

AUGUSTA FRED, Plaintiff  
v.  
FATIOL AIRINIOS, Defendant  
Civil Action No. 414  
Trial Division of the High Court  
Truk District  
May 26,1967

Action to determine ownership of land in Oneop Island, Lukunor Atoll, Mortlock Islands, in which each party claims right to sell or transfer land which belongs to lineage. The Trial Division of the High Court, Chief Justice E. P. Furber, held that sale or gift of lineage or family land in Mortlock Islands to outsider is invalid without unanimous consent of all members, and that none of properties in dispute may be sold by either party without consