

UKAU and Others, Plaintiffs
v.
MAIRID, Defendant
Civil Action No. 70
Trial Division of the High Court
Ponape District
April 30, 1957

Action to determine ownership of land in Sokehs Municipality, in which children of lessee of Japanese lease claim right to land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that neither party had title to land, since Japanese lease could not be inherited, but that defendant had right to possession until designation of owner by government, since he originally gained possession lawfully under written document signed by former lessee.

1. Ponape Land Law—Japanese Lease—Succession

Japanese lease of land on Ponape Island cannot be inherited or transferred by will as of right, and disposition of land after death of lessee rests in discretion of government.

2. Ponape Land Law—Japanese Lease—Termination

Where holder of Japanese lease to land on Ponape Island dies, it must be presumed his rights under lease were either cut off by his death or substitution of another lease for the one to him.

3. Ponape Land Law—Japanese Lease—Succession

Where title to land on Ponape Island is vacant after death of holder of Japanese lease, party who originally gained possession lawfully may continue in possession unless and until action is taken by government as to disposition of land.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Krispin developed—i.e. cleared and planted—about half the land in question.
2. Krispin asked Kokak to hold the land for Krispin's children.
3. After Krispin's death, the plaintiff Ukau occasionally assisted in developing the land and took some produce

from it, but most of the work and harvesting was done by either Kokak or the defendant Mairid.

4. The land was covered by a 20 year lease issued to Kokak by the Japanese Government in 1941 in the same general form as that involved in *Mikelina v. Simon*, 1 T.T.R. 153.

CONCLUSIONS OF LAW

1. This action involves land in the Municipality of Jokaj (sometimes spelled Sokaes), Ponape Island, under a long term Japanese Government lease in a form commonly used there about 1941. In this instance the lease appears to have replaced an earlier one. Perhaps there were two or more successive leases or use permits before it. The form of the previous lease or leases has not been shown. The plaintiffs Ukau and others, claim as the children of the original lease-holder Krispin who died in 1929. The defendant Mairid is the step-son of the lessee Kokak named in the lease here in question, who died in 1954. Mairid claims under a written document signed by Kokak designating Mairid to take Kokak's place with regard to this land and allegedly agreed to by the Chief Magistrate and Secretary of Jokaj.

[1] 2. This court has already held that the type of lease involved here cannot be inherited or transferred by will as of right, but that the disposition of land under such a lease, after the death of the lessee, now rests in the discretion of the Government of the Trust Territory. See *Mikelina v. Simon*, 1 T.T.R. 153, and *Elina and Meri v. Danis and Makio*, 1 T.T.R. 206.

[2,3] 3. In the absence of any showing to the contrary it must be presumed that any rights Krispin had under his earlier lease or permit (the terms of which have not been shown) were cut off either by his death or the substitution of another lease for the one to him. Un-

less and until some action is taken by the Government of the Trust Territory as to the disposition of the land, the defendant Mairid, as one who originally gained possession lawfully, 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 plaintiffs Ukau and his brother, sister, and half-brother, nor the defendant Mairid has any right of ownership in the land known as Paneni located in the Palikir Section of Jokaj (sometimes spelled Sokaes), Ponape Island, or the lease of it from the Japanese Government to Kokak, beyond the right of the defendant Mairid to continue in possession pending action by the Government of the Trust Territory of the Pacific Islands as to 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 any party.