

**ATING SESON, Plaintiff**

v.

**WALES EDWIN, Defendant**

Civil Action No. 171

**ATING SESON, Plaintiff**

v.

**IDOSI ALPET, Defendant**

Civil Action No. 172

**Trial Division of the High Court**

Ponape District

**May 8, 1964**

Actions to determine ownership of land on Ngatik Atoll, in which illegitimate son brought suit to recover land of deceased father. The Trial Division of the High Court, Chief Justice E. P. Furber, held that illegitimate son does not inherit as matter of right on Ngatik, and by waiting over twenty years to litigate claim, plaintiff has lost cause of action.

**1. Ponape Land Law—Ngatik—Inheritance**

Under Ngatik custom, illegitimate child does not inherit land from father as matter of right.

**2. Real Property—Quiet Title—Laches**

Where plaintiff shows no good excuse for waiting over twenty years after becoming of age before bringing suit to quiet title, court will not grant relief.

FURBER, *Chief Justice*

These two actions came on to be considered upon the Master's Reports, both counsel in both actions having notified the court through the Master that they did not wish to be heard by the court upon either report. After examination of the records, including the entire transcripts of evidence, the Master's Reports are approved.

## OPINION

Although these actions were heard separately one after the other by the Master, they are most easily understood if considered together. From the pleadings and statements of the plaintiff's claims it would appear that he was trying to establish ownership of the whole of the land Imwin Nahu in both actions, but from the defendants' claims and the evidence it is clear that the plaintiff is seeking ownership in Civil Action No. 171 of roughly two-thirds of that land in the possession of Wales Edwin, and in Civil Action No. 172 is seeking ownership of the remaining roughly one-third, which is in the possession of Idosi Alpet.

The land in question is located on Ngatik Atoll in the Ponape District. It is agreed that the whole of the land belonged to Seson. The plaintiff Ating's claim is that as the illegitimate son and only child of Seson, he inherited the land in question on Seson's death. It was agreed in Action No. 171 that Seson died in 1915, 1916, or 1917 and the evidence in that action indicates that Ating was then a very small child. Yet these actions were not brought until Ating was about 45 or more years old. The land had passed into the possession of Seson's father under claim of ownership and he had divided it into three parts giving one to Wales and one to each of two other persons. The interest of one of these two had been acquired by Wales and the interest of the other by Idosi.

[1] The evidence offered in Action No. 171 to show that Seson was the father of Ating is not convincing and no evidence at all on this point was offered in No. 172. The court considers it clear, however, that under Ngatik customary law, still in effect there, an illegitimate child does not inherit land from his father as a matter of right. The court further considers that the Master was fully justified from the evidence in finding that there had neither been any gift of this land to Ating nor had he been adopted by Seson.

[2] Furthermore, these are very "stale demands". Ating has shown no good excuse for standing by over twenty years after he became of age before bringing these actions. Our courts in handling such actions to quiet title to land are expected to aid those who have been reasonably active in pressing their claims, but to refuse relief to those who have not made proper effort to press their claims. For a discussion of this basic idea see *Kanser v. Pitor and Others*, 2 T.T.R. 481.

JUDGMENT—in Civil Action No. 171.

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

1. As between the parties and all persons claiming under them:—

a. The plaintiff Ating Seson, whose home is on Ujelang Island in the Marshall Islands District, has no rights of ownership in the land known as Imwin Nahu, located on the east side of Wahd Island, Ngatik Atoll, in the Ponape District.

b. The roughly two-thirds of Imwin Nahu in the possession of the defendant Wales Edwin, who lives on the main island of Ngatik, is owned by him.

2. This judgment shall not affect any rights of way there may be over the land in question.

3. The defendant Wales Edwin is awarded such costs, if any, of this action as he may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided he files a sworn itemized statement of them within thirty (30) days after the entry of this judgment. Otherwise no costs will be allowed.

4. Time for appeal from this judgment is extended to and including August 7, 1964.

JUDGMENT—in Civil Action No. 172.

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

1. As between the parties and all persons claiming under them:—

a. The plaintiff Ating Seson, whose home is on Uje-lang Island, in the Marshall Islands District, has no rights of ownership in the land known as Imwin Nahu, located on the east side of Wahd Island, Ngatik Atoll, in the Ponape District.

b. The roughly one-third of Imwin Nahu in the possession of the defendant Idosi Alpet, who lives in Kolonia in Ponape District, is owned by him.

2. This judgment shall not affect any rights of way there may be over the land in question.

3. The defendant Idosi Alpet is awarded such costs, if any, of this action as he may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided he files a sworn itemized statement of them within thirty (30) days after the entry of this judgment. Otherwise no costs will be allowed.

4. Time for appeal from this judgment is extended to and including August 7, 1964.