Idid Clan v. Olngebang Lineage, 12 ROP 111 (2005)

IDID CLAN and KAZUO ASANUMA,
Appellants,

v.

OLNGEBANG LINEAGE and KOROR STATE PUBLIC LANDS AUTHORITY,
Appellants/Appellees,

v.

ESTATE OF ISIDORO RUDIMCH,
Appellee.

CIVIL APPEAL NO. 03-28
Civil Action No. 01-12

Supreme Court, Appellate Division
Republic of Palau

Argued: January 17, 2005
Decided: March 28, 2005

⊥112, 113

Counsel for Idid Clan: Carlos Salii/William Ridpath

Counsel for Kazuo Asanuma: Johnson Toribiong

Counsel for Olngebang Lineage: Oldiais Ngiraikelau

Counsel for KSPLA: Valerie Glynn

Counsel for Estate of Rudimch: Moses Uludong, T.C.

BEFORE: LARRY W. MILLER, Associate Justice; J. UDUCH SENIOR, Associate Justice Pro Tem; ALEX R. MUNSON, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable R. BARRIE MICHELSEN, Associate Justice, presiding.

PER CURIAM:

This appeal arises from a return-of-public-lands case referred by the Land Court to the Trial Division pursuant to 35 PNC § 1304(d) and involving multiple parcels of land in Medalaii Hamlet, Koror State. The subject property spans an entire block south of the main road (where

the Post Office, Fuji Restaurant, and the Seventh Day Adventist Office are located), to the area across the street (where the Internet Café, KR Hardware, and the Hanpa Building are located), and continuing north behind that block, all the way to the mangroves. Monumentation of claims is reflected in the Bureau of Lands and Surveys ("BLS") Worksheet No. 99-B-00A2, which actually consists of five overlapping lots.[1] Viewed as a whole, these lots generally comprise "Claim 37," a number assigned during land claim proceedings held in 1955 before the Palau District Land Title Office.

After a lengthy trial, the trial court awarded Olngebang Lineage, represented by Gabriela Ngirmang ("Gabriela"), the entire area of land north of the main road within the limits of the boundaries of the old Claim 37. The court also awarded a small private lot to the Estate of Isidoro Rudimch ("Estate of Rudimch"), but denied all other claims south of the main road. In response, five appeals were filed with this court. Because we do not find any of the trial court's findings to be clearly erroneous, we affirm for reasons more thoroughly expressed below.

BACKGROUND

The background to this case is detailed and often times confusing. In 1954, Gabriel Kesolei (brother of Gabriela) was the sole claimant to a tract of land known as *Kelbid*. Gabriel's claim stated that *Kelbid* was approximately 1,000 tsubos and was forcibly sold to the Japanese Government for 300 yen. On March 7, 1955, the district land title officer issued his Findings of Fact with respect to Claim 37, stating that "[t]he land known as *Kelbid* [sic] containing area of 37.88 acres located in the center of Koror . . . formerly was owned by the Olngbong [sic] Lineage." The officer further concluded: "The land was sold in 1921 or 1922 to the Japanese Government. The claim was not taken to court." On January 8, 1957, a Determination of Ownership was issued, releasing *Kelbid* to the Trust Territory of the ⊥114 Pacific Islands. The determination referenced a sketch # 37, which stated that *Kelbid* was "165,036 sq. ft."

In the immediate action, a total of seven claimants timely filed claims to the various lots contained in BLS Worksheet No. 99-B-00A2. Gabriela claimed Lot 99-B-04-05 (an area slightly larger than that depicted in sketch #37), which includes within it Lots 99-B-04-01, 02, 03, and 04.[2] Bilung Gloria Salii ("Bilung"), on behalf of Idid Clan, or more specifically, the Techeboet Lineage of Idid Clan, claimed Lot 99-B-04-01 (south of the main road). Ibedul Yutaka Gibbons ("Ibedul"), on behalf of Idid Clan, claimed Lot 99-B-04-05 (north of the main road). Kazuo Asanuma ("Asanuma") and the Estate of Isidoro Rudimch ("Estate of Rudimch") claimed portions of Lot 99-B-04-02 (Hanpa lot) and Lot 99-B-04-03 (KR Hardware lot). Koror State Public Lands Authority ("KSPLA") claimed all of the public lands, but conceded that a section of Lot 99-B-04-02 (designated by the trial court as "Lot 99-B-04-02A") was private land.

