

Nevertheless, they contend that the law is clear that one must own land to convey any interest, and because KSPLA has no ownership interest, the lease is void. However, as the trial court noted and Appellants have not attempted to rebut, Appellants, as lessees, may not challenge KSPLA's title to the property or assert that a third party—here the Council of Chiefs—has superior title. 49 Am. Jur. 2d Landlord and Tenant §§ 764, 777. Appellants present no authority or argument that this principle should not apply to the scenario at hand, and this Court has accepted that one cannot assert that a third party not involved in the proceeding has superior title. *See Aguon*, 5 ROP Intrm. at 129. We find no error in the court's reasoning.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the Trial Division.

SIMAKO NARUO,
Appellant,

v.

LELAND NARUO,
Appellee.

CIVIL APPEAL NO. 10-043
Civil Action No. 09-144

Supreme Court, Appellate Division
Republic of Palau

Decided: September 12, 2011¹

[1] **Courts:** Docket Management

Courts have broad discretion in setting their calendar and managing civil proceedings.

[2] **Courts:** Judicial Bias

A litigant alleging judicial bias bears a heavy burden.

[3] **Courts:** Judicial Bias

Adverse rulings against a litigant are insufficient to establish a judge's bias or prejudice against that litigant.

Counsel for Appellant: J. Uduch Sengebau,
Senior

Counsel for Appellee: Pro Se

BEFORE: ARTHUR NGIRAKLSONG,
Chief Justice; ALEXANDRA F. FOSTER,

¹ Upon review of the briefs and the record, the panel finds this case appropriate for submission without oral argument pursuant to ROP R. App. P. 34(a).

Associate Justice; KATHERINE A. MARAMAN, Part-Time Associate Justice.

Appeal from the Court of Common Pleas, the Honorable HONORA E. REMENGESAU RUDIMCH, Senior Judge, presiding.

PER CURIAM:

Appellant, Simako Naruo (“Simako”) appeals the findings of fact and judgment issued by the Court of Common Pleas in favor of Appellee, Leland Naruo (“Leland”). For the reasons set forth below, we **AFFIRM**.

BACKGROUND

At issue are certain personal possessions of the late Naruo Ngirngemeusch, also known as Naruo Robert (“Naruo”). Specifically, the parties are fighting over (1) a vehicle, (2) a boat, (3) a tool box with tools, (4) a fish finder, (5) a chainsaw, (6) a boat propeller, and (7) a fishing net.² Simako, Naruo’s surviving spouse, filed a petition to settle Naruo’s estate on September 30, 2009, in which she requested that all of the possessions be transferred to her. In response, Leland, an adopted child of Naruo, filed a claim stating that under customary law he is the rightful heir to all of the possessions at issue.

After several continuances, the Court of Common Pleas set a hearing in the matter for April 6, 2009. On the day of the hearing, Leland filed a “motion to vacate hearing” and requested an additional sixty days to attempt

to resolve the matter out of court. Leland did not appear at the hearing, but his counsel was present. After hearing argument from the parties regarding the motion, the court denied the motion and permitted the hearing to go forward. The court then stated that while the motion to vacate was denied, it would set another hearing date so that Leland may have the opportunity to present his case.

The court heard testimony and argument by the parties on April 6, 9, and 16, 2009. Cleophas Roberts (“Cleophas”), Naruo’s brother, testified that he was in charge of the *eldecheduch* following Naruo’s death. At the *eldecheduch*, Cleophas stated generally that Naruo’s properties will pass to his surviving wife (Simako) and children. He made no individual distribution of the properties at that time; however, both Cleophas and Simako testified that Naruo wanted his vehicle to pass to his eldest daughter, Naemi. In contrast, Leland testified that Naruo wanted the vehicle, along with all of the other items, to pass to him (Leland) because they are traditionally male belongings and he is Naruo’s only son.

Leland called Demei Otobed to testify as an expert on Palauan custom.³ Otobed stated that the distribution of a decedent’s property is to be determined at the *eldecheduch*. If someone argues that the intentions of the decedent with regard to the distribution of assets differ from what was said at the *eldecheduch*, the statement at the *eldecheduch* prevails. Otobed also testified that another customary manner for distribution of a decedent’s property is based on whether

² The lower court noted that the Estate included money from Naruo’s bank account, but distribution of this money was not challenged by the parties and is therefore not at issue on appeal.

