

Ordered, adjudged, and decreed:—

1. That plaintiff is denied recovery on his claim Fefan Municipality has encroached upon and is using a strip of the lands Fankurek #2 and Uonpoin adjoining the municipal land.

2. The defendant is denied recovery on its counterclaim that it purchased and is entitled to use a strip of land surrounding Lot 60393 within the adjoining lands Fankurek #2 and Uonpoin.

3. This judgment shall not affect any rights-of-way existing over the lands in question.

4. No costs are allowed.

MINA, Plaintiff

v.

FEFAN MUNICIPALITY, Defendant

Civil Action No. 547

Trial Division of the High Court

Truk District

October 6, 1971

Action to determine ownership of certain lands in Fefan Municipality, Truk Lagoon. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that the municipality had no right, title or interest in plaintiff's land.

<i>Assessor:</i>	ICHIRO MOSES, <i>Associate Judge of the District Court</i>
<i>Interpreter:</i>	SABASTIAN FRANK
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	RAFAEL ROBERT
<i>Counsel for Defendant:</i>	AKAPITO

TURNER, Associate Justice

This case concerns ownership of a strip of land between plaintiff's land known as Nesok and the boundaries of

Lot 60393 owned by Fefan Municipality on Fefan Island, Truk Lagoon. A companion decision similar in many respects but tried separately is *Tarsisio v. Fefan Municipality*, 5 T.T.R. 504. An earlier and similar decision, not reported, was *Albert Hartman v. Fefan Municipality*, Civil Action No. 362.

FINDINGS OF FACT

1. *Albert Hartman v. Fefan Municipality*, supra, held that the part of the land Nojak (spelled in the present case "Nesok") "on which the municipal office building was constructed" belonged to the plaintiff Hartman.

2. Plaintiff acquired a portion of Nesok from her mother, Roslin, who acquired it from Anfios, her brother. Plaintiff's mother obtained the land in Japanese times and she transferred it to plaintiff in 1955. Plaintiff's occupancy was not challenged by the municipality, or anyone else, until the boundary survey was undertaken in 1969.

3. As a result of the Judgment in Civil Action No. 362, the Hartman corners and boundaries of Nesok which adjoin plaintiff's portion of Nesok were established and the 1969 survey of plaintiff's land was made from these corners.

4. Anfios, from whom the municipality claims to have purchased a portion of plaintiff's land in 1948, had no interest in the land and could not, therefore, convey it to the municipality.

5. The construction of a municipal building, a cookhouse and a school by the municipality on plaintiff's land was upon permission granted by plaintiff and was not intended as a conveyance of an interest in the land. The present community building is not on the same site as the former one, located on the land successfully claimed by Albert Hartman in his suit against Fefan Municipality.

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6. Plaintiff's claim that her property line runs through the present community house is not sustained by the evidence.

7. Survey lines made by the District Land Management Office separating Lot No. 60393, owned by the municipality, and the land Nesok, owned by plaintiff, as shown in Land Management Office Drawing 6032/69 show the division of the two properties.

OPINION

Under the leadership of Carl Hartman, then chief of Fefan Island, a community project was undertaken whereby a *taro* swamp was filled in by the people for a community center. The project began in 1947.

Money was raised by assessment upon the people of the four sections of Fefan Municipality which included Param Island, each section paying \$60.00. Only \$180.00 was used in paying for coconut and other trees surrounding the swamp to make additional land available for municipal use.

The first office building, built in 1947-1948, was not built on the filled-in swamp but on that portion of Nesok owned by Albert Hartman. Further municipal construction was located on plaintiff's land with consent, and was not purchased by the municipality. If the municipality made any payments either for trees cut or the privilege of building, and the evidence is uncertain as to this point, the payment was to Anfios who had no interest in the land.

This action and the two companion prior cases, *Tarsisio*, supra, and *Albert Hartman*, supra, involve the same issues except each pertains to separate lands adjoining the former *taro* swamp, designated by the land office as Lot 60393. Accordingly, this decision should be in conformity with the prior decisions.

The fact that the *Albert Hartman* decision resulted in corner boundary markers of one side of the land in dispute in this case requires our acceptance of the 1969 survey which used the *Hartman* corners as the proper starting points for the Nesok boundary.

The evidence is much more certain in this case than it was in Civil Action No. 556, 5 T.T.R. 504, that the Nesok boundary surveyed by the Office of Land Management represents the correct lines between plaintiff's property and the municipal land.

Ordered, adjudged, and decreed:—

1. That the dividing line between plaintiff's land known as Nesok and the municipal land, designated Lot No. 60393, is that which is shown by Land Management Drawing No. 6032/69.

2. That plaintiff has no right, title and interest in land which includes the present community office building.

3. That the municipality has no right, title and interest in plaintiff's land on which the community school building is located except as plaintiff may permit its continued use by the municipality and, in the event plaintiff terminates permissive use, plaintiff shall either recover occupancy of the portion so used or shall be entitled to reasonable rental for its continued use.

MO J., Successor to LANJEN, Plaintiff

v.

BWIJTAK, and Others, Defendants

Civil Action No. 113

Trial Division of the High Court

Marshall Islands District

November 4, 1971

Motion for order in aid of judgment. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where defendant cut copra with