

inter vivos trust under which title passed to Kederiko upon Deresia's death is without merit. Based upon the record before us, the only way in which such a trust could have come into being would be by the trial court's finding as a fact that Kederiko had used his own assets to pay for the land, but the trial court rejected the evidence tending to show that that had been the case and, instead, found precisely the opposite.

No reversible error is to be found in the record, and therefore the Judgment of the trial court is **AFFIRMED**.

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In the Matter of the Estate of BULELE, Deceased

Civil Appeal No. 40

Appellate Division of the High Court

Marshall Islands District

January 25, 1977

Appeal from distribution of property of a decedent. The Appellate Division of the High Court, Hefner, Associate Justice, affirmed.

**Appeal and Error—Evidence—Weight**

Where notice of appeal and brief merely repeated assertions made below, court would not re-weigh evidence on appeal or set aside findings of fact made below, and, there being nothing to demonstrate that the findings were erroneous, judgment would be affirmed.

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Before BURNETT, *Chief Justice*, HEFNER, *Associate Justice* and WILLIAMS, *Associate Justice*

HEFNER, *Associate Justice*

This appeal emanates from a judgment distributing certain property of the deceased. The notice of appeal and the brief of the appellant is nothing more than a repeat of the assertions made before the trial judge.

This Court will not re-weigh the evidence, and the findings of fact of the trial court shall not be set aside.

IN RE SANTOS

There is nothing to demonstrate that the findings were clearly erroneous.

The judgment is affirmed.

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In re ARNET SANTOS, KIOSY MARTIN and SISILIO PRIMO  
Civil Action No. 189  
Appellate Division of the High Court  
Ponape District  
January 26, 1977

Petition for writ of habeas corpus and reinstatement of appeal. The Appellate Division of the High Court, Hefner, Associate Justice, held that where Trial Division of the High Court incorrectly dismissed appeal from District Court, Appellate Division of the High Court could not grant writ of habeas corpus; proper procedure would have been to seek writ of mandamus, and Appellate Division would construe petition as one for mandamus and order reinstatement of appeal to Trial Division.

**1. Criminal Law—Appeals—Filing Requirements**

It is clear that rule which must be applied in appeals from District Court to Trial Division of the High Court does not require a concise statement of the grounds for appeal unless demand therefor is made by appellee; and dismissal for failure to include statement would be vacated where appellee made no demand. (TT Rules Crim. Proc., R. 31)

**2. Habeas Corpus—Availability of Writ**

Where Trial Division of the High Court incorrectly dismissed appeal from District Court, Appellate Division of the High Court could not grant writ of habeas corpus; proper procedure would have been to seek writ of mandamus, and Appellate Division would construe petition as one for mandamus and order reinstatement of appeal to Trial Division.

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*HEFNER, Associate Justice*

The petitioners, Defendants in a Ponape District Court case (171-76), filed a petition for Writ of Habeas Corpus. The relief requested was two-fold. First, it is requested that the petitioners be released from custody, and secondly, that their appeal be reinstated.