ZAKIOS and LABI, Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 29

ISHMIEL, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 30

Trial Division of the High Court

Marshall Islands District

November 17, 1959

Defendants were separately convicted in Marshall Islands District Court of maintaining a nuisance in violation of T.T.C., Sec. 408, upon evidence of failure to comply with notice from Department of Sanitation issued under T.T.C., Sec. 618. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that Section 408 applies only to public nuisances, that every violation of Section 618 does not necessarily create a public nuisance, and that where violation does not create public nuisance, nuisance itself must be proved to warrant conviction under Section 408.

Reversed and remanded.

1. **Public Nuisance—Generally**

   Exact limits of legal meaning of nuisance cannot be stated or explained on any comprehensive basis. (T.T.C., Sec. 408)

2. **Criminal Law—Statutes—Construction**

   Written laws imposing criminal penalties are subject to strict construction, and are to be interpreted strictly against government and liberally in favor of accused.

3. **Public Nuisance—Generally**

   Trust Territory law regarding maintenance of a nuisance, in referring to "a condition of things which is prejudicial to the health, safety, property, sense of decency or morals of the people of the Trust Territory", applies only to a public nuisance, sometimes called a common nuisance. (T.T.C., Sec. 408)

4. **Public Nuisance—Generally**

   All crimes are not necessarily public nuisances, and every unlawful act in violation of written law does not necessarily constitute a public nuisance. (T.T.C., Sec. 408)

5. **Public Nuisance—Sanitation Regulations**
In order for violations of Trust Territory law regarding sanitation to create public nuisance and to warrant conviction of maintaining a nuisance, nuisance itself must be proved. (T.T.C., Secs. 408, 618)

6. **Public Nuisance—Sanitation Regulations**
Every violation of Trust Territory law regarding sanitation does not necessarily create a public nuisance. (T.T.C., Secs. 408, 618)

7. **Public Nuisance—Sanitation Regulations**
Public nuisance involved in violation of Trust Territory law regarding sanitation would have to arise from condition created by accused's failure to comply with Sanitarian's notice. (T.T.C., Secs. 408, 618)

8. **Public Nuisance—Sanitation Regulations**
Failure to comply with Sanitarian's notice is clearly insufficient, in and of itself, to constitute public nuisance. (T.T.C., Secs. 408, 618)

9. **Public Health—Sanitation Regulations**
Since violations of Trust Territory law regarding sanitation constitute independent crimes, there is no need to bring such offenses under any of crimes set forth in Chapter Six of Code. (T.T.C., Sec. 618)

10. **Public Health—Sanitation Regulations**
Where government relies on violation of Trust Territory law regarding sanitation, accused is entitled to notice of charge, to require proof of charge, and reasonable chance to defend against it or show mitigating circumstances. (T.T.C., Sec. 618(a) and (b))

11. **Public Health—Sanitation Regulations**
In order to show violation of Trust Territory law regarding sanitation, government must show that failure to comply with notice from Sanitarian left condition for which accused was responsible, and which violated provisions of law. (T.T.C., Sec. 618)

12. **Public Health—Sanitation Regulations**
Where criminal prosecution is brought at request of District Sanitarian, government must prove beyond reasonable doubt all essential elements of the crime.

13. **Public Health—Sanitation Regulations**
Sanitarian's belief that there was violation of statute does not do away with need for proof of violation by accused in criminal case.

Assessor:	JUDGE KABUA KABUA
Interpreter:	RAYMOND DEBRUM
Counsel for Appellants:	LANGINMO JACOB
Counsel for Appellee:	TULENSA J. MAC., *Acting Sheriff*

FURBER, *Chief Justice*

These appeals were heard together. They are from separate convictions of maintaining a nuisance in violation of Section 408 of the Trust Territory Code.

Original notice of appeal in case No. 29 and written arguments submitted by each counsel are attached to this record in case No. 29. It was agreed at the hearing on the appeals that these written arguments would be considered equally in case No. 30 so far as they related to the facts in that case. Original notice of appeal in case No. 30 is attached to this record in that case.

