

**FRITZ RUSASECH, and NGIREBLEKUU UCHELMEKEDIU,
Appellants**

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS, and
JOSEPH C. PUTNAM, its Alien Property Custodian, Appellees**

Civil Action No. 98

Trial Division of the High Court

Palau District

September 4, 1958

Action to determine title to Ngercheu Island, in which plaintiffs are representatives of clan which owned land in question until it was taken by Japanese Government in 1927, without payment of compensation. On appeal from District Land Title Determination, the Trial Division of the High Court, Associate Justice Philip R. Toomin, held that adequate time had not been permitted for recourse to courts of prior government where taking was protested and such protest was pending and undisposed of in courts up to end of Japanese occupation.

1. Former Administrations—Redress of Prior Wrongs

Where question for determination by court involves redress of ancient wrongs of prior power by successor power, international law and not traditional principles of equity jurisprudence are applicable.

2. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Where claim for return of lands taken by Japanese Government in 1927 was undisposed of and pending in courts of Japanese Administration at time war began, it was existing cause of action on December 1, 1941, and also on May 28, 1951, and is considered to have accrued on latter date. (T.T.C., Sec. 324)

3. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Where party's claim for return of land taken by Japanese Government in 1925 was effectively stayed by coming of war, and no machinery was set up by Trust Territory Government for filing of such claims until January 11, 1951, filing of claim with District Land Title Officer on May 25, 1954, was in apt time. (Office of Land Management Regulation No. 1)

4. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Where no final decision on claim for return of land was handed down by Japanese courts prior to coming of war, adequate time has not been permitted for recourse to courts.

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5. Eminent Domain—Generally

Taking of private property for public use without adequate compensation violates Trust Territory Bill of Rights. (T.T.C., Sec. 4)

6. Former Administrations—Redress of Prior Wrongs

Taking of private property which creates cause of action under law of Trust Territory is not sufficient to confer jurisdiction on court to redress wrongs in commission of which that government had no part.

7. Former Administrations—Recognition of Established Rights

Matters of recognition by successor sovereign of equitable rights outstanding but undetermined at conclusion of prior sovereignty are not within purview of judicial branch except as they have been recognized by legislative branch.

8. Trust Territory—Suits Against

There can be no action against government for return of property in its possession or claimed by it without its consent.

9. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Trust Territory Administration policy statement regarding return of lands taken by Japanese Government from native owners is binding on courts until rescinded or modified. (Policy Letter P-1, December 29, 1947)

10. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Land transfers from non-Japanese private owners to Japanese Government, corporations, or nationals since March 27, 1935, are subject to review and are considered valid unless former owner establishes sale was not made of free will and just compensation not received. (Policy Letter P-1, December 29, 1947)

11. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Reasonable cut-off date for origination of claims against Trust Territory Government is entirely matter of legislative prerogative.

12. Former Administrations—Taking of Private Property by Japanese Government—Limitations

Where taking of private property by Japanese Government occurred prior to cut-off date set by legislature, but taking was protested and protest was pending and undisposed of in courts up to end of Japanese occupation, taking is considered to have been in suspense during entire period of controversy, and not a taking prior to cut-off date.

Assessor: JUDGE PABLO RINGANG
Interpreter: ANTHONY H. POLLOI
Counsel for Appellant: ROSCOE L. EDWARDS, ESQ.
Counsel for Appellee: ALFRED J. GERGELY, ESQ.

TOOMIN, *Associate Justice*

OPINION

In this proceeding an appeal was taken from a Determination of Ownership made by the District Land Title Officer of Palau District and filed with the Clerk of Courts of said district pertaining to certain lands located in said district. The proceeding originated in a claim filed by appellants asking for an adjudication of ownership in them, as clan representatives of said lands. After due hearing pursuant to Office of Land Management Regulation No. 1, the District Land Title Officer made a finding of ownership adverse to appellants, and found instead that said lands were the property of appellees.

By agreement of the parties, there has been filed with the court the record made before the Land Office on the hearing of said claims, including the evidence and exhibits offered and received on behalf of appellants, and the findings of fact and conclusions of the Land Title Officer. No other evidence was offered by the parties on the hearing of this appeal.

