

TASIO, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Case No. 204

NUSIO, Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee
Criminal Case No. 205

Trial Division of the High Court
Truk District
April 4, 1967

Two appeals considered together and involving same question of law. Appellants were convicted in Truk District Court of trespass in violation of T.T.C., Sec. 401, in connection with taking coconuts from government land. Appellants contend that they had rights in land from which coconuts were taken. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where person accused of trespass claims to have acted in lawful exercise of rights, burden is on government to show beyond reasonable doubt that interference was unlawful. The Court also held that criminal courts should not be used to try land disputes.

Reversed and remanded.

1. Trespass-Intent

Where person who is accused of trespass and who claims right to land has previously lost civil dispute over that land, this has important bearing on question of his good faith in claiming right to land. (T.T.C., Sec. 401)

2. Criminal Law—Appeals—Draft Report

In appeal from criminal conviction, evidence which appellee wishes to have considered should be adequately set forth in District Court reports. (Rules of Crim. Proc., Rule 15b(3))

3. Criminal Law-Appeals-Draft Report

In appeal from criminal conviction, report from District Court to appellate court should include statement of all rulings and substance of all evidence needed for full understanding of questions raised by appeal. (Rules of Crim. Proc., Rule 15b(3))

4. Criminal Law-Appeals-Draft Report

Draft reports to appellate court should include matters tending to support grounds of appeal or matters tending to show grounds are not sound. (Rules of Crim. Proc., Rule 15b(3))

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5. Criminal Law-Generally

Civil trespass is distinct and separate from offense of criminal trespass. (T.T.C., Sec. 401)

6. Criminal Law-Generally

Criminal statutes should not be used to try disputed rights in land or as substitute for other adequate civil remedies for trespass.

7. Criminal Law-Statutes-Construction

Penal statutes are to be interpreted strictly against government and liberally in favor of accused.

8. Criminal Law-Generally

Crime of trespass is intended to punish interferences with property that are clearly without right or unlawful, and is not to be used as summary method of trying ownership of land in lower courts. (T.T.C., Sec. 400)

9. Courts—High Court

Adjudication of land disputes is within exclusive original jurisdiction of the Trial Division of the High Court. (T.T.C., Sees. 123, 138, 149)

10. Trespass-Intent

Where person accused of trespass claims to have acted in lawful exercise of his rights, burden is on government to show beyond reasonable doubt that interference with property was unlawful, and where evidence leaves room for reasonable doubt as to validity of accused's claim of right, he should be acquitted of criminal charge. (T.T.C., Sec. 401)

11. Trespass-Intent

Claim of right made in good faith, even though erroneous, is good defense to charge of criminal trespass. (T.T.C., Sec. 401)

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FURBER, *Chief Justice*

These two appeals from separate decisions of the Truk District Court have been submitted on one set of briefs to be considered together since they involve the same question of law. The appeal by Tasio in Criminal Case No. 204 is from decision of the Truk District Court in its Criminal Case No. 2313, that of Nusio in Criminal Case No. 205 is from decision of the Truk District in its Criminal Case No. 2314.

OPINION

In each case the appellant was found guilty of trespass for taking coconuts or "making copra" from a tree or trees located in the same area claimed by the complainant on behalf of the Government to be a part of the land known as Fanmeikoch, but which the appellants contend is a part of the adjoining piece of land known as Nefin owned by a group of which both appellants are members.

The appellee in its brief claims that the trees in question were not near the boundary line of Fanmeikoch and Nefin but extended from about fifty (50) feet on the Fanmeikoch side of the Japanese road used as a boundary line between the two lands to almost the middle of the land Fanmeikoch. If this was established by evidence, it would have an important bearing on the case, but there is nothing in the District Court's report in either case to show that the Japanese road was used as a boundary line.

[1] The appellee has also included under "POINTS OF AUTHORITIES" in its brief, reference to information developed at the pre-trial conference held by this court in *Toris v. Nusio*, 3 T.T.R. 163, and states in another part of its brief that it denies the appellants' statements that they had been on the land Fanmeikoch for a long time. At still another point, the appellee claims that the appellants overlooked the fact that in Civil Action No. 213, the boundaries of Fanmeikoch were at issue, and points out that one may easily imply that each appellant's act of entering upon the land Fanmeikoch was an intrusion without a bona fide claim of title. Apparently, the appellee wishes the court to infer that the appellants tried to raise issues in the present cases which had already been decided against them by this court in Civil Action No. 213. If this were true, it would clearly have an important bearing on the question of their good faith. Again, however, there is nothing in the District

Court's report in either case to show that the judgment in Civil Action No. 213 was considered in any way in the present cases or that the appellants made any statements in these cases to the effect that they had been on the land Fanmeikoch for a long time or were claiming rights in it. Their claim as shown by the report in each case and by their brief is that the trees in question were not on Fanmeikoch, but were on their adjoining land Nefin.

