ESTATE OF TONY NGIRAILILD and DWELYNE NGIRAILILD, co-administrator,
Appellants,

v.

NGARCHELONG PUBLIC LANDS AUTHORITY,
Appellee.

CIVIL APPEAL NO. 12-018
Civil Action No. 01-220

Supreme Court, Appellate Division
Republic of Palau

Decided: August 8, 2013

[1] **Property:** Homesteads

The previously-controlling Trust Territory Homestead Act sets out the following process to perfect a homestead claim and earn title to the government land: (1) the claimant must complete and file an application with the District Land Office; (2) the District Land Office would review the application and submit a recommendation to the District Land Administrator; (3) the District Land Administrator would file the determination with the Clerk of Courts and, if approved, issue an "entry permit" to the claimant to enter the land and to begin improving it based on the conditions set out in the permit; (4) after three years, the District Land Office would inspect the land to determine whether the conditions of the permit had been satisfied and, if so, issue a certification of compliance; and (5) the homestead claimant would be entitled to a deed of conveyance within two years

conveying all of the Trust Territory government's interests in the land.

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

The lower court's factual findings are reviewed using the clearly erroneous standard.

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

The lower court's conclusions of law are reviewed de novo.

Counsel for Appellant: Yukiwo P. Dengokl
Counsel for Appellee: William L. Ridpath

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and R. ASHBY PATE, Associate Justice.

Appeal from the Trial Division, the Honorable LOURDES F. MATERNE, Associate Justice, presiding.

PER CURIAM:

This case concerns an appeal from the Trial Division's denial of a claim to land pursuant to the Trust Territory Homestead Act, 67 TTC §§ 201–13. For the following reasons the decision of the Trial Division is affirmed.[1]

BACKGROUND

The salient facts in this matter are not in dispute. In the late 1940s or early 1950s, Appellant Dwelyne Ngirailild's grandfather, Ngirailild Yaichi ("Ngirailild"), leased from the Trust Territory government an island off the coast of Ngarchelong known as *Ngerkeklau*, which is identified as Cadastral Lot No. F-7-1 and Tochi Daicho Lot No. 1464. Pursuant to that lease, Ngirailild made a home on the island; improved the land; farmed coconuts; and raised animals such as pigs, chickens, and goats.

[1] In early 1962, Ngirailild filed an application for a homestead on *Ngerkeklau*, which was received, filed, and reviewed by the Trust Territory District Land Office. The then-controlling Trust Territory Homestead Act sets out the following process to perfect a homestead claim and earn title to the government land: (1) the claimant must complete and file an application with the District Land Office; (2) the District Land Office would review the application and submit a recommendation to the District Land Administrator; (3) the District Land Administrator would file the determination with the Clerk of Courts and, if approved, issue an "entry permit" to the claimant to enter the land and to begin improving it based on the conditions set out in the permit; (4) after three years, the District Land Office would inspect the land to determine whether the conditions of the permit had been satisfied and, if so, issue a certification of compliance; and (5) the homestead claimant would be entitled to a deed of conveyance within two years conveying all of the Trust Territory government's interests in the land. *See* 67 TTC §§ 201–08.

[1] Although Appellants request oral argument, we determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

On consideration of Ngirailild's application, the District Land Advisory Board issued its recommendation that his application be accepted "subject to certain minor restrictions." Beyond evidence of that recommendation, there is not any documentary evidence relating to Ngirailild's homestead claim showing that the District Land Administrator accepted the Board's recommendation, issued an entry permit, inspected Ngirailild's progress and compliance with any conditions of his permit, certified Ngirailild's compliance, surveyed the homesteaded land, or issued any deed of conveyance.

Ngirailild continued to live on *Ngerkeklau* until his death in 1975.

In August 2001, Tony Ngirailild, heir to Ngirailild, filed a quiet title action in the Trial Division seeking title to *Ngerkeklau*, title to which was maintained by Ngarchelong State. Tony Ngirailild died during the pendency of the underlying matter, and his Estate was thereafter substituted as a plaintiff along with its co-administrator, Dwelyne Ngirailild. The Trial Division held a trial on November 7, 8, and 16, 2011, to resolve whether Ngirailild was entitled to a deed of conveyance for *Ngerkeklau*. The Trial Division concluded: (1) *Ngerkeklau* was not conveyed orally to Ngirailild; (2) Ngirailild's homestead application was not approved by the Land District Officer; (3) Ngirailild was not issued an entry permit for *Ngerkeklau*; and (4) Ngirailild did not meet the requirements for a homestead under the Trust Territory Homestead Act and, accordingly, did not acquire fee simple title to the island.

