

NAKAS and ERETA, Plaintiffs

v.

**UPULLI, REIKINA MORI, YUNIE, APENIS (otherwise known
as ABELIS), the UNITED CHURCH BOARD FOR WORLD
MINISTRIES (successor to the AMERICAN BOARD OF
COMMISSIONERS FOR FOREIGN MISSIONS) doing
business as PHILADELPHIA SCHOOL, NIRO MORI,
and FINAIK, Defendants**

Civil Action No. 180

Trial Division of the High Court

Truk District

November 26, 1963

Action for determination of title to land located on Tol Island, in which plaintiffs claim land as result of two civil wars in pre-German times and on basis of German land document issued in 1909. The Trial Division of the High Court, Chief Justice E. P. Furber, held that presumption of ownership in defendants, arising from long continuous possession, has not been rebutted, and that plaintiff had no rights in land. The Court further held that plaintiffs' claim of failure to bring action because they thought defendants were using land for them, was unsupported by evidence.

1. Real Property—Quiet Title—Laches

Where party claiming land has let matter rest so long that other persons or their predecessors in interest have been in possession under claim of ownership for long time, it is presumed that other persons' predecessors were given rights they have purported to exercise.

2. Real Property—Quiet Title—Laches

If person believes he owns land and stands by for many years and raises no objection to someone else using it, on theory that other person is using it for person who believes he owns it, person claiming ownership should obtain definite acknowledgment of ownership by words or acts of user at intervals of less than twenty years, and if he cannot obtain acknowledgment, he should bring matter to court for determination.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiffs Nakas and Ereta have failed to show that they or their predecessors in interest did not have a reasonable chance to have their claims determined

during the periods of either the German or Japanese Administrations.

2. The defendants Yunie, Finaik, and United Church Board for World Ministries, and those for whom the defendant Apenis claims, or their respective predecessors in interest, have been in open and peaceful possession under claim of ownership of the respective pieces of land they claim, at least since the end of German times. This possession was adverse to the claims of all others and was clearly intended to be exclusive and uninterrupted (except for the disruption caused by World War II), and the court finds that it was in fact as exclusive and uninterrupted as can reasonably be expected in the light of the character and location of the land involved.

3. Any use which the plaintiff Nakas or members of his lineage may have made of any of the lands in question since German times was only occasional and secretive and did not effectively impair the exclusive possession of the defendants and those for whom the defendant Apenis claims or their respective predecessors in interest.

OPINION

This action is governed by the principles set forth in this court's opinion in the cases of *Kanser v. Pitor and Others*, and *Kanser v. Enita and Others*, 2 T.T.R. 481.

[1] The claims of the plaintiffs Nakas and Ereta depend primarily on what was or was not done with regard to these lands in or as a result of two civil wars on Tol Island, Truk District, before German times and on just what part of the land known as Nepinom was covered by the words "halb Lapinom" on the back of the German land document issued in the name of "Faua", May 15, 1909. The plaintiffs and their predecessors in interest have let this matter rest so long and the defendants or their predecessors in interest have been in possession under claim

of ownership for so long, that it must now be presumed that defendant's predecessors in interest were given the rights they have purported to exercise.

[2] The plaintiffs claim that they did not object to the actions of some of the defendants or their predecessors in interest with regard to the lands because they thought that these people were acting for or under the plaintiffs' group, but the conduct of these defendants and their predecessors in interest clearly shows that they were not so acting and the court considers that the plaintiffs have failed to show any reasonable ground for believing that these defendants or their predecessors in interest were acting, or ever acknowledged that they were acting, for the plaintiffs' group. To avoid trouble of this sort in the future, it is strongly urged that if a person who believes he owns certain land stands by for many years and raises no objection to someone else using it on the theory that such other person is using it for the person who believes he owns it, the person claiming the ownership should at least obtain some clear and definite acknowledgment of his ownership by word or acts of the user at intervals of less than twenty (20) years. If he cannot obtain such an acknowledgment, he should bring the matter to court for determination before the use has continued for more than twenty (20) years either from the time it began or from the time of the last such acknowledgment.

JUDGMENT

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

1. As between the parties, all of whom live or have a usual place of business on Tol Island, Truk District, and all persons claiming under them, the lands described below, all located in Fason Village, Tol Island, Truk District, and shown on the map filed with the pre-trial order in this action, are owned as follows:—

a. The part of the land shown as Nepuma on said map, which part is north of the dotted line running from the river to a stone and thence turning slightly and running to the walk leading from the main road to the "Government Building", which part is more specifically shown in the sketch attached to the answer filed July 3, 1961, in this action by Wilhelm F. Kaercher, Missionary, is owned by the defendant United Church Board for World Ministries, doing business as the Philadelphia School.

b. The remainder of the land shown as Nepuma on said map is owned by the defendant Yunie.

c. The part of the land shown as Nepinom on said map, which part lies west of Nepuma as shown on said map and east of the boundary line shown as running through a mango tree and separating that part from the land shown in the name of Apenis, together with the part north of the road to Upuili's house bounded on the south by the road to Upuili's house, on the east by the main road, on the northwest by the river and on the west by the projection in a straight line of the boundary line mentioned above running through the mango tree, is owned by the defendant Finaik.

d. The part of the land shown as Nepinom on said map, which part is bounded on the south by the road to Upuili's house, on the northwest by the river and on the east by the projection in a straight line of the boundary line mentioned above running through the mango tree, is owned by the children of the defendant Apenis, on whose behalf he makes claim in this action.

e. Neither the plaintiff Nakas nor the plaintiff Ereta has any rights of ownership in any of said lands.

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

3. The defendants are awarded such costs, if any, of this action as they may have had which are taxable under

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he first sentence of Section 265 of the Trust Territory Code, provided they file a sworn itemized statement of them within thirty (30) days after entry of this judgment. Otherwise no costs will be allowed.

RDECHOR TKOEL, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 249

Trial Division of the High Court

Palau District

January 10, 1964

Defendant was convicted in Palau District Court of affray, in violation of T.T.C., Sec. 424. On appeal, defendant contends there was no evidence of anyone besides participants being put in fear or danger. Appellee contends that such evidence was introduced in proceedings against other participant in affray and that same evidence should be considered in present proceedings. The Trial Division of the High Court, Chief Justice E. P. Furber, held that defendant was deprived of right to be confronted with witnesses against him and was entitled to new trial.

Reversed and remanded.

1. Affray—"Fear or Danger"

Placing of other persons in fear or danger is essential element of crime of affray. (T.T.C., Sec. 424)

2. Constitutional Law—Public Trial and Confrontation of Witnesses

Accused has right in all criminal prosecutions to be confronted with witnesses against him, including right to cross-examination and to know upon what evidence he is being tried. (T.T.C., Sec. 4)

3. Criminal Law—Rights of Accused—Confrontation of Witnesses

While accused in criminal prosecution can waive right to be confronted with witnesses against him, it cannot properly be taken away from him without his consent. (T.T.C., Sec. 4)

4. Criminal Law—Prosecutor's Error or Omission

Where essential point in criminal prosecution has been omitted through inadvertence or misunderstanding, and it is probable there is evidence available on it, accused is not entitled to acquittal on appeal as matter of right, and case will be remanded with such directions for new trial as may be just. (T.T.C., Sec. 200)