The records of trial in these cases appear regrettably incomplete as to the evidence presented and give rise to the inference that argument of counsel may have been accepted in place of evidence, but neither side requested any amendment of or addition to any one of the records as provided for in the Trust Territory Rules of Criminal Procedure. It was agreed by counsel at the hearing on the appeals, however, that each accused was found guilty upon evidence tending to show merely that he had failed to build a "benjo" (that is, an outhouse toilet) in connection with his house within the time called for by a notice to him from a representative of the Sanitation Department, or Sanitation Division within the Department of Public Health, of the District Administration, and it is the contention of the Appellee that such evidence alone is sufficient to sustain the convictions. In one case, there was uncontroverted evidence that the accused had an arrangement under which the occupants of his house in question used, and had permission to use, the benjo of a neighboring house. In that case, the appellant also claims that he

was just staying temporarily in the house in question. Another one of the appellants claims he was prevented by illness from complying with the notice. With these exceptions, the issues raised by all three of the appellants in the lower court and on this appeal are identical.

Each appellant claims that there was no evidence that he maintained or allowed to be maintained any condition which could properly be called a nuisance. Each claims that he was using a benjo. Their counsel, in oral argument, also claimed that no violation of Section 618 of the Trust Territory Code (dealing with sanitation) was either shown or involved.

The appellee's counsel, in his written argument, discusses solely violation of Section 618 of the Code and relies particularly upon the last sentence of paragraph (b) of that section. In his oral argument he claimed that Sections 618 and 408 are connected or related, the inference being that any violation of Section 618 would constitute a nuisance under Section 408. He also brought out in his oral argument that the prosecution, in each of these cases, was made at the written request of the District Sanitarian in connection with a general effort to stop improper disposal of human excreta. Counsel for the appellee admitted, however, that he had no evidence that these particular accused were guilty of or responsible for any such improper disposal or any improper accumulation of refuse.

CONCLUSIONS OF LAW

[1–8] 1. The exact limits of the legal meaning of the word "nuisance" in the various ways it is used in which the question about it may arise, are extremely difficult to state or explain on any comprehensive basis. In 39 Am. Jur., Nuisances, § 2, third paragraph, the following statement on this subject appears:

"It has been said that the term 'nuisance' is incapable of an exact and exhaustive definition which will fit all cases, because the controlling facts are seldom alike, and each case stands on its own footing."

It is a well-settled general rule that written laws imposing criminal penalties are subject to what is called "strict construction". That is, such laws are to be interpreted strictly against the government and liberally in favor of the accused. 50 Am. Jur., Statutes, §§ 407, 408, and 409. Considering the words "a condition of things which is prejudicial to the health, comfort, safety, property, sense of decency, or morals of the people of the Trust Territory", in Section 408 of the Trust Territory Code, in the light of this usual rule of strict construction and in the further light of the American precedents on which Section 408 appears to be based, the court holds that Section 408 only applies to a "public nuisance" or, as it is sometimes called, a "common nuisance". Both of these terms mean exactly the same thing and are used interchangeably. They both refer to a nuisance which is prejudicial to the general public or the public at large. That is, one which affects a considerable number of people. 39 Am. Jur., Nuisances, §§ 8 and 178. While it may be said that all crimes are nuisances, all crimes are not necessarily public nuisances and it has been held many times that every unlawful act in violation of written law does not necessarily constitute a public nuisance. 39 Am. Jur., Nuisances, § 21. While this court recognizes that some violations of Section 618 of the Code might create a public nuisance, in such cases the nuisance itself must be proved to warrant a conviction of maintaining a nuisance. The court is clear that every violation of Section 618 does not necessarily create a public nuisance. If there was any public nuisance involved in any one of these cases, it would have to arise from the condition which was created by the accused's failure to comply

with the Sanitarian's notice. The court holds that this failure to comply with the Sanitarian's notice is clearly insufficient, in and of itself, to constitute a public nuisance and from the admissions made by counsel for the appellee in oral argument, it seems unlikely that any public nuisance was, in fact, involved.

