

**IDINGEL (sometimes known as RESINA), Plaintiff**

**v.**

**MADA (also spelled MATA), Defendant**

**Civil Action No. 8**

**Trial Division of the High Court**

**Ponape District**

**July 21, 1954**

Action to determine ownership of land in Uh Municipality. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where son of deceased supervisor of Japanese leased land claims right of possession of land, but there was no right of inheritance according to lease, legal title to land is vacant; but until government acts, son of deceased has greater rights to possession than widow who remarried.

**1. Ponape Land Law—Japanese Supervised Lease—Generally**

Supervised land was common form of leasing land on Ponape Island under Japanese Administration.

**2. Ponape Land Law—Japanese Supervised Lease—Cancellation**

Japanese Administration on Ponape Island reserved right to cancel leases and appoint supervisor at any time and without compensation.

**3. Ponape Land Law—Japanese Supervised Lease—Generally**

Supervised lease of land on Ponape Island was agreement under which supervisors continuing to hold possession of land depended primarily on good will and general policy of government rather than upon legal rights.

**4. Ponape Land Law—Japanese Supervised Lease—Succession**

Supervised lease of land on Ponape Island does not grant supervisor any interest in land which can be inherited as matter of right.

**5. Ponape Land Law—Japanese Supervised Lease—Succession**

Question of succession on death of supervisor of Japanese lease of land on Ponape Island is left to discretion of government.

**6. Former Administrations—Official Acts**

It is not function of courts of present administration to upset official act of former administration taken many years before it gave up authority over land in question.

**7. Public Lands—Use Rights**

Oral revocable permission to use land granted by United States authorities creates tenancy at will which is automatically terminated by death of person to whom permission to use land is granted.

**8. Public Lands—Determination of Ownership**

Where there is no legal title to land, question of disposition of land rests in discretion of government, which may consider questions of policy and moral rights which it would not be proper for court to pass upon.

**9. Ponape Custom—Family Obligations**

Under Ponape custom, widow who remarries loses all claims upon her deceased husband's family.

**10. Ponape Land Law—Japanese Supervised Lease—Succession**

Until action by government is taken as to vacant title to land on Ponape Island, son and adopted son of deceased supervisor of Japanese land lease have greater right to possession than widow who has remarried.

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FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff Idingel's father Samuel, who had been given informal permission to use the land in question by the Japanese Government about 1916, was appointed supervisor of it by a written document issued by the government under date of 29 January 1923, a copy of which is in the book entitled in Japanese "File of Land Assigned to Supervisors returned to the Government" among the records collected by the Ponape District Land Office. Any rights Samuel had in the land earlier were replaced by this document.

2. Samuel used the land for the growing of crops from about 1916 until about 1925, when Nakamura took possession from him, and the document referred to in the first finding of fact bears a notation that over 100 trees were planted. Nakamura offered him some money and materials and to help him get other land, but Samuel refused these saying he did not want to sell.

3. The Japanese Government, by directive dated 8 December 1930, ordered the land returned to the government on the ground that it had been leased to Nakamura Kakuzo on 31 March 1922.

4. There is no evidence that Mada ever obtained permission from the United States authorities to occupy the land, the application on file in the District Administration Office for permission to use the land being in the name of Noak only.

5. The defendant Mada has remarried since the death of her husband Noak.

#### CONCLUSIONS OF LAW

[1] 1. This action involves the question of the inheritance of rights in a piece of land on Ponape Island which was once what is often referred to locally as "supervised land", and is alleged to have been later covered by an oral revocable permit from the United States authorities on Ponape. "Supervised land" in this instance refers to land held under one of the documents issued by the Japanese Government in the form, a translation of which appears on pages 4, 5 and 6 of one of the annexes to "Anthropologist's Report CAU Ponape, E. Caroline Is., 5 June 1951", by Mr. J. L. Fisher. The annex containing this translation is headed "Translations: Japanese Land Documents with regard to Ponape Land. Translator: Kan Akatani, January 1951." This was a common method of making government land available to Ponapeans in the early part of the Japanese administration. See page 19 of Mr. Fisher's report referred to above.

2. The plaintiff Idingel is the true daughter of Samuel who was appointed supervisor of the land in question by the type of document referred to above. The defendant Mada was the wife of Noak who was the younger adopted son of Samuel. Most of the essential facts were agreed upon by the parties. About 1925 Nakamura, a Japanese, got the Policemaster of U and the Governor of Ponape to help take the land away from Samuel. Nothing was given or paid to Samuel for the land by either Nakamura

or the Japanese Government. Nakamura occupied the land from that time until he went back to Japan when Yosimaru, another Japanese, succeeded him on the land and remained there until the Americans came. Samuel died February 9, 1926. His younger adopted son Noak married the defendant Mada about 1946. They settled on the land and Noak applied to the American authorities for a revocable permit to use it. Mada claims the American Government gave her and Noak permission to use the land. It is agreed he and Mada lived there until about the time Noak died. He died May 14, 1950, without ever having had any children, either real or adopted.

