

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.
11.
12.
13.
14.
15.
16.
17.
18.
19.
20.
21.
22.
23.
24.
25.
26.
27.
28.

FOR PUBLICATION

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**IN RE THE ESTATE OF
RITA KAIPAT,
Deceased.**

CIVIL ACTION NO. 90-0840

**ORDER RE ACCOUNTING, CLAIMS OF
SURVEYORS JUAN I. CASTRO AND
ALFRED K. PANGELINAN, AND
CARMEN GUELLES' HEIRSHIP CLAIM**

This matter was last before the Court on January 17, 2006 on claimants' motions for the following: (1) accounting of estate funds; (2) application for payment of surveying work pursuant to Com. R. Civ. P. 6(c); and (3) inclusion of Carmen Guelles ("Carmen") as an heir to the Rita Kaipat Estate (the "Estate"). The Court held an evidentiary hearing on the issue of Carmen's heirship. Appearing at oral arguments and/or on the briefs were Antonio M. Atalig for Alfred K. Pangelinan of Meridian Surveying and Juan I. Castro of Pacific Lands Surveying (hereafter, collectively referred to as "surveyors") and heirship-claimants Maria Indalecio ("Maria") and Juliana Romolor ("Juliana"); Bruce L. Mailman for heirship-claimant Catalina Laniyo Tebit; Joseph A. Arriola for the Administrator, Luis Pelisamen ("Administrator"); and Edward C. Arriola for heirship-claimants Maria M. Yaisewil, Julita O.T. Kileleman, Jessica O.T. Roligat, and Victoria T. Moded. The Court addresses each of the motions separately as follows.

I. ACCOUNTING OF ESTATE FUNDS

Heirship-claimants Maria and Juliana, through Counsel Atalig, moved for an updated accounting of the Estate. The Administrator did not object.

1. The Court will order Administrator Luis Pelisamen to provide an updated accounting.

2. **II. PAYMENT OF SURVEYING WORK**

3. The surveyors, through Counsel Atalig, moved the Court to order the Estate to pay for
4. surveying fees allegedly incurred by the surveyors on behalf of the Estate.

5. The Administrator objected to what it considered to be a motion for reconsideration of the
6. Court's denial of payment in the Vicente Kaipat case. The Court noted that the surveyors had thus
7. far failed to refile their claim in the Rita Kaipat probaton, as the order denying the same claim in
8. the Vicenta Kaipat probaton had suggested they do. Accordingly, the Court will treat the instant
9. motion as a new claim in the Rita Kaipat probaton. Should the Administrator deny the claim, the
10. surveyors will have leave to request an evidentiary hearing on the matter. The considerations for
11. recovery of the claim from the Estate are set forth in the Court's December 13, 2005 order. As
12. stated in that order, the Administrator will be personally liable for that amount which is not
13. compensated by the Estate.
14.

15. The Court will order Administrator Luis Pelisamen to submit a response approving or
16. denying the claims of Juan I. Castro and Alfred K. Pangelinan.

17. **III. CARMEN GUELLES' HEIRSHIP CLAIM**

18. **A. Factual and Procedural Background**

19. Heirship-claimant Maria Indalecio through Counsel Atalig moved this Court to find Carmen
20. Guelles to be an heir to the Estate. The Administrator denied the claim on grounds of untimeliness
21. and for lack of evidence. *See* Administrator's Denial of Claim, July 1, 2005.
22.

23. In support of this motion, Counsel Atalig submitted affidavits from Roman Larope, Maria,
24. and Juliana. He also called on Maria and Juliana to testify at the hearing. None of the other litigants
25.

26.
27.
28.

1. offered any evidence in opposition. Based on the evidence submitted, the Court makes the
2. following findings of fact:

3. 1. Carmen was born on October 2, 1918 to Maria M. Roligat.

4. 2. Maria Roligat was Rita Kaipat's first cousin. Their mothers, Ignacia and Vicente
5. Kaipat, were sisters.

6. 3. As an infant and throughout her childhood, Carmen lived with and was raised by
7. Rita Kaipat. Carmen was brought into the family to be a sister to Rita's biological daughter, Nieves.

8. 4. Carmen was fluent in the Carolinian language and familiar with Carolinian customs.
9. She spoke with Rita Kaipat in the Carolinian language. Carmen was referred to as "Nedita" by her
10. Carolinian family.

11. 5. When Carmen got married, the wedding took place at Rita's house.

12. 6. Carmen had 13 children. Maria Indalecio, the oldest, was born May 30, 1940.
13. Carmen's other children include Vicente Muna, Bonifacio Muna, Remedio Muna, Bernadita Sablan,
14. Susana Muna, Ignacia Sablan, Jacinta Lacy, Alfonsina Arju, Juan Muna, and Juanita Charfurus.

