

WASISANG, Plaintiff

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS
(as successor to the Imperial Japanese Government)
and Others, Defendants**

Civil Action No. 2

Trial Division of the High Court

Palau District

May 26, 1952

Action to determine rights to land in Ngaraard Municipality, which had been taken from plaintiff's father as punishment by official act of Japanese Government. The Trial Division of the High Court, Chief Justice E. P. Furber, held that it is not proper function of courts of present administration to right wrongs which may have for many years been persisted in by former administration.

1. Former Administrations—Applicable Law

Whether any act was legally wrong should be decided at time act was done, except when changed by some express provision in law.

2. Public Lands—Succeeding Sovereign

In area of property rights, present government of Trust Territory is in position like that of succeeding sovereign taking over government of land conquered by it or ceded to it by another nation.

3. Former Administrations—Official Acts

As succeeding sovereign, present administration of Trust Territory is entitled to rely upon and respect official acts of Japanese Administration.

4. Former Administrations—Redress of Prior Wrongs—Exception to Applicable Doctrine

Present administration of Trust Territory is not required as matter of right to correct wrongs of former administration, except where wrong occurred so near time of change of administration there was no opportunity to correct it through courts or other agencies of former administration.

5. Legislative Power—Generally

Granting of relief from hardships, where there is no obligation to do so, is matter of policy to be decided by law-making authorities in Trust Territory and not by courts.

6. Former Administrations—Redress of Prior Wrongs

It is not proper function of courts of present administration to right wrongs which may have been persisted in for many years by former administration.

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7. Public Lands—Succeeding Sovereign

Any interest previously owned or held by Japanese Government in land or other property in Trust Territory is vested in Alien Property Custodian. (Interim Regulations Nos. 4-48, 6-48, 3-50)

8. Courts—Parties

Where parties defendant have asked for no determination of rights as between themselves, no such determination will be made.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Orratelruul, the land in question in this action, was taken about 1918 by the Japanese Government from the plaintiff's father, Temedad, who was at that time the owner of the land. This was done as part of the punishment imposed upon Temedad as one of the leaders of the Modeknei movement which the Japanese Government had made illegal and was endeavoring to stamp out.

2. The taking, and the reason for it, were formally and publicly announced, and explained by the Government to leaders of the community. No fraud has been shown in connection with it.

3. The taking was in accordance with the established policy of the Japanese administration. Compensation for trees on the land was offered to and refused by Temedad and was finally paid to his sister's son, Ngiramektii, as Temedad's representative. Ngiramektii was at that time both chief of Achol village and head of the Negatii clan of which Temedad was a member.

4. All trees now on the land were planted by Mochimaru Heinosuke and those claiming under him.

CONCLUSIONS OF LAW

[1] 1. Whether any act was legally wrong should be decided according to the law as it was at the time the act

was done. This is the rule, except when it is changed by some express provision in the law. On this basis, the plaintiff, Wasisang, has not shown that any wrong was done him or those through whom he claims.

[2-6] 2. So far as property rights are concerned, the present government of the Trust Territory of the Pacific Islands is in a position like that of a succeeding sovereign taking over the government of land conquered by it or ceded to it by another nation. The rights and obligations of such a succeeding sovereign are explained in general terms in Volume 30 of American Jurisprudence, pages 202 to 207, in paragraphs 44 to 47 of the article on "International Law". In accordance with the general principles there explained, the present administration is entitled to rely upon and respect the official acts of the Japanese administration of these islands and is not required as a matter of right to correct wrongs which the former administration may have done, except in those cases where the wrong occurred so near the time of the change of administration that there was no opportunity for it to be corrected through the courts or other agencies of the former administration. The present administration may be willing in some cases to grant relief from hardships imposed by the law in force under the former administration where the present administration is under no obligation to do so as a matter of right. The granting of such relief, however, is a matter of policy to be decided by the law-making authorities and not by the courts. The general rule is that it is not a proper function of the courts of the present administration to right wrongs which may have for many years before been persisted in by the former administration.

[7] 3. The Court takes notice that by a Vesting Order issued on September 27, 1951, under Interim Regulation

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No. 4-48 as amended by Interim Regulations Nos. 6-48 and 3-50 any interest previously owned or held by the Japanese Government in any land or other property in the Trust Territory was vested in the Area Property Custodian.

[8] 4. The defendants in this case have asked for no determination of rights as between themselves. Counsel appearing for the District Property Custodian representing the Trust Territory stated that the individual defendants were in possession of the land in question with the consent of the present administration. Therefore, no determination is made in this case as to their rights as against either the Trust Territory government or the Area Property Custodian.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties and all persons claiming under them, the land known as Orratelruul, located in the Oluchel Section of Achol Village in Ngaraard Municipality belongs to the Area Property Custodian subject to any rights that may still be in effect under the lease from the Japanese Government to Mochimaru Heinosuke expiring March 31, 1953, referred to in paragraph 4 of the Pre-Trial Order in this action and the plaintiff, Wasisang, has no rights of ownership in this land.

2. The defendants are to allow the plaintiff a reasonable time to remove the house erected by him on the land in question.

3. This judgment shall not affect any rights of way which may exist over or across the land in question.

4. No costs are assessed against any party.