[2-6] 3. The type of document under which Samuel was appointed supervisor contains provisions of which the following are translations :

“Article 11. The supervisor or the bereaved family of the supervisor may request a change of name of the supervisor.

In the request for change of name of supervisor, the requestee shall submit this paper and set forth the reasons for the change and the relationship between the former and latter supervisor.

Article 12. At some time in the future, the area of supervision is leased or disposed of in some other manner, the supervisor, in the absence of special reasons, may request he be given priority over persons other than the supervisor.

Article 14. In the event the Gov't deems it necessary, or the supervisor violates any of the articles of this directive, the appointment as supervisor may be cancelled even during the term set forth to the foregoing article.

Article 15. The Gov't will not assume any responsibility for damages which may result from Articles 8, 13 and 14, and damages which may be sustained by the supervisor because he was appointed supervisor.

The supervisor shall himself assume responsibility if interests of third parties are encroached upon as a result of his actions.

However, in the above event the Gov't may arbitrate between the interested parties.

Reports and requests which are stipulated in this directive shall be submitted via the Village Chief or his Assistants."

In view particularly of the above provisions, but considering the whole document, the court holds that the document dated 29 January 1923 appointing Samuel as supervisor, reserved to the Japanese Government the right to cancel the appointment and lease or otherwise dispose of the land in some other manner at any time it deemed necessary, without the payment of any damages or other compensation to the supervisor, and that while under Article 12 the supervisor could request that he be given priority in the matter of lease or other disposition of the land, the granting of this priority was a matter left to the discretion of the government which could deny the request if it deemed best. In other words, it was a type of agreement under which the supervisor's continuing to hold possession of the land depended primarily on the good will and general policy of the government rather than upon legal rights. Assuming that the way this land was taken away from Samuel was contrary to the general Japanese policy, as the plaintiff Idingel implies, it was still within the legal power of the government to do so. The court further holds that the type of document in question did not give Samuel any interest in the land which could be inherited by anyone as a matter of right. The question of who should succeed him, even if he were the supervisor at the time of his death, is left, under Article 11, to the discretion of the government. Furthermore, it is clear that however irregular or informal the taking of the land may have been originally, it was confirmed by official act of the Japanese Government by its directive dated 8 December 1930. Under the principles explained in the conclusions of law in the case of *Wasisang v. Trust Territory of the Pacific Islands*, 1 T.T.R. 14, it is not a proper function for the courts of the present ad-

ministration to try to upset an official act of a former administration taken many years before it gave up authority over the area in question. The court therefore holds that the plaintiff Idingel has no legal rights in the land in question.

[7] 4. For the purposes of this action the court assumes that on Noak's application, he was granted by the United States authorities oral revocable permission to use the land, as requested. The application on file is in Noak's name only, and in the absence of any other evidence on the matter, it cannot be assumed that the permission granted gave Mada any rights other than those she might get through Noak. Such a revocable permit would, however, only give him a tenancy at will. Since this form of permission was one introduced by the United States authorities, it is believed that it must be construed in accordance with the principles of law usual in the United States in the absence of anything to indicate that it should be controlled by other considerations. Under generally accepted principles of the common law, any such tenancy at will would be automatically terminated by the death of the person to whom permission to use the land had been granted. See paragraph 67 of the article on "Landlord and Tenant" in Volume 32 of American Jurisprudence, at page 83. The court accordingly holds that the defendant Mada has no legal rights in the land in question.

[8-10] 5. The parties are therefore in a position similar to that of those in the case of *Mikelina v. Simon*, 1 T.T.R. 153, in that the question of disposition of the land is one resting in the discretion of the government which may consider questions of policy and moral rights which it would not be proper for this court to try to pass upon in this action. It is accordingly suggested that the parties take up with the Ponape District Land Office the question of per-

mission for use of this land. So far as the moral rights of the parties are concerned, it should be noted that under Ponapean custom the defendant Mada has lost by her re-marriage, all claims upon her deceased husband Noak's family; that the plaintiff Idingel is admittedly using the land in cooperation with Samuel's older adopted son Olpet; and that under Ponapean custom Idingel and Olpet are considered much closer to Samuel than Mada is. Unless and until some action is taken by the Government of the Trust Territory as to the disposition of the land, the plaintiff Idingel may, as between the parties, continue in possession.

#### JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, neither the plaintiff Idingel nor the defendant Mada has any right of ownership in the land known as Rituos in the Palap Section (sometimes considered part of the Nanu Section) of the Municipality of U, beyond the right of the plaintiff Idingel to continue in possession pending action by the Government of the Trust Territory of the Pacific Islands as to the disposition of the land or the right to possession of it.
2. This judgment shall not affect any rights of way there may be over the land in question.
3. No costs are assessed against either party.