

of his lost pay minus any mitigating income). George produced no evidence from which the court could reasonably calculate a damages amount. He did not testify or produce documents about his income from his MLSC employment. Since George's termination was not a material breach, even if George were permitted to proffer evidence now about the measure or the amount of his damages it would not help his case since he failed to prove a material breach and that failure is enough to bar any recovery.

George also contends that the court was premature in concluding that there was no material breach because the defendants had not yet put on their case-in-chief. This is false. If a plaintiff does not make out a prima facie case for all the elements of his cause of action during his own case-in-chief, then the defendants do not need to present any further evidence in order to be entitled to a Rule 41(b) dismissal at the close of the plaintiff's evidence. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 46 (Chk. 2010). And, even if a prima facie case is presented but the preponderance of the evidence is such that judgment can only be awarded to the moving defendants, the defendants have no need to put on a case-in-chief. *Id.*

That happened here. The preponderance of the evidence presented during George's case-in-chief required judgment for the defendants. There was no manifest error of law or fact.

IV. CONCLUSION

Accordingly, Sasaki George's motion for a new trial is denied.

\* \* \* \*

FSM SUPREME COURT APPELLATE DIVISION

JOSEPH S. ITTU,	)	APPEAL CASE NO. K2-2014
	)	
Appellant,	)	
	)	
vs.	)	
	)	
STEPHINSIN S. ITTU,	)	
	)	
Appellee.	)	
_____	)	

OPINION

Argued: July 29, 2015  
Decided: September 25, 2015

BEFORE:

Hon. Ready E. Johnny, Acting Chief Justice, FSM Supreme Court  
Hon. Beaulen Carl-Worswick, Associate Justice, FSM Supreme Court  
Hon. Camillo Noket, Specially Assigned Justice, FSM Supreme Court\*

\* Chief Justice, Chuuk State Supreme Court, Weno, Chuuk

APPEARANCES:

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\* \* \* \*

HEADNOTES

Appellate Review – Standard – Civil Cases

Appeals from Kosrae Land Court decisions are decided by applying the "substantial evidence rule" and if the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate. Ittu v. Ittu, 20 FSM R. 178, 184 (App. 2015).

Appellate Review – Standard – Civil Cases – Factual Findings

Case law mirrors Kosrae State Code §11.614(5)(d)'s statutory directive, in that the State Court's review must focus on whether the Land Court decision was predicated on substantial evidence and not contrary to law. The standard of appellate review regarding sufficiency of the evidence, is very limited; only findings that are clearly erroneous can be set aside. Ittu v. Ittu, 20 FSM R. 178, 184 (App. 2015).

Appellate Review – Standard – Civil Cases – Factual Findings

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion and consists of more than a scintilla of evidence but may be less than a preponderance. The Kosrae State Court, when reviewing a Land Court decision, applies the substantial evidence rule and does not determine where, in its view, the preponderance of the evidence lies but must determine if the record contains evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence, and if there was, the State Court must affirm the Land Court decision even if the evidence would not, in its view, amount to a preponderance of the evidence and even if it would have decided it differently. Ittu v. Ittu, 20 FSM R. 178, 184 (App. 2015).

Appellate Review – Standard – Civil Cases – Factual Findings

The standard of review, concerning a trial court's findings of fact, is whether such determination is clearly erroneous. Since a trial court's findings are presumptively correct, when trial court findings are alleged to be clearly erroneous, an appellate court can find reversible error only if: 1) the trial court findings were not supported by substantial evidence in the record; or 2) the trial court's factual finding was the result of an erroneous conception of the applicable law or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the appellate court is left with a definite and firm conviction that a mistake has been made. Ittu v. Ittu, 20 FSM R. 178, 184-85 (App. 2015).

