IDID CLAN,
Appellant,

v.

JOAN DEMEI, YUKIWO ETPISON, EBUKEL NGIRALMAU, ESTATE OF NGIRCHORACHEL ILILAU, and REMUSEI TABELUAL,
Appellees.

CIVIL APPEAL NO. 09-013
LC/B 07-213, 07-214, 07-216, 07-217, 07-218

Supreme Court, Appellate Division
Republic of Palau

Decided: July 12, 2010[1]

[1] **Appeal and Error:** Standard of Review

The proper location and identity of certain Worksheet Lots are findings of fact, which the Court reviews for clear error.

[2] **Land Commission/LCHO/Land Court:** Claims

A party has a duty to claim and monument all of the disputed lots that it believes it owns. The failure to do so will render a party unable to pursue a claim to those lots.

[3] **Civil Procedure:** Law of the Case Doctrine

The law-of-the-case doctrine does not apply when the decision invoked was in a different case.

[4] **Civil Procedure:** Res Judicata

Res judicata precludes redetermination of a factual issue that is actually litigated and determined by a valid and final judgment, and which is essential to that judgment. If issues are previously determined, but the judgment is not dependent upon the determinations, relitigation of those issues in a subsequent action between the parties is not precluded.

[5] **Descent and Distribution:** Applicable Law

In determining who shall inherit a decedent's property, the court must apply the statute in effect at the time of the decedent's death.

[6] **Appeal and Error:** Basis of Appeal

Appellate courts generally should not address legal issues that the parties have not developed through proper briefing. It is not the Court's duty to interpret broad, sweeping arguments, to conduct legal research for the parties, or to scour the record for any facts to which the argument might apply.

[7] **Property:** Adverse Possession; **Property:** Statute of Limitations

Adverse possession and the twenty-year statute of limitation are two sides of the same coin and are generally considered together, usually with the same party relying on both doctrines. A claimant typically will obtain the same result whether claiming under a twenty-

[1] The panel finds this case appropriate for submission without oral argument. *See* ROP R. App. P. 34(a).

year adverse possession claim or invoking the twenty-year statute of limitations.

[8] **Property:** Adverse Possession

The burden is on the party asserting adverse possession to establish its elements.

[9] **Property:** Adverse Possession

To prove adverse possession, one must show that the possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for twenty years. The doctrine does not apply where any one of these elements is lacking, and the party asserting adverse possession must affirmatively prove its claim by clear and convincing evidence.

[10] **Property:** Adverse Possession

Possession of property is notorious when an adverse claim of ownership is evidenced by such conduct as is sufficient to put a person of ordinary prudence on notice of the fact that the land in question is held by the claimant as his or her own. The mere possession of land does not in and of itself show the possession is notorious or hostile; rather, there must be some additional act or circumstance indicating that the use is hostile to the owner's rights, and the true owner must know of an occupancy that is in opposition to his or her rights and inconsistent with legal title.

[11] **Courts:** Judicial Bias

Parties to any legal proceeding are entitled to a fair, impartial arbiter. This goal is protected by both the Palau Constitution, which requires due process of law, and various laws and professional standards. In Palau, judges are required to adhere to the standards of the Code of Judicial Conduct of the American Bar Association except as otherwise provided by law or rule.

[12] **Courts:** Judicial Bias

Under the ABA Model Code, a judge should not preside in a case in which he is interested, biased, or prejudiced, and this includes circumstances where the judge's impartiality might reasonably be questioned based on all the circumstances, even where no actual bias exists.

[13] **Courts**: Judicial Bias

A judge typically should recuse himself if the judge knows that the judge, the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person is a person who has more than a de minimis interest that could be substantially affected by the proceeding.

[14] **Courts:** Judicial Bias

The burden of establishing judicial bias or the appearance thereof is on the party alleging it, and it is a heavy one. Whether to grant a motion for disqualification is within the trial court's sound judicial discretion. Such a motion must be well-founded and contain facts germane to the judge's undue bias, prejudice, or sympathy or set forth circumstances such that a reasonable person would question whether the judge could rule impartially.

[15] **Courts**: Judicial Bias

A party must move for recusal at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim. This requirement is one of substance and not merely one of form. An untimely objection or motion to disqualify a judge waives the grounds for recusal, and this is particularly true when the party seeking disqualification waits until after it receives an adverse ruling to raise the issue.

Counsel for Appellant: Carlos Salii

Counsel for Appellees: Pro se

BEFORE: LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice; HONORA E. REMENGESAU RUDIMCH, Associate Justice, Pro Tem.

Appeal from the Land Court, the Honorable C. QUAY POLLOI, Senior Judge, presiding.