³ The parties stipulated that Otobed was an expert on Palauan custom and Simako declined to call her own expert witness.

the property at issue is traditionally considered male or female property. For instance, items that are traditionally considered male property, such as land, chainsaws, and canoes, generally pass to the male children. Similarly, items traditionally considered female property, such as taro patches, generally pass to the female children. According to Otobed, even if it is directed at the eldecheduch that the decedent's property shall pass to "the surviving wife and children," items that are traditionally considered male property go to the male child, if there is one.

In its Findings of Fact and Judgment, the court concluded that although Roberts directed that Naruo's property go to his surviving wife and children, the items at issue belong to Leland. The court found that the vehicle, boat, tool box, fish finder, chainsaw, propeller, and fishing net are traditionally considered male property, and that Otobed presented clear and convincing evidence that under Palauan custom, such properties are to pass to the male child under the unique circumstances of this case. Simako now appeals.

STANDARD OF REVIEW

We review the Court of Common Pleas's conclusions of law de novo. *Chun v. Liang*, 14 ROP 121, 122 (2007) (citing *Cura v. Salvador*, 11 ROP 221, 222 (2004)). Factual findings are reviewed under the clearly erroneous standard. *Id.* The factual findings of the lower court will be set aside only if they lack evidentiary support in the record such that no reasonable trier of fact could have reached the same conclusion. *Id.* at 122-23. Where there is a challenge to the trial court's discretionary decisions, we

employ an abuse of discretion standard. *See Ngoriakl v. Gulibert*, 16 ROP 105, 107 (2008). A trial court's discretionary decision will be overturned only if the decision was "arbitrary, capricious, or manifestly unreasonable," or because "it stemmed from an improper motive." *Id.* (quoting *W. Caroline Trading Co. v. Philip*, 13 ROP 28, 30 (2005)).

ANALYSIS

Simako presents two issues on appeal. First, she asserts that the Court of Common Pleas erred in allowing Leland to present his case after it denied his motion to vacate the April 6, 2009, hearing. Second, Simako asserts that the court's decision to award the items at issue to Leland was not supported by the evidence. These issues are addressed in turn.

I. The Court of Common Pleas did not err in permitting Leland another opportunity to present his case.

Simako first contends that because Leland failed to show good cause to support his motion to vacate the April 6, 2009, hearing, the court committed reversible error by providing him another opportunity to present his case. Relatedly, she asserts that the court demonstrated bias in favor of Leland because it continued the hearing to April 9, 2009, even though Leland failed to show good cause for his absence at the April 6, 2009, hearing. According to Simako, the court should have entered judgment in her favor after the April 6, 2009, hearing since Leland failed to rebut the evidence presented at that hearing.

Simako's contention that the denial of

the motion to vacate the April 6, 2009, hearing somehow barred the court from setting another hearing is untenable. Here, the court heard argument on Leland's motion and ultimately ruled in Simako's favor. It found that the ground asserted in the motion—that additional time was needed to settle the matter—was without merit. The court also rejected Leland's counsel's oral statement that matters should be postponed because she is having difficulty communicating with her client. The next question for the court was how to proceed given that Leland was in Peleliu and apparently unable to obtain transportation to the hearing. After hearing from Leland's counsel, the court concluded that Leland did not present good cause for his failure to appear, and as a consequence he "waived his right to be present for th[at] particular hearing." The court explained that it would permit Leland the opportunity to present his case at a later date because "it appears . . . that he did not get notice . . . [of] the hearing early enough." The court then stated that there seemed to be a lack of communication between Leland and his counsel, and that it would be unfair under the circumstances to punish a party due to the inefficiency of his counsel.

[1] Courts have broad discretion in setting their calendar and managing civil proceedings, *see First Commercial Bank v. Mikel*, 15 ROP 1, 2 (2007), and nothing in the record indicates that the court abused its discretion by setting another hearing date under the circumstances. The cases cited by Simako in support of her claim, *Masang v. Ngerkesouaol*, 13 ROP 51, 53 n.1 (2006) (discussing ROP R. App. P. 4(c)), and *Pamintuan v. Republic of Palau*, 14 ROP 189, 190 (2007) (addressing appellant's excuses for

failure to file timely notice of appeal) concern application of the rules of appellate procedure and are wholly distinguishable from the facts at hand. Without more, Simako's argument on this point fails.

