

for seeking restraint of a district court judge's actions in a pending case. See Dhalluin v. McKibben, 682 F. Supp. 1096, 1097 (D. Nev. 1988) (the structure of the federal courts does not allow a judge of a district court to rule directly on the legality of another judge's judicial acts); In re McBryde, 117 F.3d 208, 225 (5th Cir. 1997) ("[T]he chief judge cannot sit as a quasi-appellate court and review the decisions of the other judges in the district court").

IV. CONCLUSION

In the same manner as US District Court judges, FSM Supreme Court Trial division justices lack jurisdiction to rule directly on the legality of another Trial Division Justice's judicial acts. NOW THEREFORE IT IS HEREBY ORDERED that this case is DISMISSED for lack of subject matter jurisdiction.

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KOSRAE STATE COURT TRIAL DIVISION

JOSEPH S. ITTU,)	CIVIL ACTION NO. 63-12
)	
Appellant,)	
)	
vs.)	
)	
STEPHINSIN S. ITTU,)	
)	
Appellee.)	
_____)	

MEMORANDUM OF DECISION

Aliksa B. Aliksa
Chief Justice

Decided: January 22, 2014

APPEARANCES:

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HEADNOTES

Appellate Review – Standard – Civil Cases

The standard of review for appeals from the Land Court is set by statute. Land Court findings

and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decision is based upon substantial evidence, the court recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence, and to resolve factual disputes. If the findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Ittu v. Ittu, 19 FSM R. 258, 261 (Kos. S. Ct. Tr. 2014).

Appellate Review – Standard – Civil Cases

When the appellant presented four issues in his brief, but addressed and labeled only two, the court will address only the two issues actually expanded on by the appellant. Ittu v. Ittu, 19 FSM R. 258, 261 (Kos. S. Ct. Tr. 2014).

Property – Land Court

A Land Court case is in fact a title dispute rather than a boundary dispute when the case was remanded to the lower court specifically directed a party's boundary claim be heard and in order to have the claim on display for the hearing, the lower court gave the party the opportunity to stake out his claim on subject land parcel and the party staked out his boundary claim as encompassing the entire parcel rather than just a portion of it. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Appellate Review – Standard – Civil Cases – Factual Findings; Property – Land Court

When a party claimed a boundary to subject land, but now claims the entire parcel, that caused the court to find and conclude that the party was uncertain as to what he was claiming and because of the inconsistencies the land court questioned his credibility. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Appellate Review – Standard – Civil Cases – Factual Findings; Property – Land Court

Due regard must be given to the trial judge's opportunity to weigh the witnesses' credibility. In considering whether the decision is based upon substantial evidence, the reviewing court recognizes that it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Appellate Review – Standard – Civil Cases – Factual Findings; Property – Land Court

Land Court findings of fact will not be set aside unless clearly erroneous. To reverse its findings of fact, the appellate court must find that 1) its findings are not supported by substantial evidence; 2) there was an erroneous conception by the Land Court of the applicable law; and 3) the appellate court has a definite and firm conviction that a mistake has been made. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Property – Easements; Property – Land Court

A proposed settlement is unimportant and only confuses the issues since even if the settlement made no issue of ingress or egress, the November 1997 court order ruled in favor of the appellant's right of way through the subject parcel onto his land behind it, ordering the appellee and his family members to refrain from any acts that may interfere with ingress or egress of appellant and his family members on the subject parcel. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

Property – Land Court

A land case was a boundary dispute until the appellant claimed the entire parcel. Ittu v. Ittu, 19 FSM R. 258, 263, 264 (Kos. S. Ct. Tr. 2014).