This appeal followed.

STANDARD OF REVIEW

[2] Appellants challenge the trial court's finding that Appellants failed to establish that Ngirailild met the statutory requirements for a homestead. The lower court's factual findings are reviewed using the clearly erroneous standard. *Nebre v. Uludong*, 15 ROP 15, 21 (2008) (citing *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.,* 9 ROP 162, 164 (2002)). The appellate court's role on clear error review is not to re-weigh the evidence produced below. *Beches v. Sumor*, 17 ROP 266, 272 (2010). Where admissible evidence supports competing versions of the facts, the trial court's choice between them is not clear error. *Id*.

[3] Appellants also contend the trial court improperly applied the law with respect to the necessary proof required to establish entitlement to a homestead. The lower court's conclusions of law are reviewed de novo. *See Wong v. Obichang*, 16 ROP 209, 212 (2009); *Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001).

ANALYSIS

Appellants' challenges on appeal reduce to two arguments: (1) the trial court clearly erred when it concluded Ngirailild's "homestead application for Ngerkeklau Island was not approved and therefore no entry permit was issued," and (2) the trial court erred as a matter of law when it concluded Ngirailild did not meet the requirements for a homestead and was not entitled to a deed of conveyance for *Ngerkeklau*.

I. Appellants' Challenge to the Trial Division's Factual Findings

Appellants contend it was clear error for the trial court to conclude on this record that Ngirailild's homestead application was not approved and that he was not issued an entry permit.

As noted, there was not any documentary evidence in the record that clearly showed Ngirailild's application was approved or that he was issued an entry permit. The trial court based its conclusions on substantial evidence in the record, which reflects the following: (1) Ngirailild's homestead file did not contain an entry permit for *Ngerkeklau*; (2) Appellants did not provide a record of inspection of Ngirailild's improvements, any conditions of his permit, or a certification of compliance; (3) Ngirailild's name did not appear on the homestead map for Ngarchelong State; (4) the eight homestead owners shown on the Ngarchelong homestead map each were issued entry permits; and (5) *Ngerkeklau* was not included in the surveys of the Ngarchelong homesteads. Accordingly, the Trial Division concluded he did not satisfy the requirements of the Homestead Act and was not entitled to a deed of conveyance for *Ngerkeklau*.

Because they lacked direct evidence, Appellants relied on testimony by Elia Kual, a former Palau Public Lands Authority employee who was involved with review of homestead matters for roughly ten years beginning in 2000. Kual offered possible explanations for the lack of proper documentation, suggesting, for example, that the entry permit had been lost over the years and that the Land Officers may not have performed their duties as required. In reaching its contrary conclusion, the Trial Division determined, in light of the record as a whole, that the testimony of Taro Ngiraingas, a retired surveyor who worked for the Trust Territory government on the official Ngarchelong homestead map, was more credible than the testimony by Kual. In particular, Ngiraingas attested he was instructed to survey each homestead in Ngarchelong, but he was never sent to survey *Ngerkeklau*. Thus, the Trial Division found it "more logical" that Ngirailild's application was not approved and concluded:

> all credible evidence presented show[s] that plaintiff has failed to prove that Yaichi's application was approved and that he met all of the requirements under the Homestead Act. Consequently, there is no basis for this Court to make a determination that he acquired a fee simple title to Ngerkeklau Island.

Of note, the trial court found it particularly difficult to reach a conclusion that Ngirailild had satisfied the conditions of his entry permit because there was not any evidence in the record as to the specific conditions on Ngirailild's homestead.

Appellants also quibble with the Trial Court's determination that Ngirailild's lease of *Ngerkeklau* for several years prior to filing his homestead application was a more likely explanation for the facts that Ngirailild developed the island and was the person who granted permission to visitors of the island. The trial court concluded that the documentary evidence gave stronger support

for its interpretation, because the record contained an actual lease document but not any documentary evidence of the grant of a homestead. Appellants argue this is impermissible speculation on the part of the Trial Division and, ironically, urge this Court to speculate as to the opposite inference—that Ngirailild maintained and developed *Ngerkeklau* pursuant to a homestead that has scant evidentiary support in this record.[2]

Although Appellants go to great lengths in their briefs to paint the facts in the light most favorable to their claim, the Trial Division weighed the relevant evidence and chose between two possible interpretations: the lack of an existing entry permit might mean that one had never been issued; or it might mean that one was issued, was not properly documented by government officials, and was subsequently lost. The Trial Division's choice between these permissible views of the evidence is not clear error, nor does the Court see any basis on this record for disturbing the Trial Division's credibility determination. Accordingly, we affirm the Trial Division's factual findings.

