

*Ngirasechedui v. Whipps*, 9 ROP 45 (2001)  
**SANTOS NGIRASECHEDUI,**  
**Appellant,**

v.

**SURANGEL WHIPPS,**  
**Appellee.**

CIVIL APPEAL NO. 00-02  
Civil Action No. 342-96

Supreme Court, Appellate Division  
Republic of Palau

Argued: December 3, 2001  
Decided: December 5, 2001

[1] **Appeal and Error:** Clear Error

If a trial court's findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless the appellate court is left with a definite and firm conviction that a mistake has been committed.

[2] **Appeal and Error:** Clear Error; Standard of Review

The trial judge is best situated to make credibility determinations and such determinations will only be reversed in extraordinary cases.

[3] **Appeal and Error:** Sanctions

It is appropriate to fine counsel for failing to appear at oral argument.

Counsel for Appellant: Johnson Toribiong

Counsel for Appellee: Raynold B. Oilouch

BEFORE: ARTHUR NGIRAKLSONG, **L46** Chief Justice; LARRY W. MILLER, Associate Justice; KATHLEEN M. SALII, Associate Justice.

SALII, Justice:

Santos Ngirasechedui ("Appellant") appeals from the trial court's Decision of January 14, 2000 ("Decision"), awarding two parcels of land in Airai known as Delul and Ngerberaol to Surangel Whipps ("Appellee"). We affirm.

## **BACKGROUND**

The appeal presently before the court arises from a broader land dispute over certain parcels in Airai. The trial court divided the lands in question into smaller units and conducted separate trials for the discrete parts. The two parcels relevant to this appeal are known as Delul and Ngerberaol. Initially, three parties claimed these properties: Appellant Santos Ngirasechedui, the Airai State Public Lands Authority (“ASPLA”),<sup>1</sup> and the Telbadel Lineage. Before the case came to trial, Telbadel Lineage, acting through its senior strong members, transferred all of its interest in Delul and Ngerberaol (as well as in other properties not the subject of this appeal) to Appellee Surangel Whipps. No party challenges the validity of this transfer. Moreover, the trial court held that ASPLA did not have an interest in either parcel, a conclusion that has not been challenged on appeal. Therefore, the only parties presently before the court are Appellee and Appellant and the only issue is whether the trial court erred in awarding Delul and Ngerberaol to Appellee instead of Appellant.

Delul and Ngerberaol were owned by the Telbadel Lineage in the 1930s. Remed was the head of the Telbadel Lineage at that time. At trial, Appellant claimed that Remed met with his (Remed’s) cousin Ngirasechedui Ongor in the late 1930s at the time of the last Japanese lands survey. Appellant contended that Remed and Ngirasechedui, who was Appellant’s father, orally agreed to split Telbadel Lineage property between them such that Remed would individually own the southern part of the land and Ngirasechedui would own the northern part. Delul and Ngerberaol both lie within this northern part. Appellant argued that since he is his father’s rightful heir, the properties should now belong to him. Appellee’s predecessor in interest, by contrast, denied that Remed ever conveyed any land to Ngirasechedui. Telbadel Lineage also argued that activities on the parcels over the last two generations, along with the Lineage’s defense of its rights against the Trust Territory government in the 1960s, are more consistent with the Lineage’s claim of ownership than Appellant’s actions are with his claim of individual ownership.

The trial judge found that the oral testimony concerning these competing histories was in equipoise, and proceeded to consider various documentary sources of evidence including transcripts and records from two disputes in the 1960s between the Trust Territory government and the “Remed” Lineage<sup>2</sup> involving land that included Delul and Ngerberaol. Decision at 3-4. Relying heavily on the facts that Appellant had taken no action to involve himself in those proceedings (an omission the trial judge found inconsistent with Appellant’s claim of **147** ownership) and that the testimony at those proceedings pointed strongly toward continued Lineage ownership of Delul and Ngerberaol, the trial court concluded that the preponderance of the evidence indicated that Delul and Ngerberaol had remained Telbadel Lineage land. Decision at 7. Accordingly, the trial court awarded the properties to Appellee. This appeal followed.

## **DISCUSSION**

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<sup>1</sup>ASPLA actually only claimed the southern portion of Delul. This distinction is irrelevant to this appeal.

<sup>2</sup>The parties do not dispute that the “Remed Lineage” referred to in that case is the same entity as the Telbadel Lineage.

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[1, 2] A trial court's findings of fact are reviewed under the clearly erroneous standard. *Lulk Clan v. Estate of Tubeito*, 7 ROP Intrm. 17, 19 (1998). This standard means that "if the trial court's findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless [the appellate court] is left with a definite and firm conviction that a mistake has been committed." *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1994). Under this standard, the appellate court generally defers to the trial court's findings concerning the relative credibility of witnesses, and will only reverse such credibility findings in extraordinary cases. *See Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 35 (1999).

As Appellant conceded at oral argument, he is essentially asking this Court to reweigh the evidence considered by the trial court. But, despite his assertions, Appellant has not demonstrated that this is an extraordinary case justifying a departure from this Court's usual deference to a trial court's factual findings. Appellant contends that the trial court ignored substantial evidence in his favor. But the record does not support this claim. In its Decision, the trial court concluded that "[a]fter hearing *all* the evidence and weighing the credibility of the witnesses, neither oral history can be said to be more convincing than the other, and the evidence is in equipoise." Decision at 3-4 (emphasis added). This statement does not indicate that the trial judge overlooked the testimony of the witnesses to whom Appellant points. Rather, he apparently considered the content of their testimony and their credibility, did the same to the other side's witnesses, weighed the competing stories, and concluded that Appellant's case was unpersuasive. That is precisely the job of a trial judge, who is best situated to make such credibility determinations. *See ROP v. Ngiraboi*, 2 ROP Intrm. 257, 259 (1991). The record before this Court adequately supports the trial court's calculus, and we will therefore not disturb it on appeal.

Appellant's claim that the trial court erred by giving improper and excessive weight to the documentary records generated by the 1960s Trust Territory dispute is no more convincing. It is certainly true that Appellant was not a party to those proceedings, and should therefore not be preclusively bound by them. But the trial court did not so conclude. Rather, it simply examined the testimony from that case with an eye to its probative value in this one. *See* Decision at 7 ("At this late date, the testimony of the *rubaks* during the 1960s proceedings is the best evidence remaining"). Moreover, despite Appellant's suggestion, there is nothing improper in the trial court's inference that Appellant's failure to take any action concerning that 1960s case is inconsistent with his claim of ownership, and Appellant has adduced no authority to the contrary. This finding is not clearly erroneous.

### **COUNSEL'S FAILURE TO APPEAL AT ORAL ARGUMENT**

[3] Counsel for Appellee, Raynold B. Oilouch, did not appear at oral argument. 148 Although he has subsequently apologized for his absence, Mr. Oilouch has offered no excuse for it other than his failure to note the argument on his calendar. He is therefore ordered to pay \$200 to the Clerk of Courts within ten (10) days of the entry of this Opinion and Order. *See Ngeliei v. Rengulbai*, 3 ROP Intrm. 4, 11-12 (1991).

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**CONCLUSION**

For the foregoing reasons, the Decision of the trial court is **AFFIRMED**.