

IDERRECH v. NGESKEBEI

The determination of the competency and qualifications of a witness offered as an expert is addressed to the judicial discretion of the trial judge before whom the testimony is offered, and his ruling or determination in this respect with regard to the proposed expert witness will not be disturbed by a reviewing court unless that discretion has been abused. 31 Am. Jur. 2d Expert and Opinion Evidence § 31, citing 166 A.L.R. 1067 and numerous State and Federal citations.

In the instant case, there is no question of the trial judge abusing his discretion and we will not find such an abuse. Judgment AFFIRMED.

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**ESTEBAN IDERRECH, Plaintiff-Appellant**

**v.**

**RISONG NGESKEBEI, Defendant-Appellee**

Civil Appeal No. 256

Appellate Division of the High Court

Palau District

August 8, 1981

Appeal from a judgment of the Trial Division, wherein certain lands were declared to be "clan" lands. The Appellate Division of the High Court, per curiam, held that the appeal had no merit where appellant sought to have the Court reweigh the evidence, and therefore judgment was affirmed.

**Appeal and Error—Evidence—Weight**

It is not the function of the Appellate Division to reweigh the evidence presented at the trial.

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

PER CURIAM

This is an appeal taken from a judgment of the Trial Division, Palau, wherein lands known as Kedam, Ngermasch Village, Angaur, were declared to be "clan" lands.

A notice of appeal was filed May 18, 1978 stating the grounds as, "The Trial Court's findings of fact were reached without regard for the evidence and in conflict with applicable law and custom of the Palau District." Appellant failed to file a brief under Rule 18 Trust Territory Rules of Appellate Procedure and on August 3, 1979, Chief Justice Harold W. Burnett made an order denying a motion to dismiss the appeal by allowing appellee to file a brief after first notifying the trial court if they, appellee, desired to in fact file a brief. Appellee did not notify the Court nor did they file a brief. On August 27, 1979, another motion to dismiss the appeal was denied and this matter was submitted to the Court without briefs filed by either side. Oral argument is not allowed under the Trust Territory Rules of Appellate Procedure.

We find no merit in the appeal. Appellant seeks to have the Court reweigh the evidence presented at the trial. This is not a function of the Appellate Division and we have so held on numerous occasions. See *Sato v. Bedul*, 7 T.T.R. 600 (App. Div.).

Judgment is AFFIRMED.