*Udui v. Temol*, 2 ROP Intrm. 251 (1991)
**FELICIANO E. UDUI, Rep., NGERTUU CLAN,**
**Appellant,**

**v.**

**THEO N. TEMOL, and TENANT IN COMMON, MASAICHI ETITERNGEL, MERIU KIOSHI,**
**Appellees.**

CIVIL APPEAL NO. 12-89
Civil Action No. 142-89

Supreme Court, Appellate Division
Republic of Palau

Appellate opinion
Decided: May 7, 1991

Counsel for Appellant: J. Roman Bedor, T.C.

Counsel for Appellees: Francisco Armaluuk, T.C.

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice; ARTHUR NGIRAKLSONG, Associate Justice.

NGIRAKLSONG, Associate Justice.

This is an appeal from the Trial Court's Decision affirming Appellees' ownership of the parcel of land bearing Tochi Daicho No. 4, Cadastral Lot No. 51-5038, and located in the State of Ngiwal. We affirm the Trial Court's decision.

⊥252 BACKGROUND

Appellant is the Ngertuu Clan of Ngiwal. Appellees are successors-in-interest to Ngirarengei who is listed in the *Tochi Daicho* as the individual owner of the land. Theo N. Temol is Ngirarengei's son and the other Appellees are his co-tenants in common.

Appellant asserts that it owns the land and has never conveyed it in fee simple to anyone. Appellant concedes that it gave Ngirachebuul and his son, Ngirarengei, members of Ngertuu Clan, rights to use the land consistent with the policy of the German administration in Palau to farm idle land. Then, during the Land Survey of 1938-1941, the Japanese administration mistakenly listed the land as individually owned by Ngirarengei. Appellant contends the listing of Ngirarengei as the owner of the land was an error. A representative of the Appellant tried to correct the error through a judicial proceeding, but the outbreak of the World War II and events in Palau frustrated those corrective efforts.

Appellees base their claim to the land on three grounds: (1) that the German administration in Palau forced the Ngertuu Clan to give the land in fee simple to Ngirachebuul and his son, Ngirarengei, and such grant was accepted and legitimized by the Japanese land survey (1938-1941), (2) that Ngertuu Clan, its chief and strong members, consented or did not object to the *Tochi Daicho* listings and (3) that the Appellees and their predecessors-in-interest (Ngirachebuul and Ngirarengei) have ⊥253 possessed and used the land in a way consistent with the full ownership of the land for seventy five (75) years.

The parties or their representatives presented their claims to the Ngiwal Land Registration Team, which found in favor of the Appellees. The Palau Land Commission confirmed the findings of the Ngiwal Land Registration Team and upheld the listing of the *Tochi Daicho*.

Appellant appealed the Palau Land Commission decision to the Trial Division of this Court. Appellant made the same argument before the Trial Court. The Tochi Daicho was in error and the Appellant effectively rebutted the presumption in favor of the accuracy of the Tochi Daicho before the Ngiwal Land Registration and the Palau Land Commission and therefore the Tochi Daicho should be set aside as erroneous.

Although there is a motion by the Appellant for a trial de novo in the file, there is no record of the Trial Court's decision on the Motion. However, there was no trial de novo. The Trial Court heard argument and affirmed the Palau Land Commission Decision and the validity of the *Tochi Daicho* listing Ngirarengei as the owner of the land. The Trial Court applied the well established rule of presumption in favor of the accuracy of the Tochi Daicho in reaching its decision.

Appellant appeals from the Trial Court Decision and makes the same argument it made before the Ngiwal Land Registration Team, the Palau Land Commission and the Trial Division of this Court. Appellant did not assign as an error any abuse of discretion on the part of the Trial Court.

⊥254 DISCUSSION

First, when the notice of appeal and the brief of the Appellant is only a repetition of those assertions made before the trial judge, this Court shall not re-weigh the evidence or set aside the trial court's findings of fact. *In the matter of the Estate of Bulele* , 7 TTR 500 (1977). We find that the Appellant here makes the same assertions that it made before the Trial Court and we therefore decline review of the evidence.

We now consider Appellant's assertion that the Trial Court should have reviewed facts as well as law in this case pursuant to 14 PNC § 604(b) instead of applying the "clearly erroneous" standard of review to the decision of the Palau Land Commission.

In essence, Appellant is saying that there should have been a trial de novo. Yet, Appellant

did not raise this as an issue before the Trial Court or before this Court. Appellant should have raised it as an abuse of the Trial Court's discretion in denying Appellant's Motion for a trial de novo. The transcript of the oral argument before the Trial Court does not show the issue being raised or reserved by the Appellant. The general rule is that an issue that was not raised and reserved in the trial court, or assigned as error or argued and briefed is waived. 5 Am Jur. 2d. Appeal and Error, Sec. 709 (1962).

The exception to the "clearly erroneous" test in 14 PNC § 604(b) does not apply where the decision of the Trial Court is on ⊥255 appeal.

> The findings of fact of the Trial Division of the high court or the Supreme Court in cases tried by it shall not be set aside by the Appellate Division of that Court unless clearly erroneous, but in all other cases the appellate or reviewing court may review the facts as well as the law.

14 PNC § 604(b). [exception emphasized]. This exception in the statute was adopted from section 200 of the 1966 TT Code, 6 TTC § 355. The construction placed on the exception to the "clearly erroneous" test applies to decisions of the then Trust Territory "district courts." A court sitting in review of a decision of the district court may review facts as well as the law. *Aichi v. Trust Territory*, 3 TTR 290, (1967); and *Rengiil v. Derbai*, 6 TTR 181, 182 (1973). We hold that the exception does not apply to a decision of the Trial Division of this Court. Unlike the judges of the Trust Territory district courts, the judges of this Court are constitutionally required to at least have been practicing attorneys and members of a bar for five (5) years and are presumed to know the law. (ROP Constitution, Art. X, Sec. 8).

## CONCLUSION

We affirm the Trial Court's judgment. We do not find the Trial Court's findings of fact to be "clearly erroneous". The ⊥256 scope of our review of decisions from the Trial Division of this Court is controlled by the "clearly erroneous" test which does not include review of facts de novo.