PER CURIAM:

At dispute in this case are five separate plots of land in Ngerbodel, Koror State. The Land Court determined ownership of each tract, and, for a variety of reasons, Idid Clan was not awarded any of the disputed property. Idid Clan now appeals and makes several arguments. After considering each of them—despite a noticeable lack of legal support—we find no error below.

BACKGROUND

This case began as a proceeding under the Land Claims Reorganization Act of 1996 to establish ownership of five worksheet lots in Ngerbodel. *See* 35 PNC § 1301 *et seq.* Multiple claimants purported to own the five disputed properties; the claims began as separate cases, but the court consolidated them into a single proceeding.[2] Each worksheet lot allegedly corresponds to a lot (or portion thereof) registered in the Tochi Daicho. The Land Court held a hearing on all claims on April 29 and October 6, 2008.

Appellant Idid Clan, represented by Bilung Gloria Salii, filed a claim to Tochi Daicho Lots 278, 279, and 280. These lots are registered as the individual property of a woman named Kisaol, who was Bilung Salii's aunt and an Idid Clan member. Kisaol's mother, Dirrechong, was the sister of Bilung Salii's mother, Maria. Kisaol moved to Japan sometime in the 1950s, where she passed away in 1969. During her time in Palau, Kisaol adopted Appellee Remusei Tabelual.

According to the worksheet maps produced at the hearing, Tochi Daicho Lots 278, 279, and 280 correspond with the largest disputed worksheet lot, No. 05B004-002. Idid Clan, however, claimed that these three Tochi Daicho lots encompassed other nearby worksheet lots as well, namely Lots 181-072, 181-073, and 181-074. On the worksheets, which were the result of monumentations by the parties, Worksheet Lot 181-072 was listed as T.D. Lot 286, and Worksheet Lots 181-073 and 181-074 were listed as parts of T.D. Lot 275.

[2] The five lots (and corresponding case numbers) are Lot No. 181-073 (Case No. LC/B 07-213), Lot No. 181-074 (Case No. LC/B 07-214), Lot No. 181-072 (Case No. LC/B 07-216), Lot No. 181-064A (Case No. LC/B 07-217), and Lot No. 05B004-002 (Case No. LC/B 07-218).

In support of its claim to T.D. Lots 278, 279, and 280, Idid Clan argued that the lands have always belonged to the Clan, even though they are registered in the Tochi Daicho as Kisaol's individual property. Idid Clan produced testimony that the lots were used by various Clan members over the years since Kisaol's departure for Japan, under the management and permission of Clan leaders. The competing claimants to T.D. Lots 278, 279, and 280 are two individuals who seek ownership through adoption—David Sokok Olkeriil[3] and Remusei Tabelual.

T.D. Lot 275 is registered in the Tochi Daicho as property of Mengesebuuch. Idid Clan has no relationship to Mengesebuuch and made no formal claim to Lot 275. Mengesebuuch is the mother of Metiek, who is the mother of Appellee Ebukel Ngiralmau. The other Tochi Daicho lot in dispute is Lot 286, which is registered as belonging to the chief title Iked, with Mengesbuuch's son Etpisong as administrator. Ebukel Ngiralmau claimed this land as niece of Etpisong.

After the hearing, the Land Court determined the ownership of each lot. The Land Court awarded Worksheet Lot 181-073, which was purportedly part of T.D. Lot 275, to Appellee Joan Demei. The court found that Idid Clan, despite claiming that this worksheet lot was part of T.D. Lots 278, 279, and 280, was not a valid claimant. Idid Clan never filed a formal claim for T.D. Lot 275, Worksheet Lot 181-073, or otherwise became a party in Case No. LC/B 07-213. Rather, the boundaries of Idid Clan's original claim, filed in 1973, align closely with only Worksheet Lot 05B004-002. The Land Court found that Idid Clan should have filed a claim if it wished to assert ownership to this additional land, particularly in light of the boundaries depicted on the worksheet map used at the hearing. Despite this finding, the Land Court also addressed the merits of Idid Clan's claim and determined that it was not the proper owner of Worksheet Lot 181-073. It based this conclusion on the same 1973 claim, finding that Idid Clan's claim consisted of only the land depicted as Worksheet Lot 05B004-002. The Land Court noted that Bilung Salii had assistance when she first monumented the Clan's claim; that she attended more recent monumentations and did not redraw the boundaries; and that the only inference is that one of the sketches is inaccurate. The Land Court concluded that it was reasonable to treat the initial boundaries—which coincide with those on the modern-day worksheet—as the correct depiction of T.D. Lots 278, 279, and 280, rather than Idid Clan's more recent assertions that these historical documents are incorrect. Thus, Idid Clan was not a proper claimant for Worksheet Lot 181-073.

