.T.R. 598, involving the identical question arising under the Trust Territory Personnel Manual. The court said:—

"But, where an administrative remedy is provided, but not required to be used before suit, the plaintiff is not required in all cases to pursue the administrative remedy as a prerequisite to suit. (*Cuiffo v. United States,* 137 F.Supp. 944, 947). The Trust Territory Personnel Manual does not require mandatory exhaustion of review or appeal rights contained therein. These rights, not requirements, are couched in terms of "may use appeal rights," and "may utilize the appeal procedures," such permissive, rather than mandatory provisions indicating that an aggrieved employee has a choice as to what type of relief he may seek. And, where this right to pursue an administrative remedy is given, but not required, it is within the discretion of the court to entertain suit before the administrative procedure has been exhausted (*Cuiffo v. United States, supra,* p. 948). This court, of course, did exercise its discretion in this regard."

This case, it is apparent from the facts, is not one involving exhaustion of administrative remedies but is, instead, a determination whether an aggrieved employee is obliged to slavishly follow personnel procedure or whether or not he may take the most expeditious route available to a final administrative determination. The plaintiff chose the latter course. When the director refused to comply, the employee sued him, and his agency, in court. The suit was appropriate and well taken.

Treated as a petition for mandamus to reinstate and pay the plaintiff, he is entitled to a judgment. It is

Ordered, decreed and adjudged:—

1. That the defendant agency, the Palau Community Action Agency, shall pay plaintiff forthwith the sum of $2,641.60 for the period from April 14, 1972 to April 13, 1973, plus the sum of additional salary earned from April 14, 1973 to date of reinstatement.

2. That the executive director shall forthwith reinstate plaintiff in his position as Community Organizer.

3. Plaintiff shall have such costs as may be claimed in accordance with the law.

OLKERIIL SECHESUCH, Plaintiff

v.

KEBIK and ELIBOSANG, Defendants

Civil Action No. 493

Trial Division of the High Court

Palau District

June 12, 1973

Title dispute. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, granted plaintiff's motion for summary judgment where defendants did not plead, or offer to establish, title.

1. **Judgments—Summary Judgment—Identity of Parties**

   In action involving title dispute, motion for summary judgment on ground title had been decided in a prior action would be denied where the parties were different.

2. **Judgments—Summary Judgment—Lack of Fact Issues**

   In action claiming title to land, plaintiff's motion for summary judgment would be granted where defendants' pleadings made no claim to title and defendants did not offer to establish title.

Assessor:	PABLO RINGANG, *Presiding Judge, District Court*
Interpreter:	AMADOR D. NGIRKELAU
Reporter:	ELSIE T. CERISIER
Counsel for Plaintiff:	FRANCISCO ARMALUUK
Counsel for Defendants:	JOHN O. NGIRAKED

TURNER, *Associate Justice*

Plaintiff moved to substitute Siksei as successor to Olkeriil, who died after the complaint was filed. Sechesuch