

KARUO, Appellant

v.

CHOCHY, Appellee

Civil Action No. 576

Trial Division of the High Court

Truk District

February 12, 1971

Appeal from conviction of failure to work or pay alternative tax in lieu of work. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that while the enactment of an "Island Work Day" law is a proper exercise of municipal authority, when the statute is so ambiguous and uncertain that it is meaningless, then it cannot be enforced.

Judgment reversed.

1. Appeal and Error—Generally

An appeal from a Community Court is a right granted by the Trust Territory Code and may not be denied.

2. Judgments—Stay of Execution

Staying execution of judgment involves the exercise of reasonable discretion.

3. Statutes—Construction—Legislative Intent

A court may not speculate as to the probable legislative intent, that is the court must consider not what the legislative body intended to do but what it actually enacted.

4. Statutes—Construction—Strict Construction

Where the meaning of a statute cannot be judicially ascertained, the courts are not at liberty to supply the deficiency or undertake to make the statute definite and certain.

5. Constitutional Law—Equal Protection

Questions of discrimination and equal protection of laws arise from classification of subjects of legislation and while improper or unfair classification violates the protection afforded by Code Section 7, reasonable classification may be made by the legislature. (T.T.C., Sec. 7)

6. Constitutional Law—Equal Protection

Classification is a matter of legislative discretion as long as it is reasonable.

7. Taxation—Payment in Labor

Public work on public roads, with a tax payment as an alternative, has been long established and the courts of the United States have held that it does not constitute involuntary servitude contrary to the Thirteenth Amendment.

8. Taxation—Payment in Labor

The enactment of an appropriate "Island Work Day" law is a proper exercise of municipal authority, however, when the statute is so ambiguous and uncertain that it is meaningless then it cannot be enforced.

TURNER, *Associate Justice*

Appellant was prosecuted in Community Court by Uman Municipality, Truk District, in the name of the Municipal Treasurer, Chochy, for failure to pay an island work day tax in accordance with Uman Municipal Ordinance No. 3-66, which amended the earlier enactment, Ordinance No. 6-64.

The island work day was established by Ordinance No. 5-64 and provided:—

"All legal residents of Uman Municipality, between the ages of eighteen (18) and sixty (60) years, are required by this ordinance to participate in the Island Work Day Program."

Work was to be performed on public roads, docks, municipal office or public meeting house and playgrounds. Certain exemptions of workers were listed.

The measure provided that the "taxpayer" had a choice of paying Fifty Cents (\$0.50) per work day (there were normally two each month) in "either cash or labor."

[1, 2] Appellant, who was a member of the Municipal Council and voted against the ordinance in question, refused to either work or pay the \$1.00 per month "tax" for the seven-month period until prosecution was brought. From an adverse judgment he appealed. He was denied stay

of execution pending appeal "because no petition (for appeal) can ever be made to the judgment of this court." This magistrate (and all other magistrates) should know an appeal is a right granted by the Trust Territory Code and may not be denied. Staying execution of judgment involves the exercise of reasonable discretion.

Upon appeal to the Truk District Court, the municipal judgment was sustained on the grounds the Ordinance was effective and in force. The appeal before this court was urged primarily on the grounds the municipal ordinance was discriminatory, and denied equal protection of the laws, contrary to Section 7 of the Trust Territory Code Bill of Rights; and that its forced labor alternative to a tax payment constituted involuntary servitude, contrary to the prohibition of slavery and involuntary servitude found in Section 2 of the Trust Territory Code Bill of Rights. The court's examination of the Uman ordinance discloses a fatal defect sufficient to resolve this appeal. The ordinance on its face is too uncertain and ambiguous to be sustained.

[3] We know in a general way what was intended by Uman Ordinance 3-66, but we are limited to consideration of the statutory words. A court may not speculate as to the probable legislative intent. The court must consider not what the legislative body intended to do but what it actually enacted. 50 Am. Jur., Statutes, § 217, se seq.

[4] Courts may not legislate to supply a deficiency in an invalid legislative enactment. A United States Court said in *Re Di Torio*, 8 F.2d 279:—

"... where the meaning of a statute cannot be judicially ascertained, the courts are not at liberty to supply the deficiency or undertake to make the statute definite and certain."

It is not necessary to dwell on Ordinance 3-66 at greater length because the Municipal Council attempted to correct the patent defects of vagueness and uncertainty by en-

acting or re-enacting the Island Work Day law, with its alternatives of work or pay, as Uman Municipal Ordinance No. 7-70, approved by the District Administrator November 7, 1970. That measure is not before us and we do not comment upon it.

It is deemed necessary, however, to consider and dispose of the challenge to the law based upon discrimination, equal protection and involuntary servitude. In *Mesechol v. Trust Territory*, 2 T.T.R. 84, this court held a similar statute invalid because it was contrary to "due process" and "equal protection of the laws." Whatever the grounds, it is apparent the court was shocked by the Palau requirement of fifteen work days per month as compared with the two days in the Uman statute. In that case, the court did not discuss the grounds for attack presented in the present case.

[5, 6] Questions of discrimination and equal protection of laws arise from classification of subjects of legislation. Improper or unfair classification violates the protection afforded by Code Section 7. Reasonable classification may be made by the legislature. This law is applicable to all persons between the ages of eighteen and sixty with certain special exceptions. It cannot be said to be unreasonable. Classification is a matter of legislative discretion as long as it is reasonable. 16 Am. Jur. 2d, Constitutional Law, § 485, et seq.

Appellant's most serious challenge was that the ordinance required forced labor if, for any reason, the municipal resident was unable to pay the tax. He also argued it constituted "involuntary servitude" of property in that the worker was required to furnish his own tools: "When our tools are broken, we buy new ones"

[7] Appellant agreed an "Island Work Day" had been practiced as a matter of custom at least back to German times. The custom in Truk is no different than that prac-

ticed in England and the United States. Public work on public roads, with a tax payment as an alternative, has been long established and the courts of the United States have held that it does not constitute involuntary servitude contrary to the Thirteenth Amendment.

The United States Supreme Court said in *Butler v. Perry*, 240 U.S. 328, 36 S.Ct. 258:—

“In view of ancient usage and the unanimity of judicial opinion, it must be taken as settled that, unless restrained by some constitutional limitation, a state has inherent power to require every able-bodied man within its jurisdiction to labor for a reasonable time on public roads near his residence without direct compensation. This is a part of the duty which he owes to the public.

“From Colonial days to the present time conscripted labor has been much relied on for the construction and maintenance of roads. The system was introduced from England, and, while it has produced no Appian Way, appropriateness to the circumstances existing in rural communities gave it general favor.”

The court's opinion dealt with a statute applying to “able-bodied” men. The Uman ordinance applied to both men and women. In this age of “women's lib” an objection that it applied to women would be scorned.

This type of law is generally held not to be a tax, but rather a police regulation. Municipal exercise of the police power was sustained in *Calvo v. Trust Territory*, 4 T.T.R. 506, 512, and discussed as a justification for a municipal curfew law in *Ngiraomengesong v. Trust Territory*, 1 T.T.R. 615.

[8] It is held, therefore, that enactment of an appropriate “Island Work Day” law is a proper exercise of municipal authority. However, when the statute is so ambiguous and uncertain it is meaningless, then it cannot be enforced. Accordingly, the judgment of the Community Court is reversed and Uman Municipality is ordered to reimburse the money collected from appellant.