

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

3. No costs are assessed against either party.

AIMELIHK PEOPLE, Appellants
v.
THOMAS REMENGESAU, Appellee
Civil Action No. 224
Trial Division of the High Court
Palau District
April 9, 1962

Action brought to restrain defendants from interfering with construction of building by plaintiff. The Palau District Court issued restraining order upon showing that building was constructed on land belonging to plaintiffs' leasehold and thereafter adjudged defendants in contempt for violation of order. On appeal, the Trial Division of the High Court, Associate Justice Paul F. Kinnare, held that District Court was within its jurisdiction in issuing restraining order and in punishing contemptuous violation of order.
Affirmed.

1. Courts—Jurisdiction

Court order is void only when court has clearly acted without authority.

2. Courts—Jurisdiction

When jurisdiction of court is doubtful, it has inherent authority to make temporary order to preserve state of things while matter of jurisdiction is being considered in orderly manner.

3. Contempt—Criminal—Violation of Court Order

Where jurisdiction of court is doubtful and temporary order is issued, violations of order are punishable as criminal contempt. (T.T.C., Sec. 415)

4. Courts—District Court

District Courts in Trust Territory have clear authority to determine and make orders as to right to immediate possession of land. (T.T.C., Sec. 138)

5. Courts—District Court

Purpose of Trust Territory law allowing District Courts to determine right to immediate possession of land is to have courts readily available to determine such rights in orderly manner in order to avoid resort to force.

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6. Courts—District Court

Authority of District Courts in Trust Territory to issue orders regarding right to immediate possession of land is not limited to situations in which High Court action is pending.

7. Courts—District Court

District Court in Trust Territory acts within its jurisdiction in issuing temporary restraining order regarding right to immediate possession of land, and may punish contemptuous violation of its order. (T.T.C., Sec. 415)

8. Contempt—Criminal—Generally

Trial court in Trust Territory has discretion not to handle criminal contempt matter as separate case entered in criminal docket. (T.T.C., Sec. 415)

9. Criminal Law—Sentence—Modification

Where trial court reduces sentences of appellants after they are imposed in criminal contempt proceedings, appellants are not prejudiced thereby and cannot fairly complain about it. (T.T.C., Sec. 415)

10. Contempt—Criminal—Sentence

Determination of relative amount of punishment to be given each party convicted of criminal contempt, within limits of law, is matter resting within sound discretion of trial court.

<i>Assessor:</i>	JUDGE PABLO RINGANG
<i>Interpreter:</i>	HARUO I. REMELIIK
<i>Reporter:</i>	FLORENCE H. SHOOK
<i>Counsel for Appellants:</i>	WILLIAM O. WALLY
<i>Counsel for Appellee:</i>	JOHN O. NGIRAKED

KINNARE, *Associate Justice*

This is an appeal from a Restraining Order entered by the District Court on August 1, 1961, restraining the appellants from interfering with the construction of a building (known as the Moonlight Club) by appellee. Appellants also ask that a subsequent judgment of August 8, 1961, in which appellants were found guilty of violating the Restraining Order, and punished by fine or imprisonment, be held void and of no effect, and that the fines paid thereunder be ordered returned.

THE FACTS

Appellants and appellee were both lessees of the Government of the Trust Territory of the Pacific Islands, hereinafter referred to as the Government, and their leases adjoined. In fact, there is general agreement that, due to a surveying error, they overlapped, so that a boundary dispute arose.

The Government, as lessor, then resurveyed the plots, defining clearly the area covered by each lease. Appellants refused to recognize the boundary as laid down by the District Land Title Officer, and warned appellee not to build on the land they still contended was within their leasehold.

Appellee did so build, and appellants forcibly removed that part of appellee's building which they claimed encroached on their lease. Appellee filed a complaint in the District Court, charging trespass, but this action was dismissed when it appeared that appellants and appellee had reached agreement. The truce was short lived, and appellee filed his sworn "Petition for an Order to Enjoin" in the District Court, setting forth that appellants still threatened physical violence to prevent the construction of his building on the ground determined by the Government to be within his leasehold, and praying that appellants be enjoined and restrained from interfering with his peaceful use and enjoyment of his leasehold, and in particular from interfering with the construction of his new building. After hearing, the District Court issued a Restraining Order, substantially as prayed for by the appellee.

