

United Church of Christ v. Hamo

Supreme Court (Truk)

Benson A.J.

13 April 1988

*Enforcement of judgments—res judicata—jurisdiction of the High Court of the Trust Territory—Secretarial Order No. 3039 of 1979—pending cases “not in active trial”.
Constitutional law—due process—issue of unjust enrichment—notice and opportunity to be heard.*

In 1884 the Wito clan conveyed land to a mission board which used it for a church
10 and a school. Upon closure of the school in 1972 the church authorities leased the
school site. The Wito clan sought to be registered as owners of the land in 1972. At a
pre-trial conference in 1985 the High Court of the Trust Territory on its own initiative
raised the issue of a monetary award to compensate for unjust enrichment. Later
that year the trial was held and the Court found that the 1884 deed conveyed a
determinable fee simple title so that ownership of the land reverted to the Wito clan
when it was leased in breach of the deed, and also awarded substantial damages to
prevent the church being unjustly enriched by receipt of lease rental payments since
1972. The plaintiff now collaterally attacks the 1985 judgment by bringing
20 proceedings in this Court seeking a declaration that the High Court’s improper
failure to transfer the case to the F.S.M. Supreme Court (functioning since 1981) or
later to the Truk State Court (functioning since 1984) deprived the High Court of
jurisdiction to give judgment. It was also alleged that the unjust enrichment issue
raised *sua sponte* by the High Court deprived the plaintiff of due process of law.

HELD:

Declaration in favour of plaintiff denied, motion to enforce judgment in favour of
the defendants granted.

- (1) The Secretarial Order No. 3039 of 1979 stipulated that pending cases “not in
30 active trial” should be transferred from Trust Territory Courts to F.S.M.
Courts. The High Court judge before whom the case was pending erred in
deciding that this matter was in active trial. The fact that a case has “a long
history” does not mean that it was in active trial prior to 1985, and thus it
should have been transferred to the jurisdiction of a F.S.M. Truk court.
- (2) The improper failure to transfer the case did not deprive the High Court of
jurisdiction, however, because the United Church of Christ failed to raise
jurisdiction questions and acquiesced in (or may have deliberately chosen)
the High Court as to the forum to adjudicate the claim.
- (3) The implicit finding that the High Court had jurisdiction is *res judicata* and
cannot be collaterally attacked by a separate action in a different court
unless the judgment be void in cases involving a clear usurpation of
40 authority. No such fatal defect exists in this case.
- (4) Although the unjust enrichment issue was raised by the High Court, there

was no violation of due process. An adjournment of the pre-trial conference allowed consideration of the issue and the United Church of Christ submitted all issues to the High Court for decision at the trial.

Cases referred to in judgment:

Allen v. McCurry 449 U.S. 90, 101 S. Ct. 441, 66 L. Ed. 2d. 308 (1980)

Des Moines Nav. and R. Co. v. Iowa Homestead Co. 123 U. S. 552, 8 S. Ct. 217, 31 L. Ed. 202 (1887)

Honneus v. Donovan 691 F. 2d. 1 (1st. Circ. 1982)

50 *Ortiz .v Suazo* 570 P. 2d. 309 (N.M. 1977)

Sautbine v. Keller 423 P. 2d. 447 (Ok. 1966)

Stoll v. Gottlieb 305 U.S. 165, 59 S. Ct. 134, 83 L. Ed. 104 (1938)

Underwriters National Assurance Co. v. N.C. Life and Accident 455 U.S. 691, 102 S. Ct. 1357, 71 L. Ed. 2d. 558 (1982)

Legislation referred to in judgment:

Secretarial Order No. 3039 (1979)

Other sources referred to in judgment:

43 C.J.S. *Injunctions* (1945)

1B J. Moore, *Moore's Federal Practice* (2d. ed. 1985)

60 7 J Moore, *Moore's Federal Practice* (2d. ed. 1985)

Counsel:

R. B. Michelson for the plaintiff

C. Noket for the defendants

BENSON A. J.

