

2. As between the parties and all persons claiming under them, Rechuld has good title to the land Kedelblai more particularly described as Lots Nos. 588 and 589 (Tochi Daichio reference) and that neither the plaintiff nor the Terekieu Clan for which he acts has any right therein.

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

4. No costs are assessed against any party.

MIKO, Appellant

v.

KEIT, Appellee

Civil Action No. 301

Trial Division of the High Court

Truk District

June 29, 1964

Appeal from judgment of Truk District Court granting damages under Trukese custom for allegedly breaking up marriage of Trukese couple. The Trial Division of the High Court, Associate Justice Paul F. Kinnare, held that award of land as damages to spouse who has been "thrown away" to be paid by third person who has caused breakup of the marriage, is proper under Trukese custom, and that District Court may order transfer of land in such cases where there is no dispute about its ownership and value of land does not exceed jurisdictional limit of court.

Affirmed.

1. Truk Custom—Torts—Alienation of Affections

Appeal from District Court judgment ordering party to pay damages for breaking up Trukese marriage must be decided on basis of existing Truk custom and its interpretation by court.

2. Truk Custom—Divorce

In law, divorce in accordance with local Truk custom dissolves marriage just as fully as divorce granted by court.

3. Truk Custom—Divorce

A couple who have been divorced in accordance with local Truk custom are both then legally free to marry someone else so far as the marriage which has been dissolved by the divorce is concerned.

MIKO v. KEIT

4. Truk Custom—Torts—Alienation of Affections

If third person has caused breakup of Trukese marriage in order that either of the spouses may marry this third person, such third person is also liable to pay damages to spouse who has been "thrown away" or to his or her lineage or father.

5. Appeal and Error—Generally

When reviewing decision rendered in case tried by court without a jury, appellate court will indulge every reasonable presumption in favor of findings made by court below as basis of its decision, and appellant has burden of showing error in findings of court below.

6. Courts—District Court

Although District and Community Courts cannot adjudicate title to land or any interest therein, this does not prevent District or Community Court from ordering transfer of land as payment for damages where there is no dispute about ownership and when value of land does not exceed jurisdictional limitation of court. (T.T.C., Secs. 138, 149)

7. Judgments—Order in Aid of Judgment

Trust Territory law expressly authorizes transfers of interests in land under an order in aid of judgment. (T.T.C., Sec. 288(c))

8. Truk Custom—Torts—Alienation of Affections

Action under Truk custom for damages for breaking up marriage is in nature of action for alienation of affections.

9. Domestic Relations—Loss of Consortium

Wide latitude must be allowed for exercise of judgment as to measure of loss of consortium and affections in money.

<i>Assessor:</i>	JUDGE OLAF, W.
<i>Interpreter:</i>	F. SOUKICHI
<i>Counsel for Appellant:</i>	FUJITA PETER
<i>Counsel for Appellee:</i>	AUGUST, H.

KINNARE, *Associate Justice*

This is an appeal from a decision granting damages under Trukese custom for allegedly breaking up a marriage of a couple who had been living on Fefan Island, Truk District.

The facts in this instant case are a little unusual. Some years before 1958 Miko was the wife of Kachuo and several children were born of this marriage. In 1958 Ka-

chuo separated from Miko under circumstances which clearly constituted divorce under Trukese custom and went to live with Keit. Miko brought suit in the Community Court of Fefan against Keit, again under Trukese custom which may allow damages to the aggrieved spouse from the person who marries the ex-mate and Miko was awarded judgment against Keit of \$100.00 or, as Keit did not have \$100.00 but did have certain pieces of land in Fefan, Keit was ordered to transfer two pieces of land, Nisurur and Nesening, and a taro swamp also known as Nesening, to Miko in settlement of the damages awarded. Keit did this.

Thereafter in 1961, after Keit and Kachuo had lived together as husband and wife and had one child born of their marriage, Kachuo left Keit and returned to live with Miko. Keit thereupon brought suit in the Community Court against Miko for damages and the court's judgment was that Miko should return to Keit the same lands and taro swamp which Keit had previously transferred to her.

This judgment was appealed to the District Court, Truk District, and after hearing the court entered judgment affirming the judgment of the Community Court—that Miko should return to Keit the two lands and the taro swamp which Keit had previously conveyed to her as damages. This appeal followed.

Appellant contended in argument that review of the record will show that Kachuo's actions were wrong in leaving Miko in the first place and that Keit's actions were similarly wrong in marrying him under the circumstances then existing. Therefore, while it was proper under Trukese custom for Keit to pay damages to Miko, it is improper for Miko to be compelled to pay damages to Keit as Kachuo returned to her (Miko) of his own free will and Miko was not responsible for the break-up of any marriage between Kachuo and Keit.