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[1]BLS Worksheet No. 99-B-00A2 consists of Lots 99-B-04-01, 99-B-04-02, 99-B-04-03, 99-B-04-04, and 99-B-04-05.

[2]The trial court explained the relationship between Claim 37 and BLS Worksheet No. 99-B-00A2 as follows: "Claim 37 is . . . a little smaller than the aggregate area, which has a southern boundary line somewhat below Claim 37, and added areas to the west and northwest of Claim 37. None of these added areas are considered separate parcels, but rather reflect the lack of consensus on boundaries."

The trial in this matter spanned several months, with testimony being given in June of 2002, September of 2002, and January of 2003. In May 2003, the parties filed written closing arguments. Bilung attached to her brief a transcript from an earlier case involving a dispute over the female title "Mirair," but which also purportedly contained testimony by Gabriela concerning the location of *Kelbid*. Gabriela filed a motion to strike the exhibit, which was granted by the court. On June 10, 2003, KSPLA requested that the trial court take judicial notice of the transcript, but the court denied the motion without comment six days later.

The trial court issued its Findings of Fact and Conclusions of Law on June 17, 2003, wherein the court: (1) granted the claims of Olngebang Lineage to Lot 99-B-04-05, but "only to the extent coterminous with 'Claim 37,' and exclusive of Lot 99-B-04-02A" and to Lot 99-B-04-02 "as to that part coterminous with 99-B-04-05"; (2) deemed KSPLA to be the holder of title to the balance of Lot 99-B-04-02, but "exclusive of 99-B-04-02A," and the Estate of Rudimch to be the holder of title to Lot 99-B-04-02A; and (3) denied all other claims.

On June 26, 2003, KSPLA timely moved for a new trial pursuant to Rule 59(a) of the Palau Rules of Civil Procedure on the ground that the transcript attached to Bilung's closing brief was newly discovered evidence. Following a hearing on KSPLA's Motionfor New Trial on August 7, 2003, the trial court denied the motion after finding that the testimony contained an insufficient description of the metes and bounds of *Kelbid*.

On July 17, 2004, KSPLA filed yet another post-trial motion, this time a Motion for Relief from Judgment pursuant to Rule 60(b)(1) and (2), based upon the discovery of a 1966 government document, entitled "Land Gazette," that referred to the lands in Claim 37 and "Kelebid." On February 20, 2004, the trial court again denied KSPLA's motion, stating that the court believed "the arguments and citations presented by Gabriela Ngrimang are correct."
⊥115

STANDARD OF REVIEW

Trial court findings of fact are reviewed under a clearly erroneous standard. ROP R. Civ. P. 52(a); 14 PNC § 604(b). In other words, "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 this Court is left with a definite and firm conviction that a mistake has been made." *Fritz v. Blailes*, 7 ROP Intrm. 190, 192 (1999) (quoting *Umedib v. Smau*, 4 ROP Intrm. 257, 260 (1997)). A lower court's conclusions of law are reviewed *de novo*. *See Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

DISCUSSION

I. Lot 99-B-04-01

To the trial court, the central question with respect to Lot 99-B-04-01 was whether *Kelbid* land included any area south of the main road. In concluding that it did not, the court explained:

> There was general agreement among all witnesses that Koror proper (*Ordomel*) in the pre-colonial period was marked by a stone pathway from the east end called

> *Bdelul a Chang ra Ngerusebluk* (today the intersection of Island Mart/Catholic Mission) to the west end called Bdelul ra tobed ["tobed"]. The stone pathway is located on a map in one of Dr. Kramer's works, and that map appears to agree with all witnesses except Gabriella that "tobed" was at the Hanpa-SDA intersection, not further west. This is important for two reasons. First, Kramer has placed "Blai 22" west of tobed, and the name of the person of that "Blai" is Isoei. The daughter of Isoei later became Sumch of Idid Clan and she is not a member of Olngebang Lineage. Secondly, just below "Blai 22," Kramer's map states "Itiluchel." The map does not indicate boundaries for *Itiluchel*, but its placement is not where it would be expected if the area south of the road was *Kelbid*.

