

**In the Matter of Determination of Ownership of Land Known as
Nekou, Land Commission No. 147-76 TRUK TRADING
COMPANY, Appellant**

v.

KORO PAUL, Appellee

Civil Appeal No. 409

Appellate Division of the High Court

Truk District

January 2, 1986

Appeal of trial division's determination of ownership of a parcel of land located in Moen, Truk. The Appellate Division of the High Court, Munson, Chief Justice, affirmed the trial court judgment awarding ownership to the Wito lineage of the Wito clan, based on evidence that purported sale of land by chief of lineage took place without the unanimous consent of all lineage members, a requirement of Truk law.

1. Administrative Law—Land Commission—Appeal

There is statutory authority for the trial division to conduct trials *de novo* from Land Commission determination that are appealed.

2. Judges—Conflict of Interest—Particular Cases

Trial judge did not abuse his discretion by refusing to recuse himself *sua sponte* from case merely because the judge was a party-litigant in another case in which counsel for appellant was the attorney for the other side.

3. Property—Sale of—Truk Law

It is well recognized as a rule of law in Truk that lineage land cannot be transferred, distributed or sold by an individual member of the lineage without the consent of all adult members of that lineage.

4. Appeal and Error—Standard of Review—Findings of Fact

A finding of fact is clearly erroneous when the entire record produces the definite and firm conviction that the court below erred.

5. Property—Sale of—Truk Law

In action to determine ownership of land on Truk, trial court did not err when it determined that alleged sale of land by chief of lineage was invalid, since there was no evidence that the chief received consent from others in the lineage when he purportedly executed the sale of the property.

6. Property—Sale of—Truk Law

In action to determine ownership of land in Truk, trial correctly held that there was no adverse possession, where there was no showing of obvious hostile possession to the world at large.

7. Property—Sale of—Truk Law

In action to determine ownership of land in Truk, trial court correctly held that purported buyer's act of recording deed could not create title by adverse possession as against rightful owner, since recording statutes exist for the buyer's protection against subsequent purchasers.

Counsel for Appellant:

DOUGLAS F. CUSHNIE, ESQ.

Counsel for Appellee:

W. H. WHITAKER, *Directing Attorney* of Micronesian Legal Services Corporation, Truk Office

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

MUNSON, *Chief Justice*

This case involves the determination of ownership of a parcel of land located in Moen, Truk, designated as Lot 040-A-23, also known as Nekou. In 1975, the appellant, Truk Trading Company (TTC), filed an application for registration to confirm Nekou as its property. The Land Commission issued Determination of Ownership No. 147-76 in favor of TTC on July 9, 1976. An appeal of the Land Commission's determination was timely filed by the appellee on October 7, 1976, to the trial division of the High Court. On November 7, 1983, the trial division, in a trial *de novo*, determined that Nekou was lineage land and that it belonged to the Wito lineage of the Wito clan of Nepukos village. Appellant timely filed its notice of appeal challenging that decision.

TTC has been operating its business on Nekou with the Wito lineage's permission since 1948. Chief Petrus, the Magistrate of Moen at that time, requested of Robert, the

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

lineage's representative, permission for TTC to use the subject land. After a meeting of the Wito lineage was held with all the adult members of the lineage in attendance, TTC was granted permission to use the land.

When TTC first entered and began using the land, the United States Navy had control of it. In 1951, the Navy released the land to the Wito lineage. Appellant claims that Robert, Chief of the lineage, sold Nekou to TTC in fee simple on October 16, 1951, for \$366.50. The lineage denies a valid sale took place because Robert lacked authority to sell the land as Trukese custom at that time prohibited alienation of land without the unanimous consent of all lineage members, which was not given in this case. Robert never informed the lineage members at any time of the sale of the land.

[1] The first issue on appeal is whether the trial court had jurisdiction to conduct a trial *de novo* from a Land Commission appeal. This court held, in *Kingko Apap v. Cecilia Cabrera and Ipin Nogis*, Civil Appeal No. 408 (May 17, 1985) that it does have such jurisdiction. Specifically, the court ruled that the trial division of the High Court is authorized by 67 TTC § 115 and 6 TTC § 355 to conduct trials *de novo* from appeals of Land Commission determinations. 67 TTC § 115 provides:

Appeal from determination of ownership by a land commission shall be subject to appeal by any party aggrieved thereby to the trial division of the high court at any time within one hundred twenty days from the date of said determination. Such appeal shall be treated and effected in the same manner as an appeal from a district court in a civil action, shall be subject to the same fees, and the powers of the high court with regard thereto shall be the same

The Court further noted that on an appeal from a civil case in the district court, 6 TTC § 355 states:

Powers of courts on appeal or review.

(1) The high court on appeal or review and the district court on appeal shall have the power to affirm, modify, set aside, or reverse the judgment or order appealed from or reviewed and to remand the case with such directions for a new trial or for the entry of judgment as may be just.

(2) The findings of fact of the trial division of the high court in cases tried by it shall not be set aside by the appellate division of that court unless clearly erroneous, but *in all other cases the appellate or reviewing court may review the facts as well as the law.* (Emphasis added.)

Thus, there is statutory authority for the trial division to conduct trials *de novo* from Land Commission determinations that are appealed.

