IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE ESTATE OF
REMEDIO MALITE

SUPREME COURT NO. 06-0028-GA
SUPERIOR COURT NOS. 06-0163, 97-0369

Cite as: 2011 MP 4

Decided March 31, 2011

Stephen J. Nutting, Saipan, Commonwealth of the Northern Mariana Islands, for Appellants
Joaquin DLG. Torres, Saipan, Commonwealth of the Northern Mariana Islands, for Appellee

BEFORE: JOHN A. MANGLONA, Associate Justice; ROBERT J. TORRES, Justice Pro Tem; HERBERT D. SOLL, Justice Pro Tem.

MANGLONA, J.:

¶ 1 This appeal arises from heirship proceedings in which the trial court found that Remedio Malite adopted Jesus Somol through the Carolinian adoption custom known as mwei mwei, thus entitling Somol's heirs to inherit from Remedio's estate. The corpus of this estate is derived predominantly from the estate of Remedio Malite's father – Angel Malite – and heirs to the Angel Malite Estate appeal the trial court's heirship determination. In response to Appellants' arguments, we hold that the trial court: (1) considered the correct elements for determining a customary adoption; (2) reached a decision supported by sufficient evidence; (3) correctly placed the burden for proving customary adoption on the party seeking heirship; (4) did not impermissibly exclude material evidence; and (5) did not read or know about a letter addressed to it from Juan Somol – Jesus Somol's son – and that the mere existence of this letter did not create an appearance of partiality. We find no merit in Appellants' argument that Judge Juan T. Lizama's in-court statements reflected pervasive bias or created an appearance of partiality sufficient to invalidate the trial court's decision. We also hold Appellants never moved to have Judge Lizama disqualified from this case, and that the interests of justice do not require that we vacate the heirship determination based on his subsequent disqualification from the *Angel Malite* proceedings. Accordingly, we AFFIRM the trial court's decision declaring the mwei mwei adoption of Jesus Somol by Remedio Malite valid and recognizing Jesus Somol's estate as an heir to Remedio Malite's estate.

I

¶ 2 Angel Malite died intestate and a Petition for Letters of Administration was filed on April 8, 1997.[1] The petition listed three of Angel Malite's children – Joaquina Malite, Elias Malite, and Jacoba Malite – all of whom were deceased, as well as numerous grandchildren and great-grandchildren. Angel Malite[2] had two other children – Pedro Malite and Remedio Malite[3] – who are undisputed heirs, but were not listed in the petition. Pursuant to the Commonwealth Rules of Probate Procedure, a Notice of Hearing and Notice to Creditors was subsequently issued and published.[4]

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[1] This was the third attempt to probate the Angel Malite Estate. The first probate – Probate Case No. 11 – was initiated in the late 1960s, but was never finalized. The second probate – Civil Action No. 261 – began in the late 1970s and ended with a judgment that was never executed.

[2] Many filed documents refer to Angel "Malite" while others refer to Angel "Maliti." Both parties use Angel "Malite" in their briefs and so we will do likewise.

[3] Remedio Malite died on September 22, 1973. Appellants' Excerpts of Record ("ER") at 54.

[4] Only one claim was submitted in response and it is not relevant to the instant proceeding.

¶ 3 On March 13, 2006, the Commonwealth Superior Court approved a civil case settlement in which the Marianas Public Land Authority (the predecessor to the Department of Public Lands) paid the Angel Malite Estate (the "Estate") $3,450,000 for land originally owned by Angel Malite. Juan Somol ("Juan") then filed a motion in the Commonwealth Superior Court to include Remedio Malite as an heir to the Estate.[5] Therein, Juan, the son of Jesus Somol, asserted that his father was adopted by Remedio through the Carolinian custom of "mwei mwei." Specifically, he asserted that Remedio adopted Jesus from Carmen Olopai (Remedio's first cousin), thus entitling Jesus and his heirs to a share of the Estate.

¶ 4 Jesus C. Tudela, Administrator for the Estate, and his attorney Antonio M. Atalig initially opposed Juan's mwei mwei heirship claim. On March 23, 2006, Atalig wrote two letters expressing the Administrator's intent to reject the claim.[6] Tudela, through counsel, then filed a "Rejection or Denial of Claim," which denied Juan's motion to be included as an heir of Angel Malite and requested an evidentiary hearing on the mwei mwei adoption issue. Prior to this hearing, a separate hearing involving a petition for partial distribution of Estate funds was held on April 18, 2006. At this hearing Judge Lizama made various comments that Appellants Rosa Maliti, Lourdes Rangamar, Rombert Sinounou and Jimmy Sablan ("Heirs") argue exhibit sufficient bias and legal error to warrant reversal of the trial court's ultimate ruling.

¶ 5 At some time after the April 18 hearing, Tudela reversed his position on Juan's claim, and on the day that the hearing on the claim was scheduled, approved the claim. The Heirs objected to Tudela's decision, and hearings to determine whether Jesus Somol was the mwei mwei son of Remedio Malite were held. At those hearings Tudela stated that he approved the heirship claim because his grandmother had told him that Jesus was supposed to be included as an heir. On May 25, 2006, the trial court ruled that Jesus Somol was the mwei mwei adoptee of Remedio Malite, and therefore, Jesus Somol's estate was

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[5] The motion asserted that the stipulated settlement agreement failed to include Remedio Malite as an heir of Angel Malite, and thus Jesus Somol – who Juan alleged was Remedio Malite's adopted son – was not included as one of Angel Matite's heirs. ER at 29.

[6] Atalig's letter addressed to Appellants' counsel Stephen Nutting stated:

> Jesus C. Tudela, Administrator, informed me that he objects to the inclusion of Juan Somol as descendant by adoption or mwei-mwei to Remedio Malite in his pending motion in the estate of Angel Malite.
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> . . . The claim will be rejected by the Estate Administrator. . . . On this issue, my personal knowledge on this since the start of the investigation and preparation for probate in 1995 for Angel Malite to the present, the entire Malite clan never hear [sic] or mention any Somol as an adoptee to Remedio Malite.

ER at 35. The second letter, addressed to Joaquin Torres (Juan Somol's attorney), stated that "Somol was unknown to the Malite clan as a descendent by mwei-mwei or customary adoption" and that "[s]ince you have filed a motion for Somol to be included in the distribution of assets, I suggest that the motion be converted as a claim. I will then file a rejection of the claim." ER at 36.

entitled to inherit from Remedio Malite's estate. After the trial court issued an errata order on June 29, 2006, the Heirs filed their second amended notice of appeal.[7]

¶ 6 On June 7, 2006, the Heirs filed a motion to disqualify Judge Lizama from further involvement in proceedings concerning the Angel Malite Estate. The disqualification motion was referred to Judge Wiseman who, after holding a hearing, disqualified Judge Lizama from presiding over further *Malite* proceedings. While the Judge Lizama disqualification issue was unfolding in Superior Court, the appeal from the mwei mwei adoption ruling was pending before this Court. The Heirs attached their motion seeking Judge Lizama's disqualification to their opening appellate brief, and attached to their reply brief Judge Wiseman's order disqualifying Judge Lizama. This prompted Juan to file a motion to strike the attached order from Judge Wiseman and corresponding arguments in the Heirs' reply brief. This issue – the effect that the order disqualifying Judge Lizama should have on the mwei mwei adoption decision – was discussed briefly during oral argument, and both parties were ordered to file supplemental briefs.

¶ 7 This Court now confronts two broad tasks. We must examine the merits of this appeal to determine whether the trial court erred in declaring Jesus Somol the mwei mwei adoptee of Remedio Malite. We must also determine what impact, if any, Judge Lizama's disqualification should have on his finding that Remedio Malite adopted Jesus Somol through the mwei mwei adoption custom.

II

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[7] The errata order made only one change: the order – previously captioned as "*In re the Estate of Remedio Malite*" – was re-captioned as "*In re the Estate of Angel Malite*." The court explained that while "the litigation pertains to the Estate of Remedio Malite . . . the ultimate crux of this dispute is whether the Estate of Jesus Somol has an interest in the Estate of Angel Malite." *In re Estate of Angel Malite*, Civ. No. 97-0369 (NMI Super. Ct. June 29, 2006) (Errata for Order Confirming the Mwei Mwei Adoption of Jesus Somol and Recognizing the Estate of Jesus Somol as an Heir to the Estate of Remedio Malite ("Order Confirming Mwei Mwei Adoption") at 1). The Heirs disagree with this characterization.

The Heirs filed their original notice of appeal on June 14, 2006. This document did not include the trial court's order confirming the mwei mwei adoption, and so on June 29, 2006, the Heirs filed an amended notice of appeal incorporating the proper order. Thus, the document filed following the errata order is the second amended notice of appeal.

We note that we have jurisdiction to review the mwei mwei adoption order regardless of whether it is captioned under the *Angel Malite* or *Remedio Malite* case heading. If the Somol heirship determination is captioned under the *Remedio Malite* case, then the trial court's decision, issued on May 25, 2006, is a final judgment and reviewable by this Court. *See* NMI Const. art. IV, § 3 ("The Commonwealth supreme court shall hear appeals from final judgments and orders of the Commonwealth superior court."); *see generally Commonwealth v. Kumagai*, 2006 MP 20. Alternatively, if it is considered part of the *Angel Malite* case then, since this case is still ongoing, it would be akin to an interlocutory order. "[U]nder Commonwealth law, in the absence of an applicable statutory or common law exception, an appeal must generally await the entry of a final judgment (i.e., a judgment that fully disposes of all claims asserted in an action.)." *Camacho v. Demapan*, 2010 MP 3 ¶ 23 (Slip Opinion, March 16, 2010) (citation omitted). The order confirming the mwei mwei adoption of Jesus Somol would be subject to an "applicable statutory exception" – 8 CMC § 2206 of the Northern Mariana Islands Probate Law, which states that "[a]n appeal may be taken from an order . . . determining heirship or the persons to whom distribution should be made or trust property should pass. . . ." Our jurisdiction to review the Somol heirship determination would thus be grounded in 8 CMC § 2206. Ultimately, the source of our jurisdiction does not impact disposition of this appeal.