15. 7. Maria recalls asking her mother the significance of a tattoo reading "Carmen Roligat
16. Kai" on her mother's left hand. Maria states that her mother explained that Rita had placed the
17. tattoo there, and that "Kai" stood for "Kaipat."

18. 8. When Carmen had marital problems, she stayed with Rita.

19. 9. Carmen and her husband visited Rita regularly and brought her food. Maria visited
20. Rita with Carmen.

21. 10. Rita died in 1959. Pursuant to Carolinian custom, Carmen stayed at house of
22. deceased to help with funeral preparations.

23. 11. Carmen died September 12, 1992. She was bedridden before this time.

1. 12. Proceedings in Rita Kaipat’s probate began December 12, 1990, with the
2. appointment of Joaquina Laniyo as Administratrix.

3. 13. None of the heirs who testified in the evidentiary hearing held in July and August
4. 1991 stated that Carmen was Rita’s adopted daughter. Nor did anyone deny that Carmen was Rita’s
5. adopted daughter.

6. 14. Notices of the proceedings were published in Saipan newspapers.

7. 15. Maria was unaware of the proceedings, as she was living on the mainland with her
8. children. She did not find out about the probate until May 2005, when she read about the Estate’s
9. compensation for land taking by Marianas Public Land Agency.
10.

11. **B. Legal Analysis**

12. **1. Maria has standing to pursue a claim, as she is an heir.**

13. At the hearing, opposing claimants suggested that Maria had no standing to pursue a claim
14. on behalf of Carmen, since Carmen’s estate had not been opened and Maria had not been appointed
15. to represent Carmen. The Court will treat Maria’s petition for recognition of Carmen as an heir as a
16. petition for the recognition of Maria and her siblings as heirs by virtue of Rita’s alleged adoption of
17. Carmen.
18.

19. **2. Maria’s claim is not time-barred, as she did not receive proper notice of
20. the 1991 hearing.**

21. Opposing claimants suggest that Carmen (or her heirs) are time-barred from pursuing an
22. heirship claim, as they did nothing to appeal the Superior Court’s September 24, 1991
23. determination of heirs. Tebit’s Memorandum at 4 states that, “had Carmen Guelles—who was alive
24. for two years after the initial petition was filed in this probate—participated in the proceedings that
25. led to the Superior Court’s September 24, 1991 Decision, she could have appealed within 30 days,
26.
27.
28.

1. as allowed by the Rules of Appellate Procedure.” As noted above, Carmen was bedridden for some
2. time before her death. Further, Maria was on the mainland throughout most of the proceedings.

3. Claimants have observed that even if Carmen and Maria were unaware of the proceedings,
4. Carmen had numerous other children who should have been aware of the proceedings and taken
5. action. The Court takes judicial notice that under Carolinian custom, the eldest daughter has the
6. responsibility of serving as the spokesperson for family matters. *Cf. Tarope v. Igisaiar*, 3 CR 111,
7. 113 (CTC 1987). Because Maria Indalecio was the eldest daughter, she—and not her younger
8. siblings—would have been the person to whom notice should have been addressed.

9. Claimants have also referred the Court to several cases in which Commonwealth courts have
10. suggested that a mere lack of notice is insufficient to attack a probate decree. *See* Tebit’s
11. Memorandum at 6, citing *Castro v. Castro*, 2 N.M.I. 334, 340 n.1; *Sablan v. Iginioef*, 1 N.M.I. 192,
12. 198 n.3 (1990); and *In re Estate of Meulemar*, 1 N.M.I. 441, 446. Having read all of these cases,
13. the Court believes that the references to notice appear to be dicta and therefore not controlling. In
14. both the *Castro* and *Sablan* cases, the statement was made in a footnote.

15. The Administrator of an estate has a responsibility to seek an efficient and prompt resolution
16. of probate matters. This should involve the identification of and provision of notice to *all* potential
17. heirs, even where there may be doubt as to a claim for heirship. Indeed, it is a disservice to the
18. Estate to leave out potential heirs and risk future litigation.

19. The Court declines to apply the doctrine of laches. Claimants have shown no evidence to
20. disprove Maria’s statement that she had no notice of the probate until 2005. Further, given that all
21. the other claimants waited from 1959 until 1990 to address their probate claims, and that the
22. 23. 24. 25. 26. 27. 28.

1. proceedings in the Rita Kaipat probate have dragged on without resolution since 1990, the Court
2. can hardly find that Maria’s claim is untimely.¹

3. **3. The evidence before the Court indicates that Carmen was customarily**
4. **adopted through mwei mwei.**

5. Rather than presenting their own evidence to dispute Maria’s claim, the opposing claimants
6. suggest that Maria’s evidence is insufficient and contradictory. The claimants note that Carmen was
7. not named as an heir in the 1991 evidentiary hearing, in which Juliana also testified. Claimants
8. observe that while Juliana currently states that Carmen was an adopted daughter, she failed to
9. mention Carmen at the 1991 hearing.

10. a. Carmen’s lack of mention in the 1991 hearing is not conclusive.

11. The 1991 proceeding addressed the disputed heirship claims of three sisters—Joaquina
12. Laniyo, Rosalia Kaipat, and Maria Kaipat (all biological children of Rita’s brother Isaac), and their
13. cousin Auria O. Tagabuel (biological granddaughter of Rita). Each claimed to be an adopted child
14. of Rita, and denied that their cousin(s) was/were entitled to make the same claim. *See In Re Estate*
15. *of Rita Kaipat*, No. 90-840 (N.M.I. Super Ct. Sep. 24, 1991) (Decision) at 3. All of the claimants
16. agreed that Dolores Kaipat Pelisamen, Alejandro Laniyo, and Jesus Faisao were Rita Kaipat’s
17. adopted children. *Id.*

18. Counsel for claimants in the 1991 proceeding included Jay Sorensen (for claimant Rosalia
19. Kaipat and Administratrix Joaquina Laniyo), John Manglona (for claimant Alejandro Laniyo), Joe
20. Hill (for claimant Auria Tagabuel and the children of Nieves Kaipat), and Pedro Atalig (for the
21.
22.

23.
24. ¹ *In re Estate of Tudela*, 3 N.M.I. 316 (1992) cited in Tebit’s Memorandum at 5, lends further support to this
25. finding. The court in that case interpreted the language of 8 CMC § 2206 (the statute requiring a party aggrieved by a
26. probate ruling to appeal within 30 days) to be permissive, not mandatory. *Id.* at 320. The court explained, “A party who
27. has contested an appealable order may appeal either within 30 days of the issuance of the order, or within 30 days after
28. the conclusion of the probate case, as appellants did.” *Id.*

1. heirs of Jesus Faisao and Dolores Kaipat). Obviously, there was no one representing Carmen or her
2. children.

3. Mr. Hill conducted the direct examination of Juliana Romolar. Mr. Hill inquired first as to
4. whether Rita had adopted Auria Kaipat. Transcript at p. 287, ll. 22-23. He then asked whether Rita
5. had adopted Joaquina, Delores, and Rosalia. Transcript at p. 288 ll. 22-25. Mr. Sorensen's and Mr.
6. Manglona's cross-examinations focused only on whether Rita had adopted Auria Kaipat.

7. Mr. Atalig cross-examined Juliana to determine the natural children of Juliana's mother,
8. Nieves Kaipat. Mr. Atalig had to rephrase his questions to Juliana several times in order to
9. determine all of the children. Apparently there was some confusion resulting from Juliana's failure
10. to state the children who had already died and/or were not before the court. Transcript at p. 295.

11. The Court then conducted its own examination, during which it directly asked Juliana, "Who
12. are the adopted children of Rita?" p. 304, l. 23. Juliana answered, "Ramisol, Jesus, Delores, and
13. Auria." Unlike Mr. Atalig, the Court did not attempt to determine whether Juliana was referring to
14. *all* the adopted children of Rita Kaipat, or simply the living children or those present.

15. Again, this Court takes judicial notice of Carolinian cultural morays. *See* 8 CMC §
16. 2104(b)(4)(one of the purposes of the CMNI probate law is to preserve the historic traditions and
17. culture of the citizens of Northern Marianas descent). Part of this culture is the designation of the
18. eldest female member of the lineage as the family's spokesperson. As the eldest daughter, it was
19. Maria Indalecio's position to look after her mother Carmen's estate. It is understandable that
20. another family member would be reluctant to speak for Maria in such a situation. Maria and her
21. siblings should not be punished for Juliana's failure to speak up on their behalf.

22. b. There is sufficient evidence to prove adoption via mwei mwei.

23.
24.
25.
26.
27.
28.

1. The Carolinian customary adoption, known as mwei mwei, does not involve much event,
2. nor does it require a written record. The adopting parent requests the child of the natural parents,
3. and if the request is granted, the adopting parent takes the child then or at a later time. *See In re*
4. *Estate of Rofag*, 2 N.M.I. 23 n. 3 (1991). Because the custom does not necessarily include a
5. declaration of adoption, the adopting parent might not inform other relatives of the adoption. *In re*
6. *Estate of Juan Latiran*, No. 88-496 (Super. Ct. Aug. 10, 1990) at 2.