[9] 2. Attention is invited to the fact that in situations such as those involved in these cases, however, there is no need to rely upon any strained or doubtful definition of a nuisance. Section 625 of the Trust Territory Code provides a penalty for violations of Section 618 so that these constitute crimes independent of any other and so far as criminal prosecutions are concerned, there is no need to try to bring such offenses under any of the crimes set forth in Chapter 6 of the Code.

[10] 3. There may have been a violation of Section 618 in one or more of these cases, but this is not shown to have been looked into sufficiently at the trials for this court to fairly determine the matter. If there was any violation of Section 618, however, it would seem that it must have been of paragraph (a) rather than (b). There is not the slightest indication that the notice from the Sanitation Department or Division called for the removal of anything. If a violation of paragraph (a) or (b) of Section 618 is what the government is relying on, however, each accused is entitled (a) to notice of what he is being charged with having violated, (b) to require proof of that charge, and (c) to have a reasonable chance both to defend against it and to present any evidence he may have in mitigation of it even if he is guilty. The Sanitarian's notice should not be confused with the public health regulations referred to in Section 618. These public health regulations under Section 612 must be originated by the Director of Public Health and approved by the High Commissioner to have the effect of law.

[11] 4. The mere failure to comply with the Sanitarian's notice would not, in and of itself, prove that there was a violation of even Section 618. Whether there was or was not such a violation would depend on showing that the failure to comply with the notice left a condition for which the accused was responsible and which violated the provisions of Section 618. In fact, it has been held in the United States that a statute which purported to make the mere violation of a departmental order to abate an alleged nuisance, a misdemeanor, violated the "due process of law" clause (similar to that contained in Section 4 of the Trust Territory Bill of Rights), where the person made guilty was denied the right to any notice or to a hearing on the question of whether or not a nuisance did, in fact exist. 39 Am. Jur., Nuisances, § 179, note 1, and § 180.

[12, 13] 5. The fact that the prosecutions were brought at the request of the District Sanitarian does not alter in the slightest the burden on government in any criminal case of proving beyond a reasonable doubt all the essential elements of the crime involved if the accused pleads "not guilty". Nor does the District Sanitarian's obvious belief that there was a violation of law do away with the need for proof that the accused did, in fact, violate the law.

JUDGMENT

1. The findings and sentences of the District Court for the Marshall Islands District, in its Criminal Cases Nos. 250, 252, and 254, are hereby set aside and these cases remanded to the District Court for new trials on whatever charge the Government finally decides should be made on the basis of the facts involved in these cases. These new trials are not to be held, however, until the Government has had reasonable opportunity to look into the matter and to either amend the present complaints or file new ones.

2. The fines already paid are to be retained pending the outcome of these new trials and the amount so paid in any one of these cases is to be applied in payment of or toward the payment of any fine that may be imposed in that case as a result of the new trial. Any excess above such fine finally imposed, or the whole of the fine already paid in any of these cases which is disposed of without the imposition of any fine upon new trial, is then to be returned to the accused.

TIMAS and WANTER, Appellants

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellees

Criminal Case No. 116

Trial Division of the High Court

Truk District

December 22, 1959

Appeal from Truk District Court decision affirming conviction of accused by Community Court of Lukunor Municipality for violation of Municipal Ordinance No. 1-51, prohibiting drinking of yeast. Appellant contends that ordinance was invalid since it was not filed with Clerk of Courts and that there was insufficient evidence to find accused guilty beyond reasonable doubt. The Trial Division of the High Court, Chief Justice E. P. Furber, held that since ordinance was promulgated prior to executive order requiring filing, it was valid, but that evidence was insufficient to prove guilt of defendants beyond reasonable doubt.

Reversed and remanded.

1. **Criminal Law—Statutes**

   Fact that no signed copy of municipal ordinance is on file with Clerk of Courts for Truk District is immaterial in conviction for violation of ordinance, where ordinance was passed prior to executive order requiring such filing. (T.T.C., Sec. 31; Executive Order No. 60)

2. **Courts—Judicial Notice**

   Community Court may take judicial notice of ordinance and presume it was duly enacted in absence of evidence to contrary.

3. **Criminal Law—Burden of Proof—Reasonable Doubt**

   In criminal prosecution, proof beyond reasonable doubt of all essential elements of crime is fundamental to Trust Territory system of justice.