[2, 3] Because the Trust Territory need is urgently compelling, this Court should not be required to wait for the conclusive Federal decision, even though such decision could be accepted as persuasively compelling in the Trust Territory. Whether it be due process or equal protection, the interpretation and meaning of those phrases in the United States Constitution are the same as in the Trust Territory Bill of Rights and the decisions from the United States are applicable to the Trust Territory. *Tolhurst v. M.O.C., et al.*, 6 T.T.R. 296. *Ichiro v. Bismark*, 1 T.T.R. 57. In order to resolve the conflict between the two High Court decisions, the two District Court actions, and the questions raised on this appeal, the following question is referred to the Appellate Division:—

Does the two-year residency statute, 39 TTC § 202, which prohibits access to the courts for relief in divorce petitions, deny due process, equal protection or any of the other rights guaranteed to residents of the Trust Territory by Title 1, Chapter 1, Trust Territory Code?

Order, the above entitled appeal shall be held in abeyance, with jurisdiction retained, until the foregoing question referred to the Appellate Division has been answered.

TEBENGEL ALIK, Plaintiff

v.

ELECHEL TROLII and BECHESERRAK, Defendants

Civil Action No. 546

Trial Division of the High Court

Palau District

August 29, 1973

Ejectment action presenting boundary line dispute. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where 1955 government survey sought to locate boundaries established by prior Japanese

survey, and 1967 or 1968 survey by District Land Title Officer ran the lines over again between the 1955 survey markers, the procedure conformed with law, and where, based on those lines, defendant's occupancy was on plaintiff's land rather than adjoining government land, defendant would be ordered to surrender possession and occupancy and remove his buildings.

1. **Boundaries—Ascertainment—Size of Tract**

   The size of the area which boundary lines are presumed to encompass is the least dependable of all the methods of ascertaining the boundary lines.

2. **Boundaries—Surveys—Purpose**

   Resurvey of land was governed by former survey, as the object of a resurvey is to furnish proof of location of last lines or monuments, not dispute the correctness of, or govern as against, a former survey.

3. **Boundaries—Boundary Disputes—Particular Disputes**

   Where 1955 government survey sought to locate boundaries established by prior Japanese survey, and 1967 or 1968 survey by District Land Title Officer ran the lines over again between the 1955 survey markers, the procedure conformed with law, and where, based on those lines, defendant's occupancy was on plaintiff's land rather than adjoining government land, defendant would be ordered to surrender possession and occupancy and remove his buildings.

Assessor: PABLO RINGANG, *Presiding Judge, District Court*
Interpreter: AMADOR D. NGIRKELAU
Reporter: ELSIE T. CERISIER
Counsel for Plaintiff: FRANCISCO ARMALUUK
Counsel for Defendants: JONAS W. OLKERIIL

TURNER, *Associate Justice*

Although this case was labeled ejectment by plaintiff's complaint, the real issue is the location of the boundary line between plaintiff's land and the adjoining parcel of government land. There is no dispute as to ownership of the adjoining areas. The question to be decided is where the boundary line is, or perhaps, in accordance with the defendant's claim, it should be. The case, in many respects, is not unlike another Koror boundary dispute case, *Lalii Silvester v. Omlei Muchucheu*, 4 T.T.R. 226.

Although the present case names two defendants, the parties agreed the defendant Becheserrak was not a real party in interest because he had been employed by defendant Trolii to build a house on the land in question. Accordingly, the complaint was ordered dismissed as to Becheserrak.

Defendant has been living in an old house on the land in question since 1963 without objection from plaintiff. However, in 1971 defendant undertook to have a concrete block house built to replace the old house. He did not ask permission of the plaintiff for construction of the new house and plaintiff brought this action to eject defendant and his houses from the land.

Plaintiff inherited the land known as Mariar from his father, who was shown by the Tochi Daicho, the Japanese administration land records and surveys, to be the owner. It was designated Lot 991 in the Daicho. The Japanese records also showed that the adjoining parcel was Lot 986, and was owned by a Japanese national. Accordingly, after the war, when the American administration came to Koror, it took over the land as government land to be held in trust for all the people. *Wasisang v. Trust Territory*, 1 T.T.R. 14.

This government land was surveyed by the District Land Office in 1955, Land Office map parcel 33, PK-5. The survey of the government land thus established the boundary of the adjoining Lot 991, the location of which is the issue in the present case.