Appellate Review – Standard – Civil Cases – Factual Findings; Property – Land Court

It is primarily the Land Court's task to assess the admissibility of evidence and when it was

reasonably assessed, the reviewing court will accept its finding. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

Appellate Review – Standard – Civil Cases – Factual Findings

A finding is clearly erroneous when the reviewing court is left with the definite conviction that a mistake had been committed. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

Appellate Review – Standard – Civil Cases – Factual Findings; Property – Land Court

The Land Court's finding is based on substantial evidence in the record and not clearly erroneous when the appellant spends most of his argument repeating the same point that this matter is a boundary dispute within a parcel and not a title dispute but he not only claimed the entire parcel before the lower court, but he also surreptitiously asks for the Certificate of Title for the parcel in the same brief in which he calls for it boundary dispute. The appellant's repeated arguments are disingenuous. Ittu v. Ittu, 19 FSM R. 258, 264 (Kos. S. Ct. Tr. 2014).

* * * *

COURT'S OPINION

ALIKSA B. ALIKSA, Chief Justice:

This matter is an appeal from the Kosrae Land Court to the Kosrae Trial Division on the Memorandum of Decision awarding the whole of parcel 006M10, also called Foko, to Stephinsin S. Ittu in Kosrae Land Court No. 11-11 on August 13, 2012.

I. BACKGROUND

Parcel 006M10 was originally owned by Salik Ittu, the father of the parties. In a preliminary hearing referring to the lands in Foko on February 14, 1980, Salik Ittu assigned parcel 006M10 to his three sons, Joseph S. Ittu, Stephinsin S. Ittu and Kiatoa S. Ittu. There was a formal hearing on April 3, 1983 in which Stephinsin testified that the only dispute in 006M10 was of a boundary nature between him and one Lupe. R. 18 and R. 19, Formal Hearing. This was never appealed. On July 31, 1984 the Land Commission determined ownership of 006M10 for Stephinsin and issued him Certificate of Title on January 31, 1988. It is unclear from the record whether or not Joseph was served the Determination of Ownership or the Certificate of Title. No timely appeal was filed in the court regarding the actions of the Land Commission.

Joseph filed his first appeal twelve years later for violation of due process on March 18, 1996. The court vacated CT issued to Stephinsin S. Ittu for parcel 006M10 and remanded matter back to the former Land Commission to further evidentiary hearings. On the day of the hearing the parties, November 24, 1997, counsels, and Commission members had a site visit to the disputed parcel to stake out boundaries. The parties could not agree and the matter sat idle for years. On October 26, 2005 the land was subdivided into two parcels. Stephinsin then gave a portion of the parcel to his son MacDonald. This became parcel 006M28. The remaining portion of 006M10 is 006M29, now owned by Stephinsin S. Ittu.

On November 8, 2005, the Kosrae Land Court issued a CT of parcel 006M10 to Stephinsin S. Ittu without a hearing. Joseph S. Ittu was served the CT on August 31, 2009. He appealed the decision late on August 4, 2010, arguing that issuing the CT without opportunity for a hearing was unconstitutional. The case was remanded back to Land Court on November 28, 2011 based on the conclusion that Joseph was not given the opportunity to be heard. Hearing was held before Robinson

H. Timothy who issued a decision awarding the entire parcel to Stephinsin S. Ittu.

Robinson Timothy found in his findings of fact and in his decision that the dispute at issue is between the common boundary of parcel 006M10 and a portion of land owned by Joseph S. Ittu within plat 047M00. According to the Appellant, the dispute at issue is the common boundary between Joseph S. Ittu and Stephinsin S. Ittu on parcel 006M10 and that plat 047M00 has not been fully adjudicated and any reference to any parcel within is irrelevant and should not have been considered.

In the Memorandum of Decision and Court Order of August 13, 2012 the Presiding Judge Robinson H. Timothy awarded the whole of parcel 006M10, commonly known as Foko in the Municipality of Malem, Kosrae State to Appellee, Stephinsin S. Ittu.

