

**SARAPINA S., Plaintiff**

**v.**

**ANTON ELDRIDGE, Defendant**

**Civil Action No. 62**

**Trial Division of the High Court**

**Ponape District**

**April 30, 1957**

Action to determine ownership of land in Metalanim Municipality, in which beneficiary of use rights in land pursuant to written instructions accompanying conveyance to transferee claims these use rights. The Trial Division of the High Court, Chief Justice E. P. Furber, held that instructions are valid and beneficiary is entitled to use of land without asking transferee for permission each time before removing produce. Court further held that attempt by transferor to place land under matrilineal system of inheritance by written instructions to that effect was invalid as contrary to public policy.

**1. Ponape Land Law—German Land Title—Use Rights**

Where owner conveys German land title to land on Ponape Island with express written instructions creating rights in others to use land, and transfer is approved by *Nanmarki* and by Ponape Branch Office, court will require transferee to recognize rights established in instructions.

**2. Ponape Land Law—German Land Title—Use Rights**

Where written instructions accompanying transfer of land on Ponape Island held under German title provide that transferee shall take care of certain woman, latter may take such produce from land as she reasonably desires as freely as is consistent with exercise of similar rights by others named in instructions and designated by transferee.

**3. Ponape Land Law—German Land Title—Use Rights**

Where land on Ponape Island held under German title is transferred with instructions as to use rights, transferee, subject to rights in others, is obligated to supervise use of land with sympathetic consideration for needs and wishes of persons named in instructions.

**4. Ponape Land Law—German Land Title—Use Rights**

Although person given use rights in land is obligated to comply with instructions of title holder which are reasonably necessary to avoid conflicts between those having interests in land, she is not obligated to ask title holder each time before taking produce from land, since this is unreasonable inconvenience.

**5. Ponape Land Law—German Land Title—Use Rights**

Transferee of land subject to use rights in others may permit relatives to take produce from land as long as rights of others entitled to use of land are not interfered with or their shares reduced.

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

Written instructions accompanying transfer of land on Ponape Island which attempt to place land under former system of matrilineal clan inheritance are of no binding effect as contrary to public policy of German land reform.

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

Use instructions accompanying transfer of land on Ponape Island may be considered by *Nanmarki* and Governor in approving transfers.

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FURBER, *Chief Justice*

## FINDINGS OF FACT

1. The defendant Anton received the land in question under express written instructions from Bernardino, dated November 5, 1939, and transfer of the land to Anton was consented to by the *Nanmarki* and the official Japanese surveyors on behalf of the head of the Ponape Branch Office.

2. The plaintiff Sarapina has failed to sustain the burden of proving that the defendant Anton ever consented to the provisions of the paper in Benjamin's handwriting dated 1943, which Sarapina refers to as Bernardino's will (although it is agreed Bernardino died about May 13, 1941).

3. This paper, dated 1943, did not constitute nor do its terms set forth an official determination or binding decree by the Japanese authorities (beyond confirming the determination previously made that Anton should be recorded as owner of the land). It was rather a memorandum for the guidance of the official Japanese surveyors' office, the Metalanim Municipal Office and the *Nanmarki* in exercising their discretion in the case of future requests for transfer of the title or other action with regard to it. It does, however, show the thinking expressed by Marumo, one of the official Japanese Government surveyors, at or right after a hearing, as a result of which the parties

gave up active argument about the land until further dispute arose in 1952.

4. The defendant Anton has given his sister Luse permission to take copra from the land and to control it for him, but in the transfer of title which he has admittedly attempted to make to her, he has retained authority over the land for his lifetime. Anything Luse does about it is subject to his approval and she has notice of Bernardino's instructions.

5. Anton has not forbidden Sarapina to take copra from the land or stopped her absolutely from doing so, but has demanded that she ask him first and agree to take the copra from the part he designates.

#### CONCLUSIONS OF LAW

1. This action involves land in Metalanim Municipality, Ponape Island, held under the standard form of title document issued by the German Government on Ponape beginning in 1912. In view of the findings of fact, the principal question of law involved is as to the construction of the written instructions under which the defendant Anton received the land from Bernardino to whom the original title document for the land was issued.

