

BAULOL K., Plaintiff
v.
TAIDRIK L. and SHEM JOASH, Defendants

Civil Action No. 279
Trial Division of the High Court
Marshall Islands District

November 21, 1968

Action to determine rights to land on (Majuro Island. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that where plaintiff had delayed, without reasonable cause, bringing the suit in question for 13 years, such suit would be barred by laches.

1. Equity-Laches

The doctrine of laches will be applied in the Trust Territory, and judgments have been rendered against plaintiffs who were guilty of laches—the bringing of stale demands.

2. Equity-Laches

The controlling factors in relation to laches are as to whether, under the circumstances in the particular case, there was an adequate excuse for the delay in bringing suit, whether the delay has injured the other party, and whether the delay was for an unreasonable length of time

<i>Assessor:</i>	JUDGE SOLOMON
<i>Interpreter:</i>	MILTON ZAKIUS
<i>Reporter:</i>	MRS. FLORENCE SHOOK
<i>Counsel for Plaintiff:</i>	BARTIMIUS
<i>Counsel for Defendants:</i>	LEVI, L.

CLIFTON, *Temporary Judge*

This action was duly brought on for trial in the Trial Division of the High Court on November 20, 1968, at a sitting of the High Court at Majuro, Marshall Islands District.

The court ordered a separation of the issues for trial, that the issue of laches be tried first, and the plaintiff was sworn and testified and both parties rested their cases as to that issue.

FINDINGS OF FACT

The court finds that no good or sufficient explanation has been shown for the delay of the plaintiff and his brother Kotonlok in failing to commence this action until November 8, 1965, the plaintiff's brother having been removed from the land in question, according to plaintiff's own statement, in 1952. The court finds that this delay was unreasonable under all of the circumstances involved and that the neglect of the plaintiff and his brother in failing to bring the action until 1965 was injurious to the defendants in that it has made it difficult for the defendants to defend this action, and also because after the removal of plaintiff's brother, the defendant Shem Joash moved onto the land in question as *dri jermal* and for ten years planted coconut trees and otherwise improved the property. The court finds that the circumstances involved in the improvement of the land by Shem Joash as above found, of itself justifies this application of the doctrine of laches, and the court further finds that the plaintiff's brother Kotonlok died in 1967 and that he took no action against the defendants, this action having been commenced by the plaintiff himself in his own name in 1965. The court finds that, by reason of the circumstances above found, the plaintiff and his brother have been guilty of laches, which bars plaintiff from recovering in this action.

OPINION

As an excuse for the failure of plaintiff's brother or himself to bring the action from 1952 when his brother was removed from the land, until November 1965 when plaintiff himself commenced the action, when his brother was still living, the plaintiff testified that the reason was that his brother was not the kind of person for whom it was easy to come before a court.

He also gave as a reason that he had difficulty in finding counsel and to get the money with which to employ counsel. However, he testified that during the thirteen years during which he and his brother did nothing about the land, he was engaged in raising copra. The files of the High Court show many actions involving the same issues as in plaintiff's claims. Plaintiff also testified that he was not afraid to bring the action, that this was not the reason for the delay.

It is clear that no sufficient showing was made that the plaintiff or his brother were unable to commence the action shortly after the defendant moved onto the land and commenced improving it, which was only a few years after plaintiff's brother was removed from the land.

[1] The neglect or delay of the plaintiff and his brother, which was injurious to the defendants as above found, clearly constituted laches. In a very large number of decisions in the High Court of the Trust Territory it has been held that the doctrine of laches will be applied in the Trust Territory, and judgments have been rendered against plaintiffs who were guilty of laches-the bringing of stale demands.

As to the doctrine of laches, a brief explanation of the principles of laches is set forth in 27 Am. Jur. 2d, 689, as follows:-

"Laches is a purely equitable doctrine, and the defense of laches is a creation of equity and is generally peculiar to a court of equity. Laches is founded principally upon the equitable maxims, 'He who seeks equity must do equity,' 'He who comes into equity must come with clean hands,' and 'Equity aids the vigilant, not those who sleep on their rights.' The basis of the doctrine of laches is said to be public policy, which requires, for the peace of society the discouragement of stale demands. The doctrine is based on the injustice of allowing recovery where no explanation is given for unreasonable and injurious delay, and is based in

part at least, on the injustice that might or would result from the enforcement of a neglected right or claim. The defense that a claim is stale is said to be nothing more than an application of the doctrine of laches and to be based on estoppel." *Section 153*.

As to the propriety of a separation of the issues, and first trying the issue of laches, see *Kanser v. Pitor*, 2 T.T.R. 481. The last paragraph of the Opinion of Chief Justice Furber is as follows:-

"Roughly and bluntly stated, the effect of the above is that if a person of full age and sound mind stands by, or he and his predecessors in interest together have stood by, for twenty (20) years or more and let someone else openly and actively use land under claim of ownership for that period or more, the person who so stood by will ordinarily be held to have lost whatever rights he may previously have had in the land and the courts will not, and should not, assist him in regaining such rights. In the future, any one claiming the ownership of land of which neither he nor his predecessors in interest have been in open and active possession within twenty (20) years before the bringing of the action, can expect that the issues in his action will be separated and the question of whether his claim has been barred will be considered first and disposed of either at the pre-trial conference or by trial of that issue, before the court will go into the merits of any rights he may have had in the land based on things that happened more than twenty (20) years before the bringing of the action."

[2] The expressions of the court in said case were as to a delay of twenty years, but the same principles apply in this case where the delay was 13 years. The controlling factors in relation to laches are as to whether, under the circumstances in the particular case, there was an adequate excuse for the delay, whether the delay has injured the other party, and whether the delay was for an unreasonable length of time. In this case the delay was for 13 years, during some ten years of which the defendant Shem Joash improved it relying on his right to be on the property.

JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. That the plaintiff, or anyone holding under or through him, has no right, title or interest in or to the land hereinafter described, or to act as *alab* or *dri jermal* thereon, as against the defendants Taidrik L. or Shein Joash or anyone holding under or through them or either of them.
2. Said land is described as follows:-
Mwejabwerok *Wato* on Majuro Island,
Marshall Islands District.
3. This judgment shall not affect any rights-of-way existing on said lands.
4. The plaintiff has until 60 days after the entry of this judgment to file a notice of appeal.