

PHILIP v. CARL

ALANSO PHILIP, Plaintiff

v.

MERITE CARL, Defendant

Civil Action No. 273

Trial Division of the High Court

Ponape District

January 14, 1966

*See, also, 3 T.T.R. 330*

Action to determine ownership of land in Metalanim Municipality, in which defendant moved to dismiss action on ground there had been prior dismissal of same action pursuant to settlement. The Trial Division of the High Court, Associate Justice Joseph W. Goss, granted motion and dismissed action as parties had stipulated settlement in 1965.

1. Courts—Settlements

District and Community Courts may assist in settlement of controversies and reduce agreements to writing which, when signed by parties, have effect of judgments. (T.T.C., Sec. 164)

2. Courts-Dissmissal

Judgment dismissing action, based upon stipulation of parties, settling and adjusting matter of action and agreeing to dismissal, is bar to subsequent action for same cause of action.

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<i>Assessor:</i>	JUDGE ANDREAS WEILBACKER.
<i>Interpreter:</i>	JUDAH C. JOHNNY
<i>Counsel for Plaintiff:</i>	KLETUS JAMES and BENITO NEOR
<i>Counsel for Defendant:</i>	JOHNNY MAKAYA and YOSTER CARL

GOSS, *Associate Justice*

This is a motion for dismissal on the ground that the parties hereto had previously stipulated and submitted a

motion that Civil Case No. 261, involving the same land and issues, be dismissed. On the basis of said stipulation and motion, Case No. 261 on August 8, 1965, was dismissed by the Honorable Paul F. Kinnare.

There is no disagreement as to the fact that both cases concerned the land Wounsapwmuahu, Mesihsou Village, Madolenimw Municipality. In the earlier action the parties, daughter and father, were able to resolve their differences by providing that Merite Carl should own Wounsapwmuahu and that the land located in Sokehs, which is Pahn Ipwal, would be owned by Alanso Philip.

Counsel for the defendant argued that on the basis of Trust Territory Code, Section 164 and the doctrine recorded in 17 Am. Jur., Dismissal, Discontinuance and Nonsuit, § 97, p. 167, the motion to dismiss should be granted. Counsel for the plaintiff argued to the contrary.

#### OPINION

**[1]** Trust Territory Code, Section 164, "Conciliation Jurisdiction", states that District and Community Courts may assist in settlements of controversies and that when the settlement agreement is reduced to writing and the judge's report is signed by the parties, it shall have the effect of a judgment. The present case having been brought in the Trial Division of the High Court rather than in any District Court or Community Court, Trust Territory Code, Section 164, is not applicable to Defendant's motion.

**[2]** The above cited section of American Jurisprudence, however, sets forth the following language:

"Sec. 97, Dismissal Pursuant to Agreement-The rule is well settled that a judgment dismissing an action, based upon a stipulation of the parties, settling and adjusting the subject matter of the action and agreeing to its dismissal, is a bar to a subsequent action for the same cause, since such a judgment is generally regarded as a determination of the cause on its merits."

The Court is most sympathetic with both of the parties and their family and hopes that they will be able to amicably abide by the agreement which they entered in good faith in 1965. The Court has an obligation to assist in terminating disputes rather than prolonging them, and it is believed that the rule followed by the majority of American courts is well suited for the Trust Territory.

RULING

The motion of the Defendant is granted and Case No. 273 is dismissed.