[2] The second issue raised is whether the trial judge in this case should have recused himself *sua sponte* because he was a party-litigant in another case in which counsel for appellant was the attorney for the other side. Counsel for appellant failed to raise this issue at the trial level. It appears to the panel that if it had posed a problem, the attorney for appellant was under a duty to raise it before trial. There is no evidence that the trial judge abused his discretion by hearing this case.

[3] The third issue raised by appellant is whether the trial court erred in not finding that the sale of Nekou by Robert was valid. It is well recognized as a rule of law in Truk that

lineage land cannot be transferred, distributed or sold by an individual member of the lineage without the consent of all adult members of that lineage.

Mesaiti v. Fupi, 5 T.T.R. 631 (Truk 1972); *Resenam v. Nopuo*, 5 T.T.R. 248 (Truk 1970); *Titer v. Teifis*, 4 T.T.R. 283 (Truk 1969); *Oneitam v. Swain*, 4 T.T.R. 62 (Truk 1968); *Narruhn v. Sale*, 3 T.T.R. 514 (Truk 1968); *Pinar v. Kantenia*, 3 T.T.R. 158 (Truk 1966); *Nitoka v. Nese-*

puer, 2 T.T.R. 12 (Truk 1959); *Nusia v. Sak*, 1 T.T.R. 446 (Truk 1958).

[4] In the Trust Territory, "the findings of fact of the trial division of the High Court in cases tried by it shall not be set aside by the appellate division unless clearly erroneous." 6 TTC § 355 (2). A finding is clearly erroneous when the entire record produces the definite and firm conviction that the court below erred. However,

[i]t is the function of the trial court, and not the appellate court, to make determinations of fact which are dependent upon conflicting evidence. The appellate court must test the sufficiency of proof on the basis of what the trial court had the right to believe, not on what the defendant wishes it believed.

Yamashiro v. TTPI, 2 T.T.R. 638, 642 (App. Div. 1963). Furthermore,

[e]ven where there is a conflict in the testimony, the trial court is naturally in a better position to pass on the credibility of the witnesses and, so far as sufficiency of evidence is concerned, the appellate court is bound to uphold the trial court's decision as long as there is enough evidence to reasonably support it, even if the trial court might well have found the opposite way.

[5] Appellant has not introduced any evidence that Robert received consent from others in the lineage to act on the lineage's behalf when he purportedly executed the sale of the property. The trial court did not err when it determined that the alleged sale of Nekou was invalid.

[6] The fourth issue on appeal is whether appellant acquired title to Nekou by adverse possession since it was using the land for more than 20 years. The recognized rule of law is that

[t]o constitute an effective adverse possession, the possession must be hostile and under a claim of right; it must be actual; it must be open and notorious; it must be exclusive and it must be continuous. If any of these constituents is wanting, the possession will

not effect a bar of the legal title. *Castle Associates v. Schwartz*, 63 AD2d 481, 407 NYS2d 717.

3 Am. Jur. 2d Adverse Possession § 1. There has been no showing of obvious hostile possession by appellant to the lineage and the world at large. At all times, appellant held out to the lineage that it was using the property with the lineage's permission. For TTC to now take further advantage of the lineage's goodwill by claiming legal ownership of the land violates all sense of fairness and justice. Therefore, the trial court correctly held that there was no adverse possession.

Appellant finally argues that a deed transferring the property in fee simple was duly recorded and acts as a claim of right under adverse possession. However, it is for the *buyer's* protection against subsequent purchasers that recording statutes exist:

The purpose of the recording statute is to protect a *buyer* from a subsequent innocent purchaser because recordation of a deed is notice to the world that title is in the buyer and thus a subsequent purchaser is not "innocent" in the legal sense. *Rudimch v. Chin*, 3 T.T.R. 323, 327. (Emphasis added.)

[7] In this case, while appellant's recording of the deed may protect it against subsequent buyers, if appellee never claimed ownership of the land, it does not act to divest the lineage of its title. Therefore, appellant's act of recording the deed cannot create a title to Nekou in appellant as against the rightful owner, the lineage.

Based upon the foregoing, the judgment of the trial court is AFFIRMED.

HEFNER, *Associate Justice*, concurring.

I concur with Chief Justice Munson's opinion because it correctly applies the law. This is not to say that I am pleased with the result.

There is much to say about keeping and enforcing the traditional land laws of Truk. Indeed, this court is obligated to do so. 1 TTC § 14.

However, the impact of a case such as this one on developing a market for land for the economic development of Truk is clear.

Truk Trading Company is probably the largest private enterprise in Truk and has invested substantial funds in placing improvements on Lot 040-A-23. I don't believe the company did this fully aware of the potential disastrous effect of failing to obtain the consent of all the lineage members.

One is hard pressed to criticize a customary law which safeguards lineage land for all its members. But on the other hand, a prospective buyer or developer of a business enterprise is faced with an almost impossible task of assuring that the consent of *all* lineage members is obtained before paying out funds to purchase or develop land. *All* lineage members necessarily includes minors and those who, over the years, may have moved away or lost some contact with the lineage. The problems of finding the lineage members and acquiring their consents is obvious.

In the future the people of Truk will have to make the decision of which way they wish to proceed—to maintain the status quo or to opt for land laws more conducive to economic development. It is their choice not this court's.