The court further found the fact that no members of Idid Clan filed claims to the property in 1955 to be "compelling evidence" that the area was not considered to be part of *Itiluchel* and added: "[t]hey certainly were aware of the procedures for filing claims and did file claims for various other parcels in Koror." Consequently, the court, in the end, concluded that both Idid Clan and Olngebang Lineage had failed to carry their burden of proof regarding ownership of Lot 99-B-04-01, because both parties had sufficiently pointed to gaps in the evidentiary proof of the other.

A. Appellant Bilung Gloria Salii on behalf of Idid Clan

Bilung first argues that the trial court erred when it found the fact that Idid Clan did not file a claim to the area in 1954 to be "compelling evidence" that the area was not considered part of *Itiluchel*. She asserts that the court's conclusion that Idid Clan did not file a claim is "unwarranted as it assumes facts not in evidence." Bilung postulates that "it is most probable that the area was claimed as part of the larger area [she] testified to as ⊥116 *Itiluchel*" or that someone might have inappropriately removed Idid Clan's claim from the file. Bilung also argues that after the trial court rejected Gabriela's claim for the area south of the main road, it was *required* to accept Gabriela's admission that *Itiluchel* shares a common boundary with the south end of *Kelbid*. She contends that, by implication, if Olngebang was not the owner of the land south of the main road at the time of the acquisition by the Japanese, it is an "inescapable conclusion" that the area is *Itiluchel*.

We reject both arguments. First, it is, at best, incongruous for Bilung to charge the trial court with engaging in speculation by itself inviting this Court to speculate about lost (or removed) documents for which there is no evidence in the record. In any event, we do not view the trial court's reasoning as inappropriate. While it is clear that a claim for public land should not be denied merely because it was not claimed during the 1950's, we cannot say that, in a closely contested case like this one, the failure of Idid to claim the land – where Idid's representatives sought the return of other lands, but not this one – was wholly immaterial. As for the trial court's finding that the lack of a claim was "compelling evidence," the weight of evidence is a matter to be argued to the factfinder at trial, not a ground for reversal on appeal. *See, e.g., Schwartz v. Capital Liquidators, Inc.,* 984 F.2d 53, 54 (2d Cir. 1993). Furthermore, her second argument essentially asks us to reject all of Gabriela's testimony except for the small part about the boundary shared by *Kelbid* and *Itiluchel*. It is not this Court's duty, however, to

reweigh the evidence, test the credibility of witnesses, or draw inferences from the evidence. *ROP v. Ngiraboi*, 2 ROP Intrm. 257, 259 (1991); *Ngeribongel v. Gulibert*, 8 ROP Intrm. 68, 70 (1999). Moreover, even accepting Gabriela's statement that the two properties border each other as fact, we find that fact does not help satisfy Bilung's burden to prove, by a preponderance of the evidence, that the lot south of the main road was part of *Itiluchel*. Accordingly, we find the trial court was not clearly erroneous in denying Bilung's claim to Lot 99-B-04-01.

B. Appellant Gabriela Ngirmang on behalf of Olngebang Lineage

Gabriela's sole argument is that the trial court was clearly erroneous when it found her testimony in regards to the location of *tobed* was at odds with that of all the other witnesses. She insists that the trial court relied on this mistaken finding in denying her claim to Lot 99-B-04-01. From this allegation, Gabriela asks us to reverse the trial court and direct a judgment to be entered in favor of the Olngebang Lineage.