Appellate Review – Standard – Civil Cases – Factual Findings

In order to be clearly erroneous, a decision must strike the appellate court as more than just maybe or probably wrong; it must strike the appellate court as wrong with the force of a five-week-old

unrefrigerated dead fish. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

Appellate Review – Standard – Civil Cases – Factual Findings

An appellate court cannot substitute its judgment for that of the trial court. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

Appellate Review – Standard – Civil Cases – Factual Findings

The standard of review to be utilized by the FSM Supreme Court appellate division, when scrutinizing a Kosrae State Court decision, which in turn reviewed a Land Court decision, is whether the former abused its discretion, to wit: did the State Court fail to properly apply its standard of review in this particular case. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

Appellate Review – Standard – Civil Cases – Factual Findings

A determination that substantial evidence supports the finding does not mean the evidence must be uncontroverted or undisputed. If findings are adequately supported and the evidence reasonably assessed, the findings will not be disturbed on appeal since the reviewing court should not substitute its judgment for the lower court's well-founded findings. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

Appellate Review – Standard – Civil Cases – Factual Findings

In determining whether a factual finding is clearly erroneous, an appellate court must review the evidence in a light most favorable to the appellee and will set aside a finding of fact only when there is no credible evidence in the record to support that finding, in part, because the trial court had the opportunity to observe the demeanor of the witnesses, alongside their respective testimony. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

Appellate Review – Standard – Civil Cases – Factual Findings; Evidence

A party's insistence that the case solely involved a boundary dispute within a parcel is belied by his claim to the parcel *in toto*. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

Evidence – Witnesses

A witness's prior inconsistent statement bears on his credibility. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

Appellate Review – Standard – Civil Cases – Factual Findings; Evidence – Witnesses

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. When the trial judge believed one witness's testimony and not the other's and gave an extensive analysis of the testimony before him that led to the conclusion, there is no reason for the appellate court to disturb the trial court's conclusion since it was supported by credible evidence and the trial judge had the opportunity to observe the witnesses and the manner of testimony and the appellate court did not have that opportunity. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

Appellate Review – Briefs, Record, and Oral Argument

By statute, the Kosrae State Court decides appeals from the Land Court on the parties' briefs and no evidence or testimony will be considered, except the official record, transcripts, and exhibits received at the Land Court hearing. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

Appellate Review – Standard – Civil Cases – Factual Findings

If the appellate court, after having pored over all the evidence in the record, is left with a firm conviction that a mistake has been made, it may then conclude that the trial court's finding was clearly erroneous, but it cannot substitute its judgment for that of the trial court. Ittu v. Ittu, 20 FSM R. 178,

186 (App. 2015).

Appellate Review – Standard – Civil Cases – Factual Findings

When one can safely deduce from the Kosrae State Court's memorandum of decision that it found that substantial evidence was propounded in the Land Court to support that court's decision and as a result, affirmed same, and when the FSM Supreme Court appellate division was afforded the opportunity to review each side's appellate briefs as well as entertain oral argument, it similarly ruled that the Kosrae State Court decision affirming the Land Court's ruling was accurate, given a meticulous review of the entire evidence and resultant absence of a definite/firm conviction that any mistake has been committed. Ittu v. Ittu, 20 FSM R. 178, 186-87 (App. 2015).

Constitutional Law – Due Process – Notice and Hearing

Notice and an opportunity to be heard constitute the core requirements of due process and fundamental fairness. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

Constitutional Law – Due Process – Notice and Hearing

It is a due process violation and constitutional error for a court to base its decision, in whole or in part, on evidence to which a party has not been provided both notice and an opportunity to be heard. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

Constitutional Law – Due Process – Notice and Hearing

A land claimant was dutifully allowed to be heard on his claim, when he actively participated in the proceedings, when during the Land Court hearing, he proceeded to "open the door," in terms of an attempt to transform the complexion of the relief sought from a boundary dispute into a claim encompassing an entire parcel; when it was undisputed between the parties, that he owned land situated on a plat, which lies adjacent to the parcel; and when the Land Court received testimony regarding that adjacent plat in order to determine the exact location of the respective properties. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

Property – Easements; Property – Land Court

The Kosrae Land Court is entitled to determine an easement or right of way, because the land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

