

KELEMEND v. MAK

any of the other parties. If the parties are not able to agree on these matters within six (6) months from today, any one of them may apply to this court for further order concerning them.

3. No costs are assessed against any party.

KELEMEND, Plaintiff

v.

MAK, Defendant

Civil Action No. 59

Trial Division of the High Court

Ponape District

June 2, 1959

Action to determine ownership of land on Pingelap Atoll, in which alleged donee of land claims right to ownership over prior donee of same land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that first donee prevails as he did not fail in any obligation to donor, and although Pingelap land law permits later readjustment of land rights, attempted second gift was not one authorized by system.

1. Ponape Land Law—Pingelap

Land law on Pingelap is different from that on Ponape Island and neighboring islands and is unique.

2. Ponape Land Law—Pingelap—Family Ownership

Under Pingelap land system, land within family is subject to adjustment years after donor has died according to respective needs of different branches of family on Pingelap at time.

3. Ponape Land Law—Pingelap—Family Ownership

Although Pingelap land is referred to as belonging to individual, it is regarded as essentially a family asset to be made available to members of family on Pingelap in proportion to their needs.

4. Ponape Land Law—Pingelap

Where donor transfers land to another in 1926 and donee does not fail in any obligation to donor, and then donor attempts transfer of land to third party who is not resident of Pingelap, second transfer is not authorized by Pingelap system of land law and is of no legal effect.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Ekina purported to give the land in question to her oldest son, the defendant, Mak, about 1926, without any express condition or limitation on the gift. This was long before the plaintiff Kelemend was born.

2. Ekina purported to give the same land to the plaintiff Kelemend, who was both her true grandson and alleged adopted son, in 1942.

3. Mak had not seriously failed in any obligation he owed Ekina during the time between the two purported gifts.

4. The purported gift by Ekina to Kelemend was made while Kelemend was not a resident of Pinglap, and had no relation to any immediate needs of his for subsistence on Pinglap.

CONCLUSIONS OF LAW

[1] 1. This action involves the ownership of a piece of land in Pinglap (sometimes spelled Pingelap) Atoll in the Ponape District. It should be carefully noted that the land law on Pinglap is different from that of Ponape Island, and also different from that of Kusaie and Mokil, its nearest neighbors to the east and west, respectively, and may quite possibly be unique to Pinglap.

[2, 3] 2. The system of land ownership which the people of Pinglap have developed may seem to some Americans an almost impossible system, but it appears to have worked fairly smoothly there for several generations. Under it, all gifts of land within a family are subject to possible adjustment and readjustment years afterwards—even after the donor has died—according to the respective needs of the different branches of the family actually present on Pinglap at any time. Thus, in effect,

although the land is regularly referred to as belonging to a particular individual, it is looked upon as essentially a family asset to be used for and made available to those members of the family present on Pinglap, in rough proportion to their needs, taking into consideration what other lands, if any, are available to them there. Probably the nearest analogy to this situation in English-American law is to land subject to a whole series of possible "springing uses". See Bouvier's Law Dictionary, Third Revision, Page 3114. The special need for making land available as a source of living for those on Pinglap may be readily appreciated from its isolated position and the extent to which the atoll has been long over-populated. At the time of the 1958 census, after some 200 people had been persuaded to emigrate and homestead land on Ponape Island, the population of Pinglap still numbered 596, while its total land area is only .678 of a square mile.

[4] 3. While, therefore, the transfer to Mak in 1926 was subject to possible change, the court holds that the attempted reassignment of the land by Ekina to Kelemend was not one of those changes authorized by the Pinglap system of land law, and was of no legal effect, regardless of the question of whether Kelemend had, or had not, been adopted by Ekina.

JUDGMENT

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

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

(a) The land known as Sobuk, located on Teke Island, Pinglap Atoll, in the Ponape District, is owned by the defendant Mak, who lives on Kalap Island, Pinglap Atoll, subject to all the obligations and uncertainties of the system of land ownership developed by custom on Pinglap Atoll.

(b) The plaintiff Kelemend, who lives in the Pinglap Section (otherwise known as Mwalok Section) of Sokehs (sometimes spelled Jokaj) Municipality, Ponape District, has no rights of ownership in this land, which can be assigned or used in any beneficial way, while he remains away from Pinglap Atoll and does not maintain his home there.

(c) The plaintiff Kelemend has a purely personal right to use this land with Mak and take from it what he reasonably needs for his own subsistence on Pinglap, whenever he is on Pinglap Atoll, and if he makes his home there in good faith and cannot come to a reasonable understanding with Mak (and any other members of the family involved) as to the division of the use of the land, he may have a part of this land set off to him to own, subject to all the obligations and uncertainties of the Pinglap system of land ownership, provided this is reasonably necessary for his subsistence on Pinglap, considering any other lands he may have rights in there and the proportionate needs of other issue of Ekina living on Pinglap Atoll.

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

3. No costs are assessed against either party.

4. Time for appeal from this judgment is extended to and including August 3, 1959.