

GODLIEB, Plaintiff

v.

WELTEN, PETERINA and MERIANDA, Defendants

Civil Action No. 11

Trial Division of the High Court

Ponape District

July 29, 1954

Action to determine ownership of land in Kitti Municipality. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where heir under German title document brought action to recover land, but approval of *Nanmarki* and Head of Ponape Branch Office (Japanese official) had been given to prior inter vivos transfer and division of land, court would not upset prior transfer and would recognize family agreements for division of land.

1. Ponape Custom—"Nanmarki"

Under Ponape custom *Nanmarki* was public official who was expected to take fatherly interest in welfare of those under him and to use influence to secure what he considered proper handling of lands in area for which he was responsible.

2. Ponape Land Law—German Land Title

Nanmarki's concern with land on Ponape Island was recognized by German title document under which *Nanmarki's* consent was necessary to transfer land and to determine who should succeed to land for which deceased owner left no heir within categories specified in title document.

3. Ponape Custom—"Nanmarki"

Whether actions of *Nanmarki* in encouraging transfer of land were proper are to be determined by ideas which prevailed at that time as to what was proper under law and social conditions then existing on Ponape Island.

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

Where transfer of land on Ponape Island was approved by *Nanmarki* and concurred in by Head of Ponape Branch Office, and one seeking to upset transfer made no effort to obtain title during balance of Japanese Administration, it would not be proper function of court to upset it now.

5. Ponape Land Law—German Land Title—Succession

On death of owner, in absence of living sons, land on Ponape Island passes to his older brother in accordance with terms of German title document and remains in him except for such effect as is given to family agreement providing otherwise.

6. Ponape Land Law—German Land Title

Family agreements concerning disposition of land on Ponape Island held under German land title were encouraged by Japanese Administration and considered in accord with public policy.

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

Even though beneficiary of family agreement to transfer land on Ponape Island has failed to show consents of *Nanmarki* and Governor as required by Japanese Administration, agreement transferred to him right to possession and use except as against government or anyone who might show better right.

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

Failure to obtain consents of *Nanmarki* and Governor to transfer of land on Ponape Island as required by Japanese Administration is not defect of which any man with lesser right to possession is entitled to take advantage.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Sepajtian adopted Samuel and gave him the land in question with the approval of *Nanmarki* (chief) Sekismundo and the head of the Ponape Branch Office.

2. Samuel divided the land and gave to the defendant Peterina a three-sided piece shown with her name on the sketch attached to the pre-trial order and marked "Peterina's sketch". This division and gift were approved by the *Nanmarki* and by the official Japanese surveyor on behalf of the head of the Ponape Branch Office.

3. Sekismundo and Samuel were members of different parts of the same clan. Sekismundo was also the cousin of Sepajtian and the plaintiff Godlieb. (It was agreed at the pre-trial conference that Samuel and the defendant Welten were the sons of the daughter of Sepajtian's oldest brother.)

4. Any direction or wish that Samuel may have expressed that Merianda should inherit any of the land in question, was not approved by either the *Nanmarki* or

the head of the Ponape Branch Office, or anyone on behalf of either of them.

5. The defendant Peterina has failed to prove that the defendant Welten destroyed any yams and kava belonging to her.

6. No party has questioned the defendant Welten's claim that there was an agreement with his mother and all of his brothers and sisters, including his oldest brother Tobias, that Welten should inherit whatever rights in the land would otherwise have passed to Tobias on Samuel's death. No other party claims through Tobias. For the purposes of this case, therefore, it is assumed that there was such an agreement.

CONCLUSIONS OF LAW

1. The plaintiff Godlieb claims to have inherited a piece of land on Ponape Island as the oldest surviving brother of Sepajtian to whom the German title document for the land in question was issued in 1912. It is agreed that the title document bears an endorsement dated November 28, 1935, saying in Japanese that the owner of the land covered by the document having retired, his adopted son Samuel inherits it, and that this endorsement bears the signature and stamp of the head of the Ponape Branch Office. The plaintiff Godlieb, however, claims that this endorsement was made at the order of *Nanmarki* Sekismundo against the wishes of Sepajtian and is of no legal effect, that Sepajtian never adopted Samuel, and that Sepajtian died without ever having had a son, either true or adopted. The defendant Peterina claims that a part of the land was given to her by Samuel. The defendant Merianda claims that Samuel directed that she should inherit the rest of the land. The defendant Welten claims that under the agreement set forth in finding of fact No. 6 he inherited all of the land upon Samuel's death

in place of his older brother Tobias who was the one entitled to it under the terms of the standard form of title document as Samuel's oldest brother.

