

NELI MWOKIN, Plaintiff
v.
SULI SAIRENIOS, Defendant
Civil Action No. 240
Trial Division of the High Court
Ponape District
November 15, 1967

Action for determination of title to land on Pingelap Atoll, in which Master found that oral instructions of deceased prior owner, leaving land to defendant's predecessor, were valid and were not rescinded. The Trial Division of the High Court, Associate Justice Joseph W. Goss, held that testimony of two interested parties that they had heard about oral will from beneficiary of will, allegedly made in absence of witnesses, was insufficient without other evidence to establish existence of alleged will.

Wills-Oral

Testimony of interested party that he has heard about oral will from beneficiary of that will, allegedly made in absence of witnesses is, without other evidence, insufficient as matter of law to meet burden of establishing existence of will.

Reporter: JOANES EDMUND
Counsel for Plaintiff: KAPUS DIOFILOS
Counsel for Defendant: ROBERT SAIRENIOS

GOSS, *Associate Justice*

This case comes before the High Court upon a Master's Report, Carl Kohler, Presiding Judge, acting as Master on Pingelap Island.

Neli Mwokin, the real daughter of a deceased land owner Tomati, brought the action to recover a parcel of land called Perseno and a taro patch containing ten rows called Pwopereu, both located on the main Island of Pingelap Atoll. The land is held by the family and descendants of Sules, the deceased younger sister of Tomati. Sules claimed it originally under an oral will.

In the Findings of Fact filed by the Special Master herein, there were determinations as follows:-

"6. The man Tomati made his will unto his uncle Iakana prior to his departure to Nauru the second time; said will provides that his uncle Iakana could be taking care of the land Perseno and taro patch Pwopereu containing 10 rows of taro-the lands were to be under Iakana's care and should Tomati die the land and taro patch would go to Tomati's sister Sules who would own these lands.

7. The man Iakana carried out the provision of the will and when Tomati died, Iakana allowed Tomati's sister Sules to own the land and taro patch in dispute.

8. There is no evidence showing that Tomati rescinded his original will which he made unto his uncle Iakana."

These findings were based on the testimony of two witnesses. One witness was the present possessor of the land who testified that her mother, the alleged beneficiary, had told her about the will which was made in the absence of witnesses. The other witness was a relative who had heard from his father who in turn had heard from the beneficiary about the will. The Court holds that the testimony of an interested party that he or she has heard about an oral will from the beneficiary of that will, which was allegedly made in the absence of witnesses is, without other evidence, insufficient as a matter of law to meet the burden of establishing the existence of a will.

In the transcript of evidence submitted by the Special Master, there was uncontradicted testimony of Plaintiff's son (Transcript, p. 7 and 13) (1) that Plaintiff had previously submitted her claim to Ludwik, (2) that Ludwik was a policeman authorized to hold hearings on such matters, and (3) that Ludwik held a trial and rendered a judgment against Plaintiff dividing the land in dispute among Sua, Suli and Pida. If such alleged facts are true and if Ludwik was an official of the Japanese Administration authorized to make such determinations, then no other matters in the case need be considered and the matter may be decided in accordance with the doctrine set forth in *Kumtak Jaios v. L. Levi, et al.*, 1 T.T.R. 578.

It is therefore ordered as follows:-

1. That Findings of Fact 6, 7 and 8 as above set forth are set aside.

2. The case is re-referred to Presiding District Court Judge Carl Kohler, as Master, for Findings of Fact on the following matters:

(a) Was there a determination by Ludwik as to the right of the Plaintiff to the lands in dispute, and if so what was the determination?

(b) At that time was Ludwik an official of the Japanese Administration authorized to make such determinations ?(See Rules of Evidence 9(2), Judicial Notice.)

(c) What was the date on which Defendant's predecessors in interest assumed possession of the lands in dispute, and have said persons been in continuous possession since that date?

3. When such matters have been determined, amended Findings of Fact will be filed herein.