

NAKAMA KODANG, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 253

Trial Division of the High Court

Truk District

December 14, 1971

Appeal from conviction of violation of 45 T.T.C. § 2(3) relating to taking of turtles. The Trial Division of the High Court, H. W. Burnett, Chief Justice, held that where foreign flag ship was chartered to a local corporation it was subject to Trust Territory law and that where the crewman accused of the violation was a non-resident citizen he was also subject to Trust Territory law and that where law relating to taking of turtles had extra-territorial effect, then local court had jurisdiction over the party, location and nature of the offense.

1. Shipping—Jurisdiction Over Vessels—Criminal Law

The proposition of extended jurisdiction includes jurisdiction, for purposes of criminal law enforcement, over flag vessels, the crew of such a flag vessel, and citizens of the sovereign state wherever found, and the Trust Territory is no different from any other sovereign with respect to extra-territorial jurisdiction.

2. Shipping—Jurisdiction Over Vessels—Criminal Law

Where vessel, which was registered in Okinawa, was chartered by a Trust Territory corporation and licensed to operate within the Trust Territory by the High Commissioner, the charter and license were sufficient to confer criminal jurisdiction over the vessel upon the Courts of the Trust Territory.

3. Shipping—Charters—Nature

A charter may be one of affreightment for a specific purpose or one of demise for a specific period of time and when under demise by charter the vessel takes on a national character, even without national registry, of a flag vessel of the same nationality as the charterer.

4. Shipping—Jurisdiction Over Vessels—Criminal Law

Pursuant to the Trust Territory Code a vessel of a sovereign state, in order to be licensed to operate within Trust Territory waters, must submit herself to the jurisdiction of the Trust Territory Courts in the same manner as a vessel of Trust Territory registry. (19 T.T.C. Chs. 1, 3)

5. Shipping—Jurisdiction Over Crew—Generally

The crew of a Trust Territory vessel, regardless of nationality, are subject to the laws and jurisdiction of the flag authority.

6. Shipping—Jurisdiction Over Crew—Non-Citizen Residents

For the duration of the time non-citizen resident was enlisted or employed aboard a vessel licensed under the provisions of the Trust Territory Code and at sea, he would still receive the protections and benefits accorded any Trust Territory resident, and would also be subject to the obligations and liabilities of a Trust Territory resident, and that, of course, includes the obligation to observe all Trust Territory criminal prohibitions. (5 T.T.C. §§ 451(1), 454(1), 456)

7. Criminal Law—Statutes—Extra-Territorial Effect

All criminal laws of the Trust Territory are to be given their lawful extra-territorial effect unless the contrary intent is clearly indicated. (5 T.T.C. § 454)

8. Fish—Taking Turtles

The provisions of the Code relating to the taking of turtles contains no specific indication of any territorial limit and is binding upon all Trust Territory citizens, residents, and any others subject to Trust Territory jurisdiction, regardless of the location of the party or act. (45 T.T.C. § 2)

For the Appellant:

KESKE MARAR,
Public Defender's Representative

For the Appellee:

FUJITA PETER,
District Prosecutor

BURNETT, Chief Justice

Appellant Nakama Kodang was originally charged in the District Court, Truk Criminal Case No. 4771, with a violation of Trust Territory Code, Title 45, Chapter 1, Section 2(3), Limitations on the Taking of Turtles. Appellant, Chief Engineer of the vessel Koseng Maru #3, testified that he took the turtle on June 10, 1971; the captain of the Koseng Maru #3 testified that the turtle was taken opposite Pata Island, approximately ten miles beyond the reef. Since there is no evidence (of record) to the contrary, that testimony shall be accepted as fact on this appeal. Appellant challenges the jurisdiction of the Trust Territory Courts over acts taking place beyond the three-mile territorial limit. The appeal may be interpreted

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either as a challenge to jurisdiction over the vessel and crew, or as a challenge to jurisdiction over the location of the act. This Court shall consider both theories to be properly before it.

[1] That criminal jurisdiction may, under many circumstances, extend beyond any territorial limit is a firmly established proposition in both international law and in the laws of sovereign states. This proposition of extended jurisdiction includes jurisdiction, for purposes of criminal law enforcement, over flag vessels, the crew of such a flag vessel, and citizens of the sovereign state wherever found. The Trust Territory is no different from any other sovereign with respect to extra-territorial jurisdiction.

I. JURISDICTION OVER THE VESSEL

[2] "Except as limited by public international law, international agreement, or constitutional provision, a state has jurisdiction over all vessels flying its flag." A.L.I. Restatement, Conflict of Laws, § 45. "A vessel at sea is regarded, for many purposes, as a part of the territory of the country to which she belongs and whose flag she flies. It follows accordingly that the vessel and all on board will be governed in large measure by the law of the flag, wherever the vessel may be." 48 Am.Jur., Shipping, § 4. The question of nationality or "belonging" of the *Koseng Maru #3* arises here because the vessel is chartered by a Trust Territory corporation, Guerrero And Family, Incorporated, based on Pata Island in Truk Lagoon, and licensed to operate within the Trust Territory by the High Commissioner in accordance with Trust Territory Code, Title 19, Chapters 1 and 3; the crew is primarily of Okinawan nationality, the vessel is registered in Okinawa and so ineligible for registry as a Trust Territory national vessel. The charter and license are, however, sufficient to

confer criminal jurisdiction over the Koseng Maru #3 upon the Courts of the Trust Territory.