The only remaining claimant was Joan Demei, who claimed as a successor in interest to a former claimant, Enita Etpison Tucheliaur. Enita testified that she was given this land at the eldecheduch for Mengesebuuch's son, Etpisong, and that she used the property over the years. The Land Court credited this testimony, which was corroborated by other witnesses. Enita had

[3] David Sokok Olkeriil sought ownership through his father, Sokok, who was Kisaol's half-brother. David claimed that Kisaol adopted Sokok before her departure; that Sokok therefore inherited the property upon Kisaol's death; and that David inherited Sokok's interest upon his death.

previously transferred her interest to Joan Demei, and the Land Court found in Demei's favor.

Moving to Worksheet Lot 181-074, the Court found against Idid Clan for the same reasons—the land was not part of T.D. Lots 278, 279, and 280, and the Clan did not file a claim for this property. The remaining claimant was Etpisong's son, Yukiwo Etpison, to whom the Land Court awarded the lot.

The Land Court awarded Worksheet Lot 181-072 to Ebukel Ngiralmau after finding against Idid Clan for the same reasons. Etpisong was Ngiralmau's uncle, and she claimed that he left this property to her. The Land Court then awarded Worksheet Lot 181-064A to the estate of Ngirchorachel Ililau. Unlike the prior lots, Idid Clan did not claim that this property was part of T.D. Lots 278, 279, and 280; rather, it simply claimed that it owned the property. Again, however, Idid Clan did not file a claim, so the Land Court disregarded its arguments.

Finally, the Land Court reached the dispute in which Idid Clan was a proper claimant—for Worksheet Lot 05B004-002, which corresponded to T.D. Lots 278, 279, and 280. The Land Court first addressed Idid Clan's assertion that it has always owned this land, which conflicts with the Tochi Daicho listing under Kisaol's individual name. The Land Court properly stated that the Tochi Daicho listing is presumed to be accurate, and a party must establish its inaccuracy by clear and convincing evidence. The Land Court cited some evidence in Idid Clan's favor, but it ultimately found it to be insufficient to negate the Tochi Daicho listing. The court noted that the Japanese knew how to distinguish between clan-owned and individual property, evidenced primarily by Kisaol's registration in other parts of the Tochi Daicho as the administrator of Idid Clan property. But for the lot in dispute, she was named as the individual owner. Finding no clear and convincing evidence to rebut the Tochi Daicho presumption, the Land Court held that Kisaol had owned T.D. Lots 278, 279, and 280 individually. As a result, the Land Court addressed the claims of the two remaining claimants. The court rejected David Sokok Olkeriil's claim that Kisaol adopted his father, Sokok. Turning to Remusei Tabelual, no one disputed that Kisaol adopted her, and under the statute applicable upon Kisaol's death in 1969, the property passed to Tabelual.

Idid Clan, having failed on all of its claims, now appeals.

ANALYSIS

Idid Clan raises four issues on appeal. First, it asserts that the Land Court erred by concluding that Worksheet Lots 181-073 and 181-074 are part of T.D. Lot 275, rather than part of T.D. Lots 278, 279, and 280. Second, it claims that the Land Court violated 25 PNC § 301 by awarding T.D. Lots 278, 279, and 280 to Remusei Tabelual, rather than Idid Clan. Third, it argues that it owns the disputed property based on adverse possession and the statute of limitations. Fourth, it claims that the Land Court judge had a disqualifying conflict of interest such that the entire proceeding below should be invalidated. We address—and reject—each of Idid Clan's arguments.

I. Boundaries of T.D. Lots 278, 279, and 280

[1] Idid Clan's first argument on appeal is unclear. The title of this section of its brief states that "the Land Court abused its discretion when it rejected testimony regarding Idid claim." (Appellant's Br. at 6.) But its discussion attacks only the Land Court's inclusion of Idid Clan as a claimant to T.D. Lot 275, calling this a "red herring" and suggesting that the Land Court purposely mislabeled Idid Clan's claims due to its alleged conflict of interest. (Appellant's Br. at 4.) Idid Clan states that it was never a claimant to Lot 275, but rather it alleged that the lots it actually claimed—T.D. Lots 278, 279, and 280—covered property which the Land Court erroneously found to be part of T.D. Lot 275. The Clan also invokes the law-of-the-case doctrine, arguing that a previous Land Court determined that T.D. Lot 275 is located on the other side of a road from those worksheet lots at issue in this case. Although Idid Clan's precise claim is unclear, it appears to be arguing that the Land Court incorrectly found that Worksheet Lots 181-073 and 181-074 are not part of T.D. Lots 278, 279, and 280. The proper location and identity of Worksheet Lots 181-073 and 181-074 are findings of fact, which we review for clear error. *Tkel v. Ngiruos*, 12 ROP 10, 12 (2004).