¶ 8 In support of their contention that the trial court improperly declared Jesus Somol the mwei mwei son of Remedio Malite, the Heirs argue that the trial court: (1) applied the wrong legal standard for determining a customary adoption; (2) reached a decision unsupported by sufficient evidence; (3) created an heirship "presumption" and thereby impermissibly shifted the burden of proof to the Heirs to rebut the mwei mwei heirship claim; (4) erred by not admitting material evidence and resisting offers of proof; and (5) failed to disclose the existence of a letter addressed to Judge Lizama from Juan. Finally, they argue that errors asserted in arguments one through five create an appearance of partiality sufficient to invalidate the trial court's decision. Each of these issues will be examined in turn.

A. *The Probate Court Applied the Correct Mwei Mwei Adoption Standard*

¶ 9 The Heirs argue that the trial court either ignored or misunderstood the mwei mwei adoption elements, and thereby applied an improper legal standard for determining customary adoption. Juan responds that the judge applied the proper standard and considered relevant elements. Whether the trial court applied the correct legal standard is a question of law reviewed de novo. *See Or. Natural Desert Ass'n v. Locke*, 572 F.3d 610, 613-14 (9th Cir. 2009).

¶ 10 In order to determine the elements of mwei mwei adoption it is instructive to look to previous adoption cases. In *In re Estate of Rofag*, 2 NMI 18, 21 (1991), Rofag, who never married and had no natural children, took his niece, Magdalena, into his household and raised her. After Rofag and Magdalena died, Magdalena's children claimed their mother had been adopted through Carolinian custom and was entitled to inherit from Rofag's estate. *Id.* at 22-23. The trial court "found by preponderance of the evidence that Rofag adopted Magdalena by custom" and we affirmed. *Id.* at 23, 29. In *Rofag*, we noted that three expert witnesses had testified concerning mwei mwei adoption, and we included the following definition:

> "Mwei-Mwei" is a Carolinian customary method of adopting children. Normally, the child to be adopted is a baby, but there is evidence that a child who is nine, ten, or eleven years old could be customarily adopted, depending upon the circumstances. The adoption takes place between relatives, initiated by the women and normally a married couple, as opposed to a single person, adopt the child. (There is also evidence that single persons have adopted children by custom.)
>
> Customarily, the adopting parents propose to adopt a child and the natural parents must give their consent. Once the child is adopted under this custom, he/she is treated and considered as a natural child for all purposes.

Id. at 23 n.3. Notably, the *Rofag* Court did not discuss how to apply this definition, but instead simply affirmed the lower court decision after finding "substantial evidence supporting [the trial court's] finding that Magdalena had been adopted by Rofag." *Id.* at 31-32.

¶ 11 We revisited the mwei mwei issue in *Estate of Amires*, 1997 MP 8, wherein two individuals asserted they were the mwei mwei children of the decedent. The trial court ruled that neither were mwei mwei adoptees because both "were brought into [d]ecedent's household as older children. Further, they were not related to [the decedent] by blood." *Id.* ¶ 17 (citation omitted). The Supreme Court ruled that the lower court erred in finding that adoption at a young age and a blood relationship between the child and adopting parent were required to support a mwei mwei adoption finding. *Id.* ¶ 21. However, after looking at other evidence the Court upheld the trial court's decision, finding that the court's ultimate ruling was supported by sufficient evidence.

¶ 12 Neither *Rofag* nor *Amires* establish fixed elements that must be satisfied to justify a mwei mwei finding. Instead, they provide a list of non-exclusive factors to guide lower courts when evaluating mwei mwei adoption claims. These factors are: (1) age at the time of adoption; (2) whether the adoption occurs between relatives; (3) whether the adoption is initiated by women; (4) whether the adopting parent is married; and (5) whether the natural parent consented to the adoption. Lower courts have repeatedly considered these factors when reviewing customary adoption claims. *See In re Estate of Kaipat*, Civ. No. 90-0840 (NMI Super. Ct. Jan. 24, 2006) (finding that undisputed testimony supported mwei mwei adoption claim); *In re Estate of Teregeyo I and II*, Civ. No. 91-298 and No. 91-299 (NMI Super. Ct. March 14, 1995) (holding that claimants failed to show that any of the elements discussed in *Rofag* existed).

¶ 13 Unlike the courts in *Kaipat* and *Teregeyo*, which expressly referenced *Rofag* and the factors set forth therein, the trial court in this case did not cite *Rofag* in its analysis.[8] While lower courts would be well-advised to lay out these factors in a more explicit fashion, we conclude that the proper *Rofag* factors were considered. The trial court fashioned its legal analysis by examining the evidence in light of Melvin Faisao's expert testimony, which in many instances echoed the *Rofag* factors. For example, the court order states that "mwei mwei . . . usually occurs while a child is still breast feeding" and the court stressed the "undisputed fact that Remedio took Jesus to the outer islands at a young age."[9] Order Confirming Mwei Mwei Adoption at 10. Additionally, the court acknowledged that "single parent adoption is rare (particularly when the adopting parent has no means of support) . . . [but] it does occur." *Id.* In making these statements it is evident that the court considered the appropriate factors.

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[8] The only reference to *Rofag* is the court's statements that it would apply the "preponderance of the evidence standard" and that mwei mwei adoption "may be proved by circumstantial evidence." *In re Estate of Remedio Malite*, Civ. No. 06-0163 (NMI Super. Ct. May 25, 2006) (Order Confirming Mwei Mwei Adoption at 2) (citing *Rofag*, 2 NMI 20).

[9] The State of Yap and the State of Chuuk form part of the Federated States of Micronesia and contain "outer islands" relevant to this case. Specifically, the trial court found that Remedio and Jesus lived on Satawal and Pulusuk. Order Confirming Mwei Mwei Adoption at 3. Satawal is part of the Yap outer islands and Pulusuk is part of the Chuuk outer islands.

¶ 14 The court also referenced additional customary adoption factors not discussed in *Rofag*, including: (1) the entire community is made aware of a mwei mwei adoption; (2) it is rare for the natural parent to reclaim a mwei mwei adoptee; and (3) it is rare for a parent to give up her only child for adoption although this may be done to protect the clan from bad luck[10] if a parent's children have previously died. While these additional factors were not discussed in *Rofag*, neither *Rofag* nor its progeny establish an exhaustive list of mwei mwei adoption factors. The trial court was therefore at liberty to consider these additional factors – established through expert witness testimony – along with the *Rofag* factors to determine whether a mwei mwei adoption occurred. A trial court must consider the totality of the circumstances when making a mwei mwei adoption determination, and it is clear from the record that the lower court's analysis satisfied this standard.

¶ 15 The heirs stress that the trial court failed to adequately recognize that Carolinian custom differentiates between children adopted under the mwei mwei custom and those raised under the fa'am custom. This latter form of guardianship, which is akin to a foster parent, does not entitle a child to inherit from the adopting parents. The Heirs argue that the distinguishing characteristic between these two types of guardianship is that mwei mwei adoption requires "the existence of an agreement or a dialogue between the adoptive parent(s) and the natural parents to adopt the child." Appeal of Superior Court's Order Dated 5/25/06 ("Appellants' Opening Br.") at 10. The Heirs argue that this element must be considered, and that the trial court failed to consider it is supported from the fact that "no evidence was introduced which showed that there was ever a dialogue between Remedio and Jesus' parents, nor was there evidence to determine whether Jesus came to live [sic] Remedio (if in fact this occurred) as a mwei mwei infant or as a . . . faam adolescent." *Id.*

¶ 16 While this Court has never discussed how fa'am adoption differs from mwei mwei adoption, we acknowledge Faisao's expert testimony that an agreement or dialogue concerning the adoption is a critical distinguishing factor. However, contrary to the Heirs' assertion, we find that the trial court did consider the fa'am versus mwei mwei distinction. Specifically, the court referenced Faisao's testimony that "it would be uncommon for a guardian to take a fa'am child to live off-island" and concluded that the fact that Remedio took Jesus to the "outer islands . . . is one of the most conclusive facts in this case. It is unlikely that Jesus would have been fa'am under such circumstances." Order Confirming Mwei Mwei Adoption at 10, 14. In essence, the court used the move to the outer islands as circumstantial evidence that the parties must have discussed and consented to the adoption. While court analysis of testimony conveying a conversation between Carmen Olopai and Remedio Malite would make it more clear that this

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[10] The term "vwiischka'ar" was used to refer to the need to protect the clan from bad luck. Order Confirming Mwei Mwei Adoption at 10.

factor was considered, such analysis is not required. Remedio and Carmen have long since deceased, and direct testimony of a conversation between these two women would be difficult, if not impossible, to obtain. In such circumstances, analysis of circumstantial evidence – such as taking a child away from Saipan – is sufficient to convince us that the court considered this important factor. For the above reasons, we hold the trial court considered the proper elements for determining whether Jesus Somol was the mwei mwei child of Remedio Malite.

