

LAMPERT, Plaintiff

v.

JULIA, Defendant

Civil Action No. 87

Trial Division of the High Court

Ponape District

May 7, 1957

Action to determine ownership of land in Sokehs Municipality, in which plaintiff claims land under instructions of decedent, holder of German title document, and defendant claims title under instructions. The Trial Division of the High Court, Chief Justice E. P. Furber, held that instructions were invalid without approval of *Nanmarki* and Governor, that neither party owned land, that there is vacancy in title, and that until government designates owner, both parties should work cooperatively on land.

1. Truk Land Law—Mortlock Islands

Mortlock system of land tenure is drastically different from German land reform system on Ponape, since former involves matrilineal lineage ownership under supervision of headman with individuals restricted to use rights that are subject to readjustment as circumstances change.

2. Ponape Land Law—German Land Title—Wills

Where instructions of decedent as to disposition of land on Ponape Island are invalid without approval of *Nanmarki* and Governor, neither party named in instructions is entitled to inherit under German title document.

3. Ponape Land Law—German Land Title—Vacancy in Title

Where there are no lawful heirs to land on Ponape Island held under German land title, there is vacancy in title, and right to determine who shall succeed vests with *Nanmarki* and Governor.

4. Ponape Land Law—German Land Title—Approval of Transfer

Extent to which Mortlock custom is to be considered in determining who shall inherit land on Ponape Island held under German title vests in discretion of *Nanmarki* and Governor.

5. Ponape Land Law—German Land Title—Vacancy in Title

Until *Nanmarki* and government determine ownership of land on Ponape Island formerly held under German land title, both parties claiming land under instructions of former owner have obligation to cooperate, and plan of cooperative use under which land was worked for twenty years before 1954 should continue.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Simiram adopted the defendant Julia, when they were both living in the Mortlocks before Simiram came to Ponape, but she was never recorded in Ponape as a member of his family. She was his only child, either real or adopted.

2. Simiram gave instructions that the defendant Julia would have the land after his death, but that since Conrad and Aknes were like his family, they should take care of the land for the plaintiff Lampert until he grew up as this land was all Simiram had with which to compensate Conrad and Aknes for their assistance referred to in the next finding, and that whenever Julia came to Ponape she should use the land.

3. For a number of years right up to his death, Conrad and Aknes cared for and aided in supporting Simiram (who was in his seventies at the time he died in December, 1932).

4. Simiram's instructions described above have not been consented to by or on behalf of either the *Nanmarki* or the "Governor".

5. No determination by the *Nanmarki* and the "Governor" as to who should succeed Simiram has been shown.

6. From the time of Simiram's death until dispute arose in 1954, the land was worked and used cooperatively by a group including Albert, Aluis (who is one of those Julia asked to take care of the land for her), Conrad, Aknes, Silbester and Lampert, without any trouble between them.

7. At a meeting in 1954 Albert, who considered himself to be the head of the family involved and was at least acting as such, and Silbester, the brother of the plaintiff

Lampert, stated that the land should be given to Julia, but Conrad and Lampert did not agree.

[Note for the benefit of those not involved in this action:—It was agreed that Conrad and Aknes are the step-father and mother respectively of the plaintiff Lampert and that Simiram came from Lukunor (in the Mortlock Islands) to Ponape in 1912 and took over the land in question in 1914. There was no claim that the defendant Julia had ever been in Ponape before Simiram died though her husband visited Ponape for about a year while Simiram was there. This action was originally brought by Conrad and Aknes, but at the first pre-trial conference they stated they were claiming for Lampert and agreed that they had no real interest in the cause of action. Lampert was thereafter substituted as party plaintiff on his own motion.]

CONCLUSIONS OF LAW

[1] 1. This action involves land in the Lukunor Section of Jokaj (sometimes spelled Sokaes), within the reef surrounding Ponape Island. It was admittedly held by Simiram under the standard form of title document issued by the German Government on Ponape beginning in 1912—except that presumably paragraphs 6 and 7 of the standard provisions on pages 2 and 3 of the document were struck out, as is common in the case of land on Jokaj (Sokaes). The claims of the parties are hardly understandable, however, without some knowledge of the system of land tenure in the Mortlocks. For a brief explanation of how drastically different that is from the system introduced on Ponape by the German land reform of 1912, see the Conclusions of Law in *Miako v. Pederen Losa*, 1 T.T.R. 255. A basic feature of the Mortlock system is matrilineal lineage ownership under the supervision of the headman of the lineage, with individ-

uals restricted to use rights that are subject to readjustment as circumstances change, and with a strong obligation to make divisions and exchanges in various situations, as private lineage or inter-lineage matters without any governmental approval of individual transactions.

[2, 3] 2. Neither party on the basis of his or her own claims comes within the list of relatives entitled to inherit from Simiram as of right under the standard form of title document. The plaintiff Lampert claims that Simiram's instructions were, or should be construed to mean, that the title should be transferred to him and the defendant Julia claims they were, or should be construed to mean, that the title should be transferred to her. The instructions just don't fit the system of private land ownership on Ponape at all clearly, but whatever they mean as applied to that system they would have no effect on the title unless and until consented to or approved by or on behalf of the *Nanmarki* and the "Governor". Assuming, as all concerned appear to have, that Simiram left no brother or brother's son surviving him, there is a vacancy in the title and the right to determine who shall succeed to it, rests with the *Nanmarki* and "Governor". See *Dieko Plus v. Pretrik*, 1 T.T.R. 7.

[4] 3. Until the defendant Julia began pressing her personal claims in 1954 all concerned seem to have treated the matter of whose name the land was transferred to as of little practical importance and to have assumed that whoever had the title would permit the use to be controlled primarily in accordance with Mortlock custom. Julia and her husband admittedly came to Ponape after Simiram's death and visited Conrad and Aknes for about a year. There is no indication of any argument about the land at that time. Now both parties seem to want to throw off the restraints and obligations of the

Mortlock system. More facts than have come out in this case would have to be considered to accurately evaluate the effect of those restraints and obligations. The extent to which Mortlock custom is to be considered in determining who should have title to the land is a matter resting in the discretion of the *Nanmarki* and the "Governor", but their attention is respectfully invited to the fact that in such a situation as this under Mortlock custom whichever party "got" the land would pretty clearly have important obligations to the other to be satisfied in some manner—such as division of the land, giving of first fruits or occasional use rights, or payment in goods, services, or money—to be worked out through or with the head of the lineage or lineages involved.

[5] 4. So far as the right to possession and use of the land until the *Nanmarki* and the "Governor" make a determination as to who shall have title is concerned, the court believes both parties have an obligation to cooperate with and show consideration for each other and that the general plan of cooperative use under which the land was worked for over twenty years before 1954 should be allowed to continue.

5. If Simiram left any brother or brother's son surviving him, this decision does not purport to have any bearing on such brother or brother's son.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties and all persons claiming under them, neither the plaintiff Lampert nor the defendant Julia has any right of ownership in the land known as Lepuekeu located in the Lukunor Section of Jokaj (sometimes spelled Sokaes), within the reef surrounding Ponape Island, beyond the right of the plaintiff Lampert

to hold possession subject to the obligation to permit use of the land on the same basis as for many years before 1954 and to permit the defendant Julia to participate in this use whenever she is in Ponape, until the *Nanmarki* and the "Governor" determine who should succeed Simiram as owner.

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.