Constitutional Law – Due Process – Notice and Hearing

When the right of way determination was part of the 1997 remand and therefore cannot be characterized as a surprise to the appellant; when he was provided ample opportunity to be heard and present evidence, with respect to where the boundary between land he owned and that of the appellee was located; when he took the opportunity to claim a boundary that would award him the entire parcel; and when there was zealous participation on his part during the relevant proceedings, he received both notice and an opportunity to be heard. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

Constitutional Law – Due Process – Notice and Hearing

A party's assertion, sounding in a deprivation of an individual's unassailable right to be afforded both notice and an opportunity to be heard, is refuted by the fact that he actively participated in the subject proceedings. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

\* \* \* \*

COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

This appeal stems from a Decision of the Kosrae State Court Ittu v. Ittu, 19 FSM R. 258 (Kos. S. Tr. 2014), affirming the Land Court's Ruling In re Boundary Dispute at Land Parcel No. 006M10, Memorandum of Decision; Court Order, Kos. Land Ct. No. 11-11 (August 13, 2012), which determined ownership of parcel no. 006M10 in favor of Stephinsin Ittu, without any boundary changes redounding to Joseph Ittu; although the latter did have a right of ingress/egress over parcel no. 006M10, in order to reach his land-locked property in plat no. 047M00.

Appellant seeks this Court's review of the Kosrae State Court's Decision. Oral argument was held in Kosrae on July 29, 2015.

The land in issue was a tract of land, located within the Municipality of Malem, referred to as Foko. This property was owned by the family patriarch, Salik Ittu. At a preliminary hearing conducted before the former Kosrae Land Commission on February 14, 1980, Salik Ittu stated unequivocally that he would tender ownership of his land to his three sons: Joseph, Stephinsin and Kiatoa.

In the wake of both the preliminary and formal hearings, the Kosrae Land Commission, on July 31, 1984, issued Stephinsin Ittu a determination of ownership for parcel no. 006M10. On January 31, 1988, a certificate of title to parcel no. 006M10 was issued to Stephinsin Ittu. On August 4, 1996, Joseph Ittu appealed. On November 24, 1997, the Kosrae State Court found that Joseph Ittu's right to due process had been violated and therefore remanded the case to the Kosrae Land Commission for further evidentiary hearings. The State Court also forbade Stephinsin Ittu from planting crops, developing the subject land or interfering with Joseph's ingress/egress, until such time as the matter was resolved.

Thereafter, the case became dormant, as there was an absence of activity until November 8, 2005, when the Kosrae Land Court issued a certificate of title for parcel no. 006M10 to Stephinsin Ittu. On August 4, 2010, Joseph Ittu appealed this issuance and on November 28, 2011, the Kosrae State Court, once again, remanded the matter to the Kosrae Land Court for evidentiary hearings, since Joseph Ittu had not been afforded notice and an opportunity to be heard before the issuance of this certificate.

Hearings commenced before the Kosrae Land Court on February 16, 2012, and concluded on June 28, 2012. On August 13, 2012, the Kosrae Land Court issued a Memorandum of Decision, In re Boundary Dispute at Land Parcel No. 006M10, (Memorandum of Decision; Court Order (Kos. Land Ct. No. 11-11), which found *inter alia*,

It is undisputed between the parties at bar that Joseph owns land that is adjoined to subject parcel at its mountainside boundary - land that is mostly wetland with a small portion of dry land. Joseph's land is landlocked in the inland portion of Foko. He has no easy access to and from his landlocked land. While Joseph is arguing for a boundary inside subject land, he is also arguing for ingress/egress rights over subject land . . . Joseph testified that his contention is that Stephinsin has encroached upon his adjacent land, [which] is located in adjacent plat 047M00. Joseph continuously asserted that his dispute is based on boundary, not title to land.

*Id.* at 4. "At the site visit ordered in this case[,] for Joseph to establish his boundary claim, he staked

out a boundary that encompasses the entirety of subject land." *Id.* at 7. The Court proceeded to pose a couple of rhetorical questions, *to wit*:

Why is he now claiming the entire parcel? And why would he dispute the same boundaries that he helped establish in the 80s? Joseph's uncertain claims and inconsistent statements cause this Court to question his competency to testify. . . . Upon reviewing the prior records on this matter and hearing Joseph's testimony, this Court questions Joseph's credibility and competency to testify; therefore concludes that Joseph's boundary claim is void.