B. *There is Sufficient Evidence to Support the Trial Court's Order*

¶ 17 We next examine the Heirs' argument that there was insufficient evidence to support the trial court's finding that a mwei mwei adoption occurred. The standard of review when examining sufficiency of the evidence is whether the evidence, viewed in a light most favorable to the prevailing party, is sufficient to support the conclusion of the fact-finder. *Manglona v. Kaipat*, 3 NMI 323, 329 (1992).

¶ 18 The trial court found witness testimony critical to its decision and it is therefore helpful to preface our analysis with a brief review of the relevant witnesses who testified at trial.[11] Juan's witnesses included Carmen Olopai Taitano and Concepcion Igisomar (daughters of Juan Olopai), Bibiana Lemau[12] (who lived in Satawal with Jesus and Remedio), Maria Elameto (Jesus Somol's goddaughter), Leonisa Somol[13] (Jesus Somol's daughter and Juan Somol's brother), Dionesia Saralu[14] (who met Remedio and Jesus in 1954 and testified that Carmen Olopai was her auntie), and Rita Salepeo Saures (who testified that Jesus did not inherit from his natural mother). The Heirs attempted to rebut Juan's heirship claim with testimony from Jesus C. Tudela (former administrator for the Angel Malite Estate), Frances Camacho Keremius[15] (who allegedly lived across the street from Jesus Somol from 1960 to 1975), Jose Litulumar (Juan and Leonisa Somol's cousin), Victoria I. Kapileo (who knew Remedio Malite, but is apparently not

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[11] The Heirs have included over 100 pages of trial testimony in their submitted excerpts of records, yet inexplicably have not included any headings, table of contents, or any other form of organization that would permit this Court to easily navigate the trial testimony or determine which witness is testifying. They even fail to differentiate between hearings held on different dates, and in some instances one page of witness testimony is sandwiched between testimonies from two other witnesses, with no indication that a new witness is testifying. These deficiencies are all the more inexcusable given that large portions of testimony have been omitted, and so in many instances the Court is left to guess (or refer to briefs or trial court documents) to try to determine which witness is testifying. Effective advocacy requires assembling the record in a more thoughtful manner.

[12] While some court documents refer to this witness as "Viviana Lemau," because the trial court's order refers to her as "Bibiana Lemau" we will do likewise.

[13] While some court documents refer to this witness as "Leonicia Somol," because the trial court's order refers to her as "Leonisa Somol" we will do likewise.

[14] While some court documents refer to this witness as "Dionisia Saures Saralu," because the trial court's order refers to her as "Dionesia Saralu" we will do likewise.

[15] While some court documents refer to this witness as "Frances Camacho Keremes," because the trial court's order refers to her as "Frances Camacho Keremius" we will do likewise.

related to either the Somol/Olopai or Malite clans), Lourdes Rangamar (who testified that Remedio Malite was her auntie) and Rosa Malite (one of Remedio Malite's nieces and the oldest female relative in the Malite family). Melvin Faisao, an expert on Carolinian customs, also testified at trial.

¶ 19 To briefly summarize, the Heirs' witnesses – many but not all of whom are related to the Malite family – testified that Remedio never lived with the Somol family, that Jesus and Remedio were never seen together, and that Remedio never spoke about Jesus or about having any children. In contrast, the vast majority of Juan's witnesses are from the Somol/Olopai family and testified that Jesus grew up with Remedio and that Remedio lived with the Somol family for extended periods of time. As the trial court succinctly stated, "[w]hile it appeared at trial that everyone in the Olopai family knew that Jesus Somol had been adopted by Remedio Malite, no one in the Malite family had ever heard of the adoption." Order Confirming Mwei Mwei Adoption at 2. Given this conflicting testimony, the court framed the issue before it as needing to "weigh the competing hearsay of the Olopai and Somol family against that of the Malite heirs and witnesses." *Id*. The court ultimately ruled in Juan's favor. After reviewing the evidence in the light most favorable to Juan, we find that there is sufficient evidence to support this conclusion.

¶ 20 To review the mwei mwei adoption finding we will first consider the age at which the child is adopted. "Normally, the child to be adopted is a baby, but there is evidence that a child who is nine, ten, or eleven years old could be customarily adopted, depending upon the circumstances." *Rofag*, 2 NMI 18 at 23 n.3. Bibiana Lemau, who lived in the same village as Remedio and Jesus on Satawal, testified that when she first saw Remedio and Jesus, Jesus was a "small boy." ER at 125. She also provided circumstantial evidence of Jesus' young age by testifying that she saw Remedio and Jesus eat together from the same bowl and that Remedio took care of Jesus when he was a boy. ER at 126. Additionally, Carmen Olopai Taitano testified that her father had told her that Remedio adopted Jesus when he was "still small." ER at 114. This evidence, when viewed in a light most favorable to Juan (the prevailing party), supports the trial court's conclusion that "Remedio took Jesus to the outer islands at a young age[,]" and the implication that Jesus was adopted at a young age. Order Confirming Mwei Mwei Adoption at 14.

¶ 21 The second factor we consider is whether the adoption occurs between relatives, and the third factor is whether the adoption is initiated by women. *Rofag*, 2 NMI 18 at 23 n.3. Carmen Olopai and Remedio Malite appear to be first cousins. ER at 31. It is undisputed that Carmen Olopai and Remedio Malite are women. While the trial court did not expressly address these two factors, they do not appear to be in dispute and support the trial court's conclusion.

¶ 22 The fourth factor to consider is whether the adopting parent is married. Juan concedes that Remedio was not married when she adopted Jesus. The trial court found that although "single parent adoption is rare (particularly when the adopting parent has no means of support), it does occur." Order

Confirming Mwei Mwei Adoption at 10. Ultimately, the court considered other factors more important to this specific case; however, to the extent that this factor is relevant, it weighs against a mwei mwei finding.

¶ 23 The fifth relevant factor for a court to consider is whether the entire community is made aware of the mwei mwei adoption. Faisao testified that a mwei mwei adoption is not kept secret; thus, the community has knowledge of the adoption. *See* ER at 155. The trial court considered this factor, stating that "there is a great deal of testimony that Jesus' birth mother discussed the mwei mwei with her family and with community members." Order Confirming Mwei Mwei Adoption at 14. The record supports this conclusion. Concepcion Olopai Igisomar testified that Remedio treated Jesus in public as her son. ER at 131. Maria Elameto testified that when she occupied a hospital bed next to Carmen Olopai in November 1969, Carmen told her that Jesus was her son, but that she had given him to Remedio. ER at 138. Rita Salepeo Saures testified that Carmen told her that she had given Jesus to Remedio. ER at 139. Similarly, Carmen Olopai Taitano testified that it was her understanding that Carmen gave Jesus to Remedio to adopt. ER at 114. While the Heirs' witnesses, including Lourdes Rangamar and Victoria Kapileo, testified that they had never heard Remedio say she adopted Jesus, the trial court is entrusted with weighing competing evidence and we will not second-guess these determinations absent an abuse of discretion. *See Rofag*, 2 NMI at 31 ("We will accord particular weight to a trial judge's assessment of conflicting and ambiguous evidence.")

¶ 24 The sixth relevant factor is whether the natural parent reclaimed the adoptee. The trial court impliedly acknowledged this factor, referencing Faisao's testimony that it is "extremely rare for the natural parents of a mwei mwei adoptee to reclaim the adoptee" whereas "[f]a'am children normally go back to the natural parents after some time." Order Confirming Mwei Mwei Adoption at 9-10. While the trial court did not expressly apply the testimony to this factor, there is no evidence in the record that Carmen ever "reclaimed" Jesus.

¶ 25 The seventh factor is whether the adoptee is the natural parent's only child. Jesus was Carmen Olopai's only living child at the time of the alleged adoption. The trial court found that because Carmen Olopai had already lost three children, the "family's belief in vwiischka'ar . . . could explain why Remedio was entrusted with Jesus." Order Confirming Mwei Mwei Adoption at 15. As it is undisputed that Carmen's previous children had died, and given Faisao's testimony that this could justify a parent giving up her only child, there is sufficient support for the trial court's statement. Moreover, it is clear from the trial court's order that it did not consider this factor dispositive in reaching its ultimate ruling.

¶ 26 The final factor to consider is whether the natural parent consented to the adoption. The Heirs argue that there is no direct evidence of a conversation in which Carmen consented to Remedio adopting

Jesus. Citing Faisao's testimony that the natural and adoptive parents discuss a mwei mwei adoption,[16] they argue that absent such evidence Jesus is at most a fa'am adoptee. This Court in *Rofag* stated that a natural parent must consent to their child's adoption, but we have never examined what acts are sufficient to constitute consent.

¶ 27 No direct evidence was presented at trial concerning any conversation between Carmen and Remedio. Instead, relying on Faisao's testimony, the court stated that the "undisputed fact that Remedio took Jesus to the outer islands at a young age and lived with him throughout this time is one of the most conclusive facts in this case. It is unlikely that Jesus would have been fa'am under such circumstances." Order Confirming Mwei Mwei Adoption at 14. Juan argues that this move away from Saipan, combined with the fact that no one is alleging that Jesus was kidnapped, provides sufficient circumstantial evidence to conclude that Carmen and Remedio discussed the adoption.