[2, 3] Simako's related argument that the court demonstrated bias by permitting Leland an opportunity to present his case also fails. A litigant alleging judicial bias bears a heavy burden. *See Idid Clan v. Demei*, 17 ROP 221, 223 (2010) (citing 46 Am. Jur. 2d Judges § 200). Here, Simako alleges bias based on an adverse ruling. "Adverse rulings against a litigant . . . are insufficient to establish a judge's bias or prejudice against that litigant." *See Labarda v. Republic of Palau*, 11 ROP 43, 47 (2004) ((citing *Illinois v. Neumann*, 499 N.E.2d 487, 492 (Ill. Ct. App. 1986))). *See also* 46 Am. Jur. 2d Judges § 131, 147 (2006) (noting that alleged judicial bias must stem from an extrajudicial source and adverse rulings are insufficient). Simako provides no legal authority to support her scant allegation of bias, and we decline to interpret undeveloped arguments or conduct legal research for the parties. *See Idid Clan*, 17 ROP at 229 n.4

II. The Court of Common Pleas did not err in awarding property to Leland.

Next, Simako contends that the court's award of property to Leland was inconsistent with evidence of custom presented at the hearing. "The existence of a claimed customary law is a question of fact that must be established by clear and convincing evidence and is reviewed for clear error." *Koror State Pub. Lands Auth. v. Ngirmang*, 14 ROP 29, 34 (2006) (citing *Masters v. Adelbai*, 13 ROP 139, 141 (2006)). "The trial court's

findings as to a custom's terms, existence, or nonexistence are reviewed for clear error.” *Ngiraswei v. Malsol*, 12 ROP 61, 63 (2005).

The parties agree that custom governs the distribution of Naruo’s personal possessions, and they agree that Cleophas was authorized to direct the distribution of Naruo’s possessions at the eldecheduch. However, Simako contends that according to the evidence of custom presented by Otobed, Cleophas’s statement at the eldecheduch that Naruo’s property goes to his surviving wife and children, together, is final. According to Simako, because Leland was not specifically given property at the eldecheduch, the court committed reversible error by awarding him the items at issue.

Upon review of the record, we cannot conclude that the lower court clearly erred. While Otobed indeed testified that the distribution of a decedent’s property at an eldecheduch is considered final, he also testified that Palauan custom recognizes another manner of distribution based on whether the property is traditionally considered male or female property. According to Otobed, in rare instances when a dispute arises after the decedent’s personal properties have been distributed generally to the surviving wife and children, the properties go to individual family members based on whether the property at issue is traditionally owned by males or females.

The lower court found Otobed’s testimony to be clear and convincing evidence

of applicable customary practices. It also noted that there was no dispute that a vehicle, boat, tool box, fish finder, chainsaw, boat propeller, and fishing net are traditionally considered male properties. Applying Otobed’s testimony regarding customary distribution to the facts of the case, the court concluded that the items at issue went to Leland as Naruo’s only male child. Inasmuch as this conclusion is supported by evidence in the record, it will not be disturbed. *See Dokdok v. Rechelluul*, 14 ROP 116, 119 (2007) (“If the trial court’s findings as to custom are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be disturbed on appeal unless the Court is left with a definite and firm conviction that a mistake has been committed.” (citing *Omenged v. United Micronesia Dev. Auth.*, 8 ROP Intrm. 232, 233 (2000)) *See also Ngirmang*, 14 ROP at 34 (“[W]here there are two permissible views of the evidence as to proof of custom, the fact finder’s choice between them cannot be clearly erroneous.” (citing *Saka v. Rubasch*, 11 ROP 137, 141 (2004)).

Finally, Simako briefly contends that the only basis for Leland’s claim, as stated on his “Notice of Objection to Assets Claimed by Petitioner,” is that he was awarded Naruo’s property at the eldecheduch. She goes on to assert that because Naruo’s property was distributed generally to his surviving wife and children, the court should have denied Leland’s claim.

This argument is not persuasive. Leland’s Notice of Objection states that an eldecheduch was held, and that Naruo’s assets

were conveyed to him “pursuant to customary law.” (*See* Appellant’s Br. Appx. 2 “Notice of Objection to Assets Claimed by Petitioner”.) As discussed above, the evidence supports the court’s determination that under the unique circumstances of this case (including what was said—or not said—at the *eldech duch*), Naruo’s properties go to Leland pursuant to Palauan custom. Simako points to no legal authority to support her position, and without more, it is rejected.

CONCLUSION

For the reasons stated, the judgment of the Court of Common Pleas is **AFFIRMED**.