

JAMES MILNE, Plaintiff

v.

**OSCAR DEBRUM, Election Commissioner, Marshall Islands
District, and SHIRO E. RIKLON, Legislative Liaison Officer,
Defendants**

Civil Action No. 32-74

Trial Division of the High Court

Marshall Islands District

December 10, 1974

Citizenship dispute. The Trial Division of the High Court, Hefner, Associate Justice, held the petitioner a citizen.

Trust Territory—Citizenship

Person adopted by Marshallese in the 1930's, who thereby became a citizen of the Marshall Islands under Marshall Islands custom, became a Trust Territory citizen upon the advent of the Trust Territory Government, and statute ruling him out as a citizen would not be applied to take away citizenship he had established before the enactment of the statute. (53 TTC § 1)

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| <i>Assessor:</i> | KABUA KABUA, <i>Presiding Judge,</i> <i>District Court</i> |
| <i>Interpreter:</i> | OKTAN DAMON |
| <i>Reporter:</i> | SAM K. SASLAW |
| <i>Plaintiff's Counsel:</i> | BENJAMIN ABRAMS |
| <i>Defendant's Counsel:</i> | HARLEY EARWICKER, <i>District At-</i> <i>torney</i> |

HEFNER, *Associate Justice*

The petitioner filed a complaint for writ of mandamus, asking that the court command the defendants to allow the petitioner to vote in the June 1974 elections. The crux of this matter, as conceded by both parties, is whether the petitioner is a Trust Territory citizen. Since the June 1974 elections are now over, it would appear that petitioner's application for a writ of mandamus is moot. However, petitioner, through his counsel, and with no objection by defendants, moved to amend the petition to ask for a declaratory judgment of citizenship status. Pursuant to Rule 10, Rules of Civil Procedure, this is a proper case to allow an amendment even at this late date so that a new suit can be obviated, and justice will be served by a final determination of the status of the petitioner if the action is otherwise allowed.

That there is an existence of a controversy is clear. The defendants have not and will not allow the petitioner to vote because his citizenship status is in issue. Rule 19d, Rules of Civil Procedure, makes available to the parties, in the discretion of the Trial Division of the High Court, all other remedies and special proceedings provided for in the Federal Rules of Civil Procedure. 28 U.S.C. Sec. 2201 and Rule 57 of the Federal Rules of Civil Procedure provide relief by way of declaratory judgments. The Court may declare the rights and other legal relations of any interested party seeking such declaration. Any such declaration shall have the force and effect of a final judgment.

A review of the following authorities provides ample support for the use of declaratory judgments to establish citizenship:

Aliens and Citizens, 3 Am. Jur. 2d Sec. 68;

28 U.S.C.A. 2201, Note 46; *Rusk v. Cort*;

369 U.S. 367, 82 S.Ct. 787, 7 L.Ed.2d 809.

In the latter case, the Supreme Court of the United States stated that the remedy of declaratory judgment is available even if the plaintiff is not within the United States. Here, the petitioner was not only present at the trial of this matter but many very significant and unique circumstances convince the court that relief should be granted.

The petitioner was born on Tarawa in the Gilbert Islands. His father was Marshallese and his mother Gilbertese. Before his birth, an arrangement had been made with petitioner's father's brother whereby upon the birth of a son, petitioner would be taken and adopted by his uncle. It was not until petitioner was 10 to 12 years of age when he was brought to the island of Ebon, Marshall Islands, and adopted by his uncle, James Milne and his wife Liomere, both of whom were Marshallese. This was in approximately 1931 to 1935. Thereafter, petitioner lived on Ebon until 1944 when he went to Kwajalein. Up to the present time he has resided in the Marshall Islands.

In approximately 1935 the Japanese administration registered Marshallese citizens in a registration book known as "Kokobo". Only those persons who were Marshallese citizens were registered in the book and were then given a metal tag to wear. The petitioner was listed in the book and wore the metal tag given to him by the Japanese Government. The Japanese Government accepted and recognized any person so listed as a citizen of the Marshall Islands (See Petitioner's Exhibit 1, affidavit of Sukio Ueno, an administrator of the Japanese Government).

The evidence was uncontradicted that under Marshallese custom, an adopted child has all the rights of a natural child. Consequently, the petitioner has had and still has land rights on Ebon and Ujae islands. He has never possessed or owned passports or travel documents which were not issued by the Trust Territory Government.

In 1950 he was Speaker for the Marshall Islands Council and in 1972 was elected Magistrate of Ebon and selected as Chairman of all the Magistrates of the Marshall Islands. He is married to a Marshallese.

The provisions of 53 TTC Sec. 1 apparently rule out the petitioner as a Trust Territory citizen. However, under the unique facts in the case, it is clear that the "Marshallese citizenship" of petitioner had been established long before the enactment of 53 TTC Sec. 1 and its predecessor, Section 660 of the Trust Territory Code. If 53 TTC Sec. 1 is applied with all of its ramifications to the petitioner in this case it is the same as an enactment of a retrospective law which is analogous to an ex post facto law. Constitutional Law, 16 Am. Jur. 2d Page 754. Taking away the citizenship of a person by a law enacted subsequent to the events establishing that citizenship is a most basic deprivation of rights. The right to vote, hold office, own land and the many other rights attributable to Trust Territory citizenship would be lost. "Marshallese citizenship" automatically became Trust Territory citizenship upon the advent of the Trust Territory Government.

To apply 53 TTC Sec. 1 retrospectively in petitioner's case is repugnant to 1 TTC Sec. 4, the due process provision, as it divests him of a private vested interest. *Truax v. Corrigan*, 257 U.S. 312, 42 S.Ct. 124, 66 L.Ed. 254; 16 Am. Jur. 2d Page 756.

The evidence shows that by Marshallese custom in the 1930's the petitioner became a Marshallese citizen when he was adopted. The Japanese Government gave official recog-

dition to that citizenship. Although 1 TTC Sec. 104 provides that although all Japanese laws are repealed, nothing shall change the effect of local custom which may have been included within the scope of the laws. Certainly the effect of a custom so recognized by the Japanese Government cannot be and is not eliminated by 53 TTC Sec. 1.

It should be noted that this decision does not invalidate or modify 53 TTC Sec. 1. However, where it can be shown to the satisfaction of the court that a person had an established citizenship under the particular facts of the case, which upon the advent of the Trust Territory Government would be the same as Trust Territory citizenship, 53 TTC Sec. 1 shall not prohibit the court from declaring the vested right of citizenship in that person.

It is therefore adjudged and decreed that James Milne is a citizen of the Trust Territory of the Pacific Islands.