

first sentence of Section 265 of the Trust Territory Code, provided he files a sworn itemized statement of them within thirty (30) days after the entry of this judgment; otherwise no costs will be allowed.

WANTER, Plaintiff

v.

FERTUN, Defendant

Civil Action No. 287

Trial Division of the High Court

Truk District

May 16, 1966

Action to determine right to control and use of land in Lukunor Atoll, Mortlock Islands, in which plaintiff and defendant, brothers under the custom, are members of group holding rights in land and subject to third person as their leader. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiff failed to show he owns any of lands in question independent of defendant and others in group, and that group must share use rights in accordance with Lukunor custom.

1. Truk Land Law-Group Ownership

Where parties in Truk are members of group which is entitled to share fairly in use of properties in accordance with custom, exact method of sharing should be worked out within group and finally stated by group's leader.

2. Truk Land Law-Group Ownership

No attempt should be made by courts to determine division of use of property in Truk where members of group are entitled to share in use rights, unless and until parties have made every reasonable effort to work out determination within group and entire group has had chance to be heard on the matter.

<i>Interpreter:</i>	FRITZ SOUKICHI
<i>Counsel for Plaintiff:</i>	FILORIAN
<i>Counsel for Defendant:</i>	TIMAS

FURBER, Chief Justice

This action came on for hearing before me upon the Master's Report. Judge Ring Puas was present to assist in explaining his report. No evidence was presented at the hearing other than the Master's Report and the transcript of evidence taken by him.

The defendant objects to the third finding of fact by the Master and claims that the four properties mentioned in that finding belong to the group of which both parties are members and that therefore the defendant Fertun should be allowed to share in their use.

The plaintiff objects to the first two findings of fact by the Master, but, agrees with the third finding. He claims that while the plaintiff and defendant are both members of the same section or group for some purposes, they are entitled to own their properties separately.

OPINION

This action involves a dispute as to the control and use of six pieces of land and a taro swamp on Lukunor Atoll in the Mortlock Islands of the Truk District between two men who are considered to be brothers under the custom and both to be 'under Aisea as their elder leader. Apparently, their great difficulty is that they each wish to use these lands independently of the other and of Aisea, and the plaintiff has brought this matter to court for determination of the use of the lands without even consulting Aisea or trying to work out an agreement within the group as normally called for by Lukunor custom.

[1,21 Upon consideration of the report and the entire transcript of evidence, the arguments of counsel, and the

pleadings, the court holds that the plaintiff has failed to sustain the burden of showing that he owns any of the properties in question independent of the defendant and others or that he has any rights at all in the two pieces of land, namely Lukiluk and Falilo, referred to in the first finding of fact. The court holds that the rest of the properties, other than the two just referred to, are still owned by the group of which both parties and various others are members and of which Aisea is the present leader, and that while both parties are entitled to an opportunity to share fairly in the use of the properties in accordance with Lukunor custom, the exact method of their sharing should be worked out within the group and finally stated by Aisea. The division of use specified by the Master in his second and third findings of fact may be used as a temporary basis, but this is not held to bind the group, and the court is of the opinion that no attempt should be made by the courts in such situations to determine the division of use unless and until the parties have made every reasonable effort to work out a determination within the group and the entire group has had a chance to be heard on the matter.

The Master's Report is therefore approved only to the extent indicated in the following judgment.

JUDGMENT

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

1. As between the parties and all persons claiming under them, rights in the following properties, all located on Lukunor Atoll in the Mortlock Islands of the Truk District, are held as follows : -

a. Neither the plaintiff Wanter nor the defendant Fertun, both of whom live on Lukunor Island in Lukunor Atoll, has any rights of ownership in the land known as Lukiluk, located in the Lukolapan Section of Lukunor Is-

land, or in the land known as Falilo, located in the Lepokou Section of Sapunur Island.

b. The lands known as Likin Mesa (sometimes written Likin Mese), and Lepor, both located in the Relong Section of Lukunor Island, and the lands known as Likin Merapuin and Falemuau, both located in the Fena Section of Lukunor Island, and the taro swamp known as Lemechchairau (sometimes written Lemechairau), located in the Reuou Section of Lukunor Island, are owned by the group of which both the plaintiff Wanter and the defendant Fertun are members and of which Aisea is the present leader, and assignments of use within the group are to be made by the group in accordance with Lukunor custom.

c. Unless and until, however, the group makes some assignment of the use:-

(i) The plaintiff Wanter is to refrain from using the taro swamp Lemechchairau and is not to interfere in any way with its use by the defendant Fertun.

(ii) The defendant Fertun is to refrain from using the lands known as Likin Mesa, Lepor, Likin Merapuin, and Falemuau, and is not to interfere in any way with their use by the plaintiff Wanter, but the plaintiff Wanter is to allow Aisea to use them whenever he wishes, provided Aisea informs Wanter when he is going to do that.

d. The group may change the provisions made in subparagraph c above at any time and both parties are to comply with any such change promptly on receiving notice of it.

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

3. No costs are assessed against either party.

4. Time for appeal from this judgment is extended to and including August 5, 1966.