This government survey was intended to establish the lot lines made in the 1941–42 Japanese survey. The passage of time and the war resulted in the removal and loss of all but one of the Japanese markers. Accordingly, the surveyors brought the plaintiff, his father and others, including Ngirturong, blood brother of Metawii, who claimed ownership of the government land when she testified in behalf

of defendant. Ngirturong was farming the land now shown as government parcel 33.

The survey was completed with Land Office markers being placed at the corners of the government parcel. Defendant's principal defense, that his home was being built on government land and not on plaintiff's land, was based upon Metawii's claim that the land belonged to her and not to the government and the 1955 survey did not correctly show the boundary line. Metawii claimed that as a result of the survey plaintiff encroached upon the government land, formerly belonging to her and, therefore, the boundary was incorrect. Proof of this assertion was attempted when a former District Land Title Officer was called to testify he had tried to settle the boundary dispute by a new survey in 1967 or 1968. The dispute was not resolved, but the new survey did indicate plaintiff's land contained some fifty *tsubo* more than was credited for it in the Tochi Daicho.

If the boundary between the two parcels had been in accordance with the claim of Metawii and the late Ibedul Ngoriyakl, Idid Clan titleholder, then defendant's claim that his house was on government land and not on plaintiff's private land would have been sustained.

[1] The theory upon which defendant rests his case is contrary to the applicable law. The first, and most glaring, weakness in defendant's case is that of all the methods of ascertaining boundary lines, the size of the area which they are presumed to encompass is the least dependable. *Silvester v. Muchucheu*, 4 T.T.R. at 229.

[2] The next proposition of law that must destroy defendant's claim is that a resurvey of an area is governed by a former survey. Thus the 1967 resurvey of Parcel 33 was required to conform to the 1955 survey, as located by the monuments. This, of course, was what the surveyors

did, and the resurvey did not change the boundary line in spite of defendant's and Metawii's claim that the 1955 surveyed boundary was erroneous. This rule of law is discussed in 12 Am. Jur. 2d, Boundaries, Sec. 61:—

> "In surveying a tract of land according to a former plat or survey, the surveyor's only duty is to relocate, upon the best evidence obtainable, the courses and lines at the same place where originally located by the first surveyor on the ground. . . . The object of a resurvey is to furnish proof of the location of the lost lines or monuments, not to dispute the correctness of or to control the original survey."

[3] The 1955 surveyors used the "best evidence available" in seeking to locate the Japanese survey boundaries. In the absence of markers, they called in the people on the land who were familiar with the Japanese lines. The 1967–68 survey ran the lines over again between the markers laid down by the 1955 survey. This procedure was in conformity with the law. Based upon those survey lines, defendant's occupancy was on the private land of plaintiff and not upon the adjoining government land, as he claimed.

If anything further was needed, both defendant and the Land Title Officer, who issued the 1971 building permit, knew the house was to be built on private land and not on government land. Defendant's Exhibit A in evidence so shows.

The technical rule of law applicable to ejectment is that the plaintiff must recover upon the strength of his own title and not upon the weakness of his adversary's. This the plaintiff has done. The evidence clearly shows defendant lived on plaintiff's land and defendant now was undertaking to build a new house on plaintiff's land.

Because defendant attempted to challenge the accuracy of the boundary line between plaintiff's lot and government parcel 33 and, in so doing, offered the testimony of the original owner of the government parcel, it is necessary to

clarify the point. The government was not a party to this action and there was no reason it should be. The court may not determine the propriety of any alleged conflict between the government land and plaintiff's land.

Furthermore, neither the original owner of the government land, nor the government, were parties, and the witnesses' assertion parcel 33 should belong to her has no place in the controversy between plaintiff and defendant. The court was overly lenient in hearing the testimony, but, in any event, specifically disavows any intention to settle adverse claims to parcel 33 and to its boundary adjoining plaintiff's land.

Ordered, adjudged and decreed:—

1. That plaintiff is the owner of the land on which defendant's old house was located and upon which defendant has undertaken to build a new house, and defendant has no right or interest in the land; and, in accordance with the prayer of the complaint, the defendant is directed to surrender possession and occupancy of the land.

2. Defendant is granted ninety (90) days from date of entry of this judgment within which to remove his buildings, and any building material remaining at the end of that period shall be deemed abandoned to the plaintiff and shall thereupon become plaintiff's property.

3. Plaintiff shall be allowed costs as may be claimed in accordance with law.