

PINA LIUI and WEHSEL LIUI, Plaintiffs

v.

LINA HIGGINS, Defendant

Civil Action No. 160

Trial Division of the High Court

Ponape District

May 25, 1961

Action to determine ownership of land in Sokehs Municipality, in which plaintiff alleges oral instructions of person owning land under German title intended transfer of land to him on death of owner, and defendant claims right to land as oldest daughter of deceased. The Trial Division of the High Court, Chief Justice E. P. Furber, held that neither oral will nor inheritance by daughter were valid at time of death of title holder, so that there is vacancy in legal title, and until such time as *Nanmarki* or Governor designates owner, parties may continue in present use of land.

1. Ponape Land Law—German Land Title—Wills

Under system of land ownership introduced by German Government in 1912, land on Ponape Islands could not be disposed of by will, until law was changed in 1957. (Ponape District Order No. 9-57)

2. Ponape Land Law—German Land Title—Wills

Land held under German land title could not be disposed of by oral will prior to 1957. (Ponape District Order No. 9-57)

3. Ponape Land Law—German Land Title—Women's Rights

Although at present oldest daughter inherits land on Ponape Island in absence of any son who is living or has left issue living, this was not true prior to 1957, and enabling law of 1957 does not have retroactive effect. (Ponape District Order No. 9-57)

4. Ponape Land Law—German Land Title—Succession

Under German land title, if owner of land on Ponape Island dies without leaving any heirs as listed on document, successor is chosen by *Nanmarki* and Governor.

5. Ponape Land Law—German Land Title—Approval of Transfer

Present successor of German Governor for purpose of approving land dispositions on Ponape Island is District Administrator of Ponape District.

6. Ponape Land Law—German Land Title—Vacancy in Title

When there has been no designation of ownership of land on Ponape Island by *Nanmarki* or District Administrator, and there are no lawful heirs, there is vacancy in legal title, the filling of which rests with *Nanmarki* or District Administrator.

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7. Ponape Land Law—German Land Title—Women's Rights

Government officials may consider orally expressed intention to transfer title to land on Ponape Island and subsequent law permitting inheritance by daughter, but they are not bound by them.

8. Ponape Land Law—German Land Title—Vacancy in Title

Where there is vacancy in legal title to land on Ponape Island, right of possession is controlled by worth of claims to it.

9. Ponape Land Law—German Land Title—Vacancy in Title

Where both parties to action were formerly permitted to use land of deceased on Ponape Island, and there is vacancy in title, they may continue to use land until vacancy in title is filled.

FURBER, *Chief Justice*

I. FINDINGS OF FACT

1. Rewihn expressed orally a wish to have the land in question treated as lineage land under the system of land tenure in effect in the Mortlock Islands.

2. To carry out this wish as nearly as possible, under the land law on Ponape Island, Rewihn expressed orally the intention of transferring the land to the name of the plaintiff Pina with instructions to allow the plaintiff Wechsel to continue to work it, and the defendant Lina to take produce from it as if it were lineage land, but he died suddenly before even endeavoring to obtain the necessary consents of the *Nahnmwarki* and the Ponape District Administrator of such a transfer.

3. Rewihn died without leaving anyone within the list of relatives set forth in the standard form of title document issued by the German Government on Ponape beginning in 1912, as amended by law up to the time of his death (1950).

II. OPINION

This action involves land in Sokehs (sometimes spelled Sokaes or Jokaj), within the reef surrounding Ponape Island. The land was admittedly held by Rewihn under

the standard form of title document issued by the German Government on Ponape beginning in 1912, except that paragraphs 6 and 7 of the standard provisions on pages 2 and 3 of the document were struck out as is common in the case of land in Sokehs.

This action is governed largely by the principles set forth by this court in the second paragraph of the second section of the conclusions of law in *Cresensia Kehler and another v. Pedro Kehler and another*, 1 T.T.R. 398, and in paragraphs 5 and 6 of the conclusions of law in *Miako v. Pederan Losa*, 1 T.T.R. 255.

