

KILION and Others, Plaintiffs
v.
CHECHE and Others, Defendants
Civil Action No. 78
Trial Division of the High Court
Truk District
June 30, 1958

Action for determination of various rights in land on Moen Island given by one lineage to another lineage under Truk customary law. The Trial Division of the High Court, Chief Justice E. P. Furber, held that under Truk customary law, lineage which gave land to another lineage retained right to have first fruits presented to it and also retained reversionary interest should members of donee lineage all die out. The Court further held that parties could come to some other agreement, but unless informal agreement satisfactory to donor lineage could be reached, such reserved rights must be recognized.

1. Truk Land Law—Lineage Ownership—Gifts

Under Truk custom, there are well-recognized situations in which land is given by one lineage to another, where gift carries with it use rights and most incidents of ownership.

2. Truk Land Law—Lineage Ownership—Gifts

Under Truk custom, lineage making gift to another lineage retains right to "first fruits" and reversionary interest which may give it right to possession under certain circumstances, particularly if lineage receiving gift dies out completely.

3. Truk Land Law—Lineage Ownership—Gifts

Under Truk custom, system of retained rights in donor lineage is similar to practice in United States of donating title in fee to charitable corporation, subject to reversion to someone else on breach of condition.

4. Truk Land Law—Lineage Ownership—Gifts

Under Truk custom, although donee lineage may agree to permit donor lineage to take food from lands donated at any time by informal agreement, this does not affect basic rights in the land.

5. Truk Land Law—Lineage Ownership—Gifts

Under Truk custom, if donee lineage does not wish to continue on basis of informal agreement with donor lineage, then it must either recognize obligations to present "first fruits" to donor and donor's reversionary interest, or make some arrangement regarding donated land which is satisfactory to donor.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. In or before German times, the lands in question were transferred from lineage to lineage in different clans; and one of the lineages formerly holding them was that of the plaintiffs Kilion, Kintaro and Rapas.

2. Airam, on behalf of his lineage, used and controlled the lands from German times until his death about 1955, but he recognized that the plaintiffs' lineage, as the "original" owner, was entitled to consideration in connection with the use of the lands and permitted members of the plaintiffs' lineage to take food from them occasionally when they were in Tunuk and wished for food.

3. Airam, with the consent of his lineage, divided the lands between his lineage members and his children.

CONCLUSIONS OF LAW

[1-3] 1. Under Trukese custom, there are well recognized situations in which land is given by one lineage to another, where the gift carries with it use rights and most of the usual incidents of ownership, but the lineage making the gift retains a right to "first fruits" and a reversionary interest which may give it the right to possession under certain circumstances—particularly if the lineage receiving the gift dies out completely. See Sections 5 and 7 of "Report: Native Land Tenure in the Truk District", dated 6 June 1950 by John L. Fischer, Anthropological Field Consultant. Mr. Fischer considers we should assume in such situations, that the lineage receiving the gift was granted "usufruct rights in perpetuity but not full title". In common speech, however, each of the lineages involved in such a situation is often referred to as the owner without any implication that the rights of the other lineage in

the situation are not also valid. Sometimes the members of the lineage which has made the gift, are referred to as the "original" or "true" owners of the land, to differentiate them from those entitled to the use of the land, but again without implying any disregard or denial of the rights to the lineage which has received the gift. The situation is somewhat similar to that sometimes found in the United States where a charitable corporation may own a conditional title to land in fee, subject to reversion to someone else on breach of the condition.

[4, 5] 2. Construing the long continued practice and the statements of the members of the two lineages involved in this action during the lifetime of Airam, in the light of Trukese custom, the court holds that Airam's lineage was in the position of one that had received land directly or indirectly from the plaintiffs' lineage and acknowledged an obligation to give the plaintiffs' lineage "first fruits". Owing to the good relations between them then, it appears that members of both lineages mutually acquiesced in members of the plaintiffs' lineage being permitted to take food from the lands in question occasionally when it was convenient for them, with permission of Airam's lineage, instead of receiving formal and regular presentation of "first fruits". This permitting the taking of food at odd times was such a friendly and informal matter, however, that it is not considered to affect the basic rights in the land. If, as appears to be the case, the present owners of the use rights do not wish to continue this practice, they are not under obligation to do so. They are, however, under obligation to either present "first fruits" to the plaintiffs' lineage and recognize its reversionary rights or else make some arrangement which is satisfactory to the plaintiffs' lineage concerning these.

JUDGMENT

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

1. As between the parties and all persons claiming under them:—

a. Permanent use rights in the lands known as Omoruk, Wilipat and the part of Nemonipas known as On Achau, all located in Tunuk Village on Moen Island, Truk District, are owned by the defendants Cheche, Kosi, and Raisi, who all live in Tunuk Village.

b. Permanent use rights in the land known as Nemaout, and a part of the part of Nemonipas known as Fan Achau, both located in Tunuk Village mentioned above, are owned by the defendant Nikko, who lives in Tunuk Village.

c. Permanent use rights in the remainder of the part of Nemonipas known as Fan Achau are owned by the defendant Bereta, who lives in Tunuk Village.

d. All of the above use rights are subject to the obligation to give “first fruits” from the respective lands in question to the lineage of the plaintiffs Kilion, Kintaro and Rapas, who live in Mochun Village, Uman Island, Truk District, and to the reversionary rights of that lineage as “original” owners in accordance with Trukese custom.

e. The plaintiffs Kilion, Kintaro and Rapas, have no right to take food from or interfere with the use of the lands described above without permission of those holding the permanent use rights in the particular piece of land concerned, so long as the holders of those use rights fulfill their obligations in presenting “first fruits”.

2. This judgment shall not affect any rights of way there may be over the lands in question.

3. No costs are assessed against any party.