*Id.* at 7-8.

The Kosrae Land Court determined that Stephinsin Ittu remained the owner of parcel no. 006M10, "Joseph has no right to boundary or ownership of subject land. However Joseph possesses a land use right for passage over Stephinsin's subject land." *Id.* at 9.

Joseph Ittu then appealed to the Kosrae State Court, claiming the Decision was unsupported by substantial evidence and awarding the entirety of parcel no. 006M10 to Stephinsin, while simultaneously determining that the sole issue in the case involved Joseph Ittu's right to ingress/egress over the subject parcel, as opposed to a title dispute, did not comport with the grounds upon which the appeal had been taken and as such, constituted reversible error.

On January 21, 2014, the Kosrae State Court issued a Memorandum of Decision, affirming the Land Court's Ruling. Contingent upon the father, Salik Ittu's statement, that he had divided Foko, which consisted of 006M09, 006M10, 006M25 and 047M00, amongst his three sons, but not in the manner depicted by Joseph Ittu; Kiatoa's testimony; that both Joseph and he had established the boundaries to the Foko land, including the subdivisions therein; coupled with the failure of Joseph Ittu to object to this testimony during the respective hearings on this matter, as well as ascribing due deference to the Kosrae Land Court Judge's ability to observe the demeanor and hence the credibility of all witnesses who had testified, including the inconsistent claims of the Joseph Ittu, the State Court determined that substantial evidence was present to support the Land Court's Decision. *Ittu v. Ittu*, 19 FSM R. 258, 262-64 (Kos. S. Ct. Tr. 2014).

The Kosrae State Court additionally found, that Joseph Ittu had spent the bulk of his argument repeatedly asserting that the matter was a boundary dispute within 006M10 and not a title dispute. Accordingly, the State Court concluded that the Land Court "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 hearing of this matter based on substantial evidence and is not clearly erroneous." *Id.* at 264.

## II. ISSUES ON APPEAL

The Kosrae State Court Decision was then appealed to this Court, as Appellant argues, that the Ruling was:

- 1) not predicated upon substantial evidence and clearly erroneous and
- 2) his due process rights were violated, by the affirmance of the Kosrae Land Court Ruling.

## III. STANDARD OF REVIEW

Kosrae State Code (Kos. S.C.) § 11.614(5)(a) and (b), set forth:

(a) No evidence or testimony shall be considered at the appeal hearing[,] except those matters which constitute the official record, transcripts and exhibits received at the Land Court hearing;

(b) The State Court shall decide the matter by applying the "substantial evidence rule" to any decision rendered by the Land Court.

Furthermore, § 11.614(5)(d) spells out:

If the State Court finds the Land Court decision was not based upon substantial evidence or the Land Court decision was contrary to law, it shall remand the case to the Land Court with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate.

Kun v. Heirs of Abraham, 13 FSM R. 558, 559 (Kos. S. Ct. Tr. 2005) mirrors the statutory directive of Kos. S.C. § 11.614(5)(d), in terms of a review of by a State Court, which must focus on whether the lower Court Decision was predicated on substantial evidence and not contrary to law. George v. George, 17 FSM R. 8, 9-10 (App. 2010) followed this lead and found the standard of review on appeal, regarding sufficiency of the evidence, is very limited; only findings that are clearly erroneous can be set aside.

It is well established that the standard of review to be employed by the Kosrae State Court, in ruminating over Land Court appeals, is to consider whether the lower Court: a) exceeded its constitutional or statutory authority; b) conducted a fair proceeding; c) resolved all legal issues in a proper manner and d) proffered evidence was assessed in a reasonable fashion. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001); Anton v. Heirs of Shrew, 10 FSM R. 162, 164 (Kos S. Ct. Tr. 2001).

