

ISAO SATO, Plaintiff-Appellant

v.

SHIRO BEDUL, Defendant-Appellee

Civil Appeal No. 193

Appellate Division of the High Court

Palau District

May 15, 1978

Appeal from Trial Division of the High Court. The Appellate Division of the High Court, Burnett, Chief Justice, affirmed.

1. Appeal and Error—Evidence—Weight

Reweighing of the evidence is not a proper function of an appellate court.

2. Appeal and Error—Findings and Conclusions—Tests

Appellate court is prohibited from setting aside a finding of fact of a trial court unless it is clearly erroneous. (6 TTC § 355)

Counsel for Appellant: JOHN O. NGIRAKED
Counsel for Appellee: JOHNSON TORIBIONG

Before BURNETT, *Chief Justice*, NAKAMURA, *Associate Justice*, and GIANOTTI, *Associate Justice*

BURNETT, *Chief Justice*

Appeal was taken from judgment of the Trial Division, Palau. Pursuant to Rule 19, Appellate Rules, the Court has elected on its own motion to consider the matter without oral argument.

Appellee has filed no brief, but moved to dismiss, claiming that appellant's brief was filed late and that it fails to comply with Rule 17 in form and content.

We find the brief to have been timely filed. The record shows that counsel was served with Notice of Certification of the record on August 1, 1977, and his brief filed within the sixty days allowed by Rule 18b, on September 29, 1977.

Appellant's brief clearly does not comply with the requirements of Rule 17, but that fact does not mandate dismissal, which remains with the discretion of the Court. We have regularly allowed considerable latitude to the efforts of Trial Assistant counsel, and are reluctant to impose severe sanctions for failure in formal compliance with the Rules.

We deny the motion to dismiss, but, upon examination of the entire record, find no merit to the appeal.

The land in dispute is Tochi Daicho Lot No. 1784, located in Ollei, Ngerchelong Municipality, which the Court found was registered in the name of Ngirakoranges, as individual property, and so held at the time of his death in 1944.

Appellant claimed under Ngirakoranges pursuant to an alleged oral will. The Trial Court made a specific finding of fact that there had been no will.

[1, 2] Appellant thus seeks to have this Court reweigh the evidence. That is not a proper function of an Appellate Court; we have regularly so held, and are prohibited from setting aside a finding of fact of the Trial Division "unless clearly erroneous." 6 TTC sec. 355.

We find ample evidence in the record to sustain the Court's findings, and no error of any nature.

THE JUDGMENT IS AFFIRMED.