

**PENNO, Appellant**  
**v.**  
**KATARINA, Appellee**  
Civil Action No. 182  
Trial Division of the High Court  
Truk District  
November 8, 1963

Action for specific performance of contract for sale of land. The District Court ordered defendant-appellant to pay plaintiff \$200.00 or leave the land. On appeal from judgment for plaintiff in Truk District Court, the Trial Division of the High Court, Chief Justice E. P. Furber, held that contract was valid and allowed appellant six months to meet terms of plaintiff's offer. Modified and affirmed.

**1. Truk Land Law—Recording**

There is no requirement in Trust Territory that agreements for sale of land be in writing, nor in Truk District that they be reported to municipal office.

**2. Contracts—Failure to Agree**

Where parties have not agreed on price for sale of land and vendor expects \$250.00 but vendee considers \$30.00 full price, there is no agreement, and vendee will have to pay price of \$250.00 to meet vendor's offer.

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**FURBER, Chief Justice**

This action came on to be heard upon the appeal of the defendant-appellant from the decision of the Truk District Court in its Civil Action No. 185 in which it had ordered that the defendant-appellant Penno either pay the plaintiff-appellee Katarina Two Hundred Twenty Dollars (\$220.00) or leave her land known as Neppeno, which he has been using, on Parem Island, Truk Atoll.

Counsel for the appellant argued that the plaintiff had not established that there was any agreement that the defendant would pay the Two Hundred Fifty Dollars (\$250.00) asked by the plaintiff-appellee for the land in question. He claimed that the plaintiff had agreed to ac-

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cept as the full payment, the Thirty Dollars (\$30.00) admittedly paid toward the purchase price, and that if any agreement to pay Two Hundred Fifty Dollars (\$250.00) had been reached it should have been written down at the Municipal office or that office at least notified. He further claimed that the defendant-appellant had planted a number of coconut trees on the land which are already bearing for which he should be compensated; and that if he had to get off the land, he should also get back the Thirty Dollars (\$30.00) he had paid.

Counsel for the plaintiff-appellee claimed the evidence was sufficient to show an agreement for the purchase of the land in question for Two Hundred Fifty Dollars (\$250.00), but that if the defendant-appellant could not pay that, the plaintiff-appellee was ready to take the land back, but that since he had been in possession since 1947, the trees and the Thirty Dollars (\$30.00) which he had paid on account should be considered as merely fair compensation for the use of the land.

OPINION

This action arises out of a situation which seems fairly common in Micronesia, in which one party agrees to sell a certain piece of land, and the other party to buy it, but without coming to any agreement on the price so that, at least from American point of view, there is no complete agreement about the matter. The plaintiff Katarina was clearly asking Two Hundred Fifty Dollars (\$250.00) for the land while the defendant Penno was asking her to let him have it for the Thirty Dollars (\$30.00) he had paid down since they are considered to be brother and sister under the custom, although they are actually first cousins.

[1] There is no merit to the defendant's claim that there could have been no agreement to pay Two Hundred Fifty Dollars (\$250.00) because it was not written down at

the Municipal office or that office was not notified of it. If there were any such requirement, it would seem it should apply equally to the agreement the defendant claims was made to sell the land for the Thirty Dollars (\$30.00) already paid. The court is clear that there is no requirement in the Trust Territory that such agreements be written down or that in the Truk Atoll they must be reported to the Municipal office. Any such reporting is just a voluntary matter to assist in proving the agreement if occasion arises.

[2] The court considers and holds, however, that the evidence introduced was amply sufficient to support the trial court's basic conclusion that no definite agreement had been reached either for the purchase of the land for Two Hundred Fifty Dollars (\$250.00) or for Thirty Dollars (\$30.00). It appears undisputed that the land is the plaintiff-appellee Katarina's; that the defendant-appellant Penno has had ample time to at least try to reach agreement on the price; and that the plaintiff-appellee Katarina has clearly indicated that she is no longer willing to let the defendant-appellant Penno use the land unless he pays her price for it, which would require the further payment of Two Hundred Twenty Dollars (\$220.00).

It would appear from the record that the matter of the defendant-appellant Penno's alleged ownership of coconut trees on the land and what value he had received from the use and occupation of the land were not presented at all in the trial court. These matters might well have been considered in this action, but if either side desired that done, he or she should have presented them in trial court and not brought them up for the first time in this court on appeal. Since they were not presented in the trial court, it is believed best now to leave them for determination in a separate action if the parties are unable to come to agreement about them.

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The trial court's judgment is unfortunately indefinite as to time as well as quite naturally not covering these points which were raised for the first time on appeal. It is, therefore, modified as indicated below.

JUDGMENT

The judgment of the Truk District Court in its Civil Action No. 185 is hereby modified to read as follows:—

“The defendant Penno shall vacate the land Neppeno, located on Parem Island, Truk District, on or before May 8, 1964, unless he pays the plaintiff Katarina, on or before that date, the sum of Two Hundred Twenty Dollars (\$220.00) to complete the purchase of the land (in addition to the Thirty Dollars he had already paid), and shall not interfere with Katarina's use and control of the land thereafter, except to the extent reasonably necessary to care for and harvest from any coconut trees he may own there so long as they bear economically in accordance with good Trukese agricultural practice.

“This judgment is without prejudice to the right of either party to bring a separate action to determine the defendant Penno's ownership of any coconut trees on the land and the question of any sums due between the parties if the defendant Penno does not complete the purchase of the land by payment of the Two Hundred Twenty Dollars (\$220.00) referred to above within the time therein specified.”

As so modified, the judgment of the District Court is affirmed.