[2] First, the Land Court did not err in determining that Idid Clan was not an official claimant to T.D. Lots 275, 286, or 287-1, a fact Idid Clan does not dispute. Idid Clan's claim was solely for T.D. Lots 278, 279, and 280, which were originally part of Case No. LC/B 07-218, and the Clan claimed that those lots encompass all of the other worksheet lots in dispute. Nonetheless, a party has a duty to claim and monument all of the disputed lots that it believes it owns. *See Ucherremasch v. Rechucher*, 9 ROP 89, 91 (2002); *see also Nakamura v. Isechal*, 10 ROP 134, 138 (noting that only those filing a claim for land are considered "parties"). If Idid Clan thought that its claims extended to what were marked as Worksheet Lots 181-072, 181-073, and 181-074, then it should have filed claims for those lots on the same basis as its claims for T.D. Lots 278, 279, and 280. Instead, in 1973, Bilung Salii filed claims for only T.D. Lots 278, 279, and 280, and despite future monumentations, never adjusted or supplemented those claims. Idid Clan was on notice that other claimants disputed the boundaries of these lots and their corresponding Tochi Daicho lot numbers. This is particularly important given the competing depictions of the land in question; Idid Clan's 1973 claim showed a lot that aligned closely with only Worksheet Lot 05B004-002. Including the other worksheet lots in its claim would have created a greater area than Idid Clan's initial claim, and if it sought this additional property, it should have filed a separate claim or amended its original one.

Second, the Land Court did not clearly err in determining that T.D. Lots 278, 279, and 280 did not include Worksheet Lots 181-072, 181-073, or 181-074. The most persuasive evidence, which the Land Court cited, is Idid Clan's aforementioned 1973 claim and the description of the land it purported to own. Bilung Salii and another Idid Clan member attended the 1973 monumentation, which resulted in a sketch of the land appearing remarkably similar to the modern-day Worksheet Lot 05B004-002 only. The southern edge of the properties in both

depictions is composed primarily of coastline, and the other boundaries are roughly equivalent. Comparing the two maps and referring to the coastline and adjacent lots, the area Idid Clan now claims is much larger than its original claim. The Clan asserts that the original monumentation is wrong, but it has attended more recent monumentations, and rather than re-draw the boundaries it has simply asserted that the additional lots fall within T.D. Lots 278, 279, and 280. As the trial court noted, Idid Clan had ample opportunity to ensure that the worksheet lots it claimed were correctly monumented and depicted on the map, yet the Clan only recently revised its claim. There was evidence supporting the Land Court's determination that T.D. Lots 278, 279, and 280 are limited to the land depicted by Worksheet Lot No. 05B004-002, and thus its conclusion was not clear error.

[3] The last argument Idid Clan appears to make is that a prior Land Court's determination concerning part of T.D. Lot 275 should have preclusive effect on the court's rulings in this case. Specifically, Idid Clan refers to a determination of ownership (DO 12-576) and accompanying decision in Case No. LC/B 07-211, in which the Land Court determined ownership of Worksheet Lot No. 181-075. This lot is depicted on the worksheet map as another part of T.D. Lot 275. Idid Clan purports to apply the law-of-the-case doctrine, but this does not apply because the decision was in a different case altogether. *See Renguul v. Ngiwal State*, 11 ROP 184, 186 (2004) ("Pursuant to the [law-of-the-case] doctrine, a court is generally precluded from reconsidering an issue previously decided by the same court, or by a higher court in the identical case." (internal quotations omitted)).

[4] Presumably, the Clan intended to argue res judicata, which precludes redetermination of a factual issue that is actually litigated and determined by a valid and final judgment, and which is essential to that judgment. *Rechucher v. Lomisang*, 13 ROP 143, 147 (2006). Under that doctrine, "'[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.'" *Id.* (quoting Restatement (Second) of Judgements § 27 (1982)). In LC/B 07-211, the Land Court determined the owner of Worksheet Lot 181-075, which corresponded with at least part of T.D. Lot 275. The Land Court, however, did not conclude that T.D. Lot 275 was located *solely* on one side of the road, and ownership of the worksheet lots disputed in the present case were not before that court. There was no determination of ownership for Worksheet Lot Nos. 181-073 and 181-074, and the Land Court in this case did not err by declining to apply res judicata.

The true location of T.D. Lots 278, 279, and 280 was a factual determination for the Land Court, which had before it evidence from which a reasonable trier of fact could have reached the same conclusion; its decision on this issue therefore was not clear error. *See Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 165 (2002) ("[W]here there are two permissible views of the evidence, the court's choice between them cannot be clearly erroneous.").

