

BALSISSA G. and Others, Plaintiffs
v.
ALIKSRU TULENOA and Another, Defendants

Civil Action No. 72

Trial Division of the High Court

Ponape District

December 11, 1953

Action to determine ownership of land on Kusaie Island, in which plaintiffs, who were granted use rights in land to plant and harvest crops on condition that they remain members of household, seek right to use land and to take from land what they have planted. The Trial Division of the High Court, Chief Justice E. P. Furber, held that under Kusaie customary law, plaintiffs are entitled to use land and to take produce from it if they return to household before ten years have expired since their departure.

1. Ponape Land Law—Kusaie—Use Rights

Under Kusaie custom, one's right to use land may be subject to his living with owner.

2. Ponape Land Law—Kusaie—Use Rights

Under Kusaie custom, one who has right to use land does not lose it completely when he first ceases to live with owner, and although he cannot exercise right while away, he may exercise it if he returns within a few years.

3. Ponape Land Law—Kusaie—Use Rights

Under Kusaie custom, where one who has use right in land fails to live in household of title holder for as long as ten years, he loses all rights to land and to anything growing there.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The defendant Tulenoa, who it is agreed then owned the land, gave Glarence permission to plant and use the land in question. They agreed that anything which Glarence planted there which was still there when he died, would become the property of the defendant Tulenoa, but that any of the plaintiffs (one of whom is Glarence's widow and the others are children of his)

might use the land and take produce from it, if he or she lived with the defendant Tulenoa or his son, the defendant Aliksru, as a member of his household.

CONCLUSIONS OF LAW

[1] 1. The holding together of a household and the maintaining of the relations of respect and cooperation expected within a household, are matters of concern to many Kusaiens—especially some of the older heads of households. On Kusaie it is not unusual, or considered at all unreasonable, to make a person's right to use a certain piece of land dependent upon his living with the owner or a member of the owner's family. Anyone having such a right to use land on Kusaie must comply with the condition in order to be entitled to exercise the right.

[2, 3] 2. Under Kusaie customary law, however, a person who has such a right does not lose it completely when he first ceases or fails to live with the person specified. He cannot exercise the right while he is living away from the person specified. If he returns to live with that person within a few years, he may still exercise the right. If, however, he fails to live in the household specified for as much as ten (10) years or more at any one time, he loses all right to the land and to anything growing there.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them:—

a. Each of the plaintiffs, Balsissa Glarence who lives in Utwa, Kusaie, Nena Glarence who lives in Tafonsak, Kusaie, Sepe Taetis, Srue Kelafwa, Lilian Aliksa and Notwe, all of whom live on Lele Island, Kusaie, has a right to use the land described below and to take produce

from it whenever he or she lives with the defendant Aliksru or the defendant Tulenoa as a member of his household, provided, as to each plaintiff, that he or she has not failed to live with one or the other of the defendants for an unreasonably long time. None of the plaintiffs lives with either of the defendants at the present time and any plaintiff who fails to live with one or other of the defendants for a period of ten (10) years at any one time will thereby lose all right to the land and to anything growing there.

b. Subject to the above rights of the plaintiffs, the land described below and all of the things growing on it, belong completely to the defendant Tulenoa.

2. The land covered by this judgment is located in Tafonsak, Kusaie, and is a level piece in the form of an irregular circle, extending on both sides of the River Inlafa near where it branches off from the River Mutunte, and bounded on the southeast by land now or formerly of Kun Jacson and on all other sides by land of the defendant Tulenoa.

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

4. No costs are assessed against any party.