Appellants thereafter tore down appellee's building. An action for criminal contempt was filed against them in the District Court for violation of the court's Restraining Order and, after hearing, the court sentenced forty-three males of Aimeliik to thirty days' imprisonment, and fined twenty-nine females of Aimeliik \$5.00 each. Volunteer

labor then repaired appellee's building, and the court released the male appellants after they had served ten days of the sentence imposed on them. The fines were not returned.

OPINION

It is the appellants' contention that the District Court was without jurisdiction to issue the Restraining Order, as interests in land were involved. They cite Trust Territory Code, Section 123, and argue that, as no action to try title or to determine interests in the land involved had been filed in the High Court, there was no justiciable issue before the District Court; that therefore the Restraining Order was a nullity, and the imprisonment and fines imposed for its violation were void and of no effect; that the finding and sentences should be vacated and set aside, the case dismissed, and the fines returned.

[1-3] The appellants appear to have acted under a serious misapprehension as to what constitutes a void court order. A court's order is void only when the court has clearly acted without authority. United States Courts have repeatedly held that when a court's jurisdiction is doubtful it has inherent authority to make a temporary order to preserve the existing state of things while the matter of jurisdiction is being considered in an orderly manner and that, even if such an order is later set aside, violations of it are punishable as criminal contempt.

This point was considered and exhaustively discussed in *United States v. United Mine Workers of America*, 330 U.S. 258 at 290 et seq., 67 S.Ct. 677 at 694 et seq. In that case, a temporary restraining order was served upon defendants two and one half days before the strike was to begin. The defendants filed no motion to vacate the order. Rather, they ignored it, and acted in defiance of its terms. The court said "An injunction duly issuing out of a

court of general jurisdiction with equity powers, upon pleadings properly invoking its action, and served upon persons made parties therein, and within the jurisdiction, must be obeyed by them, however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming, but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review either by itself or by a higher court, its orders based upon its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished."

The court quoted with approval language in *Gomper8 v. Buck's Stove and Range Co.*, 221 U.S. 418, 31 S.Ct. 492, "If a party can make himself a judge of the validity of orders which have been issued, or by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery."

The law as above stated is well settled. See Am. Jur., Vol. 28, Injunctions, § 323.

[4-7] The above citations would be applicable if appellants' contention—that the District Court's action was improper because an interest in land was involved and no action concerning it was pending in the High Court—were sound. Clearly, however, appellants' contention is unsound and without merit. Under Section 138, Trust Territory Code, District Courts have clear authority to determine and make orders as to the right to immediate possession of land. One of the obvious purposes of this provision is to have courts readily available to determine such rights in an orderly manner for the express purpose of avoiding such resorts to force as the appellants engaged in. While this power of the District Courts has often been exercised to provide temporary relief where a

High Court action was pending, the authority to issue such orders is nowhere in the code limited to situations in which a High Court action is pending. In this case, then, the District Court was clearly within its jurisdiction in issuing the Restraining Order, and its action in punishing the contemptuous violation of the order was completely proper and eminently sound.

[8] While it is more usual in our practice to handle criminal contempt matters as separate cases entered in the criminal docket, the procedure here adopted was within the discretion of the trial court and there was no showing that any of the rights of the appellants were disregarded.

[9, 10] It is not clear from the record on what the trial court based its right to reduce the sentences on the male appellants once they had been imposed. Clearly, however, if there was an error in this, the appellants were not prejudiced thereby and cannot fairly complain about it. Determination of the relative amount of punishment to be given each appellant, within the limits of the law, was a matter resting within the sound discretion of the trial court, and this court sees no indication that there was any abuse of that discretion.

The court sees no error in the issuance of the Restraining Order in Civil Action No. 830, nor in the fines and sentences imposed because of its violation. They are accordingly affirmed, without further costs.