¶ 28 Testimony recounting a specific conversation between the natural and adoptive parents is not required to prove that a mwei mwei adoption occurred. While such direct evidence of consent will generally make it easier for the plaintiff to prove a mwei mwei adoption, circumstantial evidence may also be relied upon. Requiring otherwise would be imprudent given that in the Commonwealth, estate probates are oftentimes delayed for decades, such that both the natural and adoptive parents – those participating in the required conversation – have long-since deceased. In the present case, the move to the outer islands is particularly compelling, and constitutes sufficient evidence to satisfy proof of consent.

¶ 29 The Heirs caution us that upholding the mwei mwei adoption absent express testimony about a conversation between the natural and adoptive parents encourages fraudulent heirship claims based on hearsay testimony. We strive to preserve and protect local culture and customs and are confident today's ruling will not undermine these priorities. While we find the circumstantial evidence in this case sufficient to support the trial court's conclusion, the proffered testimony is unusual and particularly compelling. Cases will rarely involve a child being taken so far away from Saipan and his or her natural parents at a young age. This significant fact distinguishes this case from others in which the child remains on Saipan, and ensures that this decision does not open the floodgates to fraudulent claims.

¶ 30 In light of the above analysis, we hold there is sufficient evidence supporting the trial court's finding that a mwei mwei adoption occurred. In particular, there is testimony that Remedio took Jesus to the outer islands at a young age and that Carmen told members of her community about the adoption.

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[16] Faisao gave the following testimony:

> Mr. Nutting: Okay. So is there a dialogue that takes place then between the parents who are giving up the child and the adoptive parents?
> Faisao: Usually, the [sic] would happen, or else the child would be --- the receiving parents would be considered a kidnapper.

ER at 152. Faisao also testified that "dialogue has to spread out amongst the extended family." ER at 155.

Additionally, the move to the outer islands itself is sufficient circumstantial evidence of an agreement between Remedio and Carmen and justifies the trial court's conclusion that Jesus was not a fa'am adoptee. We acknowledge the Heirs' argument that it would be unusual for a mother to let an unmarried woman adopt her only child. However, as our previous cases make clear, a court must review the factors on a case-by-case basis, and no single factor is dispositive. While considerable testimony supports the Heirs' argument, we hold that the evidence, viewed in the light most favorable to Juan, is sufficient to support the trial court's conclusion. We are not left with a "definite and firm conviction that the court below committed a mistake." *Rofag*, 2 NMI at 31.

C. *Whether the Trial Court Improperly Shifted the Burden of Proof by Establishing a "Presumption" of Heirship*

¶ 31 The Heirs next argue that the trial court's in-court statements reveal a fundamental misconception about the legal standard for deciding a mwei mwei adoption claim. They argue that the court created a presumption in favor of heirship, and, as a result of this erroneous presumption, improperly placed the burden of proof on the Heirs and resolved all contentious issues in Juan's favor. Juan responds that the court referenced the correct legal standard in both its in-court statements and written order.

¶ 32 In *In re Estate of Rofag*, 2 NMI at 30, the Supreme Court held a preponderance of the evidence standard is applied in customary adoption cases. While the *Rofag* opinion does not explicitly state that it is the party raising the adoption claim (i.e., the claimant) who bears this burden, this conclusion necessarily follows from the opinion. Specifically, we concluded that this standard is "consistent with legislative intent in establishing claims of customary adoption" and that adopting a higher standard would "restrict judicial recognition of customary adoption." *Id.* at 29. This concern would only materialize if the burden is placed on the claiming party. The Commonwealth Superior Court has previously applied this standard. *See, e.g.*, *Estate of Teregeyo*, *supra* ¶ 12 (citing *Rofag* and applying preponderance of evidence standard in customary adoption case).

¶ 33 The Heirs assert that two in-court statements show the trial court believed there was a presumption in favor of finding mwei mwei adoption, and thereby improperly placed the burden on the Heirs to prove that an adoption did not occur. The following exchange occurred during a hearing on the partial distribution of funds, which took place two weeks before the heirship hearing:

> Court: Okay. So, still there's this presumption that Remedio is an heir? I'm sorry, Jesus is an heir. Okay.
>
> Mr. Torres:[17] Yes.

[17] Juan asserts that Mr. Nutting made this statement. Appellee's Br. at 6. While the trial transcript included in the record attributes this statement to Mr. Nutting, the transcriptionist, Melissa B. Camacho, filed an affidavit stating that her transcription was incorrect and that attorney Joaquin Torres actually made this statement. Appellants' Supplemental Excerpts of Record ("SER") at 23-25; *see* ER at 105.

The Court: We have to presume that. Okay.

ER at 105. At this hearing the court also made the following statement to the Heirs' attorney Stephen Nutting:

> Court: . . . So we are going to have that evidentiary hearing for the purposes of the heirship, but don't forget, Mr. Nutting, that the administrator, the administrator's approval in probate is quite a difficult task to challenge. Do you understand that, Mr. Nutting? So it's going to be incumbent upon you to present your evidence. Their evidence is probably insurmountable already, and it's up to you to defeat that claim, okay.

ER at 110.

¶ 34 Practicality demands that we permit a trial judge to correct an earlier misstatement of law. *Cf. State v. Hovater*, 914 P.2d 37, 44 (Utah 1996) ("Misstatements of the law do not prejudice a defendant where the error has been satisfactorily corrected") (citations omitted). To hold otherwise would undermine a judge's ability to effectively conduct court proceedings. While some misstatements are sufficiently prejudicial so as to be non-correctable, such is not the case before us. While the trial court's comments reflect an incorrect legal presumption, the court's subsequent comments and written statements convince us that it ultimately applied the correct legal standard. Specifically, the trial court stated at the end of the heirship hearing during his closing remarks that:

> . . . it is better to find a person not guilty that [sic] to find someone guilty. It is better to find one as capable of inheriting than to disinherit a person that deserves to be --- deserves to inherit. *The laws are very clear that the presumption of heirships, there is a presumption and it is the burden, and it is the burden of course, of the plaintiffs to should [sic] that they are --- that Jesus is an heir and I believe that that's a good presumption.*

ER at 216 (emphasis added). Contrary to the Heirs' assertions, these comments show that the court correctly placed the burden of proof on the party seeking recognition as an heir.[18] This conclusion can also be inferred from the court's written order in which it, citing *Estate of Rofag*, stated that in "determining whether there was a mwei mwei adoption, the Court applies the preponderance of the evidence standard." Order Confirming the Mwei Mwei Adoption at 2. Accordingly, we hold that because

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[18] The Heirs also argue that the trial court's statements that "it is better to find a person not guilty that [sic] to find someone guilty" and that it "is better to find one as capable of inheriting than to disinherit a person that deserves to be --- deserves to inherit" reflect that it applied a burden of proof under which all doubts were resolved in Juan's favor. ER at 216; Appellants' Opening Br. at 8. Immediately after making these comments the trial court made the statement quoted in ¶ 34, *supra*, yet this critical statement is conspicuously absent from the Heirs' argument. The court's statement is difficult to decipher, yet given that it stated that the plaintiff bears the burden of proof, we find that the comments were insufficient to establish that the court resolved all doubts in Juan's favor.

the correct legal standard was set forth both orally at the heirship hearing and in the court's subsequent written order, the court's incorrect statements of law, which were made prior to the heirship hearing, did not prejudice the Heirs and therefore constituted harmless error.

D. *Trial Court Evidentiary Determinations*

¶ 35 The Heirs also argue that the trial court erred by barring admissible evidence, permitting leading questions, resisting offers of proof, and failing to ascribe probative value to documentary evidence. Juan responds that excluded evidence was not relevant, a key witness's old age and language barriers justified permitting leading questions, the Heirs' offers of proof were permitted, and documentary evidence was properly considered and found wanting. We will address each of the Heirs' arguments in turn.

1. *Exclusion of Trial Testimony*

¶ 36 The Heirs assert that in two instances the trial court prohibited witnesses from proffering probative testimony. They argue that the court improperly prevented counsel from questioning Mr. Tudela (the Estate administrator) concerning what research he performed before approving the Somol heirship claim and whether pecuniary considerations influenced his approval of the claim. Second, the Heirs allege that during the cross-examination of Ms. Leonisa Somol, the trial court improperly prohibited counsel from questioning Ms. Somol concerning why she waited nine years to file a claim with the Malite Estate, and whether the recent publication of the $3.45 million settlement prompted her filing. We review a trial court's decision to exclude or admit evidence for an abuse of discretion. *See In re Estate of Dela Cruz*, 2 NMI 1, 8 (1991); *Pangelinan v. Unknown Heirs of Mangarero*, 1 NMI 387, 399 (1990).

¶ 37 We find the record does not support the Heirs' argument that the court improperly prevented counsel from questioning Mr. Tudela about whether he conducted any outside research before approving the mwei mwei claim.[19] To the contrary, Mr. Nutting was permitted to ask Mr. Tudela – without an objection – "What investigation --- what independent investigations did you do of Mr. Jesus Somol's claim?" ER at 162.[20] While Mr. Nutting may have found Mr. Tudela's response inadequate, it was his

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[19] Mr. Tudela testified that he approved the claim because his grandmother had told him that Jesus was supposed to inherit from the Estate. ER at 161-62. The Heirs argued at the heirship hearing that this conversation in fact never occurred.

