

“In order to obtain such relief, particularly against the discretionary action of an official of cabinet rank, the plaintiff must establish a strong likelihood or ‘reasonable certainty’ that he will prevail on the merits at a final hearing.”

Sierra Club v. Hickel, supra.

No less “reasonable certainty” should be required for temporary restraint. Particularly in view of my views of the inapplicability of NEPA, I am unable to find such certainty or probability of success of plaintiffs’ cause.

It is therefore ordered:—

1. Defendants’ motion to Dismiss is denied.
2. Plaintiffs’ motion for a temporary restraining order is denied.

TIPA SON, Plaintiff

v.

TAISIKI SEKAP, Defendant

Civil Action No. 566

Trial Division of the High Court

Truk District

February 15, 1973

Dispute over title to the land Fanapuech, Uman Island, Truk District. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, held that the land was owned by the parties’ lineage, with right of possession in defendant as successor to his mother, to whom the lineage had assigned the land.

1. Truk Land Law—Individual Ownership—Possession by Others

Plaintiff’s claim to individual ownership of land to which both plaintiff and defendant claimed title could not be sustained in view of clear, long-continued possession of the land by his sister, continued by her son, the defendant.

2. Truk Land Law—Lineage Ownership—Assignment of Lands

Claimed division of lands by lineage, allegedly resulting in mother of defendant being given land to which plaintiff and defendant asserted title, would be held nothing more than an assignment of lands to various members of the lineage for living and working purposes where evidence showed that the parties and other lineage members consistently so

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treated the land, plaintiff, defendant and two other lineage members having lived there at various times and plaintiff having planted breadfruit trees.

3. Truk Land Law—Lineage Ownership—Possession Rights

In land title dispute, defendant, as successor to his mother, to whom the land had been assigned by the lineage, clearly had right of possession, but must recognize the customary rights of other lineage members, including plaintiff.

BURNETT, *Chief Justice*

The dispute in this action is over the title to the land Fanapuech, Uman Island, Truk District. The parties are both members of the Mew lineage, but each claims individual ownership of the land. I reject both claims, and hold Fanapuech to be the land of the lineage.

Both parties agree that Fanapuech was originally owned by the lineage, that it was taken out of the lineage by gift to Rosi, and that it was later held by Sikan. They differ sharply as to what happened thereafter.

Plaintiff contends that, as a result of a dispute with Sikan, a Japanese court ordered that he be given Fanapuech, and that Sikan should take Achaulur. There was no showing of what rights plaintiff had in Achaulur, but it does seem clear that it had been originally owned by the lineage of Sikan.

Defendant's claim is that the land was returned to the lineage through an exchange for Achaulur, and that this was done by Anipech, elder brother of defendant's mother, and the plaintiff, with Sikan.

[1] Which of the two versions is correct cannot be determined with certainty, nor, in my view, is it necessary to do so. Whether there was an exchange or a court decision is not really material, since the result was the same in either case—the return of the lands to their original lineage owners. Plaintiff's claim to individual ownership

cannot be sustained in view of the clear, long continued possession of Fanapuech by his sister Rosi, continued by her son, the defendant.

[2] Defendant claims further that his mother was given Fanapuech in a division of lands by the lineage, and that he succeeds her as individual owner. What he refers to as a division, however, I hold to be nothing more than an assignment of lands, for living and working purposes, to various members of the lineage.

This conclusion is clearly supported by evidence of the manner in which the parties and other lineage members have consistently treated the land. Both plaintiff and defendant have lived there at various times, two other members of the lineage, in addition to defendant, have houses on the land now, and there are breadfruit trees planted by the plaintiff. All is consistent with lineage ownership.

[3] Defendant clearly has a right of possession as successor to Rosi, to whom the land was assigned, which right cannot be interfered with except by decision of the lineage for good cause. At the same time he must recognize customary rights of other members of the lineage, including the plaintiff.

It is therefore ordered and adjudged :—

1. The land Fanapuech, Uman Island, Truk District, is owned by the Mew lineage, of which both plaintiff and defendant are members.

2. Defendant Taisiki Sekap is entitled to remain in possession, subject to the obligation to recognize all customary rights of other members of the Mew lineage, including the plaintiff Tipa Son, in the land Fanapuech.

3. No costs are assessed.