alleged set-off was first raised orally at the July 3, 1984 hearing. As noted earlier in the opinion, the trial date had been set for over three months and it was incumbent upon appellant during this period to file a written motion with the court according to Rule 7(b)(1) of the Trust Territory Rules of Civil Procedure. The trial court did not err on remand in refusing to allow testimony regarding the set-off, as the question of set-off was not an issue before the court.

[4] Finally, we affirm the trial court's denial of appellant's motion for a continuance of the hearing on remand to allow for the introduction of evidence regarding the set-off, as a matter of a set-off was not in issue before the court.

For the reasons stated herein, the judgment of the trial court is AFFIRMED.

NAMO HERMIOS, CATHY LAVIN and CLIFF WALL, Appellants
v.
ILLIAM TARTIOS, for himself and his lineage, Appellees

Civil Appeal No. 405

Appellate Division of the High Court

Marshall Islands District

April 28, 1986

Case involving the determination of ownership of remnants of a Japanese "zero" aircraft located on Tarawa Island, Maloelap Atoll, in the Marshall Islands. The Appellate Division of the High Court, Munson, Chief Justice, affirmed the judgment of the trial court, which concluded that the aircraft belonged to owners of land on which subject aircraft was located, based on principles of abandoned property.

1. Appeal and Error—Function of Appellate Court—Generally

Unless the trial court's findings were clearly erroneous, it is not the function of the appellate court to reweigh the evidence.

2. Property—Abandoned Property—Japanese "Zero" Aircraft

In a case involving the determination of ownership of remnants of a Japanese "zero" aircraft, trial court properly found, based on evidence, that the aircraft was located on Wojalen *weto*.

3. **Property—Abandoned Property—Japanese "Zero" Aircraft**

In a case involving the determination of ownership of remnants of a Japanese "zero" aircraft, trial court properly found that appellee had the authority to act as *"emman ladrik"* for the *alab* of the land where the aircraft was located.

4. **Property—Abandoned Property—Japanese "Zero" Aircraft**

In a case involving the determination of ownership of remnants of a Japanese "zero" aircraft, trial court properly concluded that the aircraft belonged to the appellees, under the principles of abandoned property, where appellees presented evidence that their lineage reduced the aircraft to its possession by clearing away the brush surrounding the aircraft prior to its removal.

Counsel for Appellants: DAVID STRAUSS, *Office of the Public Defender*

Counsel for Appellee: GREGORY B. DURR, *Directing Attorney* of Micronesian Legal Services Corporation

Before MUNSON, *Chief Justice*, LAURETA,* *Associate Justice*, and BENSON**, *Associate Justice*

MUNSON, *Chief Justice*

This case involves the determination of ownership of remnants of a Japanese "zero" aircraft which were located on Tarawa Island, Maloelap Atoll, in the Marshall Islands. In February, 1979, agents of the appellants removed pieces of the aircraft from Tarawa Island to Majuro where they are located today. On April 16, 1979, appellees filed a complaint and a petition for injunctive relief, seeking to enjoin appellants from removing the aircraft from the Marshall Islands. Appellees contend that the aircraft was removed

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* U.S. District Court Judge, District of the Northern Mariana Islands, designated as Temporary Associate Justice by the United States Secretary of the Interior.

** Associate Justice, Federated States of Micronesia Supreme Court, designated as Temporary Associate Justice by the United States Secretary of the Interior.

from their land, Mejjen or Wojalen *weto*. Appellants claim that it came from Moneb *weto*.

On April 12, 1979, Justice Hefner issued a temporary restraining order restraining the appellants from removing the aircraft. A preliminary injunction was later granted by Chief Justice Burnett on May 14, 1979. The trial division entered judgment for the appellees on October 6, 1983. This appeal followed.

The issues presented for review are:

1. Whether the trial court erred in finding that the aircraft was located on Wojalen *weto*.

2. Whether the trial court erred in denying appellants' hearsay objection to Illiam Tartios' testimony.

3. Did appellee Tartios have the authority to speak for the *alab*[1] of the land where the aircraft was located.

4. Whether, under the principles of abandoned property, the aircraft belonged to the appellants.

[1, 2] With regard to the first issue, appellants urge that this court review the facts of this case and determine if the trial court could reasonably have found that the subject aircraft was located on Wojalen *weto*. Unless the trial court's findings were clearly erroneous, it is not the function of the appellate court to reweigh the evidence:

> The Appellate Division of the High Court on appeal from a decision of the Trial Division cannot reweigh the evidence and decide whether in its opinion it should reach the same or different conclusions as the trial judge did as to the facts.