Judgment:

This matter came before the Court on motion of each party for an order granting summary judgment. The parties agree that there exists no genuine issue as to any material fact, and each party contends that it is entitled to judgment as a matter of law.

70 In this action the plaintiff (hereinafter United Church of Christ) seeks a declaration that the 1985 judgment of the High Court of the Trust Territory of the Pacific Islands (hereinafter High Court) in the case of *Achuo Hamo, on behalf of the Wito Clan v. United Church of Christ of Moen*, civil action no. 1-76, is void. United Church of Christ also seeks an injunction preventing the defendant (hereinafter Wito clan) from attempting to enforce the judgment. United Church of Christ alleges that the High Court lacked jurisdiction, and that the High Court judgment deprived United Church of Christ of due process of law in that a monetary award was given without notice.

80 The monetary award rose in the following manner. During pre-trial conference the High Court trial judge stated that a monetary award might be given under the Court's equitable powers to prevent unjust enrichment. Wito clan had not petitioned for such relief and no pleading exists in which a monetary award is put in issue. The pleadings were not amended. United Church of Christ requested and obtained an opportunity to consider the matter presented by the Court. Several days later the

pre-trial conference resumed. United Church of Christ made no objection to the interjection of the "unjust enrichment" issue and submitted the case to the Court for decision.

The allegation of lack of jurisdiction arises from the failure of the High Court to transfer the case in accordance with Secretary of the Interior Order No. 3039 upon the determination by the Chief Justice of the High Court that functioning courts had been established first in the F.S.M. (the F.S.M. Supreme Court) and later in Truk State (the Truk State Court).

I. Facts

In 1884 Trukese landowners conveyed five parcels of land which adjoined one another on Moen Island, Truk, to the American Board of Commissioners for Foreign Missions (hereinafter American Board). The conveyance recited that the land was "to be used for the purposes for which said board is organized".

Later the American Board conveyed its interest to United Church Board of World Ministries (hereinafter United Church Board). Over the years the property was used as the site for Logan Memorial Church and for Mizpah High School. In 1971 United Church Board decided to close Mizpah High School.

In 1972 United Church Board and Wito clan each applied to the Land Commission for the registration of the land. In 1975 the Land Commission referred the case to the High Court.

In 1973 United Church Board leased to the Trust Territory of the Pacific Islands (hereinafter T.T.P.I.) that portion of the land upon which Mizpah High School had been located. In 1978 T.T.P.I. filed its complaint in intervention asking that title be registered in the name of United Church Board.

On 5 May 1981, the Chief Justice of the High Court determined that the F.S.M. Supreme Court was functioning. On 17 June 1981, United Church Board assigned all its rights to the land to United Church of Christ. On 25 July 1981, T.T.P.I. assigned all lease rights, and on 19 February 1982, Truk State was substituted in the case for intervenor, T.T.P.I.

On 6 February 1984, United Church of Christ and Wito clan appeared for a pre-trial conference. The joint pre-trial statement was not ready and the conference did not proceed. Counsel were ordered to file the statement by 15 March 1984. The statement was filed on that date. It contained a stipulation that United Church of Christ be substituted for the United Church Board. On 2 April 1984, Wito clan filed a motion asking that the High Court retain jurisdiction of civil case no. 1-76. This motion was served upon United Church of Christ. On 20 April 1984, the Chief Justice of the High Court determined that Truk State had established a functioning court.

On 25 October 1984, a notice for a pre-trial conference to be held 7 December 1984 was issued. This conference was not held.

On 15 March 1985 counsel ratified the 15 March 1984 pre-trial statement and the pre-trial conference already noticed was held on 18 March 1985. At this point, the High Court on its own initiative raised the issue of a monetary award. The pre-trial conference was continued to allow United Church of Christ an opportunity to consider the issue. On 21 March 1985, the pre-trial conference resumed. The parties submitted the case for decision on the pleadings. Leave was given to the United Church of Christ to file an additional brief by 1 April 1985. United Church of Christ did file two motions, neither of which addressed the issue.

The High Court issued its judgment on 19 August 1985. The Court held: that the deed conveyed a fee simple determinable title to the American Board; that the leasing of the Mizpah High School site to T.T.P.I. breached the condition in the deed causing title to revert automatically; and that United Church of Christ was to pay the sum of \$300,060 together with interest at 9% from 29 June 1973, to Wito clan to prevent United Church of Christ from being unjustly enriched.

II. Issues

- 140 1. Is the High Court deprived of jurisdiction to enter judgment after failing to transfer the case to the F.S.M. Supreme Court, or later to Truk State Court as required by secretarial order No. 3039?
2. Did the High Court deprive United Church of Christ of due process of law by entering the money judgment against United Church of Christ on an issue that was not pleaded, but raised *sua sponte* by the High Court?

III. Holdings

1. The failure of the High Court to transfer the case either to the F.S.M. Supreme Court or later to the Truk State Court through a misapplication of secretarial order no. 3039 does not divest the High Court of jurisdiction.
- 150 2. The issue of unjust enrichment did not deprive the United Church of Christ of due process. It had notice, an opportunity to be heard, and did not object to this issue.

IV. Reasoning

A. *The Secretarial Order No. 3039 Issue*

The secretarial order became effective in the F.S.M. on 10 May 1979, the date of the commencement of constitutional government in the F.S.M. The following sections of the order are the provisions germane to the issue presented:

160 Section 1. Purpose. The purpose of this Order is to provide the maximum permissible amount of self-government consistent with the responsibilities of the Secretary under Executive Order 11021, for the Federated States of Micronesia, the Marshall Islands, and Palau, pursuant to their respective constitutions as and when framed, adopted, and ratified, pending termination of the 1947 Trusteeship Agreement under which the United States of America undertook to act as Administering Authority for the Trust Territory of the Pacific Islands.

170 Section 2. Delegation of Authority. Until the termination of the Trusteeship Agreement and subject to the limitations contained in this Order and in existing treaties, laws, and regulations of the United States generally applicable in the Trust Territory of the Pacific Islands, executive, legislative, and judicial functions of the Government of the Trust Territory of the Pacific Islands are, except as otherwise provided herein, hereby delegated to the three political subdivisions of the Trust Territory known as the Federated States of Micronesia, the Marshall Islands, and Palau.

Section 5. Judicial.

a. Pending Cases. The present Community and District Courts and the Trial and Appellate Divisions of the High Court of the Trust Territory of the Pacific Islands

shall continue to function and operate in accordance with the present procedural and jurisdictional provisions of Trust Territory law until the Federated States of Micronesia, the Marshall Islands, and Palau have established functioning courts pursuant to the terms of their respective constitutions. The determination that such functioning courts exist shall be made in writing by the Chief Justice of the High Court of the Trust Territory of the Pacific Islands upon written request of the chief judicial officer of the respective jurisdictions. A denial of the request may be appealed to the Secretary.

Once such a determination has been made for a jurisdiction, all cases, except for suits against the Trust Territory of the Pacific Islands Government or the High Commissioner, currently pending but not in active trial before the Community Courts, the District Courts, and the Trial Division of the High Court shall be transferred to the functioning courts of such jurisdiction, provided that the legal rights of the parties in any case in controversy pending before a Community Court, a District Court, or the Trial or Appellate Division of the High Court shall in no way be impaired by this Order.

Determination as to whether a case is in "active trial" shall be made by the Judge before whom such case is pending.

Upon the determination by the Chief Justice of the High Court on 5 May 1981, that a functioning Supreme Court existed in the F.S.M., civil case no. 1-76 should have been transferred to this court. Diversity of citizenship existed between Wito clan and United Church Board. Because the T.T.P.I. was an intervenor, civil case no. 1-76 was not a suit "against the Trust Territory of the Pacific Islands Government". Section 5(a) of the secretarial order did not prevent transfer. In any case, Truk State was substituted for the T.T.P.I., as already noted, on 19 February 1982. The diversity continued until 15 March 1984, at which date, as earlier noted, United Church of Christ was substituted for United Church Board.

The issues presented now were first presented to the High Court in 1986. On 20 January 1987, the High Court issued its denial of relief sought by United Church of Christ. On the question of the transfer of jurisdiction, the Court said:

Regarding issue No. 1 [jurisdiction of High Court to enter judgment], both counsel stipulated that the best and easiest way to determine if this case was in "active trial" as provided for in Secretarial Order 3039 on the date when the Supreme Court of the Federated States of Micronesia was certified as a court of record, was for me to telephone Judge Harold Burnett in Honolulu to determine what the status of this case was on the date of the certification. Judge Burnett was the Chief Justice of the Trust Territory High Court who certified the Supreme Court of the Federated States of Micronesia.

On December 11, 1986, I telephoned Judge Burnett wherein he told me that on or about the date of the above referred to certification, he made the decision that because the Trust Territory of the Pacific Islands was a party to the lawsuit and because of the long history of the matter, he determined that the Mizpah High School case was in "active trial" pursuant to Secretarial Order No. 3039.

An analysis of the reasoning, however, reveals an incorrect application of Secretarial Order no. 3039. First, although the T.T.P.I. was a party as intervenor, the case was not "against the Trust Territory of the Pacific Islands". Second, the fact that the case had

had a long history does not mean that it was in "active trial". A long period of pendency does not at all indicate that a case is in active trial.

When the Truk State Court was determined to be a functioning court on 20 April 1984, civil case no. 1-76 came within its jurisdiction. As to the failure of the High Court to transfer the case at that time, the High Court stated in the same order of 20 January 1987:

230 . . . [a]fter the Truk State Court was certified on April 20, 1984, Chief Justice Soukichi Fritz and I met to discuss the future handling of this case and determined that the case was still in "active trial" pursuant to Secretarial Order 3039 and we agreed that the High Court would retain jurisdiction.

The reasoning again fails to satisfy if the surrounding circumstances are examined. Up to 20 April 1984, a joint pre-trial statement was to be filed by 15 March 1984, as outlined above. A pre-trial conference was scheduled for 7 December 1984. The recitation of these facts demonstrate that at the time the High Court said the case was in "active trial", on or about 20 April 1984, no pre-trial conference yet had been held and none was scheduled until 7 December 1984. The only preparation for trial consisted of the filing of a joint pre-trial statement on 15 March 1984. I can find no factual basis for a determination by the High Court that the case was in "active trial".
240 To say that the case was in "active trial" in these circumstances is to deprive the term of any meaning at all.

I conclude that both the purpose of Secretarial Order no. 3039 to provide the maximum permissible amount of self-government, and the provisions of 3039 for transfer of pending cases, required the High Court to transfer the case.

There are two reasons, however, why this does not deprive the High Court of jurisdiction. First, United Church of Christ may not raise the issue of jurisdiction after failing to raise it in the High Court. United Church of Christ failed to object to the retention of the case by the High Court at any time prior to the judgment. Even when Wito clan moved that the High Court retain jurisdiction, United Church of
250 Christ failed to object.

Having thus acquiesced in the matter, and, for all the record shows, having deliberately chosen the High Court as a more hospitable forum to adjudicate the claims of United Church of Christ, it is unjust now to accept United Church of Christ's claims. In seeking an injunction against the enforcement of the 1985 High Court judgment, the United Church of Christ must show that it acted without fault in the matter it seeks to correct (*Sautbine v. Keller* 423 P.2d. 447 (Okl. 1966); 43 C.J.S. *Injunctions* section 26 (1945)). United Church of Christ fails to meet that requirement.

260 The second reason the High Court's failure to transfer does not deprive the High Court of jurisdiction involves the nature of United Church of Christ's cause of action in the F.S.M. Supreme Court. United Church of Christ now collaterally attacks the judgment by seeking relief in a separate action in a different court, instead of directly attacking the judgment by appeal¹ or otherwise in the High Court.

In entering the judgment of 1985, the High Court implicitly found that it had

1 The United Church of Christ filed a timely notice of appeal from the 1985 judgment. It was returned, however, because the \$5.00 filing fee was not submitted. United Church of Christ then sent in the notice of appeal and the fee. Both were returned as untimely filed. No issue is now being made of this by the United Church of Christ.

jurisdiction. This determination by the High Court is *res judicata* (1B J. Moore, *Moore's Federal Practice*, paragraph 0.405 [4-1] (2d. ed. 1985) at 199; *Underwriters National Assurance Co. v. N.C. Life and Accident* 455 U.S. 691, 102 S. Ct. 1357, 71 L. Ed. 2d. 558 (1982); *Stoll v. Gottlieb* 305 U.S. 165, 59 S. Ct. 134, 83 L. Ed. 104 (1938); see *Allen v. McCurry* 449 U.S. 90, 101 S. Ct. 441, 66 L. Ed. 2d. 308 (1980); *Ortiz v. Suazo* 570 P.2d. 309 (N.M. 1977)). It is not subject to collateral attack, except in "very rare" cases involving a clear usurpation of authority (7 J. Moore, *Moore's Federal Practice*, paragraph 60.25[2] (2d. ed. 1985) at 60-227 to 230). To successfully attack the judgment collaterally, the judgment would have to be found void because of a defect fatal to the action, such as failure to give notice or an opportunity to be heard. No such fatal defect exists in this case.

No earlier case is before the F.S.M. Supreme Court that might serve as precedent as to the effect of an incorrect failure to transfer. Therefore the Court accepts an analogous situation presented. Jurisdiction of U.S. district courts depends upon diversity of citizenship of the parties. It is settled in the United States that even if the finding of diversity is erroneous, the proceedings cannot be collaterally attacked (*Honneus v. Donovan* 691 F. 2d. 1 52, 8 S. Ct. 217, 31 L. Ed. 202 (1887)).

For the reasons stated, this Court cannot say that the High Court lacked jurisdiction to enter its judgment of 1985.

B. *Due Process and the Monetary Award*

United Church of Christ next asserts that the monetary award was entered against it in violation of its due process rights because it had no notice and no opportunity to be heard.²

The facts outlined above show that these contentions are not supported by the record. The ground for this relief was set out by United Church of Christ before the 20 January 1987 order of the High Court was entered. The High Court's order sets out in detail the circumstances surrounding the entry of the monetary award. The recitation of facts in the High Court order is uncontested and this, with the minutes entry of 21 March 1985, forms the basis for the facts set forth in this order. The facts show that the High Court raised the issue of unjust enrichment itself, continued the pre-trial hearing at the request of United Church of Christ in order that the church might consider the issue presented by the High Court, and, upon the resumption of the hearing some three days later, United Church of Christ submitted all issues to the High Court for decision.

The procedure in this matter would be governed by Rule 15(b) of the Rules of Civil Procedure of the Trust Territory Courts. This Court is unable to say that the procedure fails to give notice and an opportunity to be heard.

United Church of Christ has failed to establish that it is entitled to judgment in its favour as a matter of law. Its motion is accordingly denied.

Wito clan has established that it is entitled to a judgment in its favour as a matter of law. Its motion is accordingly granted. Wito clan is entitled to a judgment dismissing this action brought by United Church of Christ.

Reported by: D. V. W.

2 At oral argument this court inquired into the legal and factual basis for the award. Later, memoranda were requested and furnished. I conclude that no basis exists which would justify any award. The United Church of Christ explicitly chose not to make this a separate issue in support of its cause or action.