MARIA NGURUN ACFALLE, Plaintiff v.

CARLUS V. AGUON, Defendant

Civil Action No. 21
Trial Division of the High Court
Yap District

May 13, 1960

Action to determine rights to certain taro patches, in which defendant requested court to refuse to consider action on its merits as plaintiff is citizen of United States. The Trial Division of the High Court, Chief Justice E. P. Furber, held that even if plaintiff is disqualified from holding rights in land, this is matter of which only government can take advantage.

- Trust Territory—Land Law—Ownership Disqualification
 Where person is disqualified under Trust Territory law from holding
 rights in land which he has acquired, this is matter of which only gov ernment can take advantage. (T.T.C., Sec. 900)
- 2. Trust Territory—Land Law—Ownership Disqualification
 As against all persons other than government, one disqualified under
 Trust Territory law from holding rights in land may continue to
 exercise all rights of ownership unless and until government acts on
 the matter.

FURBER, Chief Justice

[1,2] 1. At the pre-trial conference held by me on January 18, 1960, in this action, the defendant Carlus requested that the court refuse to consider the action on its merits because the plaintiff Ngurun was a citizen of the United States. The plaintiff admitted she had become a United States citizen, but pointed out that she had acquired her interest in the land and accompanying rights in question long before she became a United States citizen. The court denied the defendant's request, pointing out that, in accordance with common law principles and previous decisions of this court in other cases, even if a person were disqualified under Trust Territory Code Section 900 from holding a right in land which he had acquired, this

was a matter of which only the government could take advantage, and that as against all others than the government, such a person could continue to exercise all the rights of ownership unless and until the government acted on the matter. See 2 Am. Jur., Aliens, §§ 29, 49, and 58.

2. At a later session on January 27, 1960, of this same pre-trial conference, the plaintiff Ngurun asked that the court take some action against the defendant Carlus for his violation of the Yap District Court's order forbidding him to go to the taro patches connected with Dachangar pending determination of this action. The defendant claimed at the hearing as a result of which this order was issued, he had explained that the plaintiff had been given a right to plant in only one of these taro patches, that the order applied only to that one, and that he had not been to that one since the order was issued. The presiding judge of the Yap District Court confirmed the plaintiff's claim that the order covered all the taro patches connected with Dachangar, but in the discussion it developed that this had been an oral order, issued on an oral request, that it had never been confirmed in writing, and that no record had been made of it. The defendant protested strongly that he thought the District Court had been talking just about the one taro patch in which the defendant had admitted he had given the plaintiff permission to plant. After further hearing, the court warned the defendant of the seriousness of contempt of court. and announced that it would issue its own written temporary injunction (which was done), but that under all the circumstances it would take no further action at that time on the defendant's alleged violation of the District Court's order.

14.