

LASU, MUSKO, and NUSITA, Plaintiffs

v.

PETERO and LOPU, Defendants

Civil Action No. 333

Trial Division of the High Court

Truk District

June 22, 1966

Action to determine ownership to land located on Tol Island, in which defendants claim certain lineage lands as compensation for services rendered their deceased father, formerly member of lineage, in his last illness. The Trial Division of the High Court, Chief Justice E. P. Furber, held that compensation owed to person rendering care to deceased lineage member need not be paid in land; and that if defendants have claim for such compensation, it is merely as creditors of lineage and not as owners of any particular piece of lineage land.

1. Truk Land Law-Lineage Ownership-Gifts

Under Truk custom, gift of lineage land by lineage member to his sons as payment for care rendered by them in his last illness is subject to review by matrilineal family.

2. ~~Truk Custom--Care~~ During Last Illness

While matrilineal lineage cannot properly deny obligation to pay compensation in one form or another for care rendered to lineage member in his last illness, if lineage failed without good cause to provide proper care for their deceased member, compensation need not necessarily be in land, but may be paid in goods or money.

3. Truk Custom-Care During Last Illness

Where parties who rendered care to lineage member in his last illness are entitled to compensation from lineage, parties may only claim as creditors of lineage and not as owners of any particular piece of lineage land.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Neither side has succeeded in showing any transfer of any of the lands in question made by the lineage with the consent of all of its adult members.

2. Nienmete and her husband Iakop, during the lifetime of their oldest son, Tira, directed that the lands Lechamal and Wichom should pass to their children as lineage lands.

3. Tira died without issue and without having made any specific disposition of the land Faninin.

4. After Tira's death, Nienmete and Iakop confirmed that Lechamal and Wichom should pass to their surviving children as lineage land and added as a further direction that Faninin, formerly owned by Tira, should also pass to their surviving children as lineage land, and this was concurred in by the surviving children.

5. No good cause has been given by the other lineage members for Kunut's attempt, with or without the assistance of his brother Nino, who pre-deceased him, to strip his lineage of these lands, divert them to himself, and then give two or all of them to his sons, the defendants Petero and Lopu.

OPINION

This action involves the ownership of three pieces of land located on Tol Island, Truk District. Both sides acknowledge that the lands Lechamal and Wichom were once lands of the lineage consisting of the children of Nienmete and their descendants in the female line, and the court holds that the effect of the third and fourth findings of fact was to make Faninin also land of that lineage. Both sides claimed that the lands have now become individual land, the defendants claiming that the plaintiffs or their predecessors in interest have so neglected their obligations to the lineage as to have lost their rights, thereby authorizing the last two surviving sons of Nienmete to dispose of the lands without consultation with the rest of the lineage. This claim is disposed of by the fifth finding of fact.

[1-3] Counsel for the defendants, in his closing argument, apparently impressed with the evidence tending to

show lineage ownership, brought up an entirely new basis for the defendants' claim of ownership, namely, that they were entitled to these lands as compensation for services rendered their deceased father, Kunut. In support of this, he cited Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 193. Such a ground had never been advanced or explored before in this action and there was not the slightest indication in the evidence that Kunut had ever attempted to give any of these lands to his sons as compensation for care rendered by them. There was an indication in the evidence that Kunut may have attempted to give the land Faninin to the defendants' mother for her care in his last illness, but she was not a party to the action. Furthermore, according to counsel for the defendants' own citation, any attempted gift by Kunut to his sons as payment for care would be "subject to review by the family", clearly meaning the matrilineal family, and while a matrilineal family or lineage cannot properly deny the obligation to pay proper compensation in one form or another for such services, if the lineage failed, without good cause, to provide proper care for their deceased member, this compensation need not necessarily be in land, but may be paid in goods or money. There has been no intimation of any attempt to work out any review of the situation with the lineage. It does appear that Kunut's lineage did not provide care for him in his last illness, although there is also evidence that the reason for this was because of the hostile actions of the defendants and the threats of one of them. It may be that the defendants or their mother or all three of them are entitled to some just compensation. The court makes no determination or intimation on that subject since it feels the matter was not sufficiently explored to enable the court to make a fair determination. The court holds, however, that whatever claim for compensation the defendants have, is as a creditor of

the lineage and not as the owner of any particular piece of lineage land.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the lands known as Lechamal, Wichom, and Faninin, all located in Foup Village on Tol Island, Truk District, are owned by the matrilineal lineage consisting of the descendants in the female line of Nienmete, of which the plaintiff Lasu, who lives in Foupo Village, Tol Island, is the present senior member, and the plaintiffs Musko and Nusita, who live in Foup Village, are also members, and neither the defendant Petero, nor the defendant Lopu, both of whom live in Foup Village, has any rights of ownership in any of the said lands.

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

3. This judgment is without prejudice to any claim the defendants may have against said lineage for services rendered their father Kunut in his last illness.

4. The plaintiffs together are allowed such costs as they may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided they file a sworn itemized statement of them within thirty (30) days after the entry of this judgment; otherwise they will be allowed only three dollars and fifty cents (\$3.50) costs to cover the filing fee and trial fee. Costs allowed are assessed against both defendants as a group, each being liable for the full amount, but they are only liable between them to see that the amount is paid once.