The standard of review, regarding Kosrae Land Court Decisions, which pertains to, not only the Kosrae State Court, but the FSM Supreme Court, was crystallized in Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650 (App. 2011).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion and if it consists of more than a scintilla of evidence[,] but may be less than a preponderance. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010); George v. Albert, 17 FSM R. 25, 33 (App. 2010); Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007); Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009). . . .

Thus, when reviewing a Land Court decision, the State Court, applying the substantial evidence rule, does not determine where, in its view, the preponderance of the evidence lies. . . . The State Court thus must determine if the record contained evidence supporting the Land Court decision[,] that was more than a mere scintilla or even more than some evidence. If there was, the State Court must affirm the Land Court decision[,] even if the evidence would not, in the State Court's view, amount to a preponderance of the evidence[,] but would be somewhat less and even if the State Court would have decided it differently.

Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655-56 (App. 2011).

The standard of review, concerning a trial Court's findings of fact, is whether such determination

is clearly erroneous. A trial Court's findings are presumptively correct. George v. Albert, 17 FSM R. 25, 30 (App. 2010); George v. George, 17 FSM R. 8, 10 (App. 2010). When trial Court findings are alleged to be clearly erroneous, an Appellate Court can find reversible error only if: 1) the trial Court findings were not supported by substantial evidence in the record; or 2) the trial Court's factual finding was the result of an erroneous conception of the applicable law or 3) after reviewing the entire body of evidence and construing it in a light most favorable to the appellee, the Appellate Court is left with a definite and firm conviction that a mistake has been made. Albert, 17 FSM R. at 30; George, 17 FSM R. at 9-10. In order to be clearly erroneous, a Decision must strike the Appellate Court as more than just maybe or probably wrong; it must strike the Appellate Court as wrong with the force of a five-week-old unrefrigerated dead fish. Smith v. Nimea, 19 FSM R. 163, 173 (App. 2013).

An Appellate Court cannot substitute its judgment for that of the trial Court. Simina v. Kimeuo, 16 FSM R. 616, 620 (App. 2009). In short, the standard of review to be utilized by the FSM Supreme Court, with respect to scrutinizing a Decision of the Kosrae State Court, which in turn was reviewing a Decision of a Land Court, is whether the former abused its discretion, *to wit*: did the State Court fail to properly apply its standard of review, with respect to the particular case.

#### IV. ANALYSIS

##### 1. *The Decision was predicated upon substantial evidence and not clearly erroneous*

Joseph Ittu's first assignment of error challenges the sufficiency of evidence. The Kosrae State Court's affirmance of the Kosrae Land Court's Ruling found that there was substantial evidence to corroborate the subject Decision. Under the facts of the case at hand, the Memorandum of Decision issued by the Land Court reflected a thorough analysis of a wealth of testimonial evidence, the record on file, as well as scrutinizing maps which had been produced depicting the Foko property and the boundaries, to which Joseph Ittu and his brother Kiatoa, had concurred.

A determination that substantial evidence supports the finding does not mean the evidence must be uncontroverted or undisputed, but if findings are adequately supported and the evidence reasonably assessed, the findings will not be disturbed on appeal. Heirs of Mackwelung v. Heirs of Mongkewa, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009). Furthermore, on appeal, the reviewing Court should not substitute its judgment for well-founded findings of the lower Court. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 628 (Kos. S. Ct. Tr. 2004).

Joseph Ittu additionally claims the Kosrae Land Court misconstrued what was actually in issue. According to Joseph Ittu, the gravamen of the case was an intra-boundary dispute within the confines of parcel 006M10, as opposed to a controversy over the boundary lines; separating parcel no. 006M10 and plat no. 047M00. Hence, Joseph Ittu contends the Decision rendered by the Land Court and affirmed by the State Court, was not supported by the evidence or record in this matter.

In determining whether a factual finding is clearly erroneous, an Appellate Court must review the evidence in a light most favorable to the appellee. The reviewing Court will set aside a finding of fact only where there is no credible evidence in the Record to support that finding, in part, because the trial Court had the opportunity to observe the demeanor of the witnesses, alongside their respective testimony. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 374 (App. 2003).