There is some conflict in the evidence and this court agrees with the finding of the District Court that the person primarily at fault in both the previous actions was Kachuo.

[1-4] This appeal, however, must be decided on the basis of existing Trukese custom and its previous interpretation in this court. We believe that the memorandum issued December 20, 1954, by the Chief Justice and the Associate Justice on the subject "Divorces under Local Custom in the Truk District" is applicable here. Point A-I of that memorandum is:—

"I. IN LAW A DIVORCE IN ACCORDANCE WITH LOCAL CUSTOM DISSOLVES A MARRIAGE JUST AS FULLY AS A DIVORCE GRANTED BY A COURT."

Further under that same point:—

"A couple who have been divorced in accordance with local custom are both then legally free to marry someone else so far as the marriage which has been dissolved by the divorce is concerned."

Paragraph A IV of the same memorandum states:—

"IV. IF A THIRD PERSON HAS CAUSED THE BREAKUP OF THE MARRIAGE IN ORDER THAT EITHER OF THE SPOUSES MAY MARRY THIS THIRD PERSON, SUCH THIRD PERSON IS ALSO LIABLE TO PAY DAMAGES TO THE SPOUSE WHO HAS BEEN "THROWN AWAY" OR TO HIS OR HER LINEAGE OR FATHER."

So far then it appears that Kachuo effected a legal divorce from Miko and married Keit. The Community Court found that Keit must pay damages to Miko. No appeal was taken from this decision.

[5] Later Kachuo divorced Keit, to whom he was married, and remarried Miko. After hearing, the court awarded the same damages from Miko to Keit which the court had previously awarded from Keit to Miko. The court finds nothing in the record which would justify the reversing of this decision.

"Presumptions. When reviewing a decision rendered in a case tried by the court without a jury, or with a jury in a merely advisory capacity, an appellate court will indulge every reasonable presumption in favor of findings made by the court below as the basis of its decision, particularly where the record on appeal contains no statement of the evidence, or the appeal has been taken on the judgment roll alone. This presumption generally extends not only to a finding of ultimate facts, but also to a finding of secondary facts and inferences drawn therefrom. In the absence of specific findings, every finding of fact necessary to support the decision appealed from will be presumed to have been made. The appellant has the burden of showing error in the findings of the court below. However, where findings have been made by the court below, an appellate court cannot supply the omission therein of an essential fact which is not fairly inferable from the facts found." 5 Am. Jur. 2d, Appeal and Error, § 840.

[6, 7] On oral argument on the appeal counsel for the appellant contended that the award of land from Miko to Keit was improper as it might be presumed that the land had appreciated in value since it was conveyed by Keit to Miko. Paragraph B IV of the memorandum cited above is applicable here:—

"PAYMENTS IN LAND. In paying damages in connection with divorces under local custom, payments in the form of land are common. Under Sections 138 and 149 of the Code, the adjudication of title to land or any interest therein (other than the right to immediate possession) is excluded from the jurisdiction of District and Community Courts. We believe, however, that this does not prevent a District or Community Court from ordering a transfer of land as payment for damages when there is no dispute about the ownership and when the value of the land does not exceed one thousand dollars in the case of a District Court, or one hundred dollars in the case of a Community Court. Section 288(c) expressly authorizes ordering transfers of interests in land under an order in aid of judgment."

[8, 9] Indeed under American law the result would be the same. The action involved here is in the nature of an

action for alienation of affections. Referring to damages awarded in such suits generally:—

“All courts recognize the difficulty, if not the impossibility of formulating any rule to measure loss of consortium and affections in money, and they recognize that a wide latitude must be allowed the jury for the exercise of judgment. Since the jury must arrive at a determination of the amount necessary to compensate the plaintiff in the light of the circumstances attending the defendant’s wrong and the plaintiff’s injury, the motives of the parties, the existing state of affections or lack of affections of the spouses at the time of the alleged alienation, and the improper relations, even though not known to the plaintiff’s spouse, between the plaintiff and another at such time, the court will not substitute its judgment for the judgment of the jury, however much it may be dissatisfied with the verdict; its power in this respect is limited to granting another trial, or giving the plaintiff an option to accept a lesser sum than the verdict awards or to submit to a new trial. The tendency of the courts is toward liberality in fixing such compensation.” 27 Am. Jur., Husband and Wife, § 543.

It appears here that the trial court followed the old and well-tested maxim, “Equality is equity”. The trial court found that Keit is entitled to exactly the same damages that she previously had to pay Miko, and under all of the circumstances, we find no reason to substitute our judgment for that of the trial court.

Accordingly, the judgment appealed from is affirmed. No costs are assessed against either party.