[20] The relevant portion of the trial transcript reads as follows:

Mr. Nutting:	Nevertheless, not having looked of [sic] any of the records or talked with any of the elderly family members, you made the decision to just hand over one-fourth of the Malite estate to Mr. Juan Somol and his sister?
Mr. Torres:	Objection, You Honor. That's argumentative.
Court:	Sustained.
Mr. Nutting:	Nevertheless, without making any independent investigation, you made the decision to accept the claim of Juan Somol?
Mr. Torres:	Objection, Your Honor. That's [m]ischaracterization of the evidence.
Court:	Sustained.

responsibility to ask additional questions. Nothing in the record reflects that Mr. Nutting was wrongly prevented from further questioning Mr. Tudela about his investigation. While the court did sustain objections that Mr. Nutting's questions were argumentative and mischaracterized the evidence, the Heirs have not convinced us that the trial court abused its discretion in ruling on these objections.[21]

¶ 38 With regard to Ms. Somol's testimony, the Heirs argue the court improperly sustained objections that questions concerning Ms. Somol's delay in filing a claim against the Estate were argumentative, misleading and irrelevant. The Heirs only devote one paragraph of their brief to this argument. Other than stating their position that testimony was improperly precluded, they advance no legal argument except that the "trial judge prevented a legitimate and relevant line of questions . . . ." Appellants' Opening Br. at 39. No legal authorities are cited and counsel does not specifically address how the court's ruling on each objection was improper. "[W]e will not consider an issue for which the proponent cites no legal authority." *Fitial v. Kyung Duk*, 2001 MP 9 ¶ 18. In the absence of adequate legal arguments we decline to find that the trial court abused its discretion.[22]

Mr. Nutting:	What investigation --- what independent investigations did you do of Mr. Jesus Somol's claim?
Mr. Tudela:	Not only --- well, anyways, I don't know about the claim but Jesus suppose to be have a share because that's what my grandma say.

ER at 161-162 (trial transcript at 279-80).

[21] The Heirs' argument that the court prevented questioning concerning whether Mr. Tudela was motivated by pecuniary interests is also unsupported by the record. In addition to the testimony cited in footnote 20, *supra*, counsel argues that the following exchange supports its theory:

Mr. Nutting:	Was there any particular piece of evidence or document or anything that you saw which made you decide that indeed Jesus Somol was adopted by Remedio Malite?
Mr. Tudela:	There's no document, but I heard from my grandma, my wife [sic] grandma.
Mr. Nutting:	All right. But you never mentioned that six weeks ago?
Mr. Tudela:	That's right.
Mr. Nutting:	I guess --- well, final question. Why didn't you say anything about it back in the ---
Mr. Atalig:	Objection. Argumentative, Your Honor.
Court:	Well, --- go ahead. Overruled. Go ahead.

ER at 164. Mr. Atalig was Mr. Tudela's attorney in this matter.

Based on this testimony the Heirs argue, "[t]hus, the trial [sic] refused further inquiry into the issue of whether or not the Administrator had approved the claim for personal pecuniary gain." Appellants' Opening Br. at 40. The record reflects no such refusal. To the contrary, the only objection made during this portion of the testimony was overruled. The Heirs' predicament appears to be not that evidence was improperly excluded, but that it could not get Mr. Tudela to provide sufficiently favorable testimony. Again, if counsel was unsatisfied with Mr. Tudela's answers he should have asked additional questions.

[22] We note that the trial court is granted broad discretion in making evidentiary determinations. Improper exclusion of evidence will only constitute reversible error if "a substantial right of an appellant is affected." *In re Estate of Barcinas*, 2 NMI 437, 446 (1992); *see* NMI R. Evid. 103(a). "An error affects a substantial right when it can be said with fair assurance that the error substantially influenced the outcome of the case or impaired the basic fairness of the trial itself." *Barcinas*, 2 NMI at 446 (citation omitted).

2. *Form-of-Question Objections During Trial*

¶ 39 The Heirs argue that the trial court abused its discretion by permitting leading questions during Bibiana Lemau's testimony. Ms. Lemau lived on Satawal in the same village as Jesus and Remedio. The trial court found Ms. Lemau's testimony critical, stating, "[t]he Court finds the testimony of [Bibiana Lemau] most compelling. Of all the witnesses, she was the only one with firsthand knowledge of the relationship between Jesus and Remedio in Jesus' early years." Order Confirming Mwei Mwei Adoption at 14. The Heirs argue that the following exchange contained impermissible leading questions:

Mr. Torres:	Okay. When you took I Nitighua[23] from Lamulor's village, did she have anyone --- did you take her with --- was anyone with her?
Ms. Lemau:	No, only us. She's just staying with us.
Mr. Torres:	When --- when you took I Nitighua, did I Nitighua bring someone with her?
Mr. Nutting:	Objection. Asked and answered. Leading.
The Court:	Overruled.
Ms. Lemau:	No.
Mr. Torres:	Okay. And did you --- do you know a person by the name of Jesus?
Ms. Lemau:	Yes, I see.
Mr. Torres:	And how --- how did Jesus --- did Jesus go to your village?
Ms. Lemau:	Yes, he follow his mom.
Mr. Torres:	Who is Jesus mom?
Mr. Nutting:	Objection. Lacks foundation. Move to strike.
Court:	Overruled.
Mr. Lemau:	I Nitighua.
Mr. Torres:	So when [Remedio] came to your village, [Remedio] was with Jesus.
Ms. Lemau:	Yes.

ER at 124.[24]

¶ 40 A "leading question" is one "that suggests the answer to the person being interrogated; especially a question that may be answered by a mere 'yes' or 'no.'" *People v. Miles*, 815 N.E.2d 37, 45 (Ill. App. Ct. 2004) (quoting Black's Law Dictionary 897 (7th ed. 1999)). Juan argues that leading questions were permissible because Ms. Lamau was over eighty years old (the oldest witness at trial) and testified

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[23] Throughout the hearing witnesses referred to Remedio Malite as I Nitighua.

[24] The Heirs cite additional leading questions during Ms. Lemau's examination. *See* ER at 125-27. Given our conclusion that the court was permitted to allow some leading questions there is no need to examine this contested testimony question by question.

through an interpreter. Appellee's Br. at 39. These factual assertions are uncontested. Rule 611(c) of the NMI Rules of Evidence states that "[l]eading questions should not be used on the direct-examination of a witness, except as may be necessary to develop his testimony." While this Court has never examined Rule 611(c) in an opinion, the Advisory Committee Notes to Federal Rule of Evidence 611 – which is substantively identical to NMI Evidence Rule 611 – shed light on this issue and are instructive. *See Commonwealth v. Hossain*, 2010 MP 21 ¶ 21 (Slip Opinion, Dec. 31, 2010) (referencing Federal Rules of Evidence Advisory Committee Notes). Specifically, the Notes state that an exception to the rule against leading questions exists for an "adult with communication problems" and that this "matter clearly falls within the area of control by the judge over the mode and order of interrogation and presentation and accordingly is phrased in words of suggestion rather than command." Fed. R. Evid. 611(c), Advisory Committee Notes.

¶ 41 We conclude that Ms. Lemau's age and language barriers are factors that would permit the court to allow leading questions. Accordingly, to the extent the contested questions could be considered leading, they were permissible. Additionally, the record reveals that some of the contested questions – "do you know a person by the name of Jesus" and "did Jesus go to your village" – were not even objected to at the hearing. Given the lack of objection, the witnesses' age and language barriers, and the trial court's authority to facilitate testimony, we hold that the trial court did not abuse its discretion.

3. *Offers of Proof*

¶ 42 The Heirs argue that the trial court "denied or obstructed Malite counsel's attempts to make an offer of proof on multiple occasions" and that "[i]n doing so, the trial judge may have sabotaged the appellant's ability to preserve certain key issues for appeal." Appellants' Opening Br. at 42. Offers of proof enable the judge to make an informed decision regarding admission of evidence and preserve the trial record for appeal. *See, e.g., Polys v. Trans-Colorado Airlines, Inc.*, 941 F.2d 1404, 1407 (10th Cir. 1991). Significantly, the record reveals that each offer of proof was ultimately permitted, and the Heirs concede that all documentary evidence was admitted. *See* ER at 191; Appellants' Opening Br. at 45. The Heirs do not cite any authority that supports reversing the trial court in such circumstances, and given that the offers of proof were ultimately permitted we find the Heirs' argument provides no basis for reversal.

4. *Probative Value of Documentary Evidence*

¶ 43 The Heirs argue that the trial court erred by failing to ascribe sufficient weight to documentary evidence, and that this failure created an appearance of partiality. Specifically, they argue that the court "summarily rejected the probative value of decades of relevant historical documentary evidence without sound reason and without just cause." Appellants' Opening Br. at 26. The trial court found that the proffered documents were plagued with inaccuracies and therefore not probative. While we find it

unnecessary to review each document, discussing a handful of the most significant documents aids in addressing the Heirs' argument.

a. *The Documentary Evidence*

¶ 44 The Heirs offered fourteen documents at the hearing and ascribe particular importance to three of these documents. The first document is a 1969 petition to probate the estate of Angel Malite. ER at 58-60. In 1969, Rosa Malite, Joaquina Malite, Remedio Malite and Pedro Malite met with an attorney to prepare a petition for the probate of the Estate of Angel Malite. The petition was filed on September 18, 1969, and states in relevant part that "Remedio Malite was married to a Trukese who has long ago departed Saipan and is deceased. One (1) child was born to this marriage and is deceased also. Remedio resides in Chalan Lau Lau." ER at 58-59. The Heirs argue that this document reflects that Remedio proclaimed in 1969 that she had no living children, which they argue is strong evidence that Jesus was not her mwei mwei child. Juan responds that the petition is not probative because the translation process used to produce it was likely to produce an incomplete document. Specifically, he asserts the document was produced by having Remedio speak in Carolinian, Rosa would then translate into Chamorro, and this would then be translated from Chamorro into English.

