Drairoro v. Yangilmau, 14 ROP 18 (2006)

HEIRS OF DRAIRORO, HEIRS OF BALTAZAR, and MARIANO CARLOS,
Appellants,

v.

FLORENTINE YANGILMAU, KUTERBIS KUTERMALEI, FLAVIAN CARLOS, and ELIAS SABINO,
Appellees.

CIVIL APPEAL NO. 04-023
Civil Action No. 354-93

Supreme Court, Appellate Division
Republic of Palau

Argued: September 11, 2006
Decided: November 28, 2006

Counsel for Heirs of Drairoro and Heirs of Baltazar: Raynold B. Oilouch

Counsel for Mariano Carlos: Pro se

Counsel for Yangilmau, Kutermalei, F. Carlos, and Sabino: Yukiwo P. Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; LOURDES F. MATERNE, Associate Justice.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

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PER CURIAM:

I. BACKGROUND

This is the third substantive appeal in this case, which was initially filed in 1993.[1] Although our prior opinions in this case, *Dalton v. Heirs of Drairoro*, 7 ROP Intrm. 162 (1999) and *Heirs of Drairoro v. Yangilmau*, 9 ROP 131 (2002), provide a detailed factual background, some pertinent facts are worth repeating. This action was originally filed to quiet title to the lands at issue in this appeal, as well as some other parcels of land in or around Echang Village.

[1]The three parties in this appeal are as follows: (1) the Heirs of Drairoro and Baltazar ("the Heirs"); (2) Mariano Carlos; and (3) Florentine Yangilmau, Kuterbis Kutermalei, Elias Sabino, and Flavian Carlos ("the Yangilmau group"). We have attempted to distinguish between the group called "the Heirs" and "heirs" as a legal term by the use of capitalization.

Drairoro v. Yangilmau, 14 ROP 18 (2006)

After holding an initial trial, the Trial Division awarded Margarita Dalton all of the land as an heir of Jesus Borja. The Heirs (including Mariano Carlos) and Florentine Yangilmau appealed. This Court reversed the trial court's determination in part, concluding that on remand, the Trial Division should resolve the competing claims to title for Tochi Daicho lots 1588, 1589, and 1590 among the descendants of the original Southwest islanders who originally settled Echang.

On the first remand, Justice Jeffrey Beattie merely concluded that Yangilmau and the unspecified "heirs of Drairoro" own the land as co-owners. The Trial Division failed to address whether Yangilmau was an heir who could be entitled to inherit a portion of all of the land claimed by the Heirs, rather than the smaller portion that he claimed individually. The Heirs appealed, arguing first that the trial court should have determined and identified the heirs of Drairoro and Baltazar so that a certificate of title can be issued, and second, that the court mistakenly granted Yangilmau all of the land in Lot No. 1590 below the Echang Road because Yangilmau had never claimed all of that property. The Court agreed that the Trial Division should have determined the precise identity of the heirs. Because it was remanding the case, it declined to address the appellant's second argument, and it permitted the Trial Division to determine whether and to what extent Yangilmau owned any contested land.

On the second remand, Justice Kathleen M. Salii presided over the case, after Justice Beattie's resignation. Because the record before the court failed to support a finding that a determination had been made that it was Drairoro (and only Drairoro) who owned the land, the Trial Division opened the proceedings and required any parties claiming to be heirs to file their claims. It also heard testimony on the ownership of the lots.

After hearing the evidence, the Trial Division made several findings. First, it determined what properties were originally owned by Drairoro and Baltazar, and what property was conveyed to Mariano Carlos in partial payment of legal fees. It found that Baltazar owned the western portions of Lot 1588 and 1589 as well as the western portion of Lot 1590 below Echang Road. The Heirs of Baltazar gave Carlos two parcels of land comprising roughly 8,766 square meters, bounded by markers M10-M13 and M2-M6, M8, M15-M18, and M20. Drairoro owned the remainder of the land at issue.