KSPLA does not dispute that Gabriela described *tobed* as being, more or less, in the same location as the other witnesses. KSPLA, however, argues that the error was not material to the court's determination, and further, that Gabriela misunderstands the trial court's explanation of its reasoning. We agree. Contrary to Gabriela's assertion, the trial court did not deny her claim simply because it found her testimony to be inconsistent with the other witnesses. Rather, the court denied her claim because it concluded, based upon the testimony and the depictions represented on Kramer's map, that *tobed* was at the Hanpa-SDA intersection. Indeed, when the trial court wrote, "this is important for two reasons," the court was not commenting on Gabriela's placement of *tobed*. The court was commenting on the significance of the location of the intersection. Thus, we concur with KSPLA that had the trial court found Gabriela's testimony to be ⊥117 consistent with the other witnesses on this issue, the outcome would have been the same: "Blai 22" would have still been west of *tobed*, *Itiluchel* would still have been south of "Blai 22," and most importantly, *Itiluchel* would not be where it would be expected "*if the area south of the road was Kelbid*." (emphasis added). Accordingly, because the trial court's characterization of Gabriela's testimony was not essential its determination with respect to Lot 99-B-04-01, it is immaterial whether it is clearly erroneous. *See Arbedul v. Romei Lineage*, 8 ROP Intrm. 30, 32 (1999).

II. Lot 99-B-04-05

Although the trial court found the Ibedul's testimony to be credible, it nonetheless denied his claim to Lot 99-B-04-05 because no claim to the property was filed by his predecessor in 1955. The trial court, however, found that Gabriela's "testimony was both credible and supported by the prior actions, and inactions, of Koror land owners in the 1950's." After declaring that "the claim of the Olngebang Lineage today cannot be more expansive than Kesolei's claim in 1955," the court allowed the Lineage's current claim to the part of Lot 99-B-04-05 within Claim 37.

A. Appellant Koror State Public Lands Authority

KSPLA contends that the trial court erred when it awarded "Olngebang Lineage an area of land in 2003 that is three times bigger than what Olngebang Lineage claimed in 1954." In addition, KSPLA argues that the court erred in denying both its Motion for New Trial and Motion for Relief from Judgment.

1. Size and Location of *Kelbid*

KSPLA does not dispute that the Olngebang Linage owned a parcel of land called *Kelbid*, nor does KSPLA dispute that it was taken by forcible sale. KSPLA, however, strenuously contests the trial court's finding in regards to the size and location of the property. In addition to arguing that Gabriel's testimony concerning the size and location of *Kelbid* "was not 'credible' because it was uncorroborated and indeed rebutted by every witness that testified on the issue," KSPLA notes that in Gabriel Kesolei's Statement of Claims filed on July 13, 1954, he stated that *Kelbid* was approximately "1,000 tsubos" in size. Furthermore, when the Palau District Land Title Office issued a Notice of Hearing, announcing a hearing to be held concerning the ownership of "the tract containing an area of 1,000 Tsubos more or less . . . known as *Kelbid* as shown in red on the attached sketch," the said sketch indicted a relatively small tract of land one block north of the main road. Therefore, KSPLA maintains that the land title officer's "Hearing" determination, which found that *Kelbid* was *37.88* acres, was "obviously a mistake." As KSPLA surmises, "[t]he document, if believed, would require a finding that *Kelbid* is 46 times the size of what Gabriel Kesolei claimed it to be."

At the outset, we agree with KSPLA that when the land title officer wrote 37.88 acres, it must have been a typographical error. Although KSPLA makes no effort to explain why the error might have occurred, we find there is a reasonable explanation. Sketch #37 describes *Kelbid* as constituting 165,036 square feet. We take judicial notice that 165,036 square feet converts to exactly *3.788* acres.

Having concluded that the Land Title Officer actually found that *Kelbid* was 3.788 acres, as opposed to 37.88 acres, we turn to the conflicting evidence in regards to the size ⊥118 and location of the property. KSPLA persuasively points out that *Kelbid*, for no proffered reason, expanded in size from Gabriel Kesolei's original claim filed in 1954. Furthermore, the consistent testimony of the other witnesses raises doubts as to Gabriela's contention that "everyone calls it *Kelbid*." On the other hand, it is undeniable that the official documents accompanying the *adjudication* of Kesolei's claim support Gabriela's claim to a greater portion of land than 1,000 tsubos. As we just concluded above, the land title officer, in his finding of fact, determined that *Kelbid* consisted of 3.788 acres. The Determination of Ownership issued January 8, 1957, described *Kelbid* as follows:

> Bounded on the north by Ocean
> Bounded on the east by Andres & Road
> Bounded on the south by Adventist & Radio Station
> Bounded on the west by Community Center
> As shown on sketch #37 and Land Office map #K2

Sketch #37, which resembles the boundaries demarcated for Lot 99-B-04-05, stated that *Kelbid* was 165,036 square feet (or 3.788 acres). These documents, coupled with Gabriela's "credible" testimony as found by the trial court, certainly constitute sufficient evidence. We have expressly said that "[w]here the record supports two permissible views of the evidence, the factfinder's choice cannot be clearly erroneous." *Ramon v. Silang*, 8 ROP Intrm. 124, 125 (2000); *see also Sumang v. Baiei*, 8 ROP Intrm. 186, 187 (2000); *Ngetchab Lineage v. Klewei*, 8 ROP Intrm. 116, 117 (2000); *Olngebang Lineage v. ROP*, 8 ROP Intrm. 197, 199 (2000). Accordingly, because we find the trial court's determination was supported by the record, we conclude that it was not clearly erroneous.

2. Post-Trial Motions for New Trial and Relief from Judgment

Following the close of evidence and oral arguments, the parties were given the opportunity by the trial court to submit written closing briefs. Bilung attached to her Written Closing Argument an exhibit marked "Exhibit 3," which was a "Transcript of Evidence" from *Ngirmang v. Orrukem*, Civil Action No. 276-90. The "Transcript of Evidence" contained testimony by Gabriela, made under oath, pertaining to *Kelbid*. According to KSPLA, Gabriela testified that "*Kelbid* is a house" and is land adjacent to *Ongelibel* (an area of land north of the secondary road, stretching all the way to the mangroves) on which the taro patch of Ngiraikelau is located.

KSPLA contends that describing *Kelbid* as a house and a taro patch bordering *Ongelibel* is vastly different that describing it as a large area of land straddling the main road in central Koror. KSPLA therefore argues that the trial court erred as a matter of law in denying its Motion for New Trial pursuant to Rule 59(a) of the Palau Rules of Civil Procedure when it found that the "Transcript of Evidence" did not contain a sufficient description of the metes and bounds of *Kelbid*.[3] KSPLA maintains that it is not its ⊥119 burden to prove the boundaries of the property, but rather it is Gabriela's because this is a return-of-public-lands case.

KSPLA also argues that the trial court erred in denying its Motion for Relief from Judgment pursuant to Rule 60(b)(1) and (2).[4] Approximately six months after the trial court issued its Findings of Fact and Conclusions of Law, KSPLA moved for relief following its

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[3]ROP R. Civ. P. 59(a) reads:

> A new trial may be granted to all or any of the parties on all or part of the issues for manifest errors of law apparent in the record or for newly discovered evidence. On a motion for new trial, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

[4]ROP R. Civ. P 60(b)(1) and (2) read:

> On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: mistake, inadvertence, surprise, or excusable neglect [or] newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) . . . .

discovery of an official 1966 document entitled "Trust Territory of the Pacific Islands, Palau District, Land Gazette" ("Land Gazette"). The Land Gazette referred to only 2,009 square meters of land as being *Kelbid*. KSPLA contends: "While the KSPLA cannot establish where *Kelbid* is, the Land Gazette can certainly help establish where it is not."[5]

Before turning to the merits of KSPLA's post-trial motions, we note that KSPLA asks this Court, pursuant to Rule 60(b)(1), to set aside the judgment on the basis of "mistake, inadvertence, surprise, or excusable neglect" due to the discovery of the Land Gazette months after the trial. It is clear, however, that KSPLA's motion is really asking for relief based on the Land Gazette being "newly discovered evidence." We therefore find that any relief sought pursuant to Rule 60(b) must be through subsection (b)(2). *See State Street Bank and Trust Co. v. Limitada*, 374 F.3d 158 (2d Cir. 2004) (quoting *Kalamazoo River Study Group v. Rockwell Int'l Corp*., 355 F.3d 574, 588 (6th Cir. 2004)) ("Where a claim 'sounds very much like a claim regarding newly discovered evidence,' the claim is 'controlled by 60(b)(2)' and should not be labeled as if brought under a different provision of Rule 60(b).").