¶ 45 The Heirs next reference a 1991 Decree of Final Distribution for the estate of Jesus Olopai Somol and Gregoria Litulumar Somol. ER at 61-63. The decree identifies Lot H 22 – located in Susupe – as the only piece of property belonging to the estate of Jesus and Gregoria Somol. While the Somol children testified at the heirship hearing that they grew up in a house on the Malite property in Falugulah with Remedio (their alleged grandmother), this property is not mentioned in the Distribution Decree. The Heirs argue that this deficiency is significant because it shows that in 1990 the Somols never filed a claim to a share of property belonging to Remedio Malite, which they argue would be proper if Jesus was indeed Remedio's mwei mwei child. The trial court stated during oral argument that this document lacked probative value because it evidences a defective probate because Jesus and Gregoria's estates should have been independently probated. The Heirs respond that this deficiency does not impact the document's probative value.

¶ 46 The Heirs also reference a motion filed in 1980 with the Trial Division of the Trust Territory High Court involving condemnation proceedings in Civil Action No. 261. ER at 64-66. This document involves a determination of a piece of property belonging to Angel Malite. The document purports to state the heirs of Angel Malite as of November 9, 1978. Jesus Somol's name is not listed. The Heirs argue this omission is significant because since Remedio Malite died in 1973, if Jesus was her son, then he should be listed in this document which was drafted after Remedio's death. Additionally, the Heirs note that the list of heirs in the document was compiled by Inocencia Malite Tudela – Administrator Jesus Tudela's wife. Jesus Tudela approved Jesus Somol's heirship claim because of a conversation he had with his

grandmother in 1978. The Heirs argue that if Jesus' grandmother told Jesus in 1978 that Remedio was an heir, then it seems likely that Jesus' wife would have known about this conversation and listed Remedio as an heir in this document. Juan responds that this document is not probative because three of Angel Malite's undisputed heirs – Pedro Malite, Remedio Malite and Angel Taman – are not listed in it. The trial court cites Civil Action No. 261 in the factual background section of its order confirming the mwei mwei adoption, but does not discuss its significance in the legal analysis section of the order.

¶ 47 In addition to arguing that the Heirs' proffered documents are laden with inaccuracies, Juan asserts that some of the documents the Heirs submitted favor his claim. Specifically, he cites documents involving Civil Action No. 209, which adjudicated the distribution of property belonging to Angel Malite's extended family, to which Jesus' birth mother (Carmen Olopai) belonged. ER at 68-74. One of these documents – an order dated June 25, 1979 – reflects that Jesus Somol entered an appearance as an "objector" to a proposed surveying of Malite and Olopai property. ER at 69. Juan argues that Jesus' objection to the surveying is highly significant because it corroborates Rosa Malite's testimony that Jesus believed he had a rightful claim to the Malite land. The Heirs respond that the trial court placed too much weight on this document given that nowhere in it does Jesus claim he is Remedio's heir.[25]

b. *Trial Court's Weighing of Documentary Evidence*

¶ 48 All fourteen documents proffered by the Heirs were admitted into evidence, and so we are left only to assess the Heirs' argument that the trial court ascribed this evidence insufficient weight. The trial court clearly discounted the probative value of the proffered documents, finding that the "lack of mention of Jesus and Remedio in official documents is not probative" because the documents contained many inaccuracies. Order Confirming Mwei Mwei Adoption at 12. Specifically, the court stated that the "inaccuracy of the court documents presented by the [Heirs] speaks for itself. Sometimes Remedio's name is included, even though she had already died. Other deceased children of Angel, including Pedro, Maria, and Juan, were generally not mentioned." *Id*.

¶ 49 When reviewing a trial court decision, we "will afford particular weight to a trial judge's assessment of conflicting and ambiguous evidence." *Rofag*, 2 NMI 31 (citing *Aldan v. Kaipat*, 2 CR 190 (1985)). As discussed above, some documents do provide circumstantial evidence supporting the Heirs' claim that Jesus was not Remedio Malite's adopted son. However, other documents – such as some of those filed in connection with Civil Action No. 209 – can be interpreted as favoring Juan. The record and trial court order clearly reflect that the court weighed conflicting documentary evidence and witness testimony, found some evidence more credible, and ruled accordingly. While we may have weighed the

[25] The Heirs cite other documents to support their case and briefly examine each one. *See* ER at 54-57, 67, 77-78. While we have reviewed each of these documents we find no need to examine them document by document in this opinion.

documentary evidence differently, we are not left with a "definite and firm conviction that the court below committed a mistake." *Rofag*, 2 NMI at 31.[26]

E. *Whether Juan's Letter Created an Appearance of Partiality*

¶ 50 After the trial court issued its decision approving of Juan's heirship claim, a letter addressed to Judge Lizama[27] from Juan Somol was discovered.[28] The letter ("Somol letter") was dated December 28, 2004, and contained extensive ancestral information relating to the Malite family, as well as information that the Heirs argue would have undermined Juan's credibility during the heirship hearing. While Judge Lizama repeatedly denied ever seeing the Somol letter, the Heirs argue that the letter's mere existence creates an appearance of partiality sufficient to require this Court to vacate the trial court's mwei mwei adoption order. Juan argues we should not consider the letter because Judge Lizama denied ever seeing it and because it is dated before the *Remedio Malite* case was filed.[29]

¶ 51 Judge Lizama addressed the Somol letter in two written orders. On June 21, 2006, he issued an order following a hearing on a requested partial distribution of Estate funds. In the order Judge Lizama acknowledged the Somol letter and stated that the "standard procedure for handling such letters was not to read them, but to have them filed in the probate matter, and to alert the administrator of the estate of a possible claim." *In re the Estate of Angel Malite*, Civ. No. 97-0369 (NMI Super. Ct. June 21, 2006) (Order Following the June 20, 2006 Hearing and Re-Calendaring Motions at 2) (included in SER at 27). The court further stated that it "had no recollection of having received the December 28, 2004 letter" and noted that Mr. Nutting stated in response to court questioning that he had not known about the letter until after the mwei mwei proceedings concluded, when one of his employees, Myrna Santos, brought it to his

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[26] The Heirs also argue that the trial court's treatment of documentary evidence illustrates that it misapplied the burden of proof. We reject this argument for reasons discussed in section II(C), *supra*.

[27] The letter is actually addressed to "Honorable Judge Juan T. Lizama[,] Supreme Court." ER at 79. We note that Judge Lizama was a Superior Court judge.

[28] The circumstances surrounding this discovery are disputed and ultimately unclear.

[29] Juan also argues that we cannot consider the letter because the Heirs failed to submit a proper record pursuant to Rules 21 and 28 of the Commonwealth Rules of Appellate Procedure. Appeals are currently governed by the NMI Supreme Court Rules, which became effective on January 13, 2010. However, for the purpose of evaluating Juan's arguments, relevant portions of the cited appellate rules are substantively identical to the parallel provisions in the Supreme Court Rules.

Rule 21 is entitled "WRITS OF MANDAMUS AND PROHIBITION DIRECTED TO JUDGE OR JUDGES, AND OTHER EXTRAORDINARY WRITS." Com. R. App. P. 21. The current appeal does not seek any extraordinary relief, and so this provision is facially inapplicable. Juan also cites Rule 28(a)(3), which requires a party to include a "statement of the case" in its opening brief. "The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below." Com. R. App. P. 28(a)(3). The Heirs' brief meets this requirement. While the Somol letter is not discussed in the statement of the case section, Rule 28(a)(3) does not require the filing party to state in this section every legal argument it plans to make in its brief. This is more appropriately addressed in the brief's argument section, included pursuant to Rule 28(a)(4).

attention. *Id.*[30] The letter was discovered in the *Angel Malite* case file, and a stamp on the back of the letter indicated that it was received on March 29, 2005. *Id.* The court dismissed the letter on the apparent basis that it had never seen it. *Id.*[31]

¶ 52 Judge Lizama again addressed the letter in an order dated June 27, 2006, wherein he requested that a motion seeking his recusal from the *Angel Malite* case be reassigned to another judge. *In re the Estate of Angel Malite*, Civ. No. 97-0369 (NMI Super. Ct. June 27, 2006) (Order Following the June 21, 2006 Hearing Concerning the Recusal of Judge Lizama at 5) (included in SER at 30-39). The order reflects that at a hearing held in connection with the recusal motion, Ms. Santos testified that she "came across the letter on May 30, 2006, while searching through the *Angel Malite* case file." SER at 34. Based on Ms. Santos' testimony and the court's "own representation that it had no prior knowledge of the letter" the court concluded that it did "not believe the letter was an inappropriate *ex parte* communication." SER at 35.[32]

¶ 53 In considering the Somol letter we must determine whether the court had a duty to disclose the letter to the Heirs' counsel, and also whether the letter creates an appearance of partiality sufficient to warrant vacating the trial court's heirship order. The timeline in this case convinces us that the court's failure to disclose the letter was not improper. The Somol letter is dated December 28, 2004, and is stamped as received by the court on March 29, 2005. The civil case settlement in the *Angel Malite* case was approved on March 13, 2006, and Juan Somol's motion to include Remedio Malite as an heir to the Angel Malite Estate was filed on March 22, 2006. In other words, at the time the letter was written and allegedly received by court personnel, the *Remedio Malite* case – i.e., the Somol heirship proceedings – had not begun. We therefore reject the Heirs' argument that the court should have sent the letter to opposing counsel, for the simple reason that there was no opposing counsel because the *Remedio Malite* case did not yet exist.[33]

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[30] Ms. Santos worked for the Superior Court at the time the letter was allegedly received. SER at 27.