II. Applicability of 25 PNC § 301(b)

Idid Clan's next argument is that "[t]he Land Court below awarded Tochi Daicho Lot Nos. 278, 279, and 280 to Appellee Remusei Tabelual in clear violation of 25 PNC § 301(b)." (Appellant's Br. at 8). Specifically, Idid Clan asserts that Kisaol was not a bona fide purchaser, and the property in question should "be disposed of in accordance with the desires of the immediate maternal or paternal lineage to whom the deceased was related by birth or adoption and which was actively and primarily responsible for the deceased prior to [her] death." 25 PNC § 301(b).

[5] This argument is incorrect. As the Land Court correctly noted, in determining who shall inherit a decedent's property, the court must apply the statute in effect at the time of the decedent's death. *Ngiraswei v. Malsol*, 12 ROP 61, 63 (2005) (quoting *Wally v. Sukrad*, 6 ROP Intrm. 38, 39 (1996)); *see also Anastacio v. Yoshida*, 10 ROP 88, 90 (2003). Kisaol died in Japan in 1969, and the Land Court applied the intestacy statute applicable at that time, Palau District Code § 801.

Section 801(c), as it read in 1969, provided that in the absence of a will, "lands held in fee simple by an individual shall, upon the death of the owner, be inherited by the owner's oldest living male child of sound mind, natural or adopted, or, if male heirs are lacking, by the oldest living female child of sound mind, natural or adopted . . . ." Section 801 was later amended, but the version in effect in 1969 said nothing of a bona fide purchaser. *See Wally*, 6 ROP Intrm. at 39.

Kisaol did not have a will, nor did she have any biological children. The Land Court noted this and then considered the arguments of two individuals who claimed to inherit from Kisaol through adoption. The court rejected David Sokok Olkeriil's claim, as it was entitled to do, and he did not appeal that decision. The court then credited Remusei Tabelual's claim of adoption, which was supported by testimony and not disputed at trial. The trial court did not violate 25 PNC § 301(b), which did not yet exist at the time of Kisaol's death.

Finally, Idid Clan makes a brief, undeveloped, catch-all argument under the law-of-the-case doctrine and res judicata. These doctrines do not apply. Idid Clan cites a prior dispute over a different lot, Tochi Daicho Lot 704, which was adjudicated in Case No. LC/B 07-530. Several parties claimed ownership to T.D. Lot 704, including Idid Clan and Remusei Tabelual. As with the lots disputed in this case, Lot 704 was registered under Kisaol's name in the Tochi Daicho. In that case, the Land Court determined that Kisaol had transferred Lot 704 to her close relatives before leaving for Japan. Her cousin, Ibedul Ngoriakl, eventually sold the property, and the Land Court awarded the lot to the purchasing party's descendant. Idid Clan stated that it wished to honor that sale and supported the purchasing claimant's right to title.

[6] Once again, the law-of-the-case doctrine does not apply because the determination upon which Idid Clan relies was in an entirely different proceeding. *See Renguul*, 11 ROP at 186. As for res judicata, Idid Clan cites no law on this argument, nor

does it explain why it should apply.[4] Nonetheless, the argument fails on the merits. As we mentioned, the doctrine only applies to a factual issue actually litigated and determined by a final judgment, and which is essential to that judgment. *Rechucher*, 13 ROP at 147. Here, the previous dispute concerned T.D. Lot 704 only. The prior Land Court's judgment did not rely on a finding that Kisaol had transferred *all* of her properties before she left for Japan. Rather, the only finding that was essential to its judgment—and therefore entitled to preclusive effect—is that Kisaol gave Lot 704 to three relatives, and the court made no determination regarding the lots in this case, T.D. Lots 278, 279, and 280. Furthermore, the Land Court found in favor of a party *other* than Idid Clan, which merely supported the prevailing party's claim. The Land Court in this case did not err in refusing to apply res judicata.

III. Statute of Limitations/Adverse Possession

[7] Idid Clan's third argument on appeal is that it is the rightful owner of T.D. Lots 278, 279, and 280 based on adverse possession and 14 PNC § 402, the statute of limitations governing "actions for the recovery of land or any interest therein."[5] Idid Clan states that none of the other claimants have used or exerted ownership over the disputed lots for more than twenty years, whereas Idid Clan members—namely Bilung Ngerdokou and, since 1975, Bilung Salii—have been permitting other Clan members to use the land during this period.

[8] Yet again, Idid Clan cites not one iota of legal authority to support its argument, other than the section of the Code containing the statute of limitations, 14 PNC § 402. The burden is on the party asserting adverse possession to establish its elements. *See Children of Ngiramechelbang Ngeskesuk, v. Brikul (Brikul II)*, 14 ROP 164, 166 (2007)

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[4] Idid Clan's entire argument on this point is: "In addition, *Res Judicata*, bars Remusei from making the same claim based on the same facts against the same party, i.e., Idid Clan." (Appellant's Br. at 11.) This is insufficient to develop this issue adequately, and this Court need not even consider it. It is not the Court's duty to interpret this sort of broad, sweeping argument, to conduct legal research for the parties, or to scour the record for any facts to which the argument might apply. As we have previously noted, "[a]ppellate courts generally should not address legal issues that the parties have not developed through proper briefing." *Ngirmeriil v. Estate of Rechucher*, 13 ROP 42, 50 (2006) (quotations omitted).