The Trial Division next discussed who fell into the category of Heirs of Drairoro. ⊥20 The overarching controversy focused on the impact of adoption on inheritance rights. Yangilmau and Kuterbis Kutermalei were children of Martul, and Elias Sabino and Flavian Carlos were children of Quadalupi Carlos. Each of the four, however, were adopted out of their original families. No one challenges that their biological siblings who were not adopted out are entitled to a share of Drairoro's properties, but their adopted status was raised in determining whether they were entitled to a share. The Trial Division heard expert testimony based on the custom of Pulo Ana from both sides, and ultimately, it determined that none of the testimony met the clear and convincing standard for establishing custom. It, therefore, looked to 21 PNC § 409, which permits an adopted child the same inheritance rights as those of his or her biological siblings. Based on this statute, it permitted the Yangilmau group to be heirs with the other Heirs of Drairoro. In addition, the Trial Division rejected Yangilmau's and Mariano Carlos's arguments that they should be entitled to the exclusive title of certain land.

Each of the three parties has appealed the Trial Division's decision. The Heirs' and Carlos's arguments center mainly around the issue of who is entitled to inherit land owned by Drairoro. The Yangilmau group's only issue on appeal is whether Baltazar owned the western portion of Tochi Daicho Lot Nos. 1588, 1589, and 1590.

II. ANALYSIS

A.

Although the parties spent a significant amount of their briefs and argument on the topic of adoption, the first logical step is to resolve the legal authority for intestacy distribution. In order to resolve the issue of who is entitled to inherit land owned by Drairoro, we begin by applying the rule of law at the time of death in order to determine distribution of a decedent's estate. *Delbirt v. Ruluked*, 10 ROP 41, 42 (2003); *Ngirakebou v. Mechucheu*, 8 ROP Intrm. 34, 35 n.3 (1999). It is not unusual for this determination to be made many years after the decedent dies, as in the present case. *Bandarii v. Ngerusebek*, 11 ROP 83, 86 n.6 (2004). Palau's first intestacy statute was enacted in 1959, which is eight years after the death of Drairoro. Palau Dist. Code § 801. Although this Court has upheld land determinations based on customary law in place prior to the enactment of Section 801, the Appellate Division has never formulated a rule of intestate succession of real property belonging to an individual who died before 1959 and whose lands were not disposed of in customary ways. *Tangadik v. Bitlaol*, 8 ROP Intrm. 204, 205 (2000). Nevertheless, because the parties seemingly agree on who is entitled to distribute the land after Drairoro's death, this is another case in which we need not resolve that specific issue in order to resolve the case.

Both the Heirs and Carlos argue that Quadalupi had the customary power to distribute the land as Drairoro's closest living female relative. Their arguments are supported by the testimony of Sumor and Oruetamor Albis, who stated that the eldest female relative of a decedent has the power to distribute the estate property. Florentine Yangilmau and Kuterbis Kutermalei do not appear to disagree. In their response briefs submitted to this Court and to the Trial Division, the Yangilmau group cites testimony by Quadalupi, in which she makes it clear that Yangilmau and Kuterbis were a part of the family inheriting lands from Drairoro. Moreover, their testimony does not appear to challenge this fact. Kuterbis ⊥21 emphasized that decision-making power would be instilled in the family member who provided the most services for the decedent in his or her lifetime, and he conceded out of respect for his older sister that Quadalupi had the power to distribute Martul's land. Yangilmau's testimony was inconsistent, and accordingly, not helpful. At one point he testified that the decisions would be made by the eldest son, but then he later stated that the decision would be made by the eldest female relative of the decedent.

The question then is what was Quadalupi's decision regarding distribution of the land. Quadalupi's testimony at trial indicates her intention to permit Yangilmau to inherit part of Drairoro's land. Quadalupi testified that she considered all of the children of Martul to be heirs of Drairoro. When asked if Yangilmau could own some of the property exclusively, Quadalupi said, "No, it's not for him alone; it's for all of us." The inclusive nature of Quadalupi's response

indicates that Yangilmau would share in the inheritance. She also testified affirmatively to the questions that "the family that you say owns Tochi Daicho Lot 1590 also includes Florentine Yangilmau, is that correct . . .?" and "is Yangilmau a[n] heir of Drairoro?" Testimony by Oruetamor Albis supports this finding as he also responded affirmatively to the question of whether Yangilmau is an heir of Drairoro. In addition, Quadalupi indicated that Kuterbis was also entitled to inherit land.