[1-4] 2. So far as the plaintiff Godlieb's rights are concerned, this action is controlled by the principles set forth by this court in paragraphs 1 and 3 of the conclusions of law in *Welenten Pernando v. Paulus and another*, 1 T.T.R. 32, in paragraph 2 of the conclusions of law in *Petiele and another v. Max and another*, 1 T.T.R. 26, and in paragraphs 1 and 2 of the conclusions of law in *Wasisang v. Trust Territory of the Pacific Islands*, 1 T.T.R. 14. Under Ponapean custom the *Nanmarki* was a public official who was expected to take a fatherly interest in the welfare of those under him, and to use his influence to secure what he considered proper handling of the lands in the area for which he was responsible. This system depended for its fairness upon the *Nanmarki's* friendly and sympathetic interest in those under him, many of whom were almost certain to be related to him by blood, marriage or adoption, rather than upon any principle of disinterestedness. His concern with land transfers was recognized under the system of land ownership established by the German Government on Ponape in 1912, set forth in the standard form of title document, under which the *Nanmarki* was one of the officials whose consent was necessary for such a transfer as that in question, and was one of those who was to determine who should succeed to land for which a deceased owner left no heir within the categories specified in the standard form of title document. Whether his actions in encouraging the transfer to Samuel were proper or not, are to be determined by the ideas which prevailed at that time as to what was proper under the law and social conditions then existing on Ponape, and not by any present-day American idea as to an individual's right to freedom of

action. That low people were expected to honor high people, and high people were expected to provide leadership, and that it was difficult for low people to disagree with or disregard the wishes of high people at that time, were (and to a large extent still are) inherent parts of the social system. On that basis the plaintiff has failed to show that there was anything wrong with the transfer to Samuel. Furthermore, the *Nanmarki's* approval of the transfer was concurred in by the head of the Ponape Branch Office in an official endorsement, and admittedly Godlieb made no effort to get title to the land during the balance of the Japanese period of administration, except to protest to the *Nanmarki* and the Policemaster against the transfer to Samuel. Even if there were something wrong with the transfer to Samuel, it would not be a proper function of the courts of the present administration to try to upset it now.

3. The defendant Peterina's rights in the part of the land in question claimed by her are covered by the principles set out in the conclusions of law by this court in the case of *Teresita Phelip v. Ioakim and another*, 1 T.T.R. 147.

4. So far as the defendant Merianda's rights are concerned, this action is controlled by the principles set forth in paragraph 2 of the conclusions of law by this court in *Augustin Ladore v. Pisenda Salpatierre and another*, 1 T.T.R. 18.

[5-8] 5. On Samuel's death, the part of the land retained by him passed to Tobias as his oldest brother, in accordance with the terms of the title document, and the ownership of it would remain there except for such effect as is given to the family agreement mentioned in the sixth finding of fact. The court takes notice that such

family agreements were encouraged by the Japanese Administration, given great weight, and considered definitely in accord with public policy. Even though the defendant Welten has failed to show the consents of the *Nanmarki* and the "Governor", required under the terms of the title document for the transfer of legal title to him from Tobias, the court holds that this agreement transferred to Welten the right to possession and use of this part of the land except as against the government or anyone who might possibly show a better right through Tobias. The failure to obtain these consents is not a defect of which any of the parties to this action is entitled to take advantage. See the second paragraph of the conclusions of law in *Dieko Plus v. Pretrik*, 1 T.T.R. 7.

RECOMMENDATION

Inasmuch as legal title to the portion of the land retained by Samuel appears to remain in Tobias, it is recommended that the defendant Welten apply to the *Nanmarki* and the District Administrator for approval of the transfer to him of legal title to that part of the land.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the land known as Ponmortik No. 201, located in the Anpeinpa Section of the Municipality of Kiti, on Ponape Island, is owned as follows:—

(a) The three-sided piece consisting of the upper right hand portion of Ponmortik No. 201 (as one stands on the shore looking up toward the land) shown with her name on the sketch marked "Peterina's sketch" attached to the pre-trial order in this action, is the property of the defendant Peterina, a resident of Anpeinpa Section of Kiti, with the benefit of and subject to all

the rights and obligations imposed by the system of private land ownership set forth in the standard form of title document issued by the German Government on Ponape in 1912, as heretofore or hereafter modified by law.

(b) The defendant Welten, who lives part of the time in the Anpeinpa Section of Kiti, part of the time in the Kolonia Section of the Municipality of Not, and part of the time in the Kitamw Section of Metalanim, is entitled to the possession and use of the remainder of Ponmortik No. 201, with the benefit of and subject to all the rights and obligations imposed by the system of private land ownership set forth in the standard form of title document issued by the German Government on Ponape in 1912, as heretofore or hereafter modified by law.

(c) Neither the plaintiff Godlieb nor the defendant Merianda has any right, title or interest in any of the land outside of any right he or she may have as a relative of the owner of each part of it, to live with the owner upon the land under the conditions set forth in the above mentioned form of title document.

2. This judgment shall not affect any rights of way there may be over the land in question.

3. No costs are assessed against any party.