

1978. His deposition relates the physical difficulties he experienced almost immediately after his surgery, and he told the attending physician that "now I'm going to look my lawyer and I sue you because you make the wrong operation." This deposition was placed before the trial judge at the hearing on defendant's motion for summary judgment. There was no counter affidavit filed to form any basis for the tolling of the statute. The trial judge was correct in granting the motion.

It might be added that on appeal, the plaintiff has raised additional issues such as waiver, estoppel, and the fiduciary relationship of the Trust Territory Government to the plaintiff. These issues were not properly raised at the trial level nor were they properly preserved on appeal, and this court declines to consider them.

Accordingly, the decision of the trial court is affirmed.

**PENIDO PETER, DAHNIS PETER, DALMON WALTU,
DANIEL JOHNNY, and JOHNNY and ALPERIHDA
SARAPIO, Appellants/Counter-Claimants**

v.

IUHDIS ALFONS, Appellee/Claimant

Civil Appeal No. 362

**EPENSIO EPERIAM, SEKISMUNDO SARAPIO, IOANA
RESEPWIL, and IOANA GILMETE,
Appellants/Counter-Claimants**

v.

IUHDIS ALFONS, Appellee/Claimant

Civil Appeal No. 355

Appellate Division of the High Court

Ponape District

January 19, 1984

Appeal from judgment in land ownership dispute. The Appellate Division of the High Court, Miyamoto, Associate Justice, held that the case should

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not have been referred to a Master by the trial court, and therefore the case was remanded for a new trial before an attorney-judge.

Civil Procedure—Masters

Land dispute case was not properly referred by trial court to a Master, where witnesses to the case were not inaccessible to the judge, and there was no indication that there was a necessity for a hearing before the court itself could arrange one.

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Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate Justice*, and HEFNER¹, *Associate Justice*

MIYAMOTO, *Associate Justice*

This is an appeal by two sets of appellants, who are counter-claimants to the title of a parcel of land called Enpein Pah, Kitti Municipality, Ponape State, claimed by the appellee. This action began as a quiet title action in the High Court in 1975 but was transferred to the Land Commission for title determination. In 1976, the Land Commission referred the case back to the High Court because of difficulties encountered within the Commission. This matter was heard before a Master appointed by the trial court, and a judgment was rendered on September 2, 1981, which incorporated the findings of the Master's Report.

The grounds for both appeals are essentially the same. They claim that they are entitled to fee simple interests

¹ Chief Judge, Commonwealth Trial Court, Northern Mariana Islands, designated as Temporary Justice by Secretary of Interior.

to their respective parcels rather than life estates, that the appellee's claim is barred by laches or stale demand, that the appellee is estopped from denying sale of land by her ancestors, that the court erred in not recognizing nondocumented inter-vivos transfers or sales of land, and that no opportunity was given to file or to make oral responses to the Master's Report.

Since the Master's Report forms the bases of the court's judgment and the appeal, a close scrutiny of that Report indicates the following:

1. There are patent factual contradictions within the Report.

2. The legal bases for some of the findings are weak or deficient; for example, the Master did not give credence to evidence of nondocumented inter-vivos conveyance and sales.

3. The legal bases for some of the defendants receiving life estates are not explained or documented.

4. The legal defenses of statute of limitations, laches, and stale demand raised by the counter-claimants were not addressed in the Report.

Some of the above deficiencies could have been corrected at the trial level if the parties had filed objections to the Master's Report and a hearing had been held on such objections. The order appointing the Master read as follows:

That if said Master's Report has been filed on or before February 24, 1979, counsel may call to the Court's attention any problems existing and a hearing on those problems will be held on said February 24th. The parties are to advise the Clerk of the Court for setting.

The Report was filed on May 31, 1979, instead of February 24, 1979, thus creating confusion. The result is that no objections were filed or hearings held. The Master's Report, as imperfect as it was, was incorporated into the judgment.

There is no question but that this is a complex case involving issues of law and fact that properly should have

been handled by a judge. A Master may be appointed pursuant to Rule 42 of the High Court Rules of Procedure under the following two circumstances:

RULE 42. MASTER

Any Trust Territory Court in which an action is pending may appoint a master therein and refer to him for hearing and report, any issues involving testimony of *witnesses who are located at a point which makes their appearance before the court unduly burdensome or expensive, or any issues on which the court deems hearing should be held or evidence taken before it is probable that the court itself can do so.* (Emphasis added.)

Kitti is on the main island of Ponape and it was accessible to the Master and the accompanying Clerk. Thus Kitti was also accessible to the trial judge. Further, there is no indication that there was a necessity that “evidence [be] taken before the court itself can do so.” It was therefore not the kind of case that should have been referred to a Master, even if the counsel had requested the same.

Where a trial court must rely completely upon the Master’s Report, as in this case, it is difficult for the court to arrive at findings of fact and conclusions of law based on the Master’s Report, especially where the evidence is conflicting as in this case. In *Loton v. Langrin*, 5 T.T.R. 358, at 363 (1971), the court specified the following:

There is not a mandatory rule in the Trust Territory requiring the trial division to make separate findings and conclusions of law as there is in the United States Federal Courts. Rule 16. Rules of Civil Procedure and Rule 52(a), Federal Court Rules. *However, the rules of law governing appeals in the Trust Territory, and elsewhere, make it imperative that findings be made.* An illustration of the statement of the need for findings is found in a case arising in the Virgin Islands, *Kruger v. Purcell*, 300 F.2d 830:—
 “We are met at the outset by an insurmountable obstacle to an intelligent review, namely, the inadequacy of the findings of fact and conclusions of law. The present state of the record is such that a decision by this court could be based only on conjecture and this, of course, is not permissible.” (Emphasis added.)

In view of the foregoing, this case is remanded to the trial court for a new trial before an attorney-judge. Issues raised such as statute of limitations, laches, stale demand, estoppel, and validity of nondocumented inter-vivos transfer of lands should be addressed at the time of trial.

REVERSED AND REMANDED.

LONET ELDRIDGE, Appellant

v.

ANTON ELDRIDGE and TADASY YAMAGUCHI, Appellees

Civil Appeal No. 365

Appellate Division of the High Court

Ponape District

January 25, 1984

Appeal from Trial Division judgment affirming a Land Commission Determination. The Appellate Division of the High Court, Miyamoto, Associate Justice, held that where Japanese land survey in 1941 affirmed a subdivision of land, appellant and his predecessors in interest lost whatever rights they may have had by failing to contest this subdivision until 1980, and therefore Trial Division judgment was affirmed.

1. Former Administrations—Official Acts

Where Japanese administration in survey of private land undertaken in 1941 affirmed a subdivision on certain property on Ponape, and appellant and his predecessors in interest could have contested this registration in the courts during Japanese and American times but did not do so until 1980, appellant lost whatever rights he may previously have had in the land.

2. Adverse Possession—Family Relationship

Appellant failed to sustain his burden of proving adverse possession on property where contesting party was his brother, since there was not shown a clear, positive and continued disclaimer and disavowal of title.

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