

ENS, Plaintiff
v.
ALISINA, Defendant
Civil Action No. 120
Trial Division of the High Court
Ponape District
December 4, 1962

Action to determine ownership to land on Pingelap Atoll, in which donee claims right to four rows of taro. The Trial Division of the High Court, Chief Justice E. P. Furber, held that donee breached condition to support, enabling donor to revoke gift.

1. Ponape Land Law—Pingelap—Taro Patch

Under Pingelap custom, it is usual for one who is making outright gift of taro patch to give some dry land with it.

2. Ponape Land Law—Pingelap—Taro Patch

Under Pingelap custom, where four rows of taro are given without dry land, evidence supports finding that gift of use of rows was conditional on donee continuing to take care of donor, and upon breach of condition, donor has right to retake taro rows.

FURBER, *Chief Justice*

JUDGMENT ORDER

The Master has reported that when he was on Pingelap Atoll for another case, after the parties had received their copies of his findings of fact in this action, they told him that they did not wish to be heard further on the matter before judgment was entered and were just awaiting the judgment of the court. Therefore upon consideration of the Master's Report, without argument, the Report is approved.

OPINION

The principal question raised in this action is whether a particular gift of four rows of taro in a large taro patch on the main island of Pingelap Atoll constituted an un-

conditional transfer of the ownership, or merely gave the donee right to use it on condition that he continue to assist in supporting the donors and their children. The plaintiff has made some claim to have bought the four rows of taro in question by his labor, but it is very clear that the evidence does not show any purchase.

[1] It appears that under Pingelap custom it is usual for one who is making an outright gift of ownership of some part of a taro patch to give, at the same time, some dry land with it. An outright gift of the ownership of certain rows in a taro patch on Pingelap all by themselves, is therefore not to be readily presumed.

[2] The court considers that the evidence supports the Master's finding that the four rows of taro in question were not given to the plaintiff to own. It holds on all the evidence that the gift of the use of these four rows was conditioned upon the plaintiff continuing to assist in taking care of the defendant Alisina and her husband (who were the ones who made the gift) and their children, and that upon breach of this condition the defendant Alisina as the surviving donor had a right, under Pingelap custom, to retake the four rows of taro in question as she purported to do.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the four rows of taro situated in the northern part of the main taro patch of Makarehre on the main island of Pingelap Atoll, Ponape District, which the plaintiff Ens was given the use of by the defendant Alisina and her husband Kesten in Japanese times, are owned by the defendant Alisina, who lives on Pingelap Atoll, and the plaintiff Ens, who also lives on Pingelap Atoll, has no rights whatever in them.

2. This judgment shall not affect any rights of way that may be over the rows of taro in question.

3. No costs are assessed against either party.

4. Time for appeal from this judgment is extended to and including February 25, 1963.

AMIS, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 158

Trial Division of the High Court

Truk District

December 14, 1962

Appeal from conviction in Truk District Court of assault in violation of T.T.C., Sec. 378. Appellant contends that evidence was insufficient to establish crime of assault and that court erred in failing to look up citation presented by appellant. The Trial Division of the High Court, Chief Justice E. P. Furber, held that evidence was sufficient to sustain conviction, and that judge is under no obligation to look up citations offered by counsel. Affirmed.

1. Assault—Generally

Assault is an attempt or offer to beat another, without touching him. (T.T.C., Sec. 378)

2. Criminal Law—Appeals—Scope of Review

Where appeal in criminal prosecution is based on ground that evidence does not support finding, essential point is whether there was sufficient evidence to justify trial court in making finding which it did, considering primarily evidence most favorable to decision of lower court.

3. Appeal and Error—Scope of Review

Appellate court is expected to make every reasonable presumption in favor of correctness of decision of lower court, burden being on appellant to affirmatively show error.

4. Appeal and Error—Scope of Review—Witness Credibility

Where there is conflict in testimony, trial court is in better position to pass on credibility of witnesses, and appellate court is bound to uphold trial court as long as there is enough evidence to reasonably support it.