Muna v. TTPI, 8 T.T.R. 131, 134 (App. Div. 1980). The trial court heard all of the evidence, including conflicting testimony from both appellants' and appellees' witnesses concerning the location of the aircraft. A review of the trial court's transcript reveals that respondents' witnesses Masao Zackios and Illiam Tartios both testified that the air-

[1] "*Alab*" means the person in immediate charge of the land.

craft was removed from Wojalen *weto*. Whether one witness was more credible than another was a matter reserved for the trial judge. Because there was evidence from which the trial court could have properly drawn its conclusion as to the facts, its findings will not be disturbed on appeal. The location, however, of which *weto* that the aircraft was on is not dispositive of the issue of who owns it. This question is addressed later in the opinion in our discussion of abandoned property.

The second issue is whether the trial court erred when the trial judge denied appellants' hearsay objections to Illiam Tartios' testimony concerning conversations he had with Masao Zackios. Page 33, lines 12 through 23 of the trial court's transcript of evidence states:

Q. And based upon your knowledge and the description given you by Masao, it is your belief that the plane that was removed from Tarawa Island was on your weto?

Mr. Knapp: Again, objection; hearsay.

Court: Well, he already answered that that was his belief earlier, so I will let it stand, but it has been asked and answered.

Q. Have you ever been consulted by Namo Hermios or Cathy or Jina Lavin with regarding to selling rights to scrap metal on your wetos on Tarawa Island?

A. No.

The question appellants objected to was never answered. Since no hearsay statement was received into evidence, we are without an issue to decide.

[3] The next issue raised is whether the trial court erred in finding that appellee Tartios had the authority to speak for the *alab* of the land where the aircraft was located. As stated earlier in this opinion, we will not reweigh the trial court's findings of fact unless clearly erroneous. The trial court determined from the evidence that the appellee had the authority to act as "*emman ladrik*"[2] for Kilaj, the *alab*

[2] "*Emman ladrik*" is a person duly authorized by another to act as *alab*.

of the subject land. Appellee Tartios testified he was appointed as "*emman ladrik*," and his witnesses verified that Kilaj was related to the appellee, was well into her years, that appellee had served as an advisor to Kilaj and appellee was recognized as the "*emman ladrik*" on the two *wetoes*. Appellants attempted to introduce at the appellate level a deposition of *Alab* Kilaj purporting to disprove appellees' case. Kilaj's deposition, however, was not received into evidence at the trial level. The trial court's finding that appellee Tartios had authority from the *alab* to be "*emman ladrik*" was supported by the evidence before the court. We cannot and will not disturb that finding.

[4] Finally, under the principles of abandoned property, the trial court could have concluded that the aircraft belongs to the appellees. The general rule in this area of law is that

> [p]roperty which is abandoned by the owner who relinquishes it with the intention of terminating his interest in it and without intending to vest ownership in another goes back into a state of nature, or, as more commonly expressed, it returns to the common mass of things in a state of nature and becomes subject to appropriation by the first taker, occupier, or *finder who reduces it to possession*. Such person thereupon acquires an absolute property therein as against both the former owner and the person upon whose land it happens to have been left. (Emphasis added.)

Am. Jur. 2d Abandoned Property § 18. Appellants claim that the salvage company's act of physically removing the aircraft constituted the first act of reducing the aircraft to possession. Appellees, however, presented evidence that the lineage reduced the aircraft to its possession when Masao Zackios, one of the members of the lineage, cleared away the brush surrounding the aircraft prior to appellants' removal of the aircraft. Appellants have failed to show whether there was any intention of the appellees to abandon

the property. The trier of fact determined from all the evidence that there was no abandonment of the aircraft by the appellees. For the same reasons previously discussed, the trial court's findings of fact will not be disturbed.

For the reasons stated herein, the judgment of the trial court is AFFIRMED.

IROIJ MO JITIAM, NEILORA LARRING, and BELJA ANEO, Appellants

v.

LANGILON KONOU, Appellee

Civil Appeal No. 413

Appellate Division of the High Court

Marshall Islands District

May 13, 1986

Appeal from final judgment of trial court on complaint and petition for injunctive relief seeking to confirm *alab* rights to *wetoes*. The Appellate Division of the High Court, Munson, Chief Justice, affirmed the trial court judgment, which provided that *alab* and *dri jerbal* rights belong to appellee on both *wetoes* and provided that appellee receive two-thirds of all rents accrued.

1. **Property—"Alab" Rights—Particular Cases**

   On a complaint and petition for injunctive relief seeking to confirm *alab* rights to *wetoes*, evidence presented supported trial court's determination as to proper distribution of rents between the parties.

2. **Courts—Jurisdiction—Active Trial**

   On a complaint and petition for injunctive relief seeking to confirm *alab* rights to *wetoes*, trial court properly denied motion to transfer the case to the Marshall Islands courts based on determination that the case was still in active trial.

3. **Limitation of Actions—Land Title Officer's Determination**

   Failure to appeal a land title officer's determination within one year will bar a litigant from contesting that determination.

4. **Property—"Alab" Rights—Particular Cases**

   On a complaint and petition for injunctive relief seeking to confirm *alab* rights to *wetoes*, trial court properly recognized validity of *katleb* arrangement based on determination of land title officer in 1959.