Denials of both Rule 59(a) and Rule 60(b) motions are reviewed for abuse of discretion. *See Irruul v. Gerbing*, 8 ROP Intrm. 153, 154 (2000); *Secharmidal v. Tmekei*, 6 ROP Intrm. 83, 85 (1997).⊥120 Furthermore, the standard for granting relief on the basis of newly discovered evidence pursuant to both rules is the same. 12 *James Wm. Moore et al.*, *Moore's Federal Practice and Procedure* § 59.13[2][d][i] (3d ed. 1999) (discussing relationship between Fed. R. Civ. P. 60(b) and Fed. R. Civ. P. 59). In order to prevail on a motion for new trial based on newly discovered evidence, the moving party must demonstrate that the new evidence: (1) could not have been discovered before trial through the exercise of reasonable diligence; (2) is material and not merely cumulative; and (3) would probably have changed the outcome of the trial. *Compass Technology, Inc. v. Tseng Labs., Inc*., 71 F.3d 1125, 1130 (3d Cir. 1995). A party seeking a new trial "bears a heavy burden" since relief "should be granted only where extraordinary justifying circumstances are present." *Coregis Ins. Co. v. Baratta & Fenerty, Ltd*., 264 F.3d 302, 309 (3d Cir. 2001).

After reviewing the events as outlined in its brief, we have no trouble finding that KSPLA satisfies the first prong of the aforementioned test, and we will assume, for the purposes of argument, that it satisfies the second, *i.e*, that the evidence is not cumulative. We disagree, however, that the introduction of either or both of the documents would probably have led to a different result at trial. As we found above, the trial court's determination was sufficiently supported by the evidence in the record. Indeed, the record already contained evidence that cast doubt on the size and location of *Kelbid* as claimed by Gabriela, but the trial court, in its

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[5]According to KSPLA, the Land Gazette

> "contained a list of short-term leases that had been issued throughout Palau between approximately 1956 and 1966. The list of leases contains, inter alia, the names of the lessees, the names of the land being leased, and the size of the land begin leased. It is the only known document to contain an index of public lands by their names."

KSPLA, however, concedes that "it was impossible to confirm the exact location of Kelbid because the Kelbid lease files were the only ones missing from the old lease files maintained at the PPLA."

discretion, found such evidence unpersuasive. Thus, we take notice of the fact that neither the "Transcript of Evidence" nor the Land Gazette confirm the exact size and location of *Kelbid*. Furthermore, we find KSPLA mistakenly relies on the fact that claimants bear the burden of proof in return-of-public-lands cases. In awarding Gabriela all of Lot 99-B-04-5 within Claim 37, the trial court obviously found that she had made the legally sufficient showing. Simply because KSPLA attempts to present impeachment evidence through post-trial motions does not mean Gabriela's burden is somehow resurrected. After trial, it was KSPLA's burden to show that the "Transcript of Evidence" and the Land Gazette were "of substantial probative value," and therefore, we do not find the trial court abused its discretion in denying KSPLA's motions.

B. Appellant Ibedul Yutaka Gibbons on behalf of Idid Clan

Idedul asserts one argument on appeal. Like KSPLA, he argues that Gabriela's claim is defective because *Kelbid* is actually a more modest parcel of land. Ibedul, in turn, contends that because her claim is excessive, "then Idid's 'credible' evidence," as found by the trial court, "should be deemed adequate to support a finding of ownership in its favor." However, as we just stated, the trial court's finding in regards to the size and location of *Kelbid* was supported by the evidence in the record. Therefore, we find his argument has no merit as well.