[2-4] If there was evidence introduced in either or both of these cases which would support the appellee's claims referred to in the two preceding paragraphs and the appellee wished them considered on these appeals, it should have taken steps to see that these matters were adequately set forth in the District Court's reports. This court realizes that the practice with regard to such reports on appeals from District or Community Courts required under Rule 15b(3) of the Rules of Criminal Procedure is relatively new, the particular subsection providing for this having only gone into effect January 1, 1966, but it should be clearly noted that these reports are expected to include "a statement of all rulings and the substance of all evidence needed for a full understanding of the questions raised by the appeal, which are not already contained in the record of the court appealed from", and that the trial judge in settling the contents of his report is required to "make any changes in the draft he deems necessary to fairly summarize all that happened at the trial which is material to the questions raised by the appeal". This means that the report should include not merely matter tending to support the various grounds of appeal, but should also include any matter there may be tending to show that one or more of these grounds are not sound. If the draft report submitted by counsel for the appellant fails to include any matters which counsel for the appellee considers important, the latter

should, at the hearing provided for in Section (C) of the subparagraph of the rule referred to above, specifically indicate to the trial judge what additional matter counsel for the appellee desires included.

In an effort to avoid duplication of effort in further proceedings in these cases, however, the court has taken the liberty of examining the file in Civil Action No. 213. From this examination, it clearly appears that:-

1. The issue as to the location and boundaries of the land Fanmiekoch was raised at the pre-trial conference.

2. It was determined in that action that the land Fanmeikoch was owned by the children of Sawas and their descendants in the female line, represented in that action by the plaintiff Toris (who it appears is also the complainant in each of the cases now under appeal).

3. It was further determined that the defendant Nusio and the group for which she claimed (which it now appears includes both appellants), had no rights in Fanmeikoch.

4. No determination, however, was made as to the boundaries of Fanmeikoch.

5. Furthermore, a motion for new trial is still pending, raising question as to the location of the land.

There is therefore nothing inconsistent with the decision in that case in the appellants' present claim that the trees in question are on the land Nefin.

[5] The appellee in its brief has apparently overlooked the very important distinction between civil trespass and criminal trespass. All of the authorities it has cited from American Jurisprudence have to do with civil trespass and as pointed out in the insertion made at the beginning of Section 84 on "Criminal Liability-Generally" in 52 Am. Jur., Trespass, by the 1966 Cumulative Supplement to that volume, p. 77: "The law of civil trespass is a field quite distinct and separate from criminal trespass."

[6] This court has already clearly indicated in its decisions in *Niforongu v. Trust Territory*, 1 T.T.R. 549, and *Aliwis v. Trust Territory* 2 T.T.R. 223, that criminal statutes should not be used to try disputed rights in land or as a substitute for other adequate civil remedies for trespass. The Niforongu case was one of petty larceny while the Aliwis case was one of malicious mischief arising before Trust Territory Code, Section 398, dealing with that crime, had been amended by Executive Order No. 84 of December 23, 1960. In calling attention to the change which that Executive Order had made in the elements of the crime of malicious mischief, the court said, "The amended section would appear to make the crime as therein stated more analogous to the crime of trespass than to malicious mischief as usually understood in the United States. It is regularly held, however, that even such criminal statutes should not be used to try disputed rights in land or as a substitute for other adequate civil remedies for trespass."

[7-9] As a matter of general principle, penal statutes are to be interpreted strictly as against the Government and liberally in favor of the accused. 50 Am. Jur., Statutes, § 407. Bearing this in mind and the American precedents on which it appears Section 401 of the Trust Territory Code, defining the crime of trespass, is based, the court believes that the intent of this section is to punish interferences with property that are clearly without right or "unlawful" as stated in the section and that it is not to be presumed that the legislative authorities intended this section to be used as a summary method of trying ownership in the lower courts-particularly when, as here, the validity of the accused's claim of right to possession depends on determination of land rights, the adjudication of which, as a civil matter, has been placed in the exclusive original jurisdiction of the Trial Division of the

High Court. See Trust Territory Code, Sees. 123, 138, and 149.

[10, 11] The court therefore holds that where a person accused under this section claims to have acted in the lawful exercise of his rights, the burden is on the Government to show beyond a reasonable doubt that his interference with the property was unlawful and that where the evidence leaves room for any reasonable doubt as to the validity of the accused's claim of right, the accused should be acquitted of the criminal charge, and the allegedly injured party be left to pursue the matter civilly if he so desires. 52 Am. Jur., Trespass, § 85, Notes 17 and 18. Some courts have even held that a claim of right made in *good* faith, even though erroneous, is a *good* defense under legislation similar to that involved here.

See discussion in 146 A.L.R. 656, 657, and 659, especially that concerning *State v. Ellen* (1873), 68 NC 281, on p. 657 of 146 A.L.R.

The evidence set forth in the record in each of the cases under appeal is considered clearly insufficient to justify a conclusion that the accused's claim is either worthless or made in bad faith. The court therefore holds it is insufficient to support a finding of guilty.

JUDGMENT

The findings and sentences of the Truk District Court in its Criminal Cases Nos. 2313 and 2314 are set aside and the cases remanded to the District Court for new trial or other proceedings not inconsistent with the foregoing opinion.