7. Mwei Mwei may be proved by circumstantial evidence. *Rofag, supra*, at 11-13. A court will
8. consider factors such as where the claimant was raised, how the claimant addressed the adoptive
9. parent; and evaluate the totality of circumstances to determine whether the adoption occurred.

10. In the instant case, there is no evidence to refute the claim that Rita raised Carmen from the
11. time she was a small child. They spoke Carolinian to each other. Carmen considered Rita to be her
12. mother and maintained a mother-daughter relationship with Rita throughout Rita's life.

13. Opposing claimants raised the concern that Maria's sources of information were all hearsay,
14. as Maria was not around to observe Carmen's childhood for herself. Both Com. R. Evid. 803(13)
15. and (19) allow hearsay testimony to be introduced if personal or family history is involved. *See*
16. *Guerrero v. Guerrero*, 2 N.M.I. 61 (1991) at 68-69. Com. R. Evid. 803(13) additionally requires the
17. existence of certain specified family records. Com. R. Evid. 803(19) requires the additional factor
18. of a reputation 1) among family members, 2) among associates, or 3) in the community. While
19. Maria learned of her mother's adoption only through Carmen, two additional family members
20. (Juliana and Roman Larope) presented undisputed testimony regarding Carmen's adoption. The
21. evidence is thus admissible under Com. R. Evid. 803(19).

22. Section 2918(a) of Title 8 reads: "[F]or the purposes of intestate succession . . . an adopted
23. person (including an adoption pursuant to custom) is the child of the adopting parent." Section 2908
24.
25.
26.
27.
28.

1. discusses adoption specifically within the context of the Carolinian custom: “Unless the family
2. consents or agrees otherwise, a person adopted by law or custom into a Carolinian family shall be
3. treated under this law as if he were born into the Carolinian family.” Thus, Maria and her siblings
4. are entitled to their proportionate share in the Estate along with all the other heirs.

5. The Court will order the Administrator to include Maria and her siblings among the heirs to
6. the Estate.

7. **IV. COUNSEL ATALIG’S POTENTIAL CONFLICT OF INTEREST**

8. At the hearing, various counsel noted that Counsel Atalig’s multiple representation of
9. several claimants may pose a conflict of interest. In its December 13, 2005 hearing, the Court
10. cautioned Mr. Atalig that he should be prepared to account for this apparent conflict of interest with
11. a showing that he has met the requisites of Rule 1.7(b). To date, Mr. Atalig has filed statements
12. signed by Juliana and Maria, stating their consent to Mr. Atalig’s representation of the surveyors.
13. Counsel will also need to submit statements from the surveyors, and from Juliana and Maria to the
14. effect that they waive any conflict of interest between their own heirship claims.
15.

16. The Court will order Mr. Atalig to submit consent forms from each of the clients he is
17. representing, stating that they are aware of the multiple representation, understand the potential for
18. conflict, and waive any objections to the multiple representation.
19.

20. **V. CONCLUSION**

21. The motion for an accounting of Estate funds is granted. The Court hereby orders
22. Administrator Luis Pelisamen to provide an updated accounting within 30 days.

23. The submission of the surveyors’ claims to the Estate is accepted. The Court hereby orders
24. Administrator Luis Pelisamen to submit a response approving or denying the claims of Juan I.
25. Castro and Alfred K. Pangelinan within 10 days.
26.
27.
28.

1. The heirship petition of Maria Indalecio is granted. The Court hereby orders Administrator
2. Luis Pelisamen to include the following heirs to the Estate in the distribution: Maria Indalecio,
3. Vicente Muna, Bonifacio Muna, Remedio Muna, Bernadita Sablan, Susana Muna, Ignacia Sablan,
4. Jacinta Lacy, Alfonsina Arju, Juan Muna, and Juanita Charfurus.

5. Opposing counsels' concerns regarding Mr. Atalig's potential conflict of interest are noted.
6. The Court hereby orders Mr. Atalig to submit (within 10 days) consent forms from each of the
7. clients he is representing (including Maria Indalecio, Juliana Romolor, Juan I. Castro, and Alfred K.
8. Pangelinan), stating that they are aware of the multiple representation, understand the potential for
9. conflict, and waive any objections to the multiple representation.
10.

11.

12. SO ORDERED this 24th day of January 2006.

13.

14.

/s/ _____
Juan T. Lizama
Associate Judge, Superior Court

15.

16.

17.

18.

19.

20.

21.

22.

23.

24.

25.

26.

27.

28.