

LUS and NEMOU, Plaintiffs
v.
TOTOU and RAYMOND SETIK, Defendants

Civil Action No. 115
Trial Division of the High Court
Truk District
December 30, 1958

Action for determination of title to land on Moen Island, in which plaintiffs claim land as transferees from *afokur* who was son of former lineage head. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that plaintiffs have no rights in land unless transfer to them is established by clear and convincing evidence and consented to by all male members of lineage or generally acquiesced in by them.

1. Truk Land Law—Lineage Ownership—Transfers

Under Truk custom, where it is clear that land is owned by lineage, transfer to child of male member is not to be presumed but must be established by clear and convincing evidence.

2. Truk Land Law—Lineage Ownership—Transfers

Under Truk custom, transfer to child of male member of lineage must be consented to by all male members of lineage or generally acquiesced in by them.

3. Truk Land Law—Lineage Ownership—Use Rights

Under Truk custom, use of land and sharing of production by *afokur* of former lineage head with other members of lineage does not constitute proof of title interest in *afokur* or of his right to continue sharing production.

4. Truk Land Law—Lineage Ownership—Transfers

Under Truk custom, transfer by *afokur* of former lineage head of title to piece of lineage land or use rights is ineffective to give any property rights or use rights to transferee in absence of consent by lineage.

TOOMIN, Associate Justice

I. FINDINGS OF FACT

1. This case involves the determination of title and use-rights to the lands Leon and Utunpuni, located in Tunnuk Village, Moen Island, Truk District.

2. Prior to German times, said lands were owned by the Marsalo Clan. Either by gift or inheritance, during German times said lands became the property of the Utunpuni Lineage of the Wito Clan residing in Tunnuk Village.

3. Puniti, the father of defendant Totou, was the leader of the Utunpuni Lineage during German times and until his death in early Japanese times. As such leader he had control of the production from said lands and the right to transfer the title thereto to others, including his children, with the approval of all male members of the lineage.

4. When Totou was a small boy, his father Puniti purported to transfer to him the said lands. There is no satisfactory evidence that all the adult members consented to the transfer; hence the same was and is ineffective.

5. Plaintiff Lus and his immediate family occupy one house on Utunpuni; his mother and his brothers and sisters occupy three other houses on said land. They are all members of the Utunpuni Lineage. As members of the lineage, they have been occupying the land Utunpuni and working both lands since German times.

6. Since the death of Puniti, both plaintiff Lus and the members of his said lineage have been receiving the production from said lands, and Totou also has received part of its production, from time to time. His receipt of part of the crops was not due to any right on his part to share in the production, nor because of any title interest on his part, since he is not a member of the Utunpuni Lineage nor the Wito Clan, but because he is one of the *afokur* (children) of Puniti.

7. Neither plaintiff Lus nor his immediate family were installed in possession of Utunpuni by Totou, nor did he have any right to install them in possession.

8. Defendant Raymond Setik purchased the trees on said lands from Totou in December 1957, and has paid him the agreed purchase price of \$265.00. The sale has not been consummated and Raymond has not taken possession of said lands because of the refusal of plaintiff Lus and the members of his family group to consent to the sale. Because of this refusal to consent, the said sale is ineffective.

9. Plaintiffs originally claimed the land Lemoch and asked to evict Totou from its possession. However, it appears that this land was given by Lus' family group to Totou as his individual land in German times, and he has been the owner and has enjoyed the use-rights from this land ever since.

II. CONCLUSIONS OF LAW

[1] 1. Where it is clear that land is owned by a lineage, a transfer to the child of a male member is not to be presumed, but must be established by clear and convincing evidence.

[2] 2. Such a transfer must be consented to by all the male members of the lineage, or must be generally acquiesced in by them. Goodenough: Property, Kin, and Community on Truk, p. 36. Fischer: Native Land Tenure in the Truk District, Sec. 5.

[3] 3. The use of land and the sharing of its production by the *afokur* of a former lineage head, with the members of the lineage, does not constitute proof of a title interest in the *afokur*, nor in his right to continue sharing the production. Such right to continue sharing is dependent on the consent of the lineage. *Nusia v. Sak*, 1 T.T.R. 446.

[4] 4. The transfer by an *afokur* of a former lineage head, of title to a piece of lineage land, or the right to

the production from trees or land, is ineffective to give any property rights or use-rights to the transferee, in the absence of consent by the lineage.

III. JUDGMENT

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

1. As between the parties hereto and all persons claiming through them,

(a) The lands Utunpuni and Leon, located in Tunuk Village, Moen Island, Truk District, and the use-rights therein, are owned by the Utunpuni Lineage of the Wito Clan, represented in this proceeding by plaintiffs.

(b) The defendant Totou has no right, title or interest in said lands, save the right to go on said lands and take a share of production therefrom in accordance with permission granted from time to time by said lineage.

(c) Plaintiffs have no right, title or interest in the land Lemoch, located in said village.

(d) Defendant Raymond Setik acquired no rights in Leon or Utunpuni, or in the trees on either of said parcels, by virtue of any alleged transfer from Totou, and is entitled to the return of moneys paid by him to Totou on account of said purchase.

2. This judgment shall not affect any rights of way over, across, or upon the said parcels of land.

3. No costs are assessed in favor of or against any party.