II. ISSUES PRESENTED:

1. Memorandum of Decision was not based on substantial evidence
2. Memorandum of Decision, was not based on the grounds upon which the appeal was taken.
3. Awarding the whole of parcel 006M10 to Appellee on the basis that Joseph owned parcel within Plat 047M00 was erroneous and not supported by substantial evidence.
4. Awarding the whole of parcel 006M10 to Appellee based on the court's statement that the only issue in this case was for Joseph's right for ingress or egress across parcel 006M10 and not a title dispute was a reversible error.

III. STANDARD OF REVIEW

The standard of review for appeals from the Land Court is set by statute. Land Court findings and decisions will be overturned if they are not supported by substantial evidence or if they are contrary to the law. In considering whether the decision is based upon substantial evidence, the court recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. If findings are adequately supported and the evidence has been reasonably assessed, the findings will not be disturbed on appeal. Heirs of Obet v. Heirs of Wakap, 15 FSM Intrm. 141, 144 (Kos. S. Ct. Tr. 2007). The State Court shall decide the matter by applying the "substantial evidence rule" to any decisions rendered by the Land Court. Kos. S.C. § 11.614(5)(b).

IV. ANALYSIS

Although the Appellant presented four issues in his brief, he addressed and labeled only two. The Court will address the two issues actually expanded on by the Appellant.

1. *The Memorandum of Decision is supported by the records on file, the facts and evidence presented.*

According to the Appellant, Robinson Timothy awarding the whole of parcel 006M10 was not based on the evidence presented during the hearings of the case and the record on file. The presiding judge held that this matter was a boundary dispute over boundaries between parcel 006M10 and a parcel within plat 047M00. The court also found that the appeal seeks Joseph S. Ittu's easy access through 006M10 to his land within Plat 047M00. Appellant argues that both determinations are erroneous. Appellant's contention is that rather than a boundary dispute between parcel 006M10 and plat 047M00, this matter is a boundary dispute within 006M10. Appellant's brief says Salik Ittu, the

father, testified that 006M10 was owned by three of his children. Kiatoa owns two parcels. Joseph owns a part of 006M10. Stephinsin owned a portion of 006M10, but lost it after his father disowned him. Appellant claims that plat 047M00 has not been fully adjudicated and any reference to any parcel within is irrelevant and should not have been considered.

As the Appellee has argued, it is clear from the testimony and evidence presented before the lower court that the boundary in dispute is in Foko, Malem between lands owned by Joseph and Stephinsin in cadastral plat nos. 006M00 and 047M001. In Exhibit G of the appendix of Appellant's brief, Salik Ittu states that he split "Foko" between his three sons. Foko consists of 006M09, 006M10, 006M25, and 047M00. He does not say that he split the subject parcel as the Appellant claims in the text of his brief.

Appellant further contends that this case is a boundary dispute rather than a title dispute and it was wrong for the presiding judge to decide that the rightful ownership of 006M10 is Stephinsin, because it was not supported by facts or evidence. This issue is in fact a title dispute rather than a boundary dispute. What Appellant failed to mention is that the order in 1997 remanding the case back to the lower court specifically directed Joseph's boundary claim to be heard and in order to have the claim on display for the hearing; the lower court gave him the opportunity to stake out his claim on subject land parcel 006M10 at a site visit. Based on the sketch, Joseph's stake out of his boundary claim encompassed the entirety of parcel 006M10 rather than just a portion of it. His claim went beyond boundary dispute to ownership and challenging the current cadastral plats of the Foko lands. The current cadastral mapping of Foko as shown on Cadastral Plat Nos. 006M10 and 047M00 was registered on December 19, 1986. Kiatoa testified that he and Joseph established the boundaries to Salik's Foko land and the subdivisions therein. In the hearing on this matter, Joseph did not object to Kiatoa's testimony that he participated in the establishment of the boundaries. There is no evidence that Joseph disagreed with these boundaries.