II. Appellants' Challenge to the Trial Division's Legal Conclusions

Appellants also contend that the Trial Division improperly applied the case law interpreting the Trust Territory Homestead Act. Appellants concede the trial court correctly set out the requirements of the statute, but they maintain that subsequent case law clarifies that a homestead claimant need not produce particular documentary evidence to prove his homestead claim. Thus, Appellants argue that the Trial Division erred in its reliance on the fact that there was not any documentary evidence of an entry permit, a certificate of compliance, or a deed of conveyance.

Appellants rely on two cases to support their contention, neither of which controls the outcome of this case nor demonstrates error on the part of the trial court. First, Appellants cite *Tmetuchl v. Siksei* in which this Court determined that a certificate of compliance under the Trust Territory Homestead Act is "not a *sine qua non* of finding ownership." 7 ROP Intrm. 102, 105 (1998). In *Tmetuchl*, we held that a claimant under the Homestead Act could prove through testimony or other means that he had met the homestead requirements and was entitled to the property as a result, even if he did not have a certificate of compliance as required by the statute. *Id.* Under the circumstances of that case, we held the trial court did not err when it concluded the claimant met the homestead requirements despite the lack of certification. *Id.* at 104–05. The Court did not, however, establish any controlling rule of law that would dictate the outcome of this matter. Although the Trial Division could have, as a matter of law, concluded that Ngirailild met the requirements of his entry permit and was therefore entitled to *Ngerkeklau* despite the lack of a certificate of compliance, *Temetuchl* does not require that outcome

[2] Indeed, the Court finds it strange that Appellants make such a strong assertion of factual error on this record based on the testimony of Kual, who admitted he saw Ngirailild's file for the first time in the 1990s, 30 years after the relevant period, and that he did not have any personal knowledge about the issuance, loss, or failure to properly follow up with Ngirailild's entry permit or certificate of compliance.

because it is based on the circumstantial evidence of the particular case. Furthermore, there are crucial factual distinctions between *Tmetuchl* and this matter. In *Tmetuchl*, the claimant had been issued an entry permit, the trial court was able to determine the conditions of that permit, and there was unrebutted evidence in the record from the surveyor of that homestead that the conditions of the permit had been satisfied. *Id.* at 102–03. Factually, the two matters bear little resemblance. In any event, here the trial court did not hold that the lack of a certificate of compliance was fatal to Appellants' claim. Instead, the trial court considered the relevant evidence and determined it was insufficient to satisfy Appellants' burden that an entry permit was ever issued to Ngirailild.[3] Accordingly, we cannot say that our holding in *Tmetuchl* demonstrates any legal error on the part of the Trial Division.

Appellants also cite *Cruz v. Johnston*, a Trust Territory case in which the trial division of the High Court concluded that the High Commissioner could not refuse to issue a deed of conveyance to several homesteaders who had met the conditions of their entry permits. 6 TTR 354, 356–59 (1973). Once again, however, the case does not present any controlling rule of law for this matter. Notably, each of the plaintiffs in *Cruz* were determined to have met the conditions of their entry permits and were issued certificates of compliance. *Id.* at 356–57. The *Cruz* court merely ruled that the High Commissioner must comply with the statutory directive in the Homestead Act to issue a deed of conveyance under those circumstances. *Id.* at 359–61. Here, although the Trial Division heard testimony that Ngirailild met the conditions of his permit, it concluded that no entry permit was ever issued. As set out above, we do not see any error in that finding, and, accordingly, we conclude the holding of *Cruz* is inapplicable to this matter.

CONCLUSION

For the foregoing reasons, the decision of the Trial Division is **AFFIRMED**.

[3] While Appellants correctly contend the lack of a certificate of compliance or even an entry permit is not necessarily fatal to their claim, certainly the fact that those documents cannot be located is relevant to and probative of the trial court's finding that neither was ever issued. The lesson of *Tmetuchl* is merely that such facts alone do not preclude a finding that a homesteader satisfied the statutory requirements.