III. Lot 99-B-04-02

Multiple parties laid claims to various overlapping parts of Lot 99-B-04-02. Asanuma claimed the entirety of the Hanpa lot, but did not claim the KR Hardware lot. Gabriela claimed the entirety of the KR Hardware lot and the westernmost third of the Hanpa lot. The Estate of Rudimch claimed only a portion of the Hanpa lot, designated by the trial court as Lot 99-B-04-02A (referred to as "Lot 2A"), which was conceded by KSPLA to be private land.
⊥121

The trial court described the backdrop to Lot 99-B-04-02 as follows:

> There were proceedings in the 1950's that set the stage concerning these lots. In 1958, the Trial Division of the Trust Territory High Court adjudicated a parcel of land called *Emaimelei* and concluded it was private property owned by Ngodrii Santos. *See Santos v. Trust Territory of the Pacific Islands*, Civil Action No. 76 (September 4, 1958) (reversing Palau District Land Title Officer's determination in favor of Trust Territory). The sketch accompanying Civil Action No. 76 reflected the extent of the underlying claim – Claim 20 ("the Claim 20 map"). The Claim 20 Map indicated that *Emaimelei* was comprised of two lots that straddled the road to the school. The lot north of the road is not at issue in this litigation. The lot south of the road was depicted as covering the same area as the Hanpa lot. Moreover, the metes and bounds description of *Emaimelei* stated that it was bounded on the north and west by the government land and on the south and east roads, thus indicating a location coextensive with the Hanpa lot. However, the area of the southern lot of *Emaimelei* makes clear that Santos only received ownership of a parcel similar to Lot 2A.

> Sometime between the court's decision in 1958 and December 30, 1960, Santos transferred the property to Benjamin Mersai. Mersai subsequently deeded the land to Asao Asanuma for one hundred shares of W.C.T.C. stock. The deed from Mersai to Asao Asanuma recited the size of the parcel to be 4072.5 square feet. Asao Asanuma died May 14, 1961 and devised the property to his son Kazuo. Kazuo Asanuma held the property until he conveyed it in the 1970's by way of a warranty deed to the late Isidoro Rudimch in exchange for $5,500. That deed also recited the area to be 4072.5 square feet. The deed was not recorded until May 11, 1998.

In light of these facts, the court concluded that there had been "consideration for, delivery of, and recordation (late though it might have been) of the warranty deed." The court held that the deed was effective to transfer ownership of Lot 2A, and therefore, the Estate of Rudimch was the successor in interest.

Asanuma, however, asserted two theories by which he contended he had regained ownership of Lot 2A. He first argued that the deed was rescinded, after his mother discovered the conveyance and objected. Asanuma's mother and brother purportedly went to Rudimch's mother and canceled the deed by returning the consideration. The trial court found that there had not been an effective rescission, stating: "No written record of this alleged rescission exists and there is no other indication in the record that Rudimch received the ⊥122 consideration allegedly returned. Most importantly, Rudimch retained possession of the deed as evidenced by its subsequent recordation." The court also found Asanuma's claim of adverse possession to be unavailing. The court found that "[a]ll of the testimony concerning Asanuma's use of the land relates to the period before the conveyance to Rudimch or involves the occupation of the part of the parcel outside of Lot 2A. Furthermore, any encroachment on Lot 2A by the recently constructed Hanpa lot is within the statutory period." Therefore, because he could not prove each element of adverse possession, the court concluded that Asanuma's claim to Lot 2A failed.

The court next addressed Asanuma's claim to the remainder of the Hanpa lot:

> Asanuma's claim is apparently based on the 1961 deed between Mersai and his father. Although an argument may be made as to precisely how much land was originally adjudicated in favor of Santos in 1958, it is clear from both the Mersai-to-Asao Asanuma deed and the Asanuma-to-Rudimch deed that the 1961 conveyance did not consist of all of that is now the entire Hanpa lot. First, the area recited in both deeds, 4072.5 square feet, is more comparable to the area of Lot 2A than to the Hanpa lot. Second, both deeds contain an identical metes and bounds description; they recite that the parcel was bounded to the north and east by roads and bounded to the south and west by government land. Had the parcel consisted of what is now the Hanpa lot, it would have been bounded on the south by the road. Finally, the Mersai-to-Asao Asanuma deed expressly recites that there is government land to the south and was under lease to Asao Asanuma. The evidence therefore suggests that Asanuma's presence on the land south of Lot 2A is based upon a government lease, and not by right of ownership. The Court finds

that the Hanpa lot, excluding Lot 2A, is government land and accordingly, as between Asanuma and KSPLA, KSPLA prevails.

