

**TOSIKO, Plaintiff**  
**v.**  
**UPUILI, SANT, and KAREMELO, Defendants**  
**Civil Action No. 71**  
**Trial Division of the High Court**  
**Truk District**  
**June 30, 1958**

Action to determine ownership of land on Tol Island. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiff had no rights in land, as he had permitted vendors to hold themselves out as owners for long period of time and could not now upset sale to third party.

**1. Truk Land Law—Lineage Ownership—Sales**

Where lineage permits other persons to deal with land in Truk as their own for long period without raising any objection, holding them out as at least entitled to act as owners, lineage cannot then attempt to upset sale by other persons to third party.

**2. Courts—Parties**

Where Trust Territory Government or Alien Property Custodian are not party to action for determination of ownership of land in Truk, no determination is made as to rights of government.

**3. Courts—Parties**

Where court determines plaintiff has no interest in land, court will not determine rights among defendants unless defendants request that it do so.

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**FURBER, *Chief Justice***

**FINDINGS OF FACT**

1. Ioschune did not sell any part of Ulos to Sakihama, but only gave him permission to garden there, which has expired.

2. Sisam purported to sell Neniserif, Punopun, and Ne-foupas either to Sakihama or directly to the plaintiff Tosiko, and accepted payment for them from Sakihama.

3. The three pieces of land mentioned in the second finding of fact were owned at one time by Souni's lineage.

4. The plaintiff has not sustained the burden of proving any transfer of Punopun or Nefoupas, or of possession and control of either of them, by that lineage to Masis or Sisam, nor has there been any showing of any other form of authority in Sisam to transfer these.

5. Souni's lineage, and Taro through them, turned Neniserif over to the possession and control of Masis, and left it in the possession and control of his son Sisam after him, and allowed them to use it as their own and retain all income from it for many years.

#### CONCLUSIONS OF LAW

1. This action is controlled largely by the principles explained in the conclusions of law in *Nusia v. Sak*, 1 T.T.R. 446.

[1] 2. The findings of fact make it clear that Sisam's attempted transfer of Punopun and Nefoupas was of no legal effect. Whether Souni's lineage, and Taro through them, actually transferred Neniserif to Masis as his individual land so that it passed to Sisam, has not been clearly shown, but Souni's lineage and Taro, by permitting Masis and Sisam to deal with this as their own for a long period without raising any objection, held them out as at least entitled to act as owners so that the lineage and Taro and those claiming under either of them, cannot now be allowed to upset the sale of Neniserif which Sisam clearly attempted.

[2, 3] 3. Some of the facts disclosed in this action indicate that the Alien Property Custodian may have a claim to Neniserif. It should be noted, however, that neither the Trust Territory Government nor its Alien Property Custodian was a party to this action, and no determination is made or implied as to the rights of the plaintiff as against him or the Trust Territory Govern-

ment. The defendants have requested no determination of rights as among themselves, although there was some conflict as to certain of their claims and accordingly no determination is made as between them as to rights in the lands in which it has been determined the plaintiff has no interest.

#### JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties and all persons claiming under them:—

a. The land known as Neniserif, located in Foup Village on Tol Island, Truk District, is owned by the plaintiff Tosiko, who lives on Tarik Island, Truk District.

b. The plaintiff Tosiko has no rights of ownership in the lands known as Punopun, Nefoupas and Ulosa, also located in Foup Village.

2. This judgment shall not affect any rights of way there may be over the lands in question.

3. No costs are assessed against any party.