From the record of the said hearing, and from the understandings and agreements of the parties contained in a certain Memorandum of Pre-Trial Conference and Order In Relation Thereto, entered and filed in this proceeding, the following appear as the relevant and material facts:

The land in question is the whole of Ngercheu Island, lying approximately three (3) miles north of Peleliu, and containing approximately one hundred (100) acres. It was owned by the clan Edaruchei since long prior to the Japanese Administration. Appellants as leaders of the clan make claim on its behalf.

In 1927 the Japanese Administration advised the clan that the island had been taken over by the government and that they would have to pay rent or get out. This action was taken without payment of compensation. Suit was filed by the clan to obtain restoration of the land, but pending court action, the clan started to pay rent. These rental payments continued from 1932 to 1943 at which time Japanese soldiers evacuated all of the island inhabitants. Despite efforts on the part of the clan to obtain redress in the courts, they were never able to get the case heard and obtain a final decision. When the American Forces took the Palau Islands, the Administration permitted the clan to return to Ngercheu Island and they have been there ever since.

Appellees concede the land was taken without the owners' consent and without payment of compensation, also that final decision was never obtained in the Japanese courts in the action brought by the clan. Their sole objection to return of the land is that the taking occurred too long ago for the matter to be subject to review by the courts at this time.

Accordingly, it is apparent that the case presents for determination the sole question as to whether courts of a successor power have any warrant in law to redress ancient wrongs perpetrated by a prior power against its subjects, where action contesting these wrongs is pending and undetermined in the courts of the prior power at the time of the change of sovereignty.

[1] The answer to this question will be found, if at all, in the domain of international law, and not in the application of traditional principles of equity jurisprudence. While the authorities in the field are by no means legion, they are sufficiently respectable and well considered as to have solidified into well-recognized principles, the rules applicable to the situation at bar.

[2, 3] Upon comparison of the facts in the case at bar with those in *Ngodrii Santos v. Trust Territory*, 1 T.T.R. 463, decided this day, it is clear they are so parallel as to make the rules adopted in that case applicable here. Accordingly, the discussion of legal principles in that case, the legal authorities there followed, and the legal conclusions there reached, are adopted here as the law of this case. Here, as there, this court concludes as follows:

(a) The claim of appellants for return of the lands in question, was an existing cause of action on December 1, 1941, and also on May 28, 1951, hence under Section 324, Trust Territory Code is considered to have accrued on the latter date.

(b) Its prosecution was effectively stayed by the coming of the war.

(c) No machinery was set up by Trust Territory Government for the filing of such claims, until January 11, 1951, when the first land management regulation was issued.

(d) The claim of appellants filed with the District Land Title Officer on May 25, 1954, was filed in apt time under Office of Land Management Regulation No. 1.

[4] Since no final decision was handed down by the Japanese courts prior to the coming of the war, it is the opinion of this court in the light of the conclusions drawn hereinabove, and of the reasoning and authorities adopted as the law of this case, that adequate time had not been permitted for recourse to the courts within the meaning of the exception to the general principle adopted in *Cessna v. United States, et al.*, 169 U.S. 165, 18 S.Ct. Rep. 314, 332 and quoted with approval in *Ngodrii Santos v. Trust Territory*, supra. There being then, no bar to consideration of appellants' claim on the merits, the same will be considered by this court.

[5] With respect to the merits of appellants' claim, there can hardly be two views. The lands were taken without consent and without payment of compensation. Possession was not disturbed despite the taking in 1927, until military considerations required the evacuation of all inhabitants in 1943. Possession was restored by the Navy Administration in 1946, and has not been disturbed since. It is clear that had the taking occurred after the creation of Trust Territory Government, it would have been in violation of Section 4 of the Bill of Rights, Chapter I, Section 4, Trust Territory Code, as a taking of private property for public use without adequate compensation.

[6, 7] However, though the taking would have created a cause of action under the law of Trust Territory, this is not sufficient to confer jurisdiction on a court to redress wrongs in the commission of which that government had no part. The situation here is similar to that in *Cessna v. United States*, supra, where was involved the question of recognition by the successor sovereign of equitable rights outstanding but undetermined at the conclusion of a prior sovereignty. The court there held, that such matters are not within the purview of the judicial branch, except as they have been recognized by the legislative branch, and legislation adopted expressing the will of Congress as to the time, manner and condition of enforcement.

