

KALISTO BWANUS, Plaintiff

v.

KIOSI METSIFISTA, and MARGARITA, Defendants

Civil Action No. 399

Trial Division of the High Court

Palau District

August 5, 1969

*See, also, 4 T.T.R. 407*

Action to determine boundaries to certain parcels in Tobi Municipality, Palau District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that in the absence of a Japanese survey of land in question the Master properly applied customary land law to determine boundaries in question.

1. Palau Land Law-Japanese Survey-Tobi Island

The Japanese, during their administration, did not make a land survey on Tobi Island.

2. Palau Land Law-Generally

The customary land law on Tobi Island is similar to the customary law of Koror and Babelthaup Islands.

*Reporter:*

*Counsel for Plaintiff:*

*Counsel for Defendants:*

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SINGICHI IKESAKES

JONAS W. OLKERIIL

WILLIAM O. WALLY

TURNER, *Associate Justice*

RECORD OF HEARING

Presiding Judge Pablo Ringang, of the Palau District Court, was appointed Master to hear this case. Hearing was held June 10, 1968, in Tobi Municipality, Palau District. At the pre-hearing conference, it appeared Margarita claimed ownership of a portion of the land in controversy and, accordingly, the Master ordered her to appear as a party defendant.

OPINION

Hearing on the Master's report was held this day and counsel for the parties informed the court they had no objection to the report and approved of his determination of the boundaries of the parcels owned by each of the parties.

**[1, 2]** Review of the pre-hearing memorandum and the hearing report shows that the record amply supports the Master's recommendations for judgment. The Japanese, during their administration, did not make a land survey on Tobi Island. As a result, the parties to this dispute were unable to state the size of the land, Walimahata, but each claimed a portion of it. The plaintiff also claimed ownership of the land Fakab which the Master concluded was owned by Margarita. The Master carefully applied customary land law, which he found to be similar on Tobi Island to the customary law of Koror and Babelthaup Islands, to the evidence. Therefore, the Master's report is approved as made and it is

Ordered, adjudged, and decreed:-

1. That in accordance with Drawing Number SK-307-68C, Sheet 3 of 3, prepared by the Palau District Land Management Office to depict the areas of the boundary

dispute of the parties to the land known as Walimahata, the following boundary determinations are made:-

(a) The boundary line between the properties of plaintiff Kalisto and the defendant Kiosi is depicted on the above-referenced map as beginning at the point KI-5, on the road bounding the property on the easterly side, thence running in a westerly direction to the west coast shoreline, intersecting map points KI-6, KI-7, KI-3 and KI-9.

(b) That the plaintiff Kalisto is the owner of the land lying south of said line, said parcel being bounded on the southerly side by the line depicted on the map as beginning at point KA-5, on the road bounding the property on the easterly side, thence running in a westerly direction to the west coast shoreline intersecting map points KA-4, KA-3, KA-2, and KA-1.

(c) That the westerly boundary of plaintiff's land is the shoreline between the lines described in subparagraphs (a) and (b) above.

(d) That the easterly boundary of plaintiff's land is the footpath between the points KI-5 and KA-5 described in subparagraphs (a) and (b) above.

(e) That the boundary line between properties of the defendant Kiosi and the defendant Margarita is depicted on the above-referenced map as beginning at the point M, KI-4, on the road bounding the property on the easterly side, thence running in a westerly direction to the west coast shoreline, intersecting map points M, KI-3, M, KI-2 and M, KI-1.

(f) That the parcel lying south of the line described in subparagraph (e) to the line described in subparagraph (a) is owned by the defendant Kiosi.

(g) That the parcel lying northerly of the line described in subparagraph (e) to the line depicted on the aforesaid map beginning at the point M-5, running west-

erly to the sea, intersecting points M-4, M-3, M-2 and M-1 is owned by the defendant Margarita.

2. It is further ordered that the claim of the plaintiff Kalisto to ownership of the land to the line depicted on the map beginning at the point M, KA-6 and running westerly to the sea, intersecting points KA-7, KA-8, and KA-9 be and the same is hereby denied.

3. This judgment shall not affect any rights-of-way over any of the parcels of land in question.

4. No costs are assessed.