The Heirs and Carlos contend that Quadalupi met with Sumor Albis, Oruetamor Albis, and Mariano Carlos to distribute Drairoro's and Baltazar's interests in the lands after the first appellate decision was issued. Oruetamor testified that Yangilmau was adopted out and Kuterbis Kutermalei "dumped the case," and thus, Quadalupi excluded them from the inheritance.[2]

Despite this contradictory evidence, we rely on the testimony of Quadalupi herself, over statements of others commenting on what she had decided. A witness's personal statements in court are more reliable than other people's interpretations of the statements made by another. This is one of the underlying rationales for the exclusion of hearsay evidence. *See generally*, Michael H. Graham, Federal Practice and Procedure § 6321 *et seq.* (2000). Accordingly, the Court finds that Florentine Yangilmau and Kuterbis Kutermalei are entitled to inherit Drairoro's property as the children of Martul.[3]

The positions of Flavian Carlos and Elias Sabino differ from Yangilmau and Kuterbis. They are sons of Quadalupi, and unlike their co-parties, they have not presented any legal theory on how the land would be distributed to them based on inheritance. The Heirs and Carlos contend that Quadalupi's share of the land was ⊥22 distributed in accordance with 39 PNC § 102(d), which is now codified as 25 PNC § 301(b), and which was in effect at the time of Quadalupi's death.

The applicability of § 301 has been debated in several cases. *See, e.g.*, *Bandarii v. Ngerusebek Lineage*, 11 ROP 83, 85-88 (2004); *Ysaol v. Eriu Family*, 9 ROP 146, 148-152 (2002). Regardless of either of the two interpretations of § 301 espoused in these cases, the outcome is the same. The Chief Justice's opinions in *Ysaol* and *Bandarii* would preclude the applicability of that statute in this case because Quadalupi did not die without issue. Justice Miller's interpretation would not preclude reliance on the statute, but would require an analysis of whether "both requirements [of the statute] are met: a lineage related to the deceased though birth or adoption . . . assumed active responsibility for the deceased prior to his death." *Delbirt*, 10 ROP at 43. Here, although the Heirs and Carlos put in evidence a document purporting to show that Quadalupi's interest was distributed by her lineage (or precisely, that it had authorized Carlos to do so), they offered no evidence that the signatories of the document "were actively

[2]Sumor also testified that Quadalupi left Yangilmau and Kuterbis off the list because they had "gone to a different household." An objection to Sumor's testimony was sustained on the basis of hearsay and the Trial Division did not take the testimony as coming in for the truth of the matter asserted.

[3]By happenstance, after oral argument and during a status conference in a different case, a member of the appellate panel learned from counsel that Kuterbis Kutermalei had passed away in April of this year, and that Sumor Albis had died nearly a year before that. Whether or not there is any question about the survivability of their claims, it behooves counsel to keep the court informed of such matters and make appropriate motions for substitution of parties.

and primarily involved in caring for [Quadalupi] prior to [her] death." *Id.* Accordingly, where, as here, neither party has produced any evidence which established the lineage that was actively and primarily responsible for Quadalupi prior to her death, the Court "must turn to customary law to determine the proper heir of the deceased." *Id.*

No party has presented consistent arguments or enough customary evidence on this specific issue to resolve this matter based on custom. With respect to Drairoro, the Heirs and Carlos have successfully argued that custom dictated that the eldest close female relative would make the land distributions. When Quadalupi passed away, her sister Magdalena would have been in that position, but no evidence was presented regarding Magdalena's thoughts on these issues. Kuterbis testified that the decision making power would go to the family member who provided the most services to the decedent, but no conclusive evidence was presented on who that might have been. Yangilmau's testimony was inconclusive with respect to custom, and moreover, the Yangilmau group's legal briefs do not make any attempt to identify the rule of law determining who is entitled to inherit.