[3] A charter may be one of affreightment for a specific purpose or one of demise for a specific period of time. When under demise by charter, the vessel takes on the national character, even without national registry, of a flag vessel of the same nationality as the charterer. When the charterer accedes to possession, command, and control of navigation of the vessel, he becomes the owner for the duration of the chartered demise. 48 Am.Jur., Shipping, § 297; *Uravik v. Jarka Co.*, 282 U.S. 239, 75 L.Ed. 312 (1930); *The Adula*, 176 U.S. 361, 44 L.Ed. 505 (1899); *United States v. Shea*, 152 U.S. 178, 38 L.Ed. 403 (1893); *Leary v. United States*, 14 Wall (U.S.) 607, 20 L.Ed. 756 (1871); *St. Clair v. United States*, 154 U.S. 134, 38 L.Ed. 936 (1893); *The Mohawk*, 3 Wall (U.S.) 566, 18 L.Ed. 67 (1865).

[4] The vessel Koseng Maru #3 is licensed in accordance with the provisions of Trust Territory Code, Title 19, Chapters 1 and 3. It is clear that these provisions, taken as a whole, require that a vessel of a sovereign state, to be licensed to operate within Trust Territory waters, must submit herself to the jurisdiction of the Trust Territory Courts in the same manner as a vessel of Trust Territory registry. Such a vessel then assumes a status identical to that of any other flag vessel for the duration of her license. *Uravik v. Jarka Co.*, supra; *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 67 L.Ed. 894 (1922); *The Adula*, supra; *The Mohawk*, supra. The Koseng Maru is chartered and licensed within the Trust Territory, so national character for the purpose of criminal jurisdiction of the Trust Territory Courts is therefore properly imputable to her.

II. JURISDICTION OVER THE CREW

[5, 6] The crew of a Trust Territory vessel, regardless of nationality, are subject to the laws and jurisdiction of the flag authority. The crew of the Koseng Maru #3 are non-citizen residents of the Trust Territory as defined in Trust Territory Code, Title 53, Chapter 3, Sections 53(2) and 53(3). It need not be belabored that while ashore jurisdiction is incontrovertible. For the duration of the time Appellant is enlisted or employed aboard a vessel licensed under provisions of the Trust Territory Code and at sea, he shall still receive the protections and benefits accorded any Trust Territory resident, and shall still be subject to the obligations and liabilities of a Trust Territory resident. This, of course, includes the obligation to observe all Trust Territory criminal prohibitions. Trust Territory Code, Title 5, Chapter 13, Sections 451(1), 454(1) and 456; 30 Am.Jur., International Law, § 37; 48 Am.Jur., Shipping, § 145; *United States v. Flores*, 289 U.S. 137, 77 L.Ed. 1086 (1932); *United States v. Bowman*, 260 U.S. 94, 67 L.Ed. 149 (1922); *Ross v. McIntyre*, 140 U.S. 453, 35 L.Ed. 581 (1890); see also, 18 U.S.C.A. 7 (note 10) quoting *United States v. Peterson*, C.C. Mass. 1846, Fed. Cas. #16,037.

III. EXTRA-TERRITORIAL EFFECT OF THE LIMITATION

[7, 8] All criminal laws of the Trust Territory are to be given their lawful extra-territorial effect unless the contrary intent is clearly indicated. Trust Territory Code, Title 5, Chapter 13, Section 454. The Limitation on the Taking of Turtles, Trust Territory Code, Title 45, Chapter 1, Section 2(3), contains no specific indication of any territorial limit, nor is there any implication of an intent to limit extra-territorial effect. It states a flat prohibition upon the taking of certain types of turtles during specified seasons; it is binding upon all Trust Territory citizens,

residents, and any others subject to Trust Territory jurisdiction, regardless of the location of the party or act. For contrast, see Trust Territory Code, Title 45, Chapter 3, Section 51.

It is the conclusion of this Court that:—

1. The District Court properly exercised jurisdiction over the appellant, Nakama Kodang, either as a Trust Territory resident or as a crewman aboard a Trust Territory vessel.

2. The Limitation on the Taking of Turtles is intended to have extra-territorial effect.

3. The District Court therefore had jurisdiction over the party, location and nature of the offense.

The decision of the District Court is hereby affirmed.

**IN THE MATTER OF THE PROCEEDINGS BY THE TRUST
TERRITORY OF THE PACIFIC ISLANDS, Plaintiff**

v.

**FOR CONDEMNATION OF THE PROPERTY OF CARLOS
ETSCHHEIT, LEO ETSCHHEIT, ELLA ETSCHHEIT JOUBERT,
CAMILLE ETSCHHEIT, DR. ROBERT ETSCHHEIT, and
Unknown Others, Defendants**

Civil Action No. 298

Trial Division of the High Court

Ponape District

December 14, 1971

Eminent domain action wherein defendants challenge compensation awarded. The Trial Division of the High Court, Arvin H. Brown, Jr., Associate Justice, held that just compensation for the taking would be the fair market value at the time of the taking but defendant to not place a value on the land based upon a particular or special use.

1. Eminent Domain—Value—Burden of Proof

The owners have the burden of proof to establish the fair market value of the property taken for a public purpose, and that value is the fair market value as of the date of the taking.