

IN THE SUPREME COURT
OF THE TERRITORY OF
PAPUA AND NEW GUINEA

CORAM : MINOGUE, J.

IN THE MATTER OF THE MARRIED WOMEN'S PROPERTY ORDINANCE 1953

BETWEEN CHRISTINE MARIE KAPUTIN

Plaintiff

AND JOHN RUMET KAPUTIN

Respondent

1968

SUMMONS

December
17, 24.
PT. MORESBY
Minogue, J.

This is an application by the plaintiff under Section 19 of the Married Women's Property Ordinance 1953 whereby she seeks an order that she is entitled to sole possession of the leasehold land Allotment 7 Section 22, Hohola, and the house erected thereon the subject of Crown Lease Volume 9 Folio 2025 or, alternatively, for an order that the respondent do all things and sign all documents necessary to transfer his right title or interest in the property to the plaintiff.

From the affidavit sworn by and filed on behalf of the plaintiff it appears that the parties were married on 17th July 1961 at Port Moresby and there are three children of that marriage. In 1966 the respondent was awarded a scholarship by the East-West Center to attend the University of Hawaii and he left Moresby to take up that scholarship in June of that year. At about this time the plaintiff negotiated for the purchase of a house at Hohola which is on land the subject of this application. The purchase price of the property was \$8000. The plaintiff paid \$1000 out of her own monies by way of deposit and secured a loan from the Department of Treasury for the balance of \$7000. She says that she arranged the purchase of this property and the subsequent mortgage in the joint names of herself and the respondent in the hope that the house would become the matrimonial home of the parties and that they would co-habit there for the remainder of their married life.

By the terms of the mortgage the mortgagors undertake to pay the sum of \$40.92 per month which sum is to be applied towards payment of interest on the loan and in reduction of the principal. Although the plaintiff does not so state I assume that she has been making these payments out of her own monies since early in the year 1967.

The parties have not lived together since the departure of the respondent for Hawaii. He returned to the Territory in August 1968 but did not resume co-habitation with the plaintiff and it appears that at no time since his departure for Hawaii until the present has he sought to live with the plaintiff nor to resume co-habitation with her.

The respondent was present in Court at the hearing of this summons but he was unrepresented by Counsel and he did not seek to deny the plaintiff's right to possession of

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the subject property nor to traverse the allegations contained in her affidavit which he said he had read. It was obvious that serious differences exist between the parties and that the respondent is suffering from some sense of grievance, the real basis of which I was on the material before me unable to determine. I advised the respondent that he should seek legal advice which advice he somewhat emotionally rejected insisting that he did not want to dispute the plaintiff's right to possession nor to her letting the premises for one or two or three years. He maintained however that he had some rights and that he did not want to be entirely shut out of these rights.

If the facts set out in the plaintiff's affidavit were the only material before me, although it appears that she has provided the only money for the purchase of the subject property, I should have some hesitation in making an order declaring that the respondent holds his estate in trust for her. I say this because I did not make any investigation of the correspondence or conversations between the parties at or about the time the property was acquired nor into any detailed arrangements which may have been intended between them. The plaintiff apparently has still some hope of preserving the marriage and the respondent told me that he thinks there is some chance of reconciliation. I am strongly of the view that every avenue towards this end should be explored and I think it undesirable to make any final order at this stage. In any event before making any such order I would need to make a more detailed investigation of the circumstances surrounding the acquisition of the property.

Counsel for the plaintiff informed me that what she really seeks at present is an order protecting her from interference by the respondent in her proposal to let the premises during her absence in 1969. She has been offered a position at a university outside the Territory for that year and desires to have such rental as she can obtain to assist her in maintaining herself and the three children of the marriage. For reasons which I did not enter upon the respondent has contributed and is contributing nothing to their support.

Section 19 of the Ordinance empowers a Judge to make such order declaring the right to possession of the property as he thinks fit. It does not empower him to decide the title to property other than upon ordinary principles of law and equity. I am of the view that in my discretion I can make some such order as the plaintiff seeks. It seems to me that I can best preserve what in fact is the status quo by declaring that until further order the plaintiff is to remain in undisturbed possession of the property the subject of this application and that so long as she continues to pay the amounts due under the existing mortgage and any other outgoing by way of rates taxes or statutory charges, and also outgoings rendered necessary for the preservation of the property, she is entitled to let the premises and receive any rents and profits arising from such letting. And I think that in the circumstances I should also make an order restraining the respondent from interfering with the occupation of the plaintiff or any tenant or assignee of hers in the enjoyment

of the property and I will further order that so far as necessary the respondent join with her in any tenancy which she may see fit to grant during the whole or any part of the year 1969.

Solicitor for the Plaintiff : E. Pratt, Esq.

MINUTES OF ORDER

- (1) That until otherwise ordered the plaintiff be entitled to possession of the land comprised in Crown Lease volume 9 folio 2025.
- (2) The plaintiff be at liberty to negotiate a sub-lease tenancy or licence of the said land for a period not to extend beyond 31st January 1970.
- (3) The respondent if and when called upon by the plaintiff to join with her in any assurance or instrument necessary to evidence or secure the quiet and peaceable enjoyment of the said land by a sub-lessee, tenant or licensee under such a sub-lease tenancy or licence.
- (4) Until otherwise ordered the respondent to take no step by himself, his servants or agents, to interfere with the possession of the said land by the plaintiff nor with the quiet enjoyment thereof by any sub-lessee tenant or licensee thereof.
- (5) Liberty to apply.
- (6) The respondent to pay the taxed costs of this application.