With the absence of conclusive evidence on how to resolve this subject based on custom, we look to the arguments presented by the Heirs and Carlos for excluding Flavian and Sabino from the inheritance. Mariano Carlos claimed Quadalupi's lineage granted him the power to oversee the lands at issue, and he testified that he excluded Flavian and Sabino from the inheritance because they did not help to prosecute the case with Quadalupi and others and because they were adopted out of the family. Both of these arguments presume that Carlos had the power to distribute the land, but we have already found that the lineage did not meet the requirements of 25 PNC § 301(b) and therefore had no power to delegate decision making power to Carlos. Because Carlos failed to establish the legal basis for his power, the argument that he could exclude Flavian and Sabino must be denied on appeal.

B.

The Heirs and Carlos presented evidence at the trial and spend a significant portion of their appellate briefs on the issue of whether Yangilmau's, Flavian's, and Sabino's adoptive status precludes them from inheriting Drairoro's and Baltazar's properties. They accurately argue that the Trial Division ⊥23 erroneously relied on 21 PNC § 409, which provides that "[w]here there is no recognized custom as to rights of inheritance of adopted children, a child adopted *under this chapter* shall inherit from his adopting parents the same as if he were the natural child of the adopting parents . . . ." 21 PNC § 409 (emphasis added). On its face, this statute only applies to modern, legal adoptions, as opposed to customary adoptions. *See Arbedul v. Mokoll*, 4 ROP Intrm. 189, 195 n.4 (1994). Nevertheless, that error is insufficient to reverse the trial court in this case, because we find that the entire debate on adoptive status was largely immaterial.

If there were a baseline rule that, under custom or statute, a decedent's land goes to his "children," then it would make sense to ask whether "children" includes those who have been adopted out. But no party, and certainly not the Heirs or Carlos, has presented us with such a rule. Instead, as noted above they claimed that Quadalupi had the power to distribute Drairoro's land as she saw fit, and with respect to the land that she inherited, that her lineage could decide

who should receive her interest in the land. Therefore, the pertinent question is not whether adopted children may inherit, but simply whether any binding decision was made to include or exclude them.[4]

As discussed above, the record supports a finding that Quadalupi considered Yangilmau to be an heir of Drairoro, regardless of his adoptive status. In fact, she specifically testified that "Yes," Yangilmau is an heir of Drairoro. As for Flavian and Sabino,[5] although Carlos testified that he had decided to exclude them, we have already held that he was not properly empowered pursuant to 25 PNC § 301 to do so. The arguments made with respect to adoption cannot alter either of these outcomes. Therefore, their argument on adoption must fail.

C.

The Heirs and Carlos claim that Kuterbis stopped going to group meetings regarding the case, was replaced as a representative of the group, refused to pay for legal expenses incurred in this action, retained another counsel in 1999 to pursue a claim, and testified in 2004 that he decided not to be involved in the 1996 trial. They argue that these actions constitute waiver of his claim to the property, and therefore, the Trial Division erred in finding that Kuterbis is entitled to a share of Drairoro's land.

A waiver is an intentional relinquishment or abandonment of a known right. *Mesubed v. ROP*, 10 ROP 62, 65 (2003). Here, the very fact that Kuterbis retained new counsel belies any notion that he intended to abandon his claim. Although the Heirs and Carlos make much of the fact that he quit their group, Kuterbis had no legal obligation to pursue his claim with the other Heirs. Thus, even if he joined and left this group, Kuterbis did not waive his right to make a later claim so long as he complied with all applicable procedural requirements. Here it appears undisputed that as late as July ⊥24 2002, before the second trial, Justice Salii issued a general notice to potential claimants, to which Kuterbis responded. Accordingly, Kuterbis's actions do not constitute waiver.

D.