[1, 2] The plaintiffs rely upon Rewihn's oral expressions of desire concerning this land as constituting a will. Under the terms of the system of land ownership introduced by the German Government on Ponape Island in 1912, land held under this system could not be disposed of by will until the law was amended by Ponape District Order No. 9-57, effective April 1, 1957, but Rewihn died in 1950 and even Ponape District Order No. 9-57 does not authorize an oral will.

[3] The defendant Lina calls attention to the fact that both Ponape District Order No. 8-57 issued February 1, 1957, and Ponape District Law 3-17-59 approved by the High Commissioner November 24, 1959, provide that an oldest daughter shall inherit in the absence of any son who is either living or has left issue who are living. Neither of these laws, however, has any provision for retroactive effect and, as indicated above, Rewihn died years before either of them took effect.

[4-7] Under the terms of the standard form of title document involved here, if the owner of land dies without leaving anyone within the list of relatives set forth therein as entitled to inherit as a matter of right, his successor is to be chosen by the *Nahnmwarki* of the area within

which the land lies and the "Governor". The court believes that it is now clear that for this purpose the present successor of the German "Governor" is the District Administrator of the Ponape District. Neither side has claimed or proved any determination by the *Nahnmwarki* of Sokehs and the Ponape District Administrator, or either of them, as to who should succeed Rewihn. There is, therefore, a vacancy in the legal title, and the filling of this vacancy rests with the *Nahnmwarki* and the District Administrator—not with the court. These officials may properly take into consideration both Rewihn's orally expressed intention to transfer title to the plaintiff Pina and the policy indicated in Ponape District Order No. 8-57 and Ponape District Law 3-17-59 of now permitting a daughter to inherit under certain circumstances, but they are not bound to follow either of these if they do not think that is best.

[8, 9] As held by this court in a number of cases, commencing with that of *Dieko Plus v. Pretrik*, 1 T.T.R. 7, under this court's former name of District Court, where there is such a vacancy in the legal title, the right of possession and use of the land pending the filling of such a vacancy, is controlled by the worth of the claims to it. In this instance, both sides were admittedly allowed certain use of the land by Rewihn, and both appear agreeable that this should continue, at least for the time being, regardless of which one may obtain legal title. The court, therefore, holds that both sides are entitled to continue the same use which they were allowed by Rewihn until such time as the vacancy in the title is filled, and that there is no ground at this time for any sort of accounting between them.

III. RECOMMENDATION

The court is advised that the Ponape District Administration has recently established a system of handling

through the District Land Title Officer, requests for consents and determinations of the *Nahnmwarkis* and the District Administrator concerning lands held under these German title documents. It is, therefore, recommended that the plaintiff Pina and the defendant Lina each confer with the Ponape District Land Title Officer and present through him their respective requests for determination as to who should succeed Rewihn. Each should be ready to submit in support of her request such information as the Title Officer may request.

JUDGMENT

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

1. As between the parties and all persons claiming under them and until the vacancy in the legal title is filled, the plaintiffs Pina Liui and Wehsel Liui, who both live in Sokehs Municipality, Ponape District are entitled to the possession, use and care of the land known as Lehwo (sometimes written "Lawo", located in the Te (sometimes spelled "De", "Daa", "Ta", or "Tah") Section of Sokehs (sometimes written Sokaes or Jokaj) Municipality, Ponape District, subject to the obligations imposed by the system of private land ownership set forth in the standard form of title document issued by the German Government on Ponape beginning in 1912, as heretofore or hereafter modified by law, omitting the provisions of paragraphs numbered 6 and 7 on pages 2 and 3 of that standard form, and subject, also to the right of the defendant Lina Higgins, who lives in Kolonia, Ponape District, to take such produce from said land as she may reasonably need.
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.