

MOSES HENRY, Plaintiff

v.

THOMAS ELUEL, and MIKEL ELUEL, Defendants

Civil Action No. 336

Trial Division of the High Court

Ponape District

April 21, 1970

Dispute as to boundary in Mwand Peidak section of Uh Municipality. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that under the circumstances of the case the presumption that the Japanese survey was correct had been overcome and the boundaries established during the German Administration were the correct boundaries.

1. Ponape Land Law—Japanese Survey

Japanese surveyors were given broad powers, which they exercised in approving the division of lands, confirming title, and in settling disputed boundaries.

HENRY v. ELUEL

2. Ponape Land Law—Japanese Survey

There is a strong presumption that the determinations made in the Japanese survey on Ponape were correct unless the contrary is clearly shown.

3. Ponape Land Law—Japanese Survey

Where original owners did not accept the boundary established by Japanese surveyors and there was no evidence of a dispute which would require their official intervention, but rather the boundaries were changed for the convenience of the surveyors, then the presumption that the surveyors' determination was correct had been overcome.

<i>Master-Assessor:</i>	JUDGE CARL KOHLER
<i>Interpreter:</i>	JOANES EDMUND
<i>Counsel for Plaintiff:</i>	CARLES PHILLIP
<i>Counsel for Defendants:</i>	YOSTER CARL

BURNETT, *Associate Justice*

This matter involved a dispute as to the boundary separating lands owned by plaintiff Moses Henry and the defendant Mikel Eluel in the Mwand Peidak section of Uh Municipality. Following reference to him as Special Master, the Honorable Carl Kohler, Presiding Judge of the District Court, viewed the disputed boundary, took evidence on the issue and reported his findings to this Court, without recommendation. The Master's Report identified the source of the dispute to be the difference between boundary markers originally established when these lands were deeded under the German Administration, and those established by Japanese surveyors. Further testimony was taken and oral argument heard by this Court.

OPINION

The lands involved in the action, both of which are registered under German title documents, were originally owned by the father of Ioanis Eluel, who sold to plaintiff Moses Henry, and by the father of Mikel Eluel. Plaintiff's land is registered under German title documents

number 140 and 142, and the adjoining land, now owned by Mikel, is under document number 144. The original German boundary markers still stand, and were pointed out by Ioanis at the time he sold his land to plaintiff. Two additional markers were established by Japanese surveyors some time around 1941. This "new" boundary would substantially reduce the land held by plaintiff, and is the one claimed by defendant Mikel. At the time of the Japanese survey Mikel's father was deceased, and the land was cared for by his uncle, the defendant Thomas.

The sole issue, there being no dispute as to the facts, is the authority of the Japanese surveyors to change an established and accepted boundary.

[1,2] There is no question that the Japanese surveyors were given broad powers, which they exercised in approving the division of lands, confirming title, and in settling disputed boundaries; this Court has regularly given great weight to their findings. See, for example, *Belimina v. Pelimo*, 1 T.T.R. 210, 213:—

"The court takes notice that the official Japanese survey of private lands on Ponape, which began about 1941, was carried on with considerable care and publicity, after extended study of land rights on Ponape, that it was intended to form the basis for the issuance of new title documents, and that the government surveyors engaged in it were given broad powers. The court therefore holds that there is a strong presumption that the determinations made in this survey were correct unless the contrary is clearly shown."

See also *Owang Lineage v. Gibbons*, 3 T.T.R. 560, to the same effect.

[3] From the evidence it seems clear that the original owners themselves did not accept the boundary established by the Japanese surveyors. There was no evidence of a dispute between Thomas and the father of Ioanis which would require official intervention. On the contrary, Thomas testified that the change was made for the con-

venience of the surveyors, who then instructed them to destroy the other markers. When asked why they were not destroyed, he answered “. . . we just did not care to destroy them.” I hold accordingly that the presumption that the surveyors’ determination was correct has been overcome in this instance, and that the true boundary is that originally established in German times.

It is therefore, ordered, adjudged, and decreed:—

1. The boundary between lands in the Mwand Peidak section, Uh Municipality, Ponape District, owned by Mikel Eluel under German title document number 144, and by Moses Henry under numbers 140 and 142, is marked by those boundary markers established in German times and shown on plaintiff’s trial sketch as numbers 1, 2, 3 and 4.

2. The action of the Japanese surveyors in establishing a new boundary line is held to be beyond their authority; markers established by them or under their direction are of no effect, and shall be destroyed.

3. No costs are assessed against either party.