The Heirs claim that Kutermalei, Flavian, and Sabino waived their right to claim Drairoro's land below Echang Road, and thus, the trial court was clearly erroneous in determining that they were entitled to inherit some of this land. To support their argument, the Heirs focus on testimony by Kutermalei, Flavian, and Sabino, in which they state that they do not object to the Court awarding the entire parcel of land to Yangilmau. The Heirs' argument, however, does not follow from the testimony. Each of these three testified that they were making claims on the land, but that because Yangilmau had been using the land for many years, they would not object to the court awarding the entire parcel of land to Yangilmau. This does not

[4]To be sure, Carlos testified (and ascribed to Quadalupi the same intent as to Yangilmau) that part of the reason he had excluded Flavian and Sabino was because of their adopted status. But that is different from saying that they were legally barred from receiving a share of the land.

[5]It is curious that four other children of Quadalupi—Basilius, Valentine, Dolores, and Saturnina—were adopted to others, but were still included in the list of heirs submitted by the Heirs.

constitute a waiver of their claims.

E.

In the trial court's initial judgment, Flavian and Sabino were not included as heirs of Baltazar. They then filed a motion to amend the judgment to include them as heirs through their biological mother Quadalupi which the trial court granted. The Heirs and Carlos argue that Flavian and Sabino should not have been determined to be heirs of Baltazar, based on an alleged waiver by Flavian and Sabino's attorney, Yukiwo Dengokl.[6] The Heirs point to statements by Dengokl in response to the Heirs' renewed motion for summary judgment on that specific topic in which he stated that his clients had no dispute as to the twenty-nine individuals identified as heirs of Baltazar listed on Heirs' Exhibit B, and specifically that they "will not dispute [that the 29 people listed on the exhibit are the heirs of Baltazar] . . . so long as there is property . . . within any of these three lots." In response, Flavian and Sabino contend that they were not claiming to be heirs of Baltazar, but they were claiming land as heirs of Quadalupi. Since the court awarded Baltazar's land in part to the children of Quadalupi, they argue they were entitled to receive an interest in that land.

As stated above, a waiver is an intentional relinquishment or abandonment of a known right. *Mesubed*, 10 ROP at 65. Dengokl stated to Justice Salii, "Just to make sure the record is clear, Your Honor, we're saying those 29 individuals [listed on the Heirs' Exhibit B], there's no dispute that, if the Court were to find that there is a portion of any of these lots here in dispute before the Court was owned by Baltazar, then those 29 would, would be the heirs as to that part of the land." Flavian and Sabino were not among the list of 29 individuals. They could have made the alternative claim that they were entitled to inherit Baltazar's land, but they did not, choosing instead to rely on their argument that Baltazar owned no land within the area *sub judice*.[7] This constitutes an intentional ⊥25 relinquishment of a known right.[8]

Flavian and Sabino's argument that they were not claiming to be heirs of Baltazar but should be considered heirs of Quadalupi misses the mark. Dengokl made his statements in the trial before Justice Salii, which was held several years after Quadalupi passed away. The list of 29 individuals specifically included 11 children of Quadalupi, and it was obvious that the list of heirs of Baltazar included generations once removed from the first generation of heirs. Accordingly, we find that Flavian and Sabino waived their interests in the land of Baltazar at

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[6]We address below the Yangilmau group's contention that Baltazar did not own any of the disputed land in the first place.

[7]Indeed, when pressed on this issue by the trial court, their counsel made clear that they only intended to preserve their claim to lands owned by Baltazar lying outside these lots.

[8]Our decision in *Temaungil v. Ulechong*, 9 ROP 31 (2001), is squarely on point. There, we held that having once asserted that their brother had no interest in the land in dispute, and denying that they were claiming any interest that belonged to him individually, the appellees there had waived any claim to that interest on appeal. *See id.* at 34-35. The appellees there were trying to assert a new claim on appeal; likewise, a claim waived during trial cannot be resuscitated by a motion to amend the judgment. *See Dalton v. Borja*, 8 ROP Intrm. 302, 304 (2001) (Rule 59(e) "does not provide a vehicle for a party to undo its own procedural failures, and it certainly does not allow a party to . . . advance arguments that could and should have been presented to the [trial] court prior to judgment").

issue in this case, and the trial court erred in including them as heirs to his land.