Lastly, the trial court turned to the competing claims between KSPLA and Olngebang Lineage for the KR Hardware lot and the remainder of the Hanpa lot. The court announced: "For reasons stated above, the Court finds that the Olngebang [Lineage] claim for the entirety of the KR Hardware lot and the Hanpa lot to the extent it was claimed, should be granted, with the exclusion of any overlap with Lot 2A." The court then awarded the remainder of the Hanpa lot to KSPLA.

Asanuma was the only party who appealed the trial court's determination with respect to Lot 99-B-04-02.

A. Asanuma's claim to Lot 99-B-04-02

Asanuma argues that the trial court erred in limiting his claim to the lot described in the Mersai/Asanuma deed, and insists that Santos was actually awarded all of Lot 99-B-⊥123 04-02 in 1958.[6] In support of his argument, he points to evidence suggesting that the southern lot was much larger then that found by the trial court. For instance, Mersai/Asanuma deed makes reference to "just part of [*Emaimelei*]," which Asanuma interprets to mean that "the 4,072.5 square feet of land conveyed in the deed . . . was not the entirety of the southern portion of *Emaimelei* . . . ." In addition, both the land title officer's Finding of Fact with respect to Claim 20 and the Memorandum of Pre-Trial Conference and Order in relation to Civil Action No. 76 expressly state that *Emaimelei* contained "18,000 square feet." Even further, the Determination of Ownership with respect to Claim 20 states that *Emaimelei* is "[b]ounded on the south by Road," and the Claim 20 map depicts the southern lot as encompassing the present-day Hanpa lot (which is bounded on the south by the main road).

We find we are once again faced with an obvious conflict in the evidence pertaining to the size of the property in dispute. The trial court acknowledged the divergence when it stated that "an argument may be made as to precisely how much land was originally adjudicated in favor of Santos in 1958." Nevertheless, the trial court, faced with this difficult decision, determined in the end that Santos had not been awarded all of Lot 99-B-04-2. After reviewing the record, we find this conclusion, at the very least, constitutes a "permissible view of the evidence." *Ngerukebid Lineage v. KSPLA*, 9 ROP 180, 182-83 (2002). Indeed, the record reveals the following:

1. Santos's "Statement of Claims" for Claim 20, filed February 23, 1954, states that *Emaimelei* constitutes "7,966 square feet";

2. The Claim 20 map depicts two rectangular parcels of land totaling "7,966 square feet";

3. *Santos v. Trust Territory of the Pacific Islands*, Civil Action No. 76 (September 4,

[6]Asanuma claims that his father, after purchasing Lot 2A, bought the remaining portion of *Emaimelei* before he died.

1958) at page 2, describes *Emaimelei* as "land containing approximately 8,000 square feet";

4. The two rectangular lots depicted in the Worksheet used in the present proceeding add up to a total of 8,174 square feet;

5. The linear measurements of the southern rectangular lot as depicted in the Claim 20 map consisted of approximately 4,723.5 square feet or 438.8 square meters; and

6. Lot 2A as surveyed contained 4,592.9 square feet or 426.7 meters.

Accordingly, we hold that the trial court did not err in finding that the southern portion of *Emaimelei* awarded to Santos in 1958 consisted of only Lot 2A.

B. Asanuma's claim to Lot 2A

On appeal, Asanuma reasserts his arguments that his family regained ownership of Lot 2A through either rescission of the deed to Rudimch or by adverse possession. Nevertheless, we find these contentions are still unpersuasive. Asanuma contends that "the testimony was unrebutted" that his mother and brother returned the purchase ⊥124 price for Lot 2A and thereby canceled the deed. The trial court, however, is not required to accept uncontradicted testimony as true. *Ngerungor Clan v. Mochouang Clan*, 8 ROP Intrm. 94, 96-97 (1999). Furthermore, although Asanuma contends the testimony was corroborated by the fact that the deed was not recorded until 28 years later, we do not find it was an error to give greater weight to the nonexistence of a written record evidencing either the return of the money or the rescission of the deed. As for his claim of adverse possession, Asanuma does not even address the trial court's finding that "any encroachment on Lot 2A by the recently constructed Hanpa Building is within the statutory period." Therefore, we will not review this claim any further.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is AFFIRMED in all respects.