[8] Moreover, no matter how meritorious a claim may be presented by a given state of facts for return by government of property in its possession or claimed by it, there can be no action against the government without its consent, 49 Am. Jur. 301, States, Territories and Dependencies, §§ 91-96. To what extent has Trust Territory Government signified its consent to such action as is here involved?

The policy with respect to the return of lands taken by the Japanese Government from native owners, was given

initial consideration by Trust Territory Government within a matter of months after civil administration was inaugurated. On December 29, 1947, the office of the Deputy High Commissioner issued a letter of instruction to the legal administrators known as Policy Letter P-1, relating to land policy. This letter purported to state the rules to be followed by the District Administrators in the return of lands to native owners, from which they had been wrongfully dispossessed by the prior administration.

[9] The court has taken judicial notice of Trust Territory Policy Letter P-1, and considers it to be an authoritative statement of administration policy binding on the courts, at least until such time as it is rescinded or modified, 11 Am. Jur. 814, Constitutional Law, § 139, note 12 and cases there cited. *Peterson v. Widule*, 187 Wisc. 641, 147, N.W. 966, Ann. Cases 1918B, 104.

[10] Under this letter the following rules were stated with respect to the validity of land transfers made by native owners to Japanese corporations, nationals and government:

“10. Decisions by former governments as to land ownership and rights, prior to the effective date of Japan’s resignation from the League of Nations, on March 27, 1935, will be considered binding.

11. Rights in lands acquired by the German or Japanese governments will be deemed to be property belonging to the Government of the Trust Territory.

12. Land transfers from the public domain to Japanese corporations or Japanese nationals since March 27, 1935, will be considered invalid.

13. Land transfers from non-Japanese private owners to the Japanese government, Japanese corporations, or Japanese nationals since March 27, 1935, will be subject to review. Such transfers will be considered valid unless the former owner (or heirs) establishes that the sale was not made of free will and the just compensation was not received. In such cases, title will be returned to

former owner upon his paying in to the Trust Territory government the amount received by him.”

[11] From the provisions quoted above, it appears the Administration has considered March 27, 1935, the date Japan withdrew from the League of Nations, to be a reasonable cut-off date for the origination of claims. As stated above, this is entirely a matter of legislative prerogative, consisting of the legislature’s considered judgment as to the proper drawing of lines.

[12] However, it will be noted that nowhere in Policy Letter P-1 have the legislative definitions discussed the status of claims originating prior to March 27, 1935, but pending and undisposed of at the end of the Japanese period. Is it reasonable to assume that if such claims had been called to the attention of the draftsman of the Policy Letter, they would have been accorded less favorable treatment than those originating since the cut-off date, but not subjected to judicial interposition? This court thinks otherwise, and is constrained to hold that where the taking, though prior in time to March 27, 1935, was protested, and such protest was pending and undisposed of in the courts up to the end of the Japanese occupation, such taking will be considered to have been in suspense during the entire period of the controversy, and thus not a taking prior to March 27, 1935.

Since no money was received by appellants or the clan, none need be returned as a condition to re-transfer of title. And since, the taking was coercive and without just compensation, it fulfills the conditions stated in paragraph 13 of the Policy Letter above quoted. The court, therefore, holds that in line with the reasoning above, the title to the property of the clan Edaruchei, in good conscience and equity and in keeping with the spirit of the letter of December 29, 1947, ought to be returned to it.

JUDGMENT

It is, therefore, the judgment of this court that the Determination of Ownership made by the District Land Title Officer of Palau District relating to Ngercheu Island in said District, and filed with the Clerk of Courts of said District, be and the same is hereby reversed and held for naught.

It is further ordered that title to Ngercheu Island in Palau District be and the same is hereby confirmed in appellants on behalf of the clan Edaruchei, free and clear of any right, claim or interest therein on the part of any other party hereto, or their privies, and that this court retain jurisdiction for the purpose of securing to appellants the rights hereby confirmed.

Inasmuch as it appears that Counsel for the parties may not receive their copies of this Opinion in ample time to protect their appeal rights under the normal thirty (30) day appeal provision, it is

Ordered, that the time within which appeal may be taken from this decision shall be extended an additional thirty (30) days.