

ELINA and MERI, Plaintiffs
v.
DANIS and MAKIO, Defendants
Civil Action No. 32
Trial Division of the High Court
Ponape District
August 4, 1954

Action to determine ownership of land in Sokehs Municipality, in which each party claims right to succeed as lessee under lease issued by Japanese Government. The Trial Division of the High Court, Chief Justice E. P. Furber, held that since neither party had received permission for transfer of lease by Government of Trust Territory, which government is successor to Japanese Administration as lessor, neither party was rightful lessee. The Court further held that until Land Title Office determined ownership of land, oldest son of former lessee could exercise supervision over land and should permit other parties to take food from it.

1. Ponape Land Law—Japanese Lease—Generally

Japanese lease of land on Ponape Island involved personal reliance upon lessee with broad powers of supervision reserved to government.

2. Ponape Land Law—Japanese Lease—Succession

Japanese lease of land on Ponape Island could not be inherited as matter of right, and on death of lease holder, permission of Director of South Seas Bureau was necessary for transfer.

3. Public Lands—Succeeding Sovereign

Government of Trust Territory has succeeded to rights of Japanese Administration under Japanese leases of land on Ponape Island.

4. Ponape Land Law—Japanese Lease—Transfer

Where neither party has obtained government approval for transfer of Japanese lease of land on Ponape Island, neither has right to balance of leasehold, and disposition of land is in discretion of government.

5. Ponape Land Law—Japanese Lease—Transfer

Until such time as District Land Office grants permission to transfer lease of land on Ponape Island issued by Japanese Administration, court will weigh claims and interests of all parties in determining right to immediate possession.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Pidel dictated his alleged will of March 26, 1947, in the presence of Uko who was the section chief of Tomwara Section at that time. Two copies were written down by Pidel's wife Elina, who signed his name to both copies in his presence. A certificate was then added to both copies and signed by Uko, and one copy was sent to Antonio who was then responsible for certain land matters in the Jokaj Office. The other copy was kept by Uko. The plaintiff Meri and several members of Uko's family were also present at the making of this alleged will, but did not sign or stamp it. In it Pidel directed that his two children Meri and Tura should take his property—one a part and the other a part.

2. Pidel dictated his alleged will of May 10, 1948, to Iakopus, the Secretary of Jokaj, in the presence of Antonio, Felix, Josep and Amon. It was written down by Iakopus, signed by Pidel with a cross in the presence of the above named, then signed by each of them. It was later signed by *Nanmarki* Kalio at the Jokaj Office. In it Pidel directed that his boys "Tanis" and Makio should get his land after he died, stated that this piece of land was Sakaralap No. 1,000, in the Tomwara Section of Jokaj, and asked the Jokaj government to prove "this promise" later.

(Note:—At the pre-trial conference it was agreed that Elina is Pidel's widow, Meri is his adopted daughter, Tura his younger son, Danis his oldest son, and Makio his sister's son. Tura was originally a plaintiff, but was allowed to withdraw from the action at his own request during the trial.)

CONCLUSIONS OF LAW

1. The land involved in this action is in the Municipality of Jokaj on Ponape and was held by Pidel under a

lease from the Japanese Government dated 1 September 1942, and running from the date of receipt of the document to 31 March 1962 upon the form discussed in the case of *Mikelina v. Simon*, 1 T.T.R. 153. This form of lease contains an express provision against subleasing the leased property, or transferring the rights to it, or using it as security, without the permission of the Director of the South Seas Bureau, as well as provisions for revoking the lease under certain circumstances.

[1-4] 2. This court has held, in the case of *Mikelina v. Simon* referred to above, that this type of lease under the circumstances under which it was used by the Japanese Government on Ponape, involved a personal reliance upon the lessee, with broad powers of supervision reserved to the Government, and that the lease could not be inherited as of right, but that on the death of the holder permission of the Director of the South Seas Bureau, in accordance with Article X, was necessary for its transfer. It is even clearer that a transfer by will would be contrary to the terms of the lease unless made with permission there required. The Government of the Trust Territory of the Pacific Islands has succeeded to the rights of the Japanese Administration under the lease, but there has been no showing that any party has obtained any governmental approval for transfer of the lease, or has even applied for it except for the bringing of this action. The court therefore holds that neither party has any right to the balance of the leasehold as a matter of law, but that the question of the disposition of the land in question is now resting in the discretion of the Government of the Trust Territory, and that in exercising that discretion the Government 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.

[5] 3. It is suggested that the parties take up with the Ponape District Land Office the question of permission for the transfer of this lease, or other arrangements for the use of this land. Weighing the claims and interests of all the parties and the fact that the defendant Danis is Pidel's oldest son and that Pidel's only other son Tura has withdrawn from this action, the court holds that unless and until some action is taken by the Government of the Trust Territory as to the disposition of the land, the defendants Danis and Makio may, as between the parties, exercise supervision over the land permitting the plaintiffs Elina and Meri to take food from it in accordance with the right which the defendants acknowledged at the pre-trial conference the plaintiffs have to do this.

JUDGMENT

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

1. As between the parties and all persons claiming under them, neither of the plaintiffs Elina and Meri, nor either of the defendants Danis and Makio, has any right of ownership in the land known as Lots 452 and 453 in the Tomwara Section of Jokaj, or in the lease of it from the Japanese Government to Pidel, but pending action by the Government of the Trust Territory of the Pacific Islands as to the disposition of or the right to possession of this land, the defendants Danis and Makio may exercise control over it permitting the plaintiffs Elina and Meri to take food from 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 any party.