The Appellant has also claimed that the court made a predetermination that Stephinsin is the owner of 006M10 arguing that all the Certificates of Title issued were invalidated. The Appellant contends that the decision of the court below in favor of Stephinsin is not supported by facts and evidence in the record. The court in fact did not make a predetermination that Stephinsin is the owner of 006M10. The court based this decision on testimonies and evidence. Joseph's testimonies before the lower court were inconsistent with his prior claims as discussed above. The presiding judge of the lower court stated that in 1997 Joseph claimed a boundary to subject land, but is now claiming the entirety of the parcel which caused the court to find and conclude that the Appellant was uncertain as to what he was claiming. Because of the inconsistencies the lower court questioned his credibility. Marcus v. Suka, 8 FSM Intrm. 300a, 300b-0c (Chk. S. Ct. App. 1998) and FSM v. Walter, 13 FSM Intrm. 264 269 (Chk. 2005).

Due regard must be given to the opportunity of the trial judge to weigh the witnesses' credibility. In considering whether the decision is based upon substantial evidence, the court recognizes that it is primarily the Land Court's task to assess the credibility of the witnesses, the admissibility of evidence and to resolve factual disputes. Marcus, 8 FSM Intrm. at 300b-0c. This court will not set aside findings of fact of the lower court unless clearly erroneous. To reverse the trial division's findings of fact, the appellate division must find that 1) the trial division's findings are not supported by substantial evidence; 2) there was an erroneous conception by the trial division of the applicable law; and 3) the appellate division has a definite and firm conviction that a mistake has been made. Marcus, 8 FSM Intrm. at 300c. None of these factors apply here. This court believes the lower court's findings are supported by substantial evidence and the following factors were not argued by the Appellant nor are applicable to this matter.

The appellant states in his brief that the judge further held that Joseph and Stephinsin introduced a settlement agreement expressing that Stephinsin would permit ingress/egress over his land, subject parcel, for Joseph and his family to be able to enter and return to Joseph's adjacent land that is landlocked amidst the subject parcel. Appellant claims the judge misunderstood the settlement agreement; that there was a proposed settlement, but it was never agreed upon. The parties were to set what portion each owned of the subject parcel, but this never happened.

The settlement is unimportant and only confuses the issues. Even if the settlement made no issue of ingress or egress, the November 1997 order ruled in favor of Joseph's right of way through the subject parcel onto his land behind it, ordering Stephinsin and his family members to refrain from any acts that may interfere with ingress or egress of appellant his family members on the subject parcel.

2. *The Memorandum of Decision is based on substantial evidence and not clearly erroneous*

The Appellant in his second point merely repeats his argument that the dispute is a boundary dispute and not a title dispute. The Appellee again counters that the Appellant is correct that it was a boundary dispute until the Appellant claimed the entire parcel. The issue shall not be further discussed here.

The Appellant claims that it is undisputed that Joseph owns a portion of 006M10. He further claims through witness testimony from James J. James and Livingston J. James that Salik disowned Stephinsin because he was cruel to him and did not want him to own any part of the land and Stephinsin's portion should therefore go to his daughter. This was ruled by the lower court to be inadmissible hearsay because the testimonies came from what they heard from Tulpe J. James, sister of Joseph and Stephinsin, who died long before the hearing. Because it is primarily the Land Court's task to assess the admissibility of evidence and it was reasonably assessed, this Court will accept the lower court's finding that the testimony was inadmissible and therefore there is no substantial evidence that Salik disowned Stephinsin.

The presiding judge said that while Joseph and his family currently resided on plat 047M00 and argued for boundary on Stephinsin's land, he also argued for ingress/egress. The Appellant argues that this is misleading and the facts and evidence of the case don't support these contentions; therefore, the Memorandum of Decision is clearly erroneous and not substantiated by facts and evidence. The Appellant further argues that the standard of review on the question of insufficiency of evidence is whether it is clearly erroneous citing to Senda v. Mid-Pac Constr. Co., 5 Intrm. 277, 280 (App. 1992) and Opet v. Micronesia Inc., 3 FSM Intrm. 159, 165 (App. 1987). He also cites to Kinere v. Kosrae, which includes the same standard of review, but that standard requires that the court must construe the evidence in the light most favorable to the Appellees and not the Appellants. A finding is clearly erroneous when the reviewing court is left with the definite conviction that a mistake had been committed. 6 FSM Intrm. 307, 309 (App. 1993). The merit of these cases are inapplicable to this matter.

