# BERTINO LOBOK, BERTINA ALLENSO and BAM ERUKDRIK, Personal Representatives and Parents of Iram Allenso, Deceased, Appellants

v.

### TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

# Civil Appeal No. 421

# Appellate Division of the High Court

## Marshall Islands District

## October 28, 1986

Appeal of judgment on the pleadings, in wrongful death action against Trust Territory Government, holding that action was time-barred. The Appellate Division of the High Court, per curiam, held that Trusteeship Agreement is not an equitable trust that would toll the statute of limitations, and wrongful death action was therefore properly dismissed.

#### 1. Limitation of Actions—Trust Territory Government

Trial court properly held that Trusteeship Agreement did not confer trustee-beneficiary duties upon the Trust Territory Government, and therefore that wrongful death claim against Trust Territories of the Pacific Islands was barred by two-year statute of limitations. 6 TTC § 203(2).

#### 2. Appeal and Error—Precedents

Appellate Division of the High Court follows the policy of *stare decisis* in standing by its precedents on reasoned settled points of law, especially when the departure from this policy has no basis in the law.

Counsel for Appellants:

Counsel for Appellee:

DONALD R. HAZELWOOD, ESQ., Saipan

WILLIAM S. MOUNT, ESQ., Assistant Attorney General, TTPI, Saipan

Before MIYAMOTO, Associate Justice, HEFNER\*, Associate Justice

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<sup>\*</sup> Chief Judge of the Commonwealth Trial Court, designated as Temporary Justice by United States Secretary of the Interior.

# PER CURIAM

Appellants' minor son was killed on November 17, 1981, when a World War II ordnance exploded while the child was at play on "Third Island," Kwajalein Atoll, Republic of the Marshall Islands. Appellants did not file their wrongful death complaint until three and a half years later on May 20, 1985.

Appellants alleged that appellee, Trust Territory of the Pacific Islands (TTPI), was liable on the theory of "trustee" under the United Nations Trusteeship Agreement. TTPI raised the affirmative defense that the appellants' claim was time-barred under 6 TTC § 203(2), the applicable two-year statute of limitations, and moved for judgment on the pleadings. The trial court granted appellee's motion, holding that "the Trusteeship Agreement did not confer trustee-beneficiary duties upon the Trust Territory Government." The trial court concluded that

Since the trusteeship is not an equitable trust that would toll the statute of limitations, policy reasons, therefore, dictate that this court strictly enforce the two-year statute of limitations.

The issue presented on appeal is not new to this court. This court has repeatedly held that the Trusteeship Agreement did not create a trust capable of enforcement through the courts. Alig v. Trust Territory, 3 T.T.R. 603 (App. Div. 1967), Trust Territory v. Lopez, 7 T.T.R. 449 (App. Div. 1976), Royse v. Trust Territory, 8 T.T.R. 189 (App. Div. 1981), Trust Territory v. Konou, 8 T.T.R. 522 (App. Div. 1986).

The law establishing a two-year limitations in bringing wrongful death actions first appeared as Section 25 of the 1952 Trust Territory Code and was republished in 1959. Even after the establishment of the legislative branch of the Trust Territory government in 1965, the Congress of

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Micronesia had not seen fit to amend or repeal this law. This law was republished in 1970 as  $6 \text{ TTC } \S 203(2)$ .

Appellants cite *Palacios v. TTPI*, Civil Appeal No. 81-9017 (1983) of the Appellate Division of the U.S. District Court of the Northern Mariana Islands for the proposition that the TTPI stands in a position of trustee with respect to its citizens and cannot therefore assert the statute of limitations as a defense against the claims of its citizens. This case was discussed in footnote 4 of the Konou case, *supra*, by the Appellate Division of the High Court:

This [*Palacios* case] is the only case which has held that the United Nations Trusteeship Agreement created an express trust to land in Micronesia. It is contrary to all the Trust Territory cases cited herein. The express trust theory is not supported by any U.S. Federal Circuit Court cases nor any Court of Claims cases. (See, for example, *Kabua v. United States*, 546 F.2d 381, which rejected the express trust theory and classified the Trusteeship Agreement as a treaty.)

The underpinning of *Palacios* is *The People of Saipan v. U.S. Department of Interior*, 502 F.2d 90 (9th Cir. 1974). However, a reading of that case provides no support for (nor does it even discuss) the express trust theory or the statute of limitation defense.

[1, 2] In summary, this court follows the policy of *stare decisis* in standing by its precedents on reasoned settled points of law, especially when the departure from this policy has no basis in the law.

AFFIRMED.