

JUDGMENT

The finding and sentence of the Yap District Court on Count 1, for trespass, in its Criminal Case No. 702, are hereby affirmed. The finding and sentence on Count 2, for malicious mischief, in the same case, are set aside and the accused acquitted on that count.

SARAPIN T. PELIPE, Plaintiff

v.

ALFONSO PELIPE, BERNARDO LADORE,
PASTOR PELIPE and ANNA PELIPE, Defendants

Civil Action No. 242

Trial Division of the High Court

Ponape District

February 24, 1966

Action to determine ownership of land in Kitti Municipality, in which son of brother of deceased landholder under German title document claims ownership of land in opposition to adopted son of deceased. The Trial Division of the High Court, Associate Justice Joseph W. Goss, held that land belonged to defendant son since he was lawfully adopted under Ponape custom, but that since plaintiff made substantial plantings in bona fide belief he was entitled to possession, he has temporary right to harvest land.

1. Ponape Custom-Adoption

Adoption under Ponape custom did not require confirmation of *Nanmarki* or Governor under German Administration.

2. Ponape Land Law-German Land Title-Succession

Adopted son succeeds to property of his father under German land title system in Ponape.

3. Ponape Land Law-Crops

Where person makes substantial plantings on land in bona fide belief he is entitled to possession, court may grant equitable remedy such as temporary right to harvest.

GOSS, Associate Justice

This action concerns ownership of the land Pontui in the Olepal Section of Kitti Municipality, Ponape District which was formerly owned by Roke. Roke died without issue. The land is claimed by the Plaintiff as the son of Dido, a brother of Roke. Defendant Bernardo Ladore claims as purchaser from Defendant Alfonso Pelipe, son of Kerman who is alleged to have been the adopted son of Roke. Defendant Pastor Pelipe claims as the adopted son of Pastor, alleged to have been the adopted son of Kulian, Dido's older brother and brother of Roke. Anna Pelipe claims as the adopted daughter of Kulian.

FINDINGS OF FACT

1. Prior to 1912 a ceremony in which Roke adopted Kerman took place before the *Naniken* of Kitti.
2. Substantial plantings have been made on Pontui by the Plaintiff in the good faith belief that he was entitled to possession.

CONCLUSIONS OF LAW AND OPINION

This action turns on the issue of whether Kerman was adopted by Roke. In this regard the testimony of the *Naniken* of Kitti, Sarapin, is particularly important:-

"Mr. Makaya: You stated-or testified-that Kerman is an adopted child of Rake, is this true?

Answer: Yes.

Question: How do you know that Kerman was adopted by Rake?

Answer: I was present in this place when this adoption was made-or when this document was made-I ... and the Secretary

Question: To your recollection, approximately what year was Kerman-how old was Kerman at this time?

Answer: Maybe ten, or more.

Question: That day when Kerman became an adopted child, was Rake present?

Answer: Yes, all of them were present, and the Secretary Kentiner.
Question: Was the Nanmwarki present there?
Answer: No, we were alone.
Question: Was this adoption made in an office?
Answer: No, it was made at Mwokot"

[1] It is thus clear that an adoption ceremony did occur, even though the adoption may not have been brought to the attention or received the confirmation of the *Nanmwarki* and the German Governor. Since the adoption occurred prior to 1912, it is unnecessary to consider the possible effect of Paragraph 2 of the German Land Title Document and Ponape District Order 3-61, confirmation of the *Nanmwarki* and Governor not being required for a valid adoption under Ponape custom.

[2] As Roke's adopted son, Kerman succeeded to Pontui on Roke's death. Defendant Alfonso Pelipe, the oldest son of Kerman, succeeded on Kerman's death. He was accordingly within his right to sell Pontui to Defendant Bernardo Ladore.

[3] Plaintiff having made very substantial plantings on Pontui in the bona fide belief that he was entitled to possession, it is equitable that he should receive a portion of the fruits of his labor. Defendant Alfonso Pelipe, however, would ordinarily have been entitled to rent from Plaintiff. By affording Plaintiff the temporary right to harvest from his plants and trees, but limiting such right to a two year period, these interests are recognized.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the land Pontui is owned by Defendant Bernardo Ladore. Such ownership is subject to the temporary right of Plaintiff to enter Pontui and harvest from plants

and trees planted by the Plaintiff. The Plaintiff shall exercise due care not to injure any such plant or tree beyond that which customarily occurs in harvesting. All rights of Plaintiff shall expire on March 1, 1968.

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

3. No costs are assessed against any party.

BASILIOUS MESECHOL, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 278

Trial Division of the High Court

Palau District

March 31, 1966

Defendant was convicted in Palau District Court of reckless driving, in violation of T.T.C., Sec. 815(b), as amended. On appeal, defendant claims that no one was injured and that speed alone is not sufficient to constitute the offense. The Trial Division of the High Court, Chief Justice E. P. Furber, held that actual injury or accident is not necessary element in offense of reckless driving.

Affirmed.

I. Criminal Law-Appeals-Scope of Review

On criminal appeal, appellate court must consider evidence in light most favorable to government.

2. Reckless Driving-Actual Injury

No actual injury to persons or property is necessary in order to constitute offense of reckless driving within meaning of Trust Territory Code. (T.T.C., Sec. 815(b))

3. Reckless Driving-"Likely to Endanger"

Trust Territory law defining reckless driving is intended to cover situations where driver causes undue risk of injury to persons who either actually are or who it should reasonably be expected may properly be in position where they are likely to be injured, or where property similarly situated is likely to be injured. (T.T.C., Sec. 815(b)»