

As to the sentence of the court, it is well within the limits specified by Sections 812k and 816, Trust Territory Code, and we see no reason to substitute our judgment for that of the court which originally tried the case.

JUDGMENT

The findings of the District Court for the Marshall Islands District as to the charges of Reckless Driving and Driving with Expired License in its Criminal Case No. 431 are vacated, and findings of not guilty entered. The finding and sentence as to the charge of Driving with Defective Brakes are affirmed.

ERNIST L., Plaintiff

v.

AKUNG and KINTOKI, Defendants

Civil Action No. 127

Trial Division of the High Court

Truk District

May 29, 1963

Action for determination of title to land on Udot Island which came up for hearing on Master's Report. The Trial Division of the High Court, Chief Justice E. P. Furber, held that findings of Master were proper and that plaintiff was rightful owner of land. The Court further held that as long as there was substantial evidence to support Master's findings, they were entitled to stand as to disputed questions of fact.

1. Appeal and Error—Scope of Review—Witness Credibility

Master who sees and hears witnesses is in best position to weigh testimony.

2. Appeal and Error—Scope of Review—Facts

As long as there is substantial evidence to support Master's findings, they are entitled to stand as to disputed questions of fact.

FURBER, *Chief Justice*

This matter came on to be heard upon the Master's Report and was argued by counsel. After careful examination of the entire transcript of evidence taken by the Master, the Master's Report is approved.

OPINION

[1, 2] This action turns almost entirely on questions of fact as to which there was conflicting testimony. The Master who saw and heard the witnesses was in the best position to weigh this testimony. As long as there is substantial evidence to support a Master's findings, they are entitled to stand as to disputed questions of fact. 19 Am. Jur., Equity, §§ 382 and 383.

In this action the court considers there was sufficient evidence which the Master was entitled to believe, to support his findings although there was also evidence to the contrary.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the part of the land known as Pow or Pou, located in Muanitiw Village, Udot Island, Truk District, bounded as follows:—

On the north by the Village of Benia,

On the east by the land Neimueken and the main hill of Witonap,

On the south by the land Wnifou, and

On the west by the mangrove swamps and lagoon, is owned by Ludwig who lives in Muanitiw Village, for whom the plaintiff makes claim in this action, and neither the defendant Akung nor the defendant Kintoki (both of whom live on Udot Island) has any rights of ownership in this part of Pow.

2. The defendants Akung and Kintoki are permanently enjoined from and forbidden to interfere with the use of said land by Ludwig and those claiming under him, except that the defendant Akung shall be allowed to remove his house from the land within a reasonable time in a peaceful and orderly way, doing no more damage and interfering no more with the use of the land than is reasonably necessary in order to remove the house. Unless special cause to the contrary is shown on motion by either party concerned, six (6) months from the entry of this judgment will be considered a reasonable time within which to remove the house.

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

4. No costs are assessed against any party.

POLYCARP R. BASILIUS, Plaintiff

v.

OMOTO RENGIL, Defendant

Civil Action No. 255

Trial Division of the High Court

Palau District

June 10, 1963

Motion for order in aid of judgment in which plaintiff, who was previously awarded judgment against minor defendant, seeks order directed to older brother of defendant, and contends that under Palau customary law, one's relatives are liable to pay fines, judgments or debts against him if he is unable to pay. The Trial Division of the High Court, Associate Justice Paul F. Kinnare, held that plaintiff fails to prove custom on which he relies. Order denied.

1. Custom—Judicial Notice

If local custom is firmly established and widely known, court will take judicial notice of it. (T.T.C., Sec. 21)

2. Custom—Burden of Proof

Where there is dispute as to existence or effect of local custom, and court is not satisfied as to its existence or applicability, custom becomes mixed question of law and fact.