UREBAU CLAN,
Appellant,

v.

UCHELIOU CLAN,
Appellee.

CIVIL APPEAL NO. 12-024
LC/N 09-0345
LC/N 09-0397
LC/N 09-0399

Supreme Court, Appellate Division
Republic of Palau

Decided: May 21, 2013

[1] **Evidence:** Site Visits

A trial court may permit a viewing of a location if it is of the opinion that a viewing would be helpful to the trier of the fact in determining some material factual issue in the case. The determination is within the sound discretion of the trial court. In deciding a motion to view the scene the court should consider whether viewing the scene is necessary or important so that the trier of fact may clearly understand the issues and properly apply the evidence.

[2] **Evidence:** Site Visits

Generally, a visit to a site is not necessary or important because photographs or other audio-visual aids could be used, instead of a view of the premises, without any undue inconvenience.

Counsel for Appellant: Oldiais Ngiraikelau
Counsel for Appellee: J. Uduch Sengebau, Senior

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; LOURDES F. MATERNE, Associate Justice.

Appeal from the Land Court, the Honorable SALVADOR INGEREKLII, Associate Judge, presiding.

PER CURIAM:

This is an appeal of a Land Court Determination awarding ownership of land located in Ngetkib Village to Ucheliou Clan, Appellee in this matter. For the following reasons, the decision of the Land Court is **AFFIRMED.**

PROCEDURAL HISTORY

On April 17, 2012, the Land Court commenced a hearing to resolve four competing claims of ownership to three lots located in Ngetkib Village in Airai State. The lots are identified in Bureau of Lands and Surveys Worksheet Number 2005 N 001 as Lot Numbers 05N001-089 (Lot 89), 05N001-087 (Lot 87), and 05N001-97 (Lot 97). At the beginning of the hearing, two of the claimants withdrew, leaving Appellant Urebau Clan and Appellee Ucheliou Clan as the only remaining claimants. Following the withdrawals, the Land Court conducted the hearing based on Appellant and Appellee's competing claims of ownership.

When the hearing began, the representative for Appellant stated:

> [A]ll of [the lots] are inside *Sangelliou*, but several boundaries came into it so it became complicated. There is a claim by Rosania that comes in to include a

> taro paddy. It splits the taro paddy in the middle. So I ask this Court if it has availability, let us go see it before you issue your decision on it.

In support of its claim, Appellant presented evidence that all three lots are part of land known as *Sangelliou*, which was surveyed and monumented in 1976. Appellee, in turn, presented evidence that only Lot 87 was a part of *Sangelliou* and that Lot 89 and Lot 97 were parts of land known as *Ikidel*, which it owns.

Following the hearing, the Land Court issued its Summary of Proceedings, Findings of Fact, Conclusions of Law and Determination. In its Determination, the Land Court found that Lots 89 and 97 were parts of *Ikidel*, and that Lot 87 was a part of *Sangelliou*. Accordingly, the Land Court granted ownership of Lots 89 and 97 to Appellee, and ownership of Lot 87 to Appellant. In its analysis, the Land Court noted that:

> [Appellant] made allegations that Ucheliou Clan have encroached into Urebau lands without providing specific proof of such encroachment, and when Rosania identified the outer boundary of the land *Ikidel* with a green marker, [Appellant] raised no objection . . . . Instead, [it] asked the Court to review the map for proof of such encroachment. The Court declines such invitation. It is the responsibility of each claimant to present his/her claim to the best of his/her ability. And while Rule 2 of the Land Court Rules of Procedure[] requires the Land Court to 'ensure fairness in the conduct of hearings and presentation of claims with or without assistance of legal counsel' this obligation does not include the duty to assist claimants in presenting their best claims. *See, Llecholch v. Lawrence*, 8 ROP Intrm. 24 (1999), and *Arbedul v. Romei Lineage*, 8 ROP Intrm. 30 (1999).

Appellant timely appealed.

STANDARD OF REVIEW

Appellant raises one issue on appeal: that the Land Court's failure to conduct a visit to the claimed property constitutes reversible error. Decisions regarding site visits are reviewed for abuse of discretion. *Auto Owners Insurance Co. v. Bass*, 684 F.2d 764, 769 (11th Cir.1982); *see also Singeo v. Ngaraard State Pub. Lands Auth., et al.*, 14 ROP 102, 103–04 (2007) ("[T]he admission or exclusion of evidence is a matter particularly suited to the broad discretion of the trial judge."). This Court will not find an abuse of discretion unless the trial court's decision was arbitrary, capricious, manifestly unreasonable, or because it stems from an improper motive. *Western Caroline Trading Co. v. Kinney*, 18 ROP 70, 71 (2011).

DISCUSSION

Appellant raises one issue on appeal: that the Land Court's failure to conduct a visit to the claimed property constitutes reversible error. We disagree.

> **[1]** A trial court may permit a viewing of [a location] if it is of the opinion that a viewing would be helpful to the [trier of the fact] in

> determining some material factual issue in the case . . . . The determination . . . is within the sound discretion of the trial court . . . . In deciding a motion to view the scene [t]he court should consider whether viewing the scene is necessary or important so that the [trier of fact] may clearly understand the issues and properly apply the evidence.

State v. Boutilier, 36 A.3d 282, 291 (Conn. App. 2012).[1]

[2] Generally, a visit to a site is not necessary or important because "photographs or other audio-visual aids could be used, instead of a view of the premises, without any undue inconvenience." *E.I. du Pont de Nemours & Co. v. Admiral Ins. Co.*, 577 A.2d 305, 309 (Del. Super., 1989) (internal quotation marks omitted); *see also Thomas v. Home Depot, U.S.A., Inc.*, 131 F.Supp. 2d 934, 940 (E.D. Mich., 2001) (declining to consider possibility of site visit in venue transfer motion because "if . . . . the parties introduce measurements and photographs of the accident scene, that should suffice to make the jury familiar with the site of the accident in this case.").

Here, there is no indication that a site visit was important or necessary for the Land Court to understand the issues or to apply the relevant evidence properly. The sole purpose of the site visit, as stated by Appellant's representative, was to show that the land claimed by Appellee (as evidenced by a cement market) encroached on land Appellant claimed to be its taro paddy. Even assuming that was at all relevant to the resolution of the land dispute, such a fact could have been established through a combination of maps, testimony, and photographic and video evidence. *E.I. du Pont de Nemours & Co.*, 577 A.2d at 309. Accordingly, the Land Court did not act arbitrarily or capriciously when it declined to conduct a site visit of the disputed property. *Id*.

CONCLUSION

For the foregoing reasons, the decision of the Land Court is **AFFIRMED**.

[1] Although *Boutilier* was a criminal matter, we believe the described standard is applicable to civil proceedings as well.