Joseph Ittu's insistence that the case solely involved a boundary dispute within parcel no. 006M10, is belied by his claim to this parcel *in toto*. This occurred during a Court-ordered site visit to establish his boundary claim, when Joseph Ittu proceeded to stake out a boundary that encompassed the entirety of the subject land. This remarkably different characterization propounded by Joseph Ittu,



prompted the Land Court to find both his credibility and competency suspect. A witness's prior inconsistent statement bears on his credibility. FSM v. Walter, 13 FSM R. 264, 269 (Chk. 2005).

Joseph Ittu also maintained that the respective boundaries denoted within the mappings, that run parallel to the shoreline (which he assisted in establishing and registering in 1986), should actually be running perpendicular to that same shoreline. This depiction of the subject boundary lines was proffered during the Land Court proceeding in 2012 and constituted the first time the accuracy of the schematic drawings which reflected these boundary lines was challenged, notwithstanding the fact that Joseph Ittu, once again, had designated their original placement. The Land Court, after fastidiously reviewing the maps, coupled with the testimonial evidence and record, found that the argument posited by Joseph Ittu in this regard, unpersuasive.

An appellate court cannot say that the trial court's finding was clearly erroneous[,] when it was the result of weighing conflicting evidence. When the trial judge believed one witness' testimony and not the other's and gave an extensive analysis of the testimony before him that led to the conclusion, there is no reason for the appellate court to disturb this conclusion[,] since it was supported by credible evidence and he had the opportunity to observe the witnesses and the manner of testimony and the appellate court did not have that opportunity.

Narruhn v. Aisek, 16 FSM R. 236, 239 (App. 2009).

An additional averment by Joseph Ittu was broached during oral argument, *to wit*: that the family patriarch: Salik Ittu, at one point in time, had intended parcel no. 006M10 to be owned by both Joseph and Stephinsin, however given the latter's allegedly disrespectful behavior toward his father, Salik Ittu disowned this son. The Kosrae State Court noted that this affirmation had been deemed inadmissible hearsay by the lower Court, as the purported testimonial evidence emanated from a sister who had died long before the hearing. Accordingly, the State Court determined it would not disturb this finding, concerning the unsuccessful introduction of testimony and found that there was no substantial evidence to support the alleged disavowal. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

Although Joseph Ittu affixed a couple of hand-written missives, as Exhibits "E" and "F" to the Appendix of the Appellate Brief, purportedly memorializing this intent, separate and apart from the failure to have them translated from Kosraen, this Court finds they were not in evidence. By statute, the Kosrae State Court decides appeals from the Land Court on the parties' briefs and no evidence or testimony will be considered, except the official Record, transcripts and exhibits received at the Land Court Hearing. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009). As previously set forth, the Kosrae State Court noted that the sum and substance of both Exhibits "E" and "F" was ruled inadmissible hearsay by the lower Court and as such, does not constitute evidence within the Record.

After having pored over all the evidence in the Record, if the Appellate Court is left with a firm conviction that a mistake has been made, it may then conclude that the finding of the trial Court was clearly erroneous, but it cannot substitute its judgment for that of the trial Court. Livaie v. Wellbacher, 13 FSM R. 139, 143 (App. 2005). Conversely, this Court determines the Decision issued by the Kosrae State Court contained a sufficiently comprehensive analysis, referencing the factors taken into consideration, in terms of formulating the subject Ruling. One can safely deduce from this Memorandum of Decision, that the Kosrae State Court found the existence of substantial evidence propounded in the Land Court to support the respective Decision and as a result, affirmed same. This Court, was additionally afforded the opportunity to review the Appellate Briefs filed by each side, as

well as entertain oral argument and similarly finds that the Decision rendered by the Kosrae State Court, affirming the Land Court's Ruling was accurate, given a meticulous review of the entire evidence and resultant absence of a definite/firm conviction that any mistake has been committed. Kinere v. Kosrae, 6 FSM R. 307, 309 (App. 1993).

