

**FRIDORIHG LUSAMA, PENANSIUS (also known as  
PENANSIO), and ANNA (also known as  
KETINIESELANG), Plaintiffs**

**v.**

**EUNPESEUN (also known as KIRJTIAN), Defendant**

**Civil Action No. 29**

**Trial Division of the High Court**

**Ponape District**

**March 29, 1955**

Action to determine ownership of land in Metalanim Municipality, in which plaintiffs claim that their father conveyed land to them, that they inherited it on his death, and that later conveyance to defendant was invalid. The Trial Division of the High Court, Chief Justice E. P. Furber, held that defendant transferee was entitled to land where prior conveyance to plaintiffs was in consideration of agreement to support which plaintiffs grossly failed to perform, causing conveyance to fail and permitting transferor to convey land to defendant. Court further held that failure of American Administration to consent to latter conveyance did not invalidate transfer, but gave defendant right to be treated as title holder as against all persons except government.

**1. Ponape Land Law—German Land Title—Presumption of Ownership**

Presumption that person in whose name German land title is issued is owner of land on Ponape Island can be overcome by clear evidence showing that he is under legal obligation to recognize certain rights of others in property.

**2. Ponape Land Law—Obligation to Support**

Agreement by transferee of land to take care of transferor is clearly in accord with Ponape custom and public policy recognized by Japanese Administration.

**3. Ponape Land Law—Obligation of Support**

Where there is clear showing of agreement to support and a gross failure to perform agreement by transferee, transfer may be cancelled and land transferred to another.

**4. Contracts—Rescission**

Under American common law, conveyance of land in consideration of agreement to support may be cancelled if transferee substantially fails to perform his agreement.

**5. Ponape Land Law—German Land Title—Succession**

Under German title, prospective interest of eldest son in land on Ponape Island may be cut off by transfer by title holder to someone else with approval of *Nanmarki* and Governor.

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

Where American Administration has not set up method for obtaining consent of Governor necessary for transfers of German land titles to land on Ponape Island, effect is that administration tentatively consents to determination of *Nanmarki* in such matters, although government is not prevented from taking other action later, and transferee has right to be treated as title holder as against all persons except government.

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FURBER, *Chief Justice*

## FINDINGS OF FACT

1. Alperto's dividing the land in question and transferring one part to the plaintiff Fridorihg, and the other part to the plaintiff Penansius, about 1941, was upon the understanding that Fridorihg and Penansius would take care of their father Alperto until he died. The consent of the official Japanese Government surveyors on behalf of the Governor to this was granted on the statement by Alperto in the presence of Fridorihg and Penansius that this was the understanding. The evidence is not clear as to whether the *Nanmarki* consented, but for the purposes of this action it is assumed that he did. In accordance with a common Ponape practice, there was a further understanding in connection with this transfer that Alperto should retain authority over the land so long as he lived, and neither of his sons, Fridorihg and Penansius, attempted to interfere with his control of the land while he was alive.

2. The plaintiffs Fridorihg and Penansius grossly failed to fulfill their obligations under the above understanding and under Ponapean custom, and during the period of the American Administration, permitted their father Alperto for over two years, while he was bedridden, to become almost completely dependent for care and support upon the defendant Eunpeseun and the family into which he had married. The *Nanmarki* warned the plaintiffs Fri-

dorihg and Penansius of their obligation and directed them to take care of their father, but they still failed to do so.

3. Alperto, following the plaintiffs Fridorihg and Penansius' failure to perform their obligations, revoked the transfer to them and directed that the land be transferred to the defendant Eunpeseun in consideration of the care and support he rendered. This transfer to Eunpeseun was expressly approved by the *Nanmarki*.

4. The plaintiff Anna has failed to prove any rights in the land in question.

#### CONCLUSIONS OF LAW

1. This action involves land on Ponape Island which was admittedly held by Alperto under the standard form of title document issued by the German Government on Ponape. There are two principal questions of law involved. The first is whether a division and transfer of such land made by the title holder to his two sons, on the understanding that they would take care of him for the rest of his life, gave them such ownership of the land that they were entitled to it, even though it is clearly shown that they grossly failed in their obligations under the agreement. The second is whether the plaintiff Fridorihg, as oldest living son of Alperto, under the terms of the standard form of title document inherited the land in spite of Alperto's transfer or attempted transfer, during the American Administration of Ponape, to the defendant Eunpeseun, which was expressly approved by the *Nanmarki* but as to which no formal action on behalf of the American Administration has been shown.