F.

Carlos argues that Yangilmau disclaimed certain parcels of land in the first trial that the Trial Division ultimately awarded parts of to him when it found him to be an heir. The testimony quoted by Carlos, however, is in relation to Yangilmau's original claim that he was entitled to some of the land as the exclusive owner. His claim to inherit a share of the land as an heir is an alternative claim. Because the Trial Division found that Yangilmau did not have exclusive title to the land, Carlos's argument fails.

G.

Carlos presents a host of arguments related to the generational proximity some family members were to Drairoro and Baltazar. Specifically, he claims that he should have been labeled an heir of Drairoro because he was adopted by Drairoro; that Yangilmau and Teresa Tirso should not have been declared heirs of Drairoro, but instead heirs of Martul; and that Faustino Tirso should have been declared an heir of Teresa, instead of an heir of Drairoro.

It appears as though these are merely issues of semantics. "An heir is nothing more than the legal successor to the interest of the prior owner of a piece of property." *Heirs of Drairoro v. Yangilmau*, 9 ROP 131, 133 n.2. Thus, if someone is declared to obtain an interest in an estate, that person is an heir of the decedent even if there are other heirs that are closer to the decedent in the family tree. To give an example, the parties agree that Evelyn Tirso inherits some interest in Drairoro's land based on her status as the daughter of Faustino, who was the son of Teresa, who was the daughter of Martul. Thus, Evelyn is an heir of Drairoro.

Having said that, we recognize that there may be some confusion generated by the trial court's judgment, which lists the 29 living persons found to have a share in Drairoro's land through their immediate forbears, but then also lists certain of them as ⊥26 heirs of Drairoro specifically. To ensure as much clarity as possible, we make the following observations. First, *all* of the 29 individuals listed in paragraph 12 of the Second Amended Judgment as children of Martul, Teresa Tirso, Faustino Tirso, and Quadalupi Carlos, respectively, are heirs of Drairoro through the family lines shown in that paragraph, with the further understanding that Quadalupi and Teresa were children of Martul, and that Faustino was a child of Teresa. Conversely, *none* of these persons deserves special mention as an heir of Drairoro specifically.

With respect to Mariano Carlos, we conclude that he, too, is an heir of Drairoro through his mother, but we reject his claim that he deserves to be singled out as the purported adoptive son of Drairoro, and we admit to some puzzlement why he continues to press this argument, since he argues with equal vehemence that the trial court erred in stating that he sought thereby to be declared Drairoro's sole heir. In any event, for the reasons stated above, having accepted his and the Heirs' argument that Quadalupi had the power to distribute the lands of Drairoro, we find that Carlos' adoptive status – like that of the members of the Yangilmau group – is

ultimately immaterial to his status as an heir of Drairoro.[9]

H.

Carlos raises three purported errors in reference to the portions of Lot 1590 that were conveyed to him as part payment for his legal fees. Originally, this was included in the judgment, but after it was issued, the Yangilmau group moved to strike that portion of the judgment on the ground that it was not a part of the mandate on remand. First, he argues that the Trial Division erroneously described the portions of Lot 1590 that was conveyed to him. He seeks to correct the description to "lot 1590, Cadastral Lot 027 A 13, and Tochi Daicho lot 1590, Cadastral Lot No. 027 A 14." Second, he claims that the lower court erroneously stated that the two parcels carved out of Lot 1590 and conveyed to him were to be excluded in the award of Baltazar's properties. In fact, one of the properties was carved out of land from Drairoro. Third, Carlos contends that it was error to amend the judgment to exclude the two parcels from the judgment.