2. *There was no deprivation of due process*

Appellant's remaining averment sounds in an alleged deprivation of his sacrosanct right to due process, as Joseph Ittu claims to have owned a portion of parcel no. 006M10, which was taken away, given the Kosrae Land Court's issuance of the Certificate of Title for the subject land to Stephinsin Ittu. According to Joseph Ittu, the Land Court Decision represents the first time a determination was made, that his land was within plat no. 047M00 *vis a vis* parcel no. 006M10 and consequently, he was neither afforded notice, nor an opportunity to be heard, in order to refute this Ruling.

Notice and an opportunity to be heard constitute the core requirements of due process and fundamental fairness. Siba v. Noah, 15 FSM R. 189, 194-95 (Kos. S. Ct. Tr. 2007). It is a due process violation and constitutional error for a Court to base its Decision, in whole or in part, on the evidence, to which a party has not been provided both notice and an opportunity to be heard. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 573 (App. 2008). Nevertheless, Joseph Ittu was dutifully allowed to be heard, as he actively participated in the proceedings.

During the pendency of the Land Court Hearing, it was Joseph Ittu who proceeded to "open the door," in terms of an attempt to transform the complexion of the relief sought: from a boundary dispute, into a claim encompassing parcel no. 006M10, *in toto*. Furthermore, it was undisputed between the parties, that Joseph Ittu owned land situated on a plat, which lies adjacent to parcel no. 006M10 and the Land Court was on the receiving end of testimony regarding plat no. 047M00, in order to determine the exact location of the respective properties.

In addition, a Kosrae Land Court is entitled to determine an easement or right of way, because the land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014). Finally, the right of way determination was part of the 1997 remand and therefore cannot be characterized as a surprise to Joseph Ittu.

This Court finds that Joseph Ittu was provided ample opportunity to be heard and present evidence, with respect to where in parcel no. 006M10, the boundary between land he owned and that of Stephinsin was located. Instead, Joseph Ittu took the opportunity to claim a boundary that would award him the entirety of parcel no. 006M10. Nonetheless, Joseph Ittu received both notice and an opportunity to be heard; in fact there was zealous participation on his part, during the relevant proceedings.

V. CONCLUSION

The Memorandum of Decision issued by the Kosrae Land Court and affirmed by the Kosrae State Court was predicated on substantial evidence, *to wit*: testimonial evidence from witnesses presented by both parties, a fervent review of the facts and records on file, which included mappings depicting the subject property. The collateral assertion, sounding in a deprivation of an individual's unassailable right to be afforded both notice and an opportunity to be heard, is refuted by the fact that Joseph Ittu actively participated in the subject proceedings.

In light of the reasons cited above, the Judgment of the Kosrae State Court, which in turn

affirmed the Kosrae Land Court Ruling, will not be disturbed and therefore Stephinsin Ittu owns parcel no. 006M10, without any boundary changes in favor of Joseph Ittu, although the Joseph Ittu does have a right of ingress/egress over parcel no. 006M10 to reach his land-locked lot in plat no. 047M00.

\* \* \* \*

FSM SUPREME COURT APPELLATE DIVISION

HEIRS OF ISAIAH BENJAMIN,	)	APPEAL CASE NO. K4-2014
	)	
Appellants,	)	
	)	
vs.	)	
	)	
HEIRS OF CLINTON BENJAMIN,	)	
	)	
Appellees.	)	
_____	)	

OPINION

Argued: July 29, 2015  
Decided: September 25, 2015

BEFORE:

Hon. Ready E. Johnny, Acting Chief Justice, FSM Supreme Court  
Hon. Bealeen Carl-Worswick, Associate Justice, FSM Supreme Court  
Hon. Camillo Noket, Specially Assigned Justice, FSM Supreme Court\*

\* Chief Justice, Chuuk State Supreme Court, Weno, Chuuk

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\* \* \* \*

HEADNOTES

Appellate Review – Standard – Civil Cases – Factual Findings

Appeals from Kosrae Land Court decisions are decided by applying the "substantial evidence rule" and, except for the official record, no evidence or testimony is considered at the appeal hearing. If the Kosrae State Court finds that the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for rehearing the matter in its entirety or such portions of the case as may be appropriate. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 192-93 (App. 2015).