[1-3] 2. This court has held in the case of *Petiele v. Max*, 1 T.T.R. 26, that the presumption that the person in whose name the title document was issued, owns the

land with the rights and benefits and subject to the obligations set forth in the title document, can be overcome by clear evidence showing that that person is under legal obligation to recognize certain rights of others in the property. This principle applies to an agreement to take care of the one who transferred the land. Such agreements are clearly in accord both with Ponape custom and with public policy which was well recognized by the Japanese Administration, and the court holds that upon a clear showing of such an agreement and a gross failure to perform it by the persons to whom the land has been transferred, the transfer may be cancelled and the land transferred to another, as if the original transfer under the agreement to support had never been made.

[4] 3. The plaintiffs appear to rely partly upon the supposed effect of American ideas of liberty, which unfortunately seem to have been translated or construed on Ponape to mean, "do as you please", with the resulting inference that a person can disregard his obligations and still not lose anything. Attention of Ponapean leaders and of all trial assistants practicing in the Ponape District is invited to the fact that any such inference is seriously wrong. The American idea of liberty means "liberty under law", that is, liberty limited by law. Disregard of legal obligations in the United States regularly involves liability for either damages or some other relief or punishment, and sometimes for both damages and something else. As applied to the circumstances of this action, there are two further difficulties with the plaintiffs' apparent view. First, the American Administration has not attempted to impose American ideas as to land laws generally throughout the Trust Territory. Section 24 of the Trust Territory Code provides as follows:

"Sec. 24. *Land Law not Affected.* The law concerning ownership, use, inheritance, and transfer of land in effect in any part

of the Trust Territory on December 1, 1941, shall remain in full force and effect except insofar as it has been or may hereafter be changed by express written enactment made under the authority of the Trust Territory of the Pacific Islands.”

Second, although there might be more formalities involved in the United States, the more common American view as to such transfer as that of 1941 in this action is described as follows in Volume 50 of American Jurisprudence at page 887 in section 28 of the article on “Support of Persons”:—

“However, in the great majority of jurisdictions, the doctrine obtains that conveyances of real estate in consideration of agreements to furnish support, being in a class peculiar to themselves, may be canceled if the grantee in such a conveyance repudiates, or substantially fails to perform, his agreement.”

[5,6] 4. This court has already held in the case of *Welenten Pernando v. Paulus*, 1 T.T.R. 32, that in the case of land held under the standard form of title document involved in this action, the eldest son of the title holder does not have an absolute right of inheritance but his prospective interest in the land may be cut off by transfer by the title holder to someone else made with the approval of the *Nanmarki* and the Governor. That case would be controlling on any question of the plaintiff Fridorihg’s right to inherit in this action if there had been any formal consent by or on behalf of the “Governor”. The court takes judicial notice, however, that the American Administration has not yet set up any routine method for obtaining consent of the “Governor” for transfers under these German title documents and has informally left the matter largely in the hands of the *nanmarkis*. The result is that in only a very few exceptional instances have Ponapeans obtained any formal action of the American Administration either consenting to or refusing to consent to such transfers. The court holds that the effect

of this has been to tentatively consent to the *Nanmarki's* determinations in such matters, and, while not preventing the Government from taking other action later, gives the person to whom such an attempted transfer has been made with the consent of the *Nanmarki*, the right to be treated as the title holder as against all persons, except the Government.

#### JUDGMENT

1. As between the parties and all other persons claiming under them, the land known as Pandiadi (sometimes spelled Pantiati), Number 63, in the Diadi Section of Metalanim, on Ponape Island, is to be treated as the property of the defendant Eunpeseun (also known as Kirjtian), a resident of the Kipinne Section of Metalanim, 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, unless and until the Government of the Trust Territory of the Pacific Islands takes action to upset or affirmatively disapprove the transfer of this land from Alperto to him.

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.