

HIROSHI EMUAR, Plaintiff-Appellant

v.

SANTIER, Defendant-Appellee

Civil Appeal No. 35

Appellate Division of the High Court

September 6, 1977

Land title dispute. The Appellate Division of the High Court, Hefner, Associate Justice, affirmed.

Appeal and Error—Findings and Conclusions—Clearly Erroneous

Reweighting evidence is not a function of the Appellate Division, and finding below would not be disturbed where it was not clearly erroneous. (6 TTC § 355(2))

Counsel for Appellant: FUJITA PETER

Counsel for Appellee: RU CAU

Before HEFNER, *Associate Justice* and BROWN, *Associate Justice*

HEFNER, *Associate Justice*

This appeal has lain dormant for several years and the last "active" entry was an Order of the Court allowing thirty days for written argument to be filed. The date of this Order was March 5, 1969, and no briefs have ever been filed. The Order also informed the appellant and appellee that if no briefs were filed, the Court would proceed to decide the appeal without argument and without further notice.

The appellant asserts in the notice of appeal that there

was "no evidence introduced by defendant as to their relationship to my father the owner of the lands involved." Without anything more specified in the notice of appeal and without any brief filed, it makes it difficult to determine what is appellant's specific basis for a reversal.

The Trial Court found that Notun was a true sister of Mokuk, Assetin, Fittias and Napung. Assetin had a son Emuar who is deceased. The plaintiff is a descendant of Emuar.

The evidence is more than sufficient to support the finding that Notun had a daughter Nan and Nan had two children, one of whom is the defendant.

It is clear from the judgment that title to the land was awarded to the defendant because she and others are the only surviving matrilineal members of the lineage of Mokuk and his sisters, Assetin, Fittias and Napung. If, in fact, Notun was a sister of Mokuk, she and her descendants would acquire the property as lineage land.

A review of the transcript reveals that there was direct testimony that Notun was a sister of Mokuk. Plaintiff's witnesses testified they never knew of Notun. The Trial Court resolved this conflict in favor of the defendant. This finding supported the conclusion of the Trial Court and establishes the relationship of the defendant's father to the defendant.

Reweighing evidence is not a function of the Appellate Division, *Trust Territory v. Miller*, 6 T.T.R. 193 (App. Div. 1972). The finding of the Trial Court will not be disturbed unless the finding is clearly erroneous. 6 TTC 355(2). That is not the case here.

The judgment is affirmed.