

Administrator. Where there is no *Nanmwarki*, the chief magistrate with the District Administrator shall decide.”

It is, therefore, ordered, adjudged, and decreed:—

1. Neither the plaintiff Renselihna Prens, the defendant Susan Pretrick, nor any persons claiming under them, have any right of ownership in the land Sakaralp, in Mwand Peidi, Uh Municipality, Ponape District.

2. Susan shall have the right to continue to live on and subsist from the land for her lifetime.

3. No costs are assessed.

OTNIEL EDMOND TULENKUN, Plaintiff

v.

VILLAGE GOVERNMENT OF UTWE, Defendant

Civil Action No. 415

Trial Division of the High Court

Kusaie, Ponape District

March 13, 1972

Action between village and upland owner to determine rights to filled shore lands. The Trial Division of the High Court, H. W. Burnett, Chief Justice, held that the government could not dispossess a landowner at will of rights conferred upon him by law and that the occasional use of filled land was permissive only and thus rights therein were in upland owner.

1. Trust Territory—Land Law—Generally

Neither the government, nor any part of it, can dispossess a landowner, at will, of a very real and substantial right conferred on him by law.

2. Real Property—Shore Lands

Provision of the Trust Territory Code relating to rights in areas below high watermark, does not give ownership of the land below the high watermark, but rather gives a right, under conditions of approval, to build improvements on the land, which improvements may be the property of the upland owner; ownership of the land remains in the government. (67 T.T.C. § 2(c))

3. Real Property—Shore Lands

Where the occasional use made of filled shoreland by village was permissive only, the village acquired no rights thereby. (67 T.T.C. § 2(c))

BURNETT, *Chief Justice*

FINDINGS OF FACT

1. The land in dispute, a portion of the land Utwe Taf, Utwe Village, Kusaie, is located below the ordinary high watermark.
2. Plaintiff owns the land which abuts the area in dispute.

OPINION

The facts necessary to decision in this action and set out in the foregoing findings, are not in serious dispute, and found support in the testimony of witnesses for both parties. The question then becomes one of law, to be answered by reference to 67 T.T.C. 2, which is controlling as to ownership of land below the high watermark.

67 T.T.C. 2, with the exception, here applicable, set forth in subdivision (c) reads:—

“Section 2. Rights in areas below high watermark.

(1) That portion of the law established during the Japanese Administration of the area which is now the Trust Territory, that all marine areas below the ordinary high watermark belong to the government, is hereby confirmed as part of the law of the Trust Territory, with the following exceptions:—

(c) The owner of land abutting the ocean or lagoon shall have the right to fill in, erect, construct and maintain piers, buildings, or other construction on or over the water or reef abutting his land and shall have the ownership and control of such construction; PROVIDED, that said owner first obtains written permission of the District Administrator before beginning such construction.”

[1] The exception, and the nature of the right which it confers on the abutting landowner, is most important in this matter. The defendant contends that, as a local government of the Trust Territory, it was entitled to use the land, which had been filled and on which, at various times in the past, had been maintained the Utwe municipal office, notwithstanding the lack of consent of the owner of the

abutting upland. To sustain that position would require a finding that the government, or any part of it, can dispossess a landowner, at will, of a very real and substantial right conferred on him by law. Of course this cannot be.

[2] There was much conflict in the testimony as to whether the land had been filled, and the first building erected, before or after plaintiff's father bought the land. The defendant contends that this was done before, and thus the municipality's rights were fixed by permission of a prior owner. This contention too must fail. Note that Section 2(c) does not give ownership of *the land* below high watermark. What it does give is a right, under conditions of approval, to build improvements on the land, which improvements may be the property of the upland owner. Ownership of the land below high water does not change; it remains in the government of the Trust Territory.

It follows, therefore, that, whether any prior owner attempted to transfer the area in dispute or not is immaterial. The right given by Section 2(c) is one which cannot be separated from ownership of the abutting upland.

[3] In the view which I take of the matter, the occasional use made of the area in dispute by the village government of Utwe has been permissive only, and defendant has acquired no rights thereby.

Mention was also made of the almost universal failure of land owners in Kusaie to obtain the approval of the District Administrator, as required by Section 2(c), before proceeding to fill and build on land below high water. However that may be, such a defect is one available only to the government, and cannot affect the outcome of a suit such as this in which the village government stands in the same position as a private landowner.

It is, therefore, ordered, adjudged, and decreed:—

1. The land here in dispute is the property of the Trust Territory government, pursuant to Section 2, Title 67,

Trust Territory Code, subject to the exception set forth in subsection (c) thereof.

2. The plaintiff, Otniel Edmond Tulenkun, is owner of the land abutting the area in dispute and possesses those rights conferred by subsection (c) of Section 2, Title 67, Trust Territory Code; Defendant Village Government of Utwe has no rights therein.

3. No costs are allowed either party.

MESAITA, Plaintiff

v.

FUPI, Defendant

Civil Action No. 595

Trial Division of the High Court

Truk District

March 15, 1972

Action to determine right to land on Namoluk Island, Truk District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that Master's determination that land in question was lineage land, was correct and as such the land could not be transferred or exchanged without the consent of all adult members of the lineage.

1. Truk Land Law—Lineage Land—Transfers

Where land is owned by a lineage, a transfer to the child of a member is not presumed, but must be established by clear and convincing evidence.

2. Truk Land Law—Lineage Land—Transfers

Any transfer or exchange of lineage land must be consented to by all adult members of the lineage.

TURNER, *Associate Justice*

Hearing was held before Ring Puas, Associate Judge of the District Court, as Master on May 28, 1971, on Namoluk Island, Truk District. Hearing on the Master's report and