

**DIEKO PLUS, Plaintiff**

**v.**

**PRETRIK, Defendant**

**Civil Action No. 6**

**District Court for Ponape District**

**May 31, 1951**

Action to determine ownership of land in Net Municipality. The District Court for Ponape District, Judge E. P. Furber, held that where land owner agreed that if he were permitted to retain custody of plaintiff's mother's children he would permit plaintiff to inherit his land, his having received benefits of agreement prevented his later attempt to transfer land to defeat prior agreement.

**1. Ponape Land Law—German Land Title—Approval of Transfer**

Under German land title, gift of land on Ponape Island to one not entitled to inherit under German title required permission of *Nanmarki* and Governor.

**2. Ponape Land Law—German Land Title—Approval of Transfer**

Civil Administrator of Ponape or Governor of Eastern Carolines may exercise power of approval granted to Governor under German title document if authorized by High Commissioner.

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

Where transferee has not received approval of *Nanmarki* and Governor as required under German land title, there is vacancy in legal title of land on Ponape Island.

**4. Ponape Land Law—German Land Title—Vacancy in Title**

Where title to land on Ponape Island is vacant, until government designates owner, right of possession and use of land is controlled by worth of different claims to it, which depend upon agreements and conduct of those who formerly owned land.

**5. Real Property—Sales**

Where land owner enters into agreement regarding disposal of land and receives benefits of agreement, he cannot act to defeat agreement by transferring land without consent of other party to agreement.

FURBER, *District Judge*

FINDINGS OF FACT

1. Eukenio, after the death of the plaintiff's mother about 1936, entered into an oral family agreement with the plaintiff's mother's relatives to the effect that if he were permitted to retain custody of the plaintiff's mother's children, he would permit the plaintiff as the eldest son to inherit Eukenio's land just as if Dieko were his true son. Pursuant to this agreement the plaintiff grew up in Eukenio's household and assisted in taking care of him loyally until the plaintiff was conscripted by the Japanese authorities about 1944. This agreement was not made with the permission of either the *Nanmarki* or the Japanese Governor or anyone on behalf of either of these.

2. Eukenio did not give any valid directions, written or oral, that anyone other than the plaintiff should own the land in question after Eukenio's death.

3. The gift to the defendant which Eukenio purported to make during his lifetime and which the plaintiff has agreed to recognize, included all of the half of Panode No. 33 abutting on land formerly of Palentin. That is, Eukenio gave Pretrik all of that half from the water to the upland boundary of the lot.

4. At the time of his death Eukenio left the plaintiff as his nearest living male relative.

CONCLUSIONS OF LAW

[1-3] 1. The plaintiff is not within the list of relatives who are entitled to inherit from Eukenio as of right under the standard form of title document issued by the German Government. Any gift to him to be valid would, in accordance with the terms of the standard form of German title document, have to be with permission of or determined by the *Nanmarki* and the Governor. Similarly

the gift by Eukenio to the defendant would require this same permission or determination. No change in this rule appears to have been made which bears upon this case. There may be some uncertainty as to which official may now exercise the power reserved to the Governor in the German title documents, but it is believed clear that the Civil Administrator, Ponape or the Governor of the Eastern Carolines, may exercise this power, if authorized to do so by the High Commissioner. Therefore, there is a vacancy in the legal title.

[4, 5] 2. Unless and until, however, the government interests itself in designating the owner for this land, the right of possession and use of the land is controlled by the worth of the different claims to it. This in turn depends, in a case like the present one, in large part upon the agreements and conduct of those who formerly owned it, or now claim it, or those through whom they claim. Eukenio entered into a family arrangement that his wife's children should continue to live as part of his family and that, in return, the plaintiff as oldest son should inherit Eukenio's land as if he were his true son. Eukenio received the benefits of that agreement. He was thereby prevented from himself taking any action which would have legal effect, to defeat this agreement, without either obtaining the consent of the plaintiff or complying with the requirements of the law for transfer of the legal title. Eukenio's later attempt to will the land to Pretrik without obtaining the consent of the plaintiff or the permission of the *Nanmarki* and the Governor was, therefore, without legal effect.

#### RECOMMENDATION

It is recommended that the plaintiff apply to the *Nanmarki* and the Civil Administrator for legal title to the part of Panode No. 33 to which this judgment deter-

mines he has the right of possession and use, and that the defendant similarly apply for legal title to the rest of Panode No. 33.

#### JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all other persons claiming under them, the plaintiff Dieko Plus, a resident of the Tolonier Section of Net, is entitled to the possession and use of the part of the land known as Panode No. 33 in the Tolonier Section of Net, on the left side of the dividing line described below, as one stands on the shore facing the lot, and the defendant Pretrik, also a resident of the Tolonier Section, is entitled to the possession and use of the rest of the land in question in this action, comprising all of Panode No. 33 on the other side of the dividing line upland from that part which the plaintiff agreed was Pretrik's. The dividing line runs from a point on the shore half way across Panode No. 33, upland along the center line of Panode No. 33 through a marker consisting of a pile of stones, to the upland boundary of the lot.

2. The plaintiff Dieko Plus shall, however, allow the defendant Pretrik a reasonable time to remove the buildings erected by him and any other property he may have upon the part of Panode No. 33 on the left side of the dividing line as described above.

3. This judgment shall not affect any rights of way which may exist over the land nor any rights which the District Property Custodian or Area Property Custodian may have in the upland part of Panode No. 33 which was covered by a 19 year lease made by Eukenio to a Japanese.

4. No costs are allowed or taxed in this action.