[5] As we have previously noted, adverse possession and the twenty-year statute of limitation are "two sides of the same coin." *Ilebrang Lineage v. Omtilou Lineage*, 11 ROP 154, 157 n.3 (2004). "Adverse possession and the statute of limitations are generally considered together . . . usually [with] the same party relying on both doctrines—arguing that they have occupied the land for longer than 20 years, thus satisfying the adverse possession requirements, and that the landowner failed to bring an action against an unlawful occupier within the 20-year limitations period and so the claim is now barred." *Brikul v. Matsutaro (Brikul I)*, 13 ROP 22, 24 (2005) (quotations omitted). A claimant typically will obtain the same result whether claiming under a twenty-year adverse possession claim or invoking the twenty-year statute of limitations. *Palau Pub. Lands Auth. v. Salvador*, 8 ROP Intrm. 73, 77 (1999).

(citing *Seventh Day Adventist Mission of Palau, Inc. v. Elsau Clan*, 11 ROP 191, 193 (2004)). This Court has addressed adverse possession in several cases, and Idid Clan could have at least included the elements of the doctrine in its brief.

Furthermore—and even more importantly—the Clan presented very little *factual* evidence to support its claim. It merely averred "that other claimants have not used portions of the three lots claimed by Idid over a long period of time but rather people such as Isabella Sumang and others have used portions of these lots through permission of Idid Clan members, namely Bilung Ngerdokou and the present Bilung." (Appellant's Br. at 9.) Even by its own statement, the Clan appears to be claiming adverse possession of only "portions of the three lots," and it does not explain the identity of the "others" using them. Despite its undeveloped argument, the Court will address the merits.[6]

[9] To acquire title by adverse possession, the claimant must show that the possession is actual, continuous, open, visible, notorious, hostile or adverse, and under a claim of title or right for twenty years. *Brikul II*, 14 ROP at 166. The doctrine does not apply where any one of these elements is lacking, *id.*, and the party asserting adverse possession must affirmatively prove its claim by clear and convincing evidence, *Elsau Clan*, 11 ROP at 193.

[10] Particularly relevant here are the elements of a continuous, notorious claim of title or right by Idid Clan. "Possession of property is notorious when an adverse claim of ownership is evidenced by such conduct as is sufficient to put a person of ordinary prudence on notice of the fact that the land in question is held by the claimant as his or her own." *Brikul II*, 14 ROP at 166. The mere possession of land does not in and of itself show the possession is notorious or hostile; rather, there must be some additional act or circumstance indicating that the use is hostile to the owner's rights, and the true owner must know of "an occupancy that is in opposition to the owner's rights and in defiance of, or inconsistent with, legal title." *Id.* at 166-67. Stated another way, the party claiming adverse possession must demonstrate "an assertion of ownership adverse to that of the true owner and all others." *Brikul I*, 13 ROP at 25.

Apart from the blanket assertion that Bilung Salii and several of her relatives have granted "others" permission to use "portions" of the land in question over the past twenty years, Idid Clan has not established the elements of adverse possession by clear and convincing evidence. Its claim on appeal is cursory, conclusive, and broad, and the Land Court made no factual findings concerning the issue. For example, the Clan has not demonstrated that it claimed actual title or ownership, to the exclusion of all others and hostile to the claims of Kisaol's descendants. Idid Clan also did not present sufficient

[6] It is also unclear whether Idid Clan even raised this argument before the Land Court, which did not analyze adverse possession or the statute of limitations in its decision. To the extent that Idid Clan raises this issue for the first time on appeal, it has waived it. *See Nebre v. Uludong*, 15 ROP 15, 25 (2008). We will consider the merits of the claim because Idid Clan did assert that its members have exercised control over the property for many years, but it does not appear to have argued these issues below.

evidence that its claim to ownership or title was continuous; it stated that several different individuals have used portions of the property in dispute, but it must demonstrate that *Idid Clan's* claim to ownership was continuous *and* that this claim was notorious and known to the true owners. The Clan also has not demonstrated which properties it is claiming by adverse possession, nor has it established by clear and convincing evidence that its use or claim to the land was hostile. The Land Court alluded to this issue when it noted that the other claimants may have permitted certain Idid Clan members to use or manage the property out of respect to them. The facts are unclear, but even assuming Idid Clan was managing the property continuously, its adverse possession claim would fail if it knew that it was doing so by permission of the true owners.

