

RAIMATO, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Civil Action No. 219
Trial Division of the High Court
Truk District
May 9, 1967

Action to determine ownership of Dlul Island, in which plaintiff claims on behalf of group whose predecessors were driven off island by threats of force during Spanish times. On appeal from District Land Title Determination in favor of defendant, the Trial Division of the High Court, Chief Justice E. P. Furber, held that it was now too late for claimants to obtain relief from present administering authority as matter of right and that present administration will respect official act of Spanish Administration in confirming ownership of individual who drove out plaintiff's predecessors.

Affirmed.

1. Former Administrations-Applicable Law

Where individual took possession of land in Truk under grant from Spanish Government, act must be judged by law as it was at that time and not by more recent concepts.

2. Former Administrations-Redress of Private Wrongs

If there was anything wrong with land grant by Spanish Government to individual grantee, it is too late for claimants to expect relief from present administering authority as matter of right.

3. Public Lands-Succeeding Sovereign

So far as property rights are concerned, present government of Trust Territory of the Pacific Islands is in position like that of succeeding sovereign taking over government of land conquered by it or ceded to it by another nation.

4. Former Administrations-Official Acts

Present administration is entitled to rely upon and respect acts of former administration of these islands.

5. Former Administrations-Redress of Prior Wrongs-Exc.ption to Applicable Doctrine

Present administration is not required as matter of right to correct wrongs which former administration may have done, except in those cases where wrong occurred so near time of change of administration that there was no opportunity for it to be corrected through courts or other agencies of former administration.

6. Former Administrations-Redress of Primo Wrongs

Although present administration may be willing in some cases to grant relief from hardships imposed by law in force under former administration where it is under no obligation to do so, this is matter of policy to be decided by law-making authorities and not by courts.

7. Former Administrations-Redress of Prior Wrongs

It is not proper function of courts of present administration to right wrongs which may have for many years before been persisted in by former administration.

FURBER, *Chief Justice*

This is an appeal from Determination of Ownership and Release No. 1.11 by the Acting District Land Title Officer for the Truk District, in which he determined that the whole of DluI Island in Nuomunito Atoll, Truk District, is the property of the Trust Territory of the Pacific Islands. By stipulation of counsel, the appeal was submitted to the Trial Division of the High Court on the basis of the record compiled by the Land Title Officer, and argument on it was waived.

OPINION

There is very little conflict in the evidence as to the basic facts involved. It clearly appeared that the previous occupants of DluI Island vacated it as a result of threats of attack being organized by the "Tamatom people", in cooperation with those from Puluwat and other western islands of what is now the Truk District, and rumors fed to the inhabitants of DluI by the Chief of Piserach to the effect that they must prepare for defense against attack "by people of all Truk Atoll, Hall Islands, the rest of the Noumunito group and the Puluwat group". While the Island of DluI was supposedly uninhabited, one Dominique Etscheit purchased it from the Spanish Government on May 31, 1886. By the time he arrived on VluI to take possession, however, some people from Piserach,

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under the leadership of Puas, had landed on one side of the island and claimed it, while people from Tamatam allegedly having found the island abandoned, had landed on the other side and also claimed it. Mr. Etscheit struck up a working arrangement with Puas and between them they drove the Tamatam people off. Mr. Etscheit established a plantation on the island, brought in a number of workers to work the plantation, and also secured the assistance of Puas and some of his supporters to assist in redeveloping the island, which is reported to have been badly damaged by a typhoon. When the German Administration came in, the Vice-Governor by a formal document dated February 9, 1901, certified that Mr. Dominique Etscheit had been bestowed full rights of ownership in the Island of "Olul" by the Spanish Governor and that the agreement by which a small piece of land was to be kept at the disposition of the Spanish Government would be inherited by the German Government. "Olul" is well recognized as another spelling of the name "Dlul" and no doubt has been raised about its referring to the island in question. See the D.S. Board on Geographic Names' "Decisions on Names in the Trust Territory of the Pacific Islands and Guam. Part I: Caroline Islands, Cumulative Decision List No. 5501", p. 113.

Mr. Etscheit, or his successors in interest, continued to work the island with the assistance to some extent of people from Piserach as employees, and received the profits from it from Spanish time up to and during the early part of World War II. By his will, Dominique Etscheit left the island to his wife, Florentine Caymont Etscheit, otherwise known as Flora Etscheit. She in turn conveyed it to the Trust Territory of the Pacific Islands on February 14, 1957, for \$75,000.

This appeal is by the present chief of the people living on Dlul, who are the successors of those who came

from Piserach. A claim on behalf of the Tamatam people was advanced at the hearing before the Title Officer but no appeal has been taken on their behalf. Both groups of claimants allege that their predecessors were not paid and that the land was wrongfully taken from them by Dominique Etscheit's express or implied threats of force and the fear which the local inhabitants had of him because of his gun and his being a "white man".

[1-7] Mr. Etscheit's taking possession under the grant from the Spanish Government should be judged by the law as it was at that time and not by any more recent concepts. If there was anything wrong about it, it is altogether too late for the claimants to expect relief from the present administering authority as a matter of right. This court has previously passed upon the basic legal issues involved here in the case of *Wasisang v. Trust Territory*, 1 T.T.R. 14, in which the court held in the second paragraph of its conclusions of law:-

"So far as property rights are concerned, the present government of the Trust Territory of the Pacific Islands is in a position like that of a succeeding sovereign taking over the government of land conquered by it or ceded to it by another nation. The rights and obligations of such a succeeding sovereign are explained in general terms in Volume 30 of American Jurisprudence, pages 202 to 207, in paragraphs 44 to 47 of the article on 'International Law'. In accordance with the general principles there explained, the present administration is entitled to rely upon and respect the official acts of the Japanese administration of these islands and is not required as a matter of right to correct wrongs which the former administration may have done, except in those cases where the wrong occurred so near the time of the change of administration that there was no opportunity for it to be corrected through the courts or other agencies of the former administration. The present administration may be willing in some cases to grant relief from hardships imposed by the law in force under the former administration where the present administration is under no obligation to do so as a matter of right. The granting of such relief, however, is a

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matter of policy to be decided by the law-making authorities and not by the courts. The general rule is that it is not a proper function of the courts of the present administration to right wrongs which may have for many years before been persisted in by the former administration."

The reference above to the article on "International Law" in Am. Jur. is to the original Vol. 30. The corresponding provisions in Rev. Vol. 30 will be found on p. 467-473. The paragraph or section numbers, however, remain the same. The statements in the above quotation as to the official acts of the Japanese Administration apply equally to those of the Spanish Government during its period of administration. See *Orijon and Julet v. Etjon*, 1 T.T.R. 101. *Itpik Martin v. Trust Territory*, 1 T.T.R. 481. *Kanser v. Pitor* and *Kanser v. Enita*, 2 T.T.R. 481.

The conclusions of law in the Wasisang case were expressly and fully concurred in by the Appellate Division of the High Court in *Kumtak Jatios v. L. Levi*, 1 T.T.R. 578. The conclusions of law quoted above should therefore now be considered to be a part of the established law of the Trust Territory of the Pacific Islands. 20 Am. Jur. 2d, Courts, §§ 183-185.

JUDGMENT

The Determination of Ownership and Release No. 1.11 by the Acting District Land Title Officer for the Truk District, dated May 18, 1960, filed June 6, 1960, with the Clerk of Courts for the Truk District in Volume T-2, Page 252, is hereby affirmed.