

concerning which no decision is made in this case) with the benefits 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 in Ponape in 1912, as heretofore or hereafter modified by law .

2. Plaintiff has no right, title or interest in said land outside of the right as a relative of the Defendant, Pisenda, to live with him upon the land under the conditions set forth in said title document. The Defendant, Pisenda, is, however, ordered to allow the Plaintiff reasonable opportunity to remove the building which he has erected upon the land and any personal property he may have there.

3. This judgment shall not affect any rights-of-way which may exist over the land.

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

LUKAS LADORE, Plaintiff

v.

KUAN LADORE and ALBERT W., Defendants

Civil Action No. 18

Trial Division of the High Court

Ponape District

December 9, 1952

Action to determine ownership to land in Uh Municipality, in which beneficiary under alleged will claims right to ownership of land in opposition to heir and transferee of heir. The Trial Division of the High Court, Chief Justice E. P. Furber, held that testamentary disposition of land held under German title without required consents was invalid, and that land passed to rightful heir who had authority to transfer to third party with consent of *Nanmarki* and Governor. Court also held that even though consent of Head of Ponape Branch Office (Japanese official) was not endorsed on document, this was not defect of which plaintiff could take advantage.

1. Ponape Land Law—German Land Title

Land on Ponape Island held under standard form of title issued by German Government is controlled by law stated in document, except for

specific changes promulgated during German, Japanese or American Administrations.

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

Japanese official whose title was "Head of Ponape Branch Office" was lawful successor to Governor and was authorized to exercise powers of Governor under standard form of German title document for land on Ponape Island.

3. Ponape Land Law—German Land Title—Wills

No will was effective to transfer land on Ponape Island held under German title without consent of *Nanmarki* and Governor.

4. Ponape Land Law—German Land Title—Succession

Under German title document, oldest living son inherited land on Ponape Island on death of father and in absence of any disposition consented to by *Nanmarki* and Governor.

5. Ponape Land Law—German Land Title—Succession—Ponape Custom—Adoption

Natural child who has been adopted into another family is not prevented from inheriting from natural father land on Ponape Island held under German title.

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

Where sale of land on Ponape Island is made by owner with required consents, it makes no difference whether sale was consented to or discussed by family.

7. Former Administrations—Official Acts

In absence of clear evidence of fraud or gross mistake, court will not upset decision of authorities formerly in office.

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

Failure of transferee to have transfer of land on Ponape Island endorsed on document by Head of Ponape Branch Office is not defect of which private individual outside government and not having superior rights to land can take advantage.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Any instructions which Meninlang gave to the effect that his fifth son, the plaintiff Lukas, should take the land in question after Meninlang's death were not consented to by the *Nanmarki* or by the Governor or by anyone authorized to give that consent for either of them.

2. The sale of the land in question by the defendant Kuan Ladore, to the defendant, Albert W., was consented to by the *Nanmarki* and by the Police Master at U on behalf of the Head of the Ponape Branch Office, who was the one then exercising the powers of Governor within the meaning of the standard form of German title document referred to below. The granting of this consent by the Police Master to a sale to raise funds to pay debts was in accordance with the established policy of the Japanese administration at that time.

CONCLUSIONS OF LAW

[1, 2] 1. Since the land in question was held under the standard form of title document issued by the German Government in accordance with its basic reform of land laws in 1912, its inheritance is controlled by the provisions stated in this form of title document, except for any changes which may have been made by the German authorities during their regime, the Japanese authorities during their regime, or the American authorities since their occupation. No changes appear to have been made by any of these authorities which bear upon this case, other than the change in title of the Governor. The Court takes judicial notice that the Japanese official whose title is regularly translated as "Head of the Ponape Branch Office" or "Ponape Branch Office Head" was the lawful successor of the German Official whose title is regularly translated as "Governor", and who was authorized to exercise the powers of the Governor under the standard form of German title document referred to above.

[3] 2. As held by this court in the case of *Augustin Ladore*, against *Pisenda Salpatierre and another*, 1 T.T.R. 18, no will of such land was effective to transfer the land without the consent of the *Nanmarki* and the Governor.

[4, 5] 3. In accordance with the terms of the standard form of German title document the defendant, Kuan Ladore, as Meninlang's oldest living son, inherited the land on the death of his father Meninlang in the absence of any disposition consented to by the *Nanmarki* and the Governor. The standard form of German title document does not make any mention of excluding from inheritance a natural child who has been adopted into some other family. The court holds that such adoption does not prevent a child from inheriting land held under one of these title documents.

[6-8] 4. Since the sale of the land in question by the defendant Kuan Ladore, to the defendant, Albert W., was made by the owner with the consent required, it makes no difference now whether this sale was consented to or discussed with other members of the family. Although the attitude of other members of the family might have been proper things for the *Nanmarki* and the representative of the Governor to consider in granting this consent, the court, in the absence of clear evidence of fraud or gross mistake, will not undertake to upset the decision of the authorities then in office. The failure of the defendant Albert W., to have the transfer to him and the inheritance by the defendant, Kuan Ladore, endorsed upon the title document or otherwise formally acknowledged in writing by the Head of the Ponape Branch Office is not a defect which a private individual outside of the government and not having any superior right to the land can take advantage of. In this connection attention is invited to the conclusions of law in the case of *Dieko Plus* against *Pretrik*, 1 T.T.R. 7.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties and all persons claiming

under them the land known as Parenta in the Awak Section of U consisting of that part of Malenpei No. 80 to the left, as one stands on Malenpei No. 80 facing the water, of a division line marked by seven boundary markers running from the shoreline to the upland boundary of the lot and comprising about 1.8 *chobu*, is the property of the defendant, Albert W., with the benefits 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 in 1912 as heretofore or hereafter modified by law.

2. This judgment shall not affect any rights-of-way which may exist over the land in question.

3. No costs are allowed or taxed in this matter.

4. This judgment determines the rights of the parties as of January 25, 1951, the date of the close of the trial, and shall take effect as of that date, since the Court is informed the defendant, Albert W., has since died.