These are but a few outstanding factual issues. The main point is that even if Idid Clan could have demonstrated each element of adverse possession by clear and convincing evidence at trial, its arguments on appeal lack specificity and support, and it has failed to establish that it produced clear and convincing evidence of adverse possession below. It was incumbent on Idid Clan to demonstrate that its use and claim of ownership were hostile to the other claimants, continuous (despite possession or use by other individuals), and notorious. It has not done so here.

IV. Land Court Judge's Purported Conflict of Interest

Finally, Idid Clan raises a potential conflict of interest concerning the presiding Land Court judge. According to the Clan, the judge's ex-wife is a niece of Appellee Ebukel Ngiralmau (or could be considered as such under Palauan matrilineal society). The judge and his ex-wife had a son during their marriage, and, according to Idid Clan, this means that the judge's ex-wife and son could be "direct beneficiaries of the award he made to Ebukel Ngiralmau." (Appellant's Br. at 10.) Declining once again to cite any legal authority or supporting evidence, Idid Clan claims that "the presiding judge's mind was at [*sic*] clouded that his decisions is [*sic*] called into question," and that "the conflict is so serious that it warrants reversal of all awards made below and calls for another hearing." *Id.* For the following reasons, we disagree.

[11] Parties to any legal proceeding are entitled to a fair, impartial arbiter. This goal is protected by both the Palau Constitution, which requires due process of law, and various laws and professional standards. In Palau, judges are required to "adhere to the standards of the Code of Judicial Conduct of the American Bar Association except as otherwise provided by law or rule." 4 PNC § 303.[7]

[7] The Model Code of Judicial Conduct imposes higher standards than the minimum constitutional requirement of due process. *See Bracy v. Gramley*, 520 U.S. 899, 904-05 (1997). Unlike the elevated standard imposed by the Model Code, which requires disqualification for either actual impartiality or the appearance of such, the due process clause requires only that a presiding judge be free of *actual* bias. *Id.*; *see also State v. Canales*, 281 Conn. 572, 593, 594-95 (2007). The appearance of partiality or bias alone is not unconstitutional. *Bracy*, 520 U.S. at 904-05. Idid Clan is unclear whether it bases its argument on constitutional grounds or the Model Code; it mentions neither source. Instead, it merely invokes fairness and the "integrity of the

[12, 13] Under the Model Code, a judge should not preside in a case in which he is interested, biased, or prejudiced, and this includes circumstances where the judge's impartiality might reasonably be questioned based on all the circumstances, even where no actual bias exists. *See* ABA Model Code of Judicial Conduct R. 2.11(A) (2007); *see also* 46 Am. Jur. 2d *Judges* § 80 (2006); 28 U.S.C. § 455(a); *United States v. Carlton*, 534 F.3d 97, 100 (2d Cir. 2008); *Canales*, 281 Conn. at 593. As it pertains to this case, a judge typically should recuse himself if "[t]he judge knows that the judge, the judge's spouse . . . , or a person within the third degree of relationship to either of them, or the spouse . . . of such a person is: . . . (c) a person who has more than a de minimis interest that could be substantially affected by the proceeding . . . ." ABA Model Code of Judicial Conduct R. 2.11(A)(1)(c). The Code defines a "third degree of relationship" as including one's uncle, aunt, nephew, and niece. ABA Model Code of Judicial Conduct, Terminology at 7. Furthermore, "knowledge," in this circumstance, means actual knowledge of the interest or conflict, although such knowledge can be inferred from the circumstances. *Id.* at 6.

Under these provisions, one could argue that the Land Court judge should have recused himself from this matter. According to Idid Clan's allegations, his ex-wife is the niece of a party (Ebukel Ngiralmau) who potentially stands to benefit in some way from this proceeding. Putting aside for the moment the issue of whether one's ex-wife falls within the term "spouse" in Model Rule 2.11(A), the judge's son is also obviously within at least a "third degree of relationship" with the judge and allegedly stands to benefit from this proceeding as well.

[14] Idid Clan's argument on appeal fails, however, for several reasons. First, it has not shown that the judge's ex-wife or son have anything more than a "de minimis interest," nor that any such interest, if it exists, could be "substantially affected." Presumably, although it does not explain its reasoning, Idid Clan is asserting that some day in the future, Ebukel Ngiralmau might leave the property awarded to her in this case to her niece, the judge's ex-wife. The judge's son, then, would be in line to inherit or receive this property from his mother. But Idid Clan provides no facts to support these assertions—such as whether Ngiralmau has children of her own or whether she has expressed any intent to give property to the judge's ex-wife.[8] Instead, the Court is left guessing, which is clearly insufficient to establish grounds for a judge's disqualification. *See* 46 Am. Jur. 2d *Judges*

Court." In any event, we find no error under the Model Code, which necessarily means that there was no constitutional impropriety below.

