

TRUST TERRITORY

v.

ISIKEIL

Nama Community Court Criminal Case No. 1-66

TRUST TERRITORY

v.

RISA

Nama Community Court Criminal Case No. 3-66

Trial Division of the High Court

Truk District

May 6, 1966

. Review of two cases arising in Nama Community Court, in which appellants contend that judge had no power or authority to act because his term of office had expired. The Trial Division of the High Court, Chief Justice E. P. Furber, held that incumbent judge has duty to exercise functions of his office until successor is appointed.

Affirmed.

Courts—Judges

It is right and duty of incumbent judge in Trust Territory upon expiration of term of office, to hold over and exercise duties and functions of office until his successor has been appointed, if incumbent is not removed from office.

FURBER, *Chief Justice*

Review has been requested of the decisions in these two criminal cases by counsel for the accused on the ground that the judge who heard them had no power or authority to act because his term of office had expired before the cases were tried.

This court takes note from the records in these two cases and its own files that the cases were tried by Judge Sitifen after the term for which he was formerly appointed as judge of the Community Court of Nama had expired and before his current reappointment took effect. The court also notes, however, that no one else had been

appointed as judge of this court during the interim between Judge Sitifen's two appointments. It is very much in the public interest that courts be able to act when called upon. This court believes that it is the right and duty of an incumbent judge in the Trust Territory upon the expiration of his term of office, to hold over in accordance with common American practice and exercise the duties and functions of the office until his successor has been appointed **if** the incumbent himself has not been removed from office. In such a case, the judge is what is sometimes called a "judge de facto", but he has full power to act until his successor is appointed or he is re-appointed and parties appearing before him cannot successfully raise any objection because of his term having expired. 30A Am. Jur., Judges, §§ 19, 229, 231, note 12, and § 236, note 10.

The records in these two cases having been reviewed in accordance with the request of counsel for the accused, the findings and sentences are held to be valid, they are hereby affirmed, and the records ordered filed.