The Yangilmau group is technically correct that the second appellate remand mandated the court determine the precise identity of the heirs, but in taking the record as a whole, it would be inappropriate to limit the lower court on that ground. On the first remand, the court was to determine who among the parties owned the land in dispute. This mandate clearly contemplates determining what parcels out of the land at issue Carlos received at any point in time. Moreover, the interests of finality of litigation counsels in favor of resolving this matter now, instead of waiting for further, repetitive litigation. We, therefore, reverse the lower court's decision to amend its judgment, and ⊥27 we hold that Carlos owns parts of Tochi Daicho lot 1590, Cadastral Lot 027 A 13, and Tochi Daicho lot 1590, Cadastral Lot No. 027 A 14 pursuant to the Deed of Conveyance dated December 3, 1999.

I.

The Yangilmau group argues that the Trial Division erred in finding that Baltazar owned the western portion of land below the Echang Road. They claim that the credible and most reliable evidence supports a finding that this land was owned by Drairoro. Specifically, the Yangilmau group points to testimony by Quadalupi, Yangilmau, and Oruetamor Albis prior to remand and Kutermalei after remand, which suggests that Drairoro owned this land. Then, in the second trial before Justice Salii, Oruetamor claimed that Baltazar owned the lots. Sumor Albis and Mariano Carlos presented similar testimony on the second trial.

When this argument was raised below, the trial court stated: "There was testimony that a rivulet divided the properties of Drairoro and Baltazar, and that Baltazar owned the western portions of Lots 1588 and 1589, as well as the western portion of Lot 1590 below Echang road.

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[9]At oral argument, Carlos expressed concern that the finding that he was not adopted by Drairoro would be used to his detriment in subsequent cases. A finding, however, is only given preclusive effect if it was necessary to the judgment. "If issues are determined but the judgment is not dependent upon the determinations, relitigation of those issues in a subsequent action between the parties is not precluded." *Saka v. Rubasch*, 11 ROP 137, 140 (2004) (quoting Restatement (Second) of Judgments § 27 cmt. h).

That this rivulet formed a natural boundary between the two properties makes sense and the Court finds such testimony to be credible." It further found that "[w]hile there is certainly conflicting evidence, presented at both the first trial as was as the trial on remand, the credible evidence supports a finding that Baltazar owned portions of Lots 1588, 1589 and 1590."

Factual findings are reviewed using the clearly erroneous standard. *Temaungil v. Ulechong*, 9 ROP 31, 33 (2001). Under this standard, the findings of the lower court will only be set aside if they lack evidentiary support in the record such that no reasonable trier of fact could have reached that conclusion. *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002). In reviewing the factual findings, this Court will not substitute its own judgment of the credibility of witnesses or the weight of the evidence. *Ngeribongel v Gulibert*, 8 ROP Intrm. 68, 70 (1999); *Tmol v. Ngirchoimei*, 5 ROP Intrm. 264, 265 (1996). Where there are two permissible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous. *Labarda v. ROP*, 11 ROP 43, 46 (2004).

The Court agrees that there was conflicting evidence presented below. For example, Quadalupi testified before Justice Beattie that Drairoro owned Lot Nos. 1588 and 1589, but in the same context she stated that she was not sure about numbers but if the attorney showed her a map, she could point out the lots. In addition, when asked if Drairoro owned Lot No. 1589, she replied, "I think this is signed over to Balthazar." (Beattie 2 Tr. at 13). On top of this confusion, the sketch entered as Drairoro Exhibit F, for which Quadalupi provided the foundation, indicates that Baltazar was claiming part of the lots, including area below the Echang road.

In reviewing the record as a whole, there is evidentiary support in the record such that a reasonable trier of fact could have reached the conclusion that Baltazar owned the western portion of land below the Echang Road. Accordingly, we affirm the trial court's judgment on this issue.

IV. CONCLUSION

For the reasons above, we affirm the Trial Division's judgment with two limited ⊥28 exceptions. We hold that Flavian and Sabino waived their claims to any land of Baltazar and, therefore, should not have been listed as heirs of his property. In addition, we reinstate the judgment that Mariano Carlos is the exclusive owner of parts of Tochi Daicho lot 1590, Cadastral Lot 027 A 13, and Tochi Daicho lot 1590, Cadastral Lot No. 027 A 14 pursuant to the Deed of Conveyance dated December 3, 1999.