[31] The court disposed of this matter with the following comments:

> Given the mystery surrounding the letter, the Court is troubled by the fact that, prior to filing the recusal motion, counsel did not ascertain whether the Court had actually read and considered Somol's letter. Further, the Court is puzzled as to why none of the Court employees who would have been responsible for handling such letters were subpoenaed to testify on the matter.

SER at 27.

[32] Judge Wiseman also addressed the letter in his March 20, 2007 order granting the Malite Heirs motion to disqualify Judge Lizama from presiding over the *Angel Malite* case. *In re Estate of Angel Malite*, Civ. No. 97-0369 (NMI Super Ct. March 20, 2007) (Order Granting Motion to Disqualify Judge Lizama) (included in SER at 1-22). The court found that the letter's mere existence weighed in favor of granting the disqualification motion.

[33] We recognize the counterargument that that since the letter repeatedly mentioned Angel Malite and was found in the Angel Malite file, the court should have contacted Angel Malite's counsel when it received the letter. However, this argument is a red herring because the current appeal concerns the *Remedio Malite* case.

¶ 54 The second issue is whether the mere presence of the Somol letter in the *Angel Malite* court file created an appearance of partiality sufficient to vacate the trial court's heirship determination. The Heirs, relying on *In re Marriage of Wheatley*, 697 N.E.2d 938 (Ill. App. Ct. 1998), assert that even if Judge Lizama never saw the letter it still created an appearance of partiality. In *Wheatley*, two days before the start of a trial the judge received an envelope addressed to him and marked "personal and confidential." *Id.* at 939. The judge opened the envelope and discovered that the letter concerned a divorce case pending before him. *Id.* The judge did not read the letter, but instead placed it back in the envelope and left it in his desk. *Id*. On the day the judge issued his decision he rediscovered the letter and disclosed it to the parties. *Id.* "The judge insisted that he had never read the letter and that he had no idea what it contained." *Id.* The *Wheatley* court held that that the judge's actions created an appearance of impropriety requiring the court to vacate its judgment. The court reasoned that the "appearance of impropriety is bolstered by the purported identity of the sender of the letter (a former United States congressman), its adamant and strident pleas on behalf of [a party], the fact that" the court's decision conformed to the letter's wishes, and that the judge did not initially disclose that he received the letter. *Id.* at 941. In response to concerns that a party could effect the substitution of a judge by sending an unsolicited letter, the court stressed that "it is not the mere receipt of the letter which creates the appearance of impropriety. If the judge refuses to read or consider the letter and, as soon as practicable, discloses it to the parties, an appearance of impropriety may be avoided." *Id.*

¶ 55 The issue before this Court is whether the mere presence of the Somol letter in the *Angel Malite* case file created an appearance of partiality requiring us to vacate the trial court heirship determination. We find the *Wheatley* case factually distinguishable and conclude that the Somol letter does not raise an appearance of partiality. In *Wheatley*, the judge personally received the letter and failed to disclose this fact to the parties. In contrast, there is no evidence before this Court that Judge Lizama ever received the Somol letter or even knew of its existence. He repeatedly denied in written orders ever knowing about the letter, and the Heirs have presented no evidence suggesting that Judge Lizama lied. *See, e.g.*, *Henry v. Davis*, 13 W. Va. 230, 250 (1878) ("we presume, that [judges] are both honest and capable . . ."). Judge Lizama's complete lack of knowledge concerning the letter also distinguishes this case from those in which a judge reads an unsolicited letter and must ensure that all parties received it. *See, e.g.*, *People v. Michael M.*, 124 Misc. 2d 300, 303 (N.Y. Cty. Ct. 1984) ("written documents provided to the court, whether supplied by either side or unsolicited, can be considered by the court where they are openly disclosed to the parties.") Court personnel routinely receive unsolicited mail that is not brought to a judge's attention. The Heirs have not provided any legal authority suggesting that mere receipt of a letter

by court staff (i.e., not a judge), creates an appearance of partiality sufficient to warrant either recusal or vacating a court order, and we decline to adopt this position today. [34]

F. Whether Judge Lizama Demonstrated a Pervasive Bias or Prejudice, or the Appearance thereof, against the Malite Heirs and their Counsel which Warrants Reversal of the Judgment

¶ 56 We lastly examine the Heirs' argument that Judge Lizama's in-court statements raise the appearance of partiality or demonstrate pervasive bias.[35] The Heirs argue that Judge Lizama exhibited discourteous and intemperate conduct throughout the heirship hearing. For example, they cite Judge Lizama's comments in response to Mr. Nutting's attempts to make offers of proof as evidence of this alleged improper behavior.[36] They also cite the following statement, which Judge Lizama made to Mr. Nutting at a hearing held on the partial distribution of Estate funds:

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[34] Though not cited by counsel, we recognize that in some cases judge recusal or disqualification is warranted even though the judge is unaware of the circumstances that created the appearance of partiality. Indeed, Judge Wiseman stressed this fact when disqualifying Judge Lizama from the *Angel Malite* case. Order Granting Motion to Disqualify Judge Lizama at 17. Therein, the court cited three cases to support this proposition: *Liljeberg v. Health Servs Acquisition Corp.*, 486 U.S. 847 (1988), *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280 (9th Cir. 1992), and *Russell v. Lane*, 890 F.2d 947 (7th Cir. 1989). While the disqualification order is not the basis for the present appeal, we find it prudent to address the trial court's argument. *Liljeberg* involved an appearance of partiality arising from the fact that the judge served on the Board of Trustees for an organization that had an interest in the case before him. 486 U.S. at 850. *Gallo Winery* involved an appearance of partiality arising from a judge who was a former partner in a law firm that was handling the case before him and who maintained real estate investments with some of his former partners. 967 F.2d at 1295. *Russell* involved an alleged appearance of partiality arising from the fact that a judge who denied a petition for habeas corpus had served as a panel member on the appeals court that had affirmed the defendant's conviction. 890 F.2d at 947.

We find these cases readily distinguishable because none involve an appearance of partiality arising from alleged *ex parte* communications. While personal knowledge may be irrelevant when the appearance of partiality arises from a disqualifying event or circumstance (such as a personal relationship or financial interest), in the present case the alleged appearance of partiality does not arise from the mere fact that the letter exists. Instead, the potentially disqualifying circumstance *is* the judge's knowledge of the letter. Therefore, the judge's lack of knowledge plays a fundamentally different role than in cases not involving alleged *ex parte* communications. An appearance of bias obviously cannot be created whenever a letter is written, but instead must be predicated on a judge's knowledge of the contents of the letter or at least knowledge of the letter's existence. Accordingly, the Somol letter's mere existence does not raise an appearance of bias, and the Heirs have provided insufficient authority to the contrary.

[35] We acknowledge that the Heirs also argue that the court's weighing of evidence created the appearance of partiality. We stress that "[j]udicial rulings alone rarely constitute a valid basis for recusal. Rather, they are properly considered grounds for appeal." *Bank of Saipan v. Superior Ct.*, 2002 MP 16 ¶ 39. Judges are entrusted with weighing competing evidence and we find no basis for concluding that Judge Lizama's chosen balancing of the evidence in this case created an appearance of partiality.

[36] The following exchange is typical of the types of comments about which the Heirs complain:

Mr. Nutting:	Now, yesterday, or I guess a few minutes ago, there was a question about you were not present when Jesus has this conversation with . . . Remedio's sister, some time in 1978.
Ms. Rangamar:	No, I'm not present that time.
Mr. Nutting:	Okay. Do you believe that Jesus had such a conversation.
Ms. Rangamar:	I don't believe
Mr. Nutting:	Why not?

> . . . So we are going to have that evidentiary hearing for the purposes of the heirship, but don't forget, Mr. Nutting, that the administrator, the administrator's approval in probate is quite a difficult task to challenge. Do you understand that, Mr. Nutting? So it's going to be incumbent upon you to present your evidence. Their evidence is probably insurmountable already, and it's up to you to defeat that claim, okay.

ER at 110.[37]

¶ 57 To evaluate Judge Lizama's comments we must determine their source. The United States Supreme Court stated in *Liteky v. United States*:

> [J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.

510 U.S. 540, 555 (1994); *see In re the Estate of Angel Malite*, 2010 MP 20 ¶ 21 (Slip Opinion, Dec. 29, 2010). As we stated in *Malite*, to determine whether comments are extrajudicial in nature we look not only to where the statements were made, but also to the source of the information underlying the

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Mr. Torres:	Objection, Your Honor.
The Court:	Sustained.
Ms. Rangamar:	Because the old ---
Mr. Torres:	Objection
The Court:	Sustained
Mr. Nutting:	Your Honor, if I may make record of proof. She may have --- she may have factual circumstances which would justify ---
The Court:	No, no, no. She testified that she doesn't see it, she doesn't know it. That's good enough. Let's move on Mr. Nutting.
Mr. Nutting:	Your Honor, I need to make an offer of proof for the record then.
The Court:	No. If you want to testify, you can testify.
Mr. Nutting:	I will make --- make an offer of proof.
The Court:	What's the offer of proof.
Mr. Nutting:	The offer of proof is that she has certain other factual circumstances related to the relationship between Jesus Tudela and Joaquina Malite which would indicate that it's highly improbable that there would have been such a communication between Jesus Tudela and his grandmother.
The Court:	Sustained. Sustained. Sustained. Sustained.