Senda v. Mid Pac Constr., Co. is a debtor/creditor case appealed directly to the Appellate Division of the Supreme Court of the FSM on issues not regarding land. The standard of review in that case was as Appellant stated; however, the court found no error because the appeal grounds were without merit. 5 Intrm. 277, 280 (App. 1992).

Opet v. Micronesia Inc. is a money judgment case and not a land dispute matter. The Court affirmed the findings and decision of the lower court. The standard of review in this case is one that is limited to only setting aside findings that are clearly erroneous. This does not apply here. 3 FSM Intrm. 159, 165 (App. 1987).

Kinere v. Kosrae offers the same standard of review, but also requires that the court must construe the evidence in the light most favorable to the Appellee. The court found in favor of the Appellee, confirming the trial court's decision. The issue was also completely different from this matter as it regarded contractual obligation rather than land. Even so, this case seems to be in favor of Stephinsin over Joseph if anything.

This matter is more closely resembled by a Chuuk State Appellate Division case called Marcus v. Suka. This is an appeal from the judgment of the Chuuk Trial Division in an action to determine land ownership. The court here states that findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial judge to weigh the credibility of the witnesses. 8 FSM Intrm. 300a, 300c (Chk. S. Ct. App. 1998). This weighs in favor of giving due regard to the presiding judge in the lower court to weigh the credibility of witnesses and therefore weighs in favor of the Appellee.

The Appellant contends again that the presiding judge made findings and decisions not supported by facts, evidence, or records on file. He repeats again the finding that the dispute is an ownership dispute rather than a boundary dispute as incorrect. The Appellant is correct that the dispute was initially a boundary dispute, but he himself did not support this in the hearing before the lower court by claiming to own all of 006M10.

The Appellant claims that Salik, the father of the three brothers, made a statement that 006M10 is owned by his three sons, but as evidenced in Appellant's own exhibit G, Salik testified that the three sons own his Foko lands which consists of 006M09, 006M10, 006M25, and 047M00. Salik made no reference specifically to 006M10 as stated in Appellant's brief. Therefore the lower court's finding that Joseph owned a portion in plat 0047M00 and Stephinsin owned 06M10, both parts of the Foko lands split between the three sons, is based on substantial evidence in the record and not clearly erroneous.

Finally, the Appellant spends most of his argument repeating the same point: that this matter is a boundary dispute within 006M10 and not a title dispute. Not only did he claim the entirety of 006M10 before the lower court, he surreptitiously asks for the Certificate of Title for parcel 006M10 in the last sentence of the conclusion portion of the same brief in which he calls for a boundary dispute. His argument that he repeats over and over again are disingenuous. He is still claiming ownership before this court as he did with the lower court.

V. CONCLUSION

The Memorandum of Decision; Court order of August 13, 2012 was based on the facts, evidence presented, and record on file. Further, the Memorandum of Decision was based on the grounds upon which the appeal was based and did not misapply the facts and evidence presented at the hearings of this matter. Finally the Memorandum of Decision was based on substantial evidence and is not clearly erroneous.

For the above reasons, judgment is entered in favor of Appellee Stephinsin S. Ittu as to parcel 006M10 and against Appellant Joseph S. Ittu. The Memorandum of Decision; Court Order of the Kosrae Land Court will not be vacated and no further hearings will be held to determine ownership of 006M10. The Certificate of Title for the subject land will not be granted to Joseph S. Ittu, rather reissued to Stephinsin S. Ittu. The decision of the Kosrae Land Court is affirmed.