be added to the judgment for damages for personal injuries and shall bear interest at the rate of six percent per annum from December 15, 1966, until paid.

PENNO, Appellant

v.

KATARINA, Appellee

Civil Action No. 182

Trial Division of the High Court

Truk District

March 6,1968

See, also, 2 *T.T.R. 470*

Hearing on order to show cause requiring appellant to show why he should not vacate land pursuant to prior' judgment. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that under the circumstances appellant had complied with the earlier judgment in the case.

1. Trust Territory-Land Law-Limitations

   The twenty-year statute of limitations within which an action to recover land may be brought is not a bar to recovery until 1971. (T.T.C., Sec. 316)

2. Civil Procedure-Costs

   Personal expenses incurred by a party to an action are not allowable under the first sentence of Sec. 265 of the Trust Territory Code which limits costs to service of process, witness fees, or filing fees on appeal. (T.T.C., Sec. 265)

3. Civil Procedure-Costs

   The second sentence of Sec. 265 of the Trust Territory Code enlarges the grounds of recoverable expenses but does not cover costs incurred for traveling and living expenses by a party to an action. (T.T.C., Sec. 265)

Assessor:	JUDGE F. SOUKICHI
Interpreter:	SABASTIAN FRANK
Counsel for Appellant:	ALIWIS
Counsel for Appellee:	RAFAEL

TURNER, *Associate Justice*

RECORD OF HEARING

This matter came before D. Kelly Turner, Associate Justice, at Moen Island, Truk District, March 5, 1968, for hearing on Order to Show Cause issued by Robert Clifton, Temporary Judge, requiring appellant Penno to show cause why he should not immediately vacate the land and the buildings thereon in accordance with the judgment entered in behalf of appellee Katarina on November 8, 1963. The judgment was entered on an appeal from decision of the Truk District Court in its Civil Action No. 182 [2 T.T.R. 470].

OPINION

Whether or not Penno, the respondent to the Order to Show Cause, had failed to comply with the judgment order was a matter of sharp conflict between the parties. Penno has lived in the same house since 1947. As to Penno's residence, there was no dispute.

Katarina asserts the house is located on her land called Neppeno.Penno insists the house is located on his land called Neuor. It is agreed both parcels adjoin each other and are located in Peniemuan Village, Parem Island, Truk District.

The appeal and first judgment in this case was concerned with whether Katarina had sold Neppeno to Penno. The judgment order recited:-

"The defendant Penno shall vacate the land Neppeno, located on Parem Island, Truk District, on or before May 8, 1964, unless he pays the plaintiff Katarina, on or before that date, the sum of Two Hundred Twenty Dollars ($220.00) ...."

Penno did not pay the money but he did vacate the land before the specified date. By "vacating the land", Penno meant he no longer harvested nuts to make copra and otherwise remained off the land. He did not vacate his house. The question whether the house was on Neppeno or Neuor was not determined by the judgment out of which this hearing arose.

That Penno is the owner of Neuor is not challenged by Katarina and it would not benefit her to do so because Penno was held to be the owner of Neuor in the decision entered December 30, 1955, in *Chiako v. Penno,* Truk District Civil Action No.3. In this case, the Revised Pre-Trial Order shows that:-

"The defendant Penno has used this land since the beginning of the American occupation, and says that his house and bakery are on the tract owned by Mana, which bounds the land Neuor at the southwest corner."

The evidence in this case, as well as in Civil Action No. 3, shows that Penno has lived in this same house for more than twenty years. Katarina has not attempted to dispossess him or require him to vacate the house until she obtained the Order to Show Cause to enforce the judgment relating to the attempted sale of Neppeno to Penno.

[1] The twenty-year statute of limitations within which an action to recover land may be brought has been held by this court not to bar a recovery until 1971. *Kanser v. Pitor,* 2 T.T.R. 481.

"The doctrine of adverse possession, under which one can establish ownership by holding adverse possession of land under claim of ownership for the period of the statute limiting the bringing of actions for recovery of land or rights in it, does not yet itself apply in the Trust Territory, but will in 1971 under the terms of the present law. The reason is that our twenty (20) year limitation on the bringing of land actions, now contained in Section 316 of the Code, did not go into effect until May 28, 1951, and only began to run on that date as to cause of action then existing, because of the

provision in Section 324 that such existing causes of action shall be considered for this purpose to have accrued on that date."

But in this case, the court applied the doctrine of laches which had the same effect as the application of the statute of limitations would have had. The court said:

"The doctrine of laches or stale demand, however, does apply. It was discussed and relied upon in the case of *Rochunap v. Yoschune and Eis*, 2 T.T.R. 317, where all the elements necessary to work what is called an 'estoppel' were found to exist although that term was not used there."

In any event, because of the complete lack of certainty in the former proceedings in this case as to whether Penno is living on Katarina's land or his own, plus- the further circumstance of his continued occupancy of his house from 1947 without specific objection from Katarina, together with his successful defense to his claim of ownership to the land Neuor, we cannot now say Penno has not complied with the earlier judgment order in this case.

The result reached now does not bar Katarina from commencing an action in ejectment against Penno if she believes she can prove her contention the house is on the land Neppeno. She must, however, give serious consideration to the probability an action in ejectment properly would be subject to the defense of laches and if delayed beyond May 28, 1971, would be barred as a matter of law by the statute of limitations.

[2,3] Penno submitted a claim for his costs incurred for traveling and living expenses arising from his obligation to respond to the Order to Show Cause. Personal expenses incurred by a party to an action are not allowable under the first sentence of Section 265 of the Trust Territory Code which limits costs to "service of process, witness fees, or filing fees on appeals". The second sentence enlarges the grounds of recoverable expenses but the

court will follow the ruling in *Serha Irons v. Petrus Mailo* 3 T.T.R. 194, and deny their recovery.

In accordance with the foregoing, it is

Ordered:

1. That appellant Penno has complied with the judgment order heretofore entered and that the appellee Katarina is denied the relief of a further order requiring Penno to vacate the land Neppeno.

2. That the request for costs submitted by Penno is denied.

INEK SEHK, Plaintiff

v.

OHANA SOHN, Defendant

Civil Action No. 232

Trial Division of the High Court

Ponape District

March 8, 1968

See, also, 3 *T.T.R. 348*

Action to determine ownership of land on main island of Pingelap. The Trial Division of the High Court, Joseph W. Goss, Temporary Judge, held that Master's finding 'that title was in defendant was supported by the evidence and also that working land for a great period of time raised a presumption of ownership without clear evidence to the contrary.

Master's Report approved.

1. Wills-Oral-Evidence

Hearsay evidence of plaintiff that his father, the beneficiary under an alleged will, had told him of its having been made, without other evidence is insufficient as a matter of law to show the existence of an oral will.

2. Real Property-Quiet Title--Presumption of Ownership

Working land for over one hundred years raises a presumption of ownership without clear evidence to the contrary.