ER at 190-91.

[37] The heirs place particular weight – both in briefs and during oral argument – on the trial court's comment that the "evidence is probably insurmountable already, and it's up to you to defeat that claim." They argue this comment displays a large degree of bias. However, we find that this comment – which was not made at the heirship hearing – does not reflect animus or bias, but instead a legal error made as the judge conveyed to the Heirs the task before it. For reasons previously discussed, *supra* ¶ 34, we find this error harmless since the correct legal standard was ultimately applied.

comments. *See* 2010 MP 20 ¶ 21 n.21. "Opinions formed by a judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky*, 510 U.S. at 555.

¶ 58 There can be no doubt that Judge Lizama had many heated exchanges with the Heirs' counsel. Yet it is equally clear that all the relevant exchanges occurred during judicial proceedings and reflected opinions derived from the matter pending before the court. Given the intrajudicial nature of the comments, the Heirs argument can only succeed if Judge Lizama's actions were "so extreme as to display clear inability to render fair judgment." *Liteky*, 510 U.S. at 551. This standard is commonly known as the "pervasive bias" exception to the "extrajudicial source" doctrine. *See id.* We find that the facts before us do not meet this high bar. While Judge Lizama should have made greater efforts to act in a more respectful and restrained manner, "[n]ot establishing bias or partiality . . . are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as [ ] judges, sometimes display." *Liteky*, 510 U.S. at 555. After reviewing all the submitted testimony we find that Judge Lizama's comments, while imprudent, do not rise to the level sufficient to demonstrate pervasive bias.[38]

III

¶ 59 We must finally determine what effect, if any, Judge Wiseman's order disqualifying Judge Lizama from the *Angel Malite* proceedings should have on the Somol heirship decision. This involves reconciling the relationship between the *Remedio Malite* and *Angel Malite* cases. As previously noted, Judge Lizama issued his initial order confirming the mwei mwei adoption on May 25, 2006. He then issued an Errata Order on June 29, 2006, which re-captioned the Somol mwei mwei decision: the Order – previously captioned under the heading "*In re the Estate of Remedio Malite*" – was re-captioned as "*In re the Estate of Angel Malite*." The decision to re-caption the case after the order was issued is unusual and has blurred the relationship between the *Remedio Malite* and *Angel Malite* cases. The Heirs summarize the resulting confusion, stating that the "judge's decision to re-caption his order over a month after the original decision was entered has created some confusion relative to the issue of how Judge Lizama's disqualification should be considered in this appeal and whether the issue of Judge Lizama's disqualification is final for purposes of this appeal." Appellants' Supplemental Brief at 14.

A. *Judge Lizama was not Disqualified from the Remedio Malite Case*

[38] The Heirs also argue that the evidence overwhelming favors their case, and so instead of remanding this case for a new trial we should declare that Jesus Somol is not the mwei mwei child of Remedio Malite and dismiss this case. Because we affirm the trial court's decision we need not address this issue.

¶ 60 To determine the effect of Judge Wiseman's disqualification order, we must first determine whether the Heirs moved to disqualify Judge Lizama from presiding over the *Remedio Malite* case. After reviewing the documents filed in the trial court to disqualify Judge Lizama, as well as Judge Wiseman's disqualification order itself, we find that the Heirs did not move to have Judge Lizama disqualified from the *Remedio Malite* proceedings.

¶ 61 The motion to disqualify Judge Lizama was filed under the caption "*In re: Estate of Angel Malite*." Significantly, the motion was filed on June 7, 2006, which is *before* the Errata Order re-captioning the *Remedio* case under the *Angel Malite* caption was issued (on June 29, 2006). In contrast, later documents such as the appellate briefs filed in this case include both *Remedio Malite* and *Angel Malite* captions. Given this fact, the Heirs cannot credibly argue that the *Angel Malite* caption in their motion was meant to encompass the *Remedio Malite* appeal.

¶ 62 We also find it significant that the relief sought in the disqualification memorandum accompanying the disqualification motion did not include any aspect of the *Remedio Malite* decision. The Heirs presented their "relief sought" as follows:

> COMES NOW Stephen J. Nutting, attorney for the administrators in the estate of Elias Maliti, Civil Action No. 06-0181; Jacoba Maliti, Civil Action No. 06-0182; Jesus Sinounou, Civil Action No. 06-0184; and Gregorio Sablan Civil Action No. 06-0183, and for Rosa Maliti, Lourdes Rangamar and Rombert Sinounou individually, all undisputed heirs of Angel Malite . . . to submit this Memorandum of Law in support of their motion to disqualify the Honorable Juan T. Lizama from hearing and ruling on any further proceedings in the above entitled matter and other probate actions which have joined in this motion.

ER at 82. Significantly, the *Remedio Malite* case – Civil Action No. 06-0163 – is not mentioned. The motion also states that it is "brought to disqualify the Honorable Juan T. Lizama from hearing and ruling on any *further* proceedings in the above entitled matter and other probate actions which have joined in this motion." *Id.* (emphasis added). This also supports our conclusion that the Heirs did not seek to alter *previously* entered orders.

¶ 63 The *Remedio Malite* case, while not cited by civil action number, is discussed at length in Judge Wiseman's Order disqualifying Judge Lizama. The Order – issued on March 20, 2007 – was filed under Civil Action No. 97-0369, and states that it involved "two actions in the Superior Court, namely Civil Action No. 97-0369, the probate of the Estate of Angel Malite, and Civil Action No. 05-0563, a land compensation case . . . ." *In re: Estate of Angel Maliti*, Civ. No. 97-0369 (NMI Super. Ct. March 20, 2007) (Order Granting Motion to Disqualify Judge Lizama) at 2. While Judge Wiseman ordered that the "case must be reassigned to another judge[,]" the Order is silent regarding its impact on the *Remedio* decision. *Id*. at 22. Accordingly, because the Heirs did not list the *Remedio Malite* case in the caption of

their disqualification motion or specifically request relief in the *Remedio* case, we find that Judge Lizama was never disqualified from the Somol heirship proceedings.

B. *Judge Wiseman's Disqualification Order Should not Affect the Somol Heirship Decision*

¶ 64 Given our finding that Judge Lizama was disqualified from the *Angel Malite* proceedings, but not from the *Remedio Malite* case, the next issue is what impact, if any, the disqualification order should have on the order affirming the mwei mwei adoption. We find the United States Supreme Court case *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1987), instructive. The *Liljeberg* Court held that a court must consider three factors when determining whether a judgment issued by a subsequently disqualified judge should be vacated. *Id.* at 864. These factors are: (1) the risk of injustice to the parties in the particular case, (2) the risk that denial of relief will produce injustice in other cases, and (3) the risk of undermining the public's confidence in the judicial process. *Id.* at 864. While *Liljeberg* dealt with an order issued in the same case in which the judge was disqualified, we find the principles enunciated therein applicable to the unique fact pattern in this case. Specifically, there can be no doubt that the *Remedio* and *Angel Malite* cases are intertwined, and that Judge Wiseman disqualified Judge Lizama from the *Angel Malite* proceedings in part because of his actions in the *Remedio Malite* case.

¶ 65 We find that the *Liljeberg* factors do not support vacating the trial court's heirship determination. We consider preventing injustice and maintaining public confidence in the judiciary to be of paramount importance. These interests are upheld in this case by our decision to review each of the Heirs' legal arguments. Significantly, we found the vast majority of their arguments unpersuasive, and the few errors that did exist were harmless. This fact convinces us that affirming the court's decision does not risk injustice or undermining public confidence in the judiciary. We recognize that some of the Heirs' arguments involve factual and evidentiary issues in which we granted the trial court deference. The argument may exist that it is disingenuous to grant Judge Lizama deference (and affirm his decision under this standard), when the very argument is that Judge Lizama's subsequent disqualification demonstrates that his heirship decision is rooted in biased judgment. This argument ignores our conclusion that Judge Lizama's actions in the *Remedio Malite* case alone did not create an appearance of bias. *See supra* section II(F). Perhaps more importantly, the *Liljeberg* factors are not easily met as only "extraordinary circumstances" will justify vacating a decision issued by a subsequently disqualified judge. *Liljeberg*, 486 U.S. at 864. We find that no such extraordinary circumstances exist in this case.

IV

¶ 66 For the foregoing reasons, we hold that the trial court did not error in ruling that Jesus Somol was the mwei mwei child of Remedio Malite. Specifically, the trial court: (1) considered the correct elements for determining a customary adoption; (2) reached a decision supported by sufficient evidence; (3) correctly placed the burden for proving customary adoption on the party seeking heirship; and (4) did not

impermissibly exclude material evidence. We further hold that neither the Somol letter nor Judge Lizama's in-court statements to counsel created an appearance of partiality sufficient to warrant vacating the court's decision. Finally, we hold that the Heirs never moved to have Judge Lizama disqualified from the *Remedio Malite* case, and that the interests of justice do not require that we vacate the heirship determination based on his subsequent disqualification from the *Angel Malite* proceedings. Accordingly, we AFFIRM the trial court's decision declaring the mwei mwei adoption of Jesus Somol by Remedio Malite valid and recognizing Jesus Somol's estate as an heir to Remedio Malite's estate.

SO ORDERED this 31st day of March 2011.

/s/_____
JOHN A. MANGLONA
Associate Justice

/s/_____
ROBERT J. TORRES
Justice Pro Tem

/s/_____
HERBERT D. SOLL
Justice Pro Tem