

BELIMINA and KLAUKUS, Plaintiffs

v.

PELIMO, Defendant

Civil Action No. 15

Trial Division of the High Court

Ponape District

August 11, 1954

Action to determine ownership of land in Metalanim Municipality, in which petitioners claim ownership of land held under German title document which was allegedly endorsed to them in 1933. The Trial Division of the High Court, Chief Justice E. P. Furber, held that presumption of ownership arising from endorsement was overcome by determination of Japanese land survey in 1941 which named defendant as owner, and by fact defendant possessed land for seventeen years under Japanese Administration and until present time.

1. Ponape Land Law—German Land Title—Women's Rights

Under German title document there is no provision for inheritance of land on Ponape Island by daughters as matter of right.

2. Ponape Land Law—Japanese Survey

Although presumption that official acts of former administration were proper would ordinarily uphold endorsement of land title to land on Ponape Island, contrary determination of Japanese survey outweighs presumption arising from endorsement.

3. Ponape Land Law—Japanese Survey

Official Japanese land survey on Ponape Island which began about 1941 was intended to form basis for issuance of new title documents, and there is strong presumption that determinations made in survey were correct unless contrary is clearly shown.

4. Ponape Land Law—German Land Title—Presumption of Ownership

Where individual remained in possession of land on Ponape Island under claim of ownership as heir under German land title for about seventeen years, up to end of Japanese Administration, and has continued in possession since, it would not be proper for court now to attempt to upset his possession.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. After the death of Saliter (otherwise known as Shariten), Belimina, with the assistance of the *Nanmarki* (Chief) of Metalanim, tried to have the Ponape Branch Office endorse the title document for this land to her. That office told her that they could not transfer the document to the name of a woman, but that if she would adopt a son and keep him for at least a year they would endorse the title document to him. She then adopted Klaukus, kept him for over a year, and the endorsement dated 12 December 8 Showa (1933) was then placed on the title document certifying in Japanese that on the death of the former possessor of the land covered by the document, "Klaukus, the adopted child of Belimina, head of the household a woman", had inherited it. Pelimo never consented to this endorsement or the transfer which it purports to show.

2. The official Japanese Government surveyors, in connection with the survey of private land on Ponape which began about 1941, approved a division of the lot of which the land in question was a part, and determined that the part in question was owned by the defendant Pelimo, but that the plaintiff Belimina should be allowed to work it under Pelimo. Both Belimina and Pelimo were present or represented at the hearing or hearings which lead up to this determination, and Pelimo, at least agreed to it.

3. The defendant Pelimo, or those claiming under him, have been in possession under claim of ownership continuously since 1928 or earlier.

CONCLUSIONS OF LAW

1. This action involves the ownership of land on Ponape which was held under the standard form of title document

issued by the German Government there. It was agreed that the title document was issued in the name of Eseron; that Eseron adopted Saliter (otherwise known as Shariten); that the title document was endorsed to show that on the death of Eseron, Shariten inherited it as Eseron's adopted heir; and that Shariten died in the 1920's without ever having had any child, either true or adopted, but leaving many true brothers, of which Palimo is the oldest. Belimina claims that she is the true daughter of the woman who owned either the land, or at least the right to use it, before the German title documents were issued; that the title document was issued in the name of Belimina's sister's husband Eseron because there were no sons in the family and the German Government, under its established policy, would not issue title documents in the name of a woman; and that Eseron adopted Belimina. She claims, therefore, that she should own the land as the true surviving daughter of her mother and the surviving adopted child of Eseron. Klaukus does not claim any beneficial interest in the land and acknowledges that he holds for Belimina any rights he may have in it.

[1-3] 2. As indicated in the conclusions of law by this court in the case of *Kantalaria v. Isidro Torres*, 1 T.T.R. 199, the system of private land ownership and inheritance established on Ponape by the German Government in 1912 and set forth in the standard form of title document, made no provision for the inheritance of land by daughters as a matter of right. It made express provision that the property should pass to the oldest living brother in case the deceased owner left no living son or living grandson. In view of this, it is hard to understand what legal justification there could have been for the endorsement to Klaukus described in the first finding of fact, although the court recognizes that there is a presumption that the official acts of the former administration were proper. In

this instance, however, the official surveyors of that same administration should have been in a better position than this court to determine the legality or effect of this endorsement. The court takes notice that the official Japanese survey of private lands on Ponape, which began about 1941, was carried on with considerable care and publicity, after extended study of land rights on Ponape, that it was intended to form the basis for the issuance of new title documents, and that the government surveyors engaged in it were given broad powers. The court therefore holds that there is a strong presumption that the determinations made in this survey were correct unless the contrary is clearly shown. Under the circumstances the government surveyors' determination set out in the second finding of fact is considered to greatly outweigh any presumption arising from the endorsement in question.

[4] 3. Furthermore, the defendant Pelimo was permitted to remain in possession of the property under claim of ownership for about 17 years right up to the end of the Japanese period of administration, and has continued on since. In accordance with the principles set forth in the conclusions of law by this court in *Wasisang v. Trust Territory of the Pacific Islands*, 1 T.T.R. 14, it would not be proper for the court to now attempt to upset it even if there were something wrong about it originally.

JUDGMENT

It is ordered, adjudged and decreed as follows:

1. As between the parties and all persons claiming under them, that part of the lot known as Nankapikap No. 177, in the Arou Section of the Municipality of Metalanim, lying on the left of the dividing line described below, as one stands on the shore facing the land, is the property of the defendant Pelimo, a resident of the Tolekei Section of the Municipality of Not, with the benefit 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 on Ponape in 1912, as heretofore or hereafter modified by law, and subject also to the right of the plaintiff Belimina, a resident of the Arou Section of the Municipality of Metalanim, to work the land, under Pelimo, in the same manner she might if she were an unmarried relative under the terms set forth in said standard form of title document. The dividing line mentioned above runs in a straight line from a pile of stones about the middle of the shore line of Nankapikap No. 177 to a pile of stones about the middle of the upland boundary of the lot.

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.

MEDEWES, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 66

Trial Division of the High Court

Palau District

August 27, 1954

Defendant was convicted in Palau District Court of disturbing the peace in violation of T.T.C., Sec. 426, by waking and calling to occupants of household during the night. On appeal, defendant contends that course of conduct in which he had engaged did not violate Sec. 426. The Trial Division of the High Court, Associate Justice James R. Nichols, held that defendant's conduct was clearly breach of the peace as defined in Trust Territory Code. Affirmed.

1. Disturbing the Peace—Generally

Where person comes to house between 1:00 a.m. and 3:00 a.m. and calls to persons therein in loud voice, frightening entire household, his course of conduct is clearly breach of the peace as defined in Trust Territory Code. (T.T.C., Sec. 426)