

LUDWIKA SEDEK, ELPINA IKALAP and
MADILDE EUR, Plaintiffs

v.

LOFES ESEDEP and SEPIO BERMANIS, Defendants

Civil Action No. 285

Trial Division of the High Court

Ponape District

December 18, 1968

Request by counsel to withdraw from further participation in the case. The Trial Division of the High Court, Harold W. Burnett, Associate Justice, held that where counsel was allowed to withdraw normally the court would set the matter over for action at a future date, however, where changed factual allegations of party were completely at variance with those previously made the action should be dismissed without prejudice to the right of party to refile it if he chose to do so.

1. Civil Procedure--Withdrawal of Counsel

When counsel is permitted to withdraw, the court will ordinarily set the matter over for action at a future date, after his client has been given an opportunity to procure other counsel.

2. Civil Procedure--Generally

The judicial process, which includes both the pre-trial conference and the trial, is a search for truth, and a search for a just solution to what one must assume to be a legitimate controversy, and at no point is a party to an action to assert that which he does not know to be true, nor is the trial to be reduced to a guessing game, with the parties introducing the element of surprise through a sudden shift of factual stance.

Counsel for Plaintiffs:
Counsel for Defendants:

YOSTER CARL
HEINRICH IRIARTE

BURNETT, Associate Justice

This matter came before the court under assignment for trial.

Upon opening of trial, counsel for plaintiffs requested permission to withdraw from further participation in the case, and assigned his reason therefor a change in the factual allegations to be made by his clients, which change had only been communicated to him on the morning set for trial. He advised the court that there was a fundamental variance from the facts as stated at the time of pre-trial conference on May 19, 1966, and that, as a consequence, the plaintiffs' position was so substantially changed that he did not feel he could properly proceed.

[1] When counsel is permitted to withdraw, the court will ordinarily set the matter over for action at a future date, after his client has been given an opportunity to procure other counsel. I am of the view, however, that this is not an ordinary situation, and that dismissal would be more appropriate.

This action has been pending since filing of the complaint on March 22, 1966, well over two and one-half years ago. It was given a prompt and thorough pre-trial by then Chief Justice Furber, and issues for trial clearly and explicitly drawn. The court has satisfied itself that the changed factual allegations of the plaintiffs are so completely at variance with those previously made that it would be necessary, if the case were tried, to precede it with further pre-trial. Such delay does not appear justified.

[2] All counsel and all litigants must be made to understand that the judicial process, which includes both the pre-trial conference and the trial, is a search for truth, and a search for a just solution to what we must assume to be a legitimate controversy. At no point is a party to an action to assert that which he does not know to be true,

nor is the trial to be reduced to a guessing game, with the parties introducing the element of surprise through a sudden shift of factual stance. The court can only look with suspicion upon the action of a party who firmly asserts a fact in support of his claim and then, on the morning of trial, elects to claim upon an entirely different basis.

I have, accordingly, determined that this action must be dismissed, without prejudice to the right of the plaintiffs to refile it if they choose to do so.

Plaintiffs were granted the right of possession by order of the Chief Justice, pending further order of the court. On the record it appears from the pre-trial order that the defendant Lofes Esedep claims title to the land in dispute as successor to his deceased mother who is the last registered owner of the land. He thereafter sold it to his co-defendant, Sepio Bermanis. Under the circumstances it is appropriate, and it is hereby ordered that possession of the land in dispute, known as Laulau No.5, Sokehs Municipality, Ponape District, shall be delivered to the defendant Sepio Bermanis.