

ASELIS (sometimes written ASENIS), Plaintiff

v.

KEREMALUS, Defendant

Civil Action No. 143

Trial Division of the High Court

Truk District

July 23, 1963

Action upon Master's Report for determination of title to land on Polle Island. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiff had no cause of action to dispute division of land by lineage during German times after having waited over forty years to bring action.

1. Former Administrations—Recognition of Established Rights

Where land in Truk was divided during German Administration without consent of former owner, and owner has raised no objection until forty years later, inference is strong that former owner either acquiesced in division or considered it valid.

2. Former Administrations—Applicable Law

If division of land on Truk was valid at time it was made, it must still be recognized as valid, and party may not now have it judged by some different standard from that which was in effect under law in force at time division was made.

FURBER, *Chief Justice*

Neither side having asked to be heard upon the Master's Report, either at or before the call of the list at the opening of the sitting at which this action came up for hearing upon the Master's Report, the action was taken under advisement without argument.

After examination of the transcript of evidence, the Master's Report is approved except for the words in the fourth paragraph of his findings of fact translated as "employed by the Japanese government" and the words "for the Japanese" which words are disapproved. It is clear from the evidence that the absence from Truk

which the plaintiff relies upon in this action occurred in German times and not in Japanese times.

OPINION

[1, 2] The plaintiff Aselis in this action is seeking to upset a division of lineage lands within Truk Atoll purported to have been made by his lineage in German times while he was away, to which he claims he never consented and under which the lands in question were given to the defendant Keremalus' father and by him to Keremalus. It would appear that the plaintiff Aselis received other land under the division and, after he returned to Truk, raised no objection to it until shortly before bringing this action. The defendant Keremalus occupied and used the lands now in dispute openly under claim of ownership for over forty years before the plaintiff Aselis raised any question about the division. The inference is strong that Aselis either acquiesced in the division or considered that it was valid, and is now seeking to have it judged by some different standard from that which was in effect under the law in force at the time the division was made. If the division was valid at the time it was made, it must still be recognized to be valid. *Orijon v. Etjon*, 1 T.T.R. 101. Second par. of conclusions of law.

If there was anything wrong about the division, the plaintiff Aselia had ample time to take this up with the authorities of one of the former administrations. In any event, it is now too late to expect the courts to try to remedy any defect there may have been in the division. *Kaii, et al. v. Kiyoshi, et al.*, 1 T.T.R. 609. *Aneten v. Olaf*, 1 T.T.R. 606. 44 Am. Jur., Quietening Title, § 65. 19 Am. Jur., Equity, §§ 490 and 498.

JUDGMENT

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

1. As between the parties and all persons claiming un-

der them, the lands known as Winiso (sometimes written Uniso), Fan Ros, and Leulan (sometimes written Neulan), all located in Chukuram Village on Polle Island, Truk District, are owned by the defendant Keremalus who lives in Chukuram Village, and the plaintiff Aselis (sometimes written Asenis), who also lives in Chukuram Village, has no rights of ownership in any of them.

2. This judgment shall not affect any rights of way there may be over the lands in question.

3. The defendant Keremalus is awarded such costs, if any, of this action as he may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided he files a sworn itemized statement of them within thirty (30) days after the entry of this judgment. Otherwise no costs will be allowed.

4. Time for appeal from this judgment is extended to and including September 23, 1963.