2. These instructions so far as this case is concerned, in effect told Anton that he should take Bernardino's place on the land, that he should take good care of Bernardino's "children" Sarapina and Renata, and also of Limueisemper and Teresa (apparently daughters of the former head of Bernardino's clan) just as Bernardino had done, that no other clan should take the land after Anton, that his children should not take the land after him, and that Bernardino and Anton's clan, namely the Sounkauat Clan should hold it as long as there was anyone left in the clan. Admittedly Sarapina was living with Bernardino on the land in question and taking care of him at the time

of his death. It is agreed that Renata, Limueisemper and Teresa have equal rights with Sarapina in the land. The plaintiff has inferentially also agreed that Anton as owner has a right to use the land with these four ladies and take copra from it. She objects (1) to having to ask anyone before she takes copra from the land, (2) to Anton's letting Luse and her husband Apner take copra from the land, and (3) to Anton's attempted transfer of the title to Luse. She points out that the paper dated 1943 referred to in the 2nd and 3rd findings of fact, expressly provided that Anton should not let anyone on the land while Limueisemper, Teresa and Sarapina were alive and that they could take food from the land "just as when Bernardino was alive".

[1-5] 3. Under all the circumstances, the court holds that Bernardino's instructions of November 5, 1939, require Anton to recognize Sarapina's right, as long as she lives, to take as much produce from the land as she reasonably wants as freely as is consistent with the exercise of similar rights by the other three ladies mentioned and by Anton or someone named by him. He has an obligation to supervise the use of the land with a sympathetic consideration for the needs and wishes of all four of the ladies and enable all interested to exercise their rights with as little friction and inconvenience as possible. Sarapina has an obligation to comply with any instructions of his that are reasonably necessary to avoid conflicts between those having interests there and to fairly provide for taking proper care of the land. The court considers, however, that Anton's demand that she ask him each time before she takes any produce imposes an unreasonable inconvenience on her and is not a proper exercise of his obligations. On the other hand, Anton as owner, is not prohibited from letting his sister Luse (and those acting for her) take copra from there or act for him in

the detailed management of the land as long as he sees that the rights of the four ladies in question are not interfered with or their shares reduced and he retains overall supervision.

[6, 7] 4. Luse is not a party to this action and no determination is made as to what future rights she has acquired or will acquire on Anton's death under the attempted transfer of title to her. The part of Bernardino's instructions attempting to place the land under the former system of matrilineal clan inheritance is considered of no binding effect as contrary to the public policy shown by the German land reform of 1912 on Ponape Island as modified by law to date. See paragraphs 5 and 6 of Conclusions of Law, in *Miako v. Pederen Losa*, 1 T.T.R. 255. On the other hand, this part of Bernardino's instructions appears to be a proper factor for the *Nanmarki* and the "Governor" to consider in passing upon Anton's request for transfer of title to Luse. The court holds that the plaintiff Sarapina has shown no legal ground for objection to Anton's trying to carry out this part of Bernardino's instructions by the attempted transfer and she is not considered to be prejudiced by it.

#### JUDGMENT

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

1. As between the parties and all persons claiming under them, the plaintiff Sarapina S., who lives in the Kamar Section of Not, has a right, so long as she lives, to use and take as much produce as she reasonably wants from the land known as Ponmadollap, located in the Elieului Section of Metalanim, Ponape Island, as freely as is consistent with the exercise of similar rights by the defendant Anton Eldridge, who lives in the Kitam Section of Metalanim, or by someone named by him, and by three others who are not parties to this action, subject

to the plaintiff Sarapina's obligation to do her share in taking care of the land and to exercise her rights in accordance with the reasonable instructions of the defendant Anton.

2. The defendant Anton shall cease demanding that the plaintiff Sarapina ask him each time before she takes produce from the land, and the plaintiff Sarapina shall cease trying to take produce from the land except in accordance with a general plan approved by the defendant Anton in accordance with the conclusions of law in this action or ordered by this court.

3. The defendant Anton and the plaintiff Sarapina shall confer and try to agree upon a practical plan for the exercise of Sarapina's rights on a continuing basis consistent with the court's conclusions of law in this action and the rights of the others interested in the land, but which will require Sarapina to consult with Anton as little as practical. Both parties shall cooperate in trying to agree upon changes in this plan whenever it does not work well because of any change in circumstances.

4. If the parties are not able to agree upon the plan referred to in the foregoing paragraph within six months after this judgment is entered, either party may apply to this court by written motion to have a plan ordered by the court.

5. No costs are assessed against either party.