[8] In fact, the Land Court indicated in its decision that Ebukel Ngiralmau desired to transfer ownership of the lot in question, No. 181-072, to her son, Wilhoid Ngiralmau. Ebukel even included a document in the file indicating such a transfer. The Land Court properly declined to make an ownership decision based on this purported transfer, finding only that Ebukel's claim was superior to the other claimants. This information, however, further damages Idid Clan's claim that the Land Court judge should have recused himself. After a transfer to Ebukel's son, the judge's ex-wife's and son's potential interest in the property would be even further attenuated.

§ 181 ("A motion to disqualify must be well-founded and contain facts germane to the judge's undue bias, prejudice, or sympathy or set forth circumstances such that a reasonable person would question whether the judge could rule impartially. A litigant's vague and unverified assertions of opinion, speculation, and conjecture are insufficient."). Idid Clan also presented no legal authority or case law that this sort of interest is more than "de minimis." The burden of establishing prejudice or the appearance thereof is on the party alleging it, and it is a heavy one. *See* 46 Am. Jur. 2d *Judges* § 200. Whether to grant a motion for disqualification, had Idid Clan made one, is within the trial court's sound judicial discretion, *Carlton*, 534 F.3d at 100; *see also* 46 Am. Jur. 2d *Judges* § 169, and the Clan has not presented sufficient facts from which this Court could determine that the trial judge abused that discretion.

[15] More importantly, Idid Clan did not raise this issue below. In its brief, it claims that the "conflict of interest was not disclosed or discussed on the record, and no waiver was made." (Appellant's Br. at 10.) Once again, Idid Clan cites to no legal authority to support this statement, nor any facts or circumstances relevant to waiver.[9] The law is clear that "[a] party must move for recusal 'at the earliest possible moment after obtaining knowledge of facts demonstrating the basis for such a claim.'" *United States v. Amico*, 486 F.3d 764, 773 (2d Cir. 2007) (quoting *Apple v. Jewish Hosp. & Med. Ctr.*, 829 F.2d 326, 333-34 (2d Cir. 1987)); *see also* 46 Am. Jur. 2d *Judges* § 173. "The requirement of a timely filing is one of substance and not merely one of form," and "[t]he basis of requiring a timely objection is that courts disfavor allowing a party to shop for a new judge after determining the original judge's disposition toward a case." 46 Am. Jur. 2d *Judges* § 173; *see also id.* § 208. "An untimely objection or motion to disqualify a judge waives the grounds for recusal," *id.* § 208, and this is particularly true when the party seeking disqualification, knowing of the possible prejudice, waits until after it receives an adverse ruling to raise the issue, *id*. §§ 208, 210. Finally, there is at least some authority that "[j]udicial acts taken before recusal may not later be set aside unless the litigant shows *actual impropriety or actual prejudice*; an appearance of impropriety is not enough to poison the prior acts." *Id.* § 215 (emphasis added).

[9] The reader may notice a theme running through this opinion. Idid Clan's opening brief contained several unexplained conclusions, with little or no citation to supporting legal authority. This Court has previously refused to address arguments lacking sufficient support. *See Ngirmeriil*, 13 ROP at 50. In *Ngirmeriil*, we quoted then-Judge Scalia, writing for the D.C. Circuit, who said that "[t]he premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them. Thus, [appellate rules] require[] that the appellant's brief contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on." *Id.* at 50 n.10 (quoting *Carducci v. Regan*, 714 F.2d 171, 177 (D.C. Cir. 1983)) (quotations omitted). Although we have addressed Idid Clan's myriad arguments, we warn its counsel to be more comprehensive in the future; if not, the Court may refuse to consider unsupported arguments.

On appeal, Idid Clan makes no mention of when it purportedly learned of the Land Court judge's potential conflict of interest. This alone renders its argument insufficient to meet its burden, and it is likewise insufficient to establish that the Clan was unaware of this potential bias prior to trial, during trial, or within the time limit for post-trial motions. The Clan did aver, however, that "it is a matter of public knowledge that the presiding judge's ex-wife, is a niece of Appellee Ebukel Ngiralmau or could be considered as such under Palauan matrilineal society. It is also a matter of public knowledge a son was born during that marriage and that marriage ended only a few years ago and after the presiding judge had been appointed to the bench." (Appellant's Br. at 10.) Thus, the only information produced by Idid Clan is that it was or should have been aware of the potential conflict of interest before, during, and after trial. Rather than raise this issue to the court below, it waited until it received an adverse judgement and now seeks to nullify that judgment by arguing conflict of interest. The Court finds that Idid Clan waived its challenge on appeal, and even if it did not, it has not established a conflict of interest warranting reversal of the trial court's decision.

CONCLUSION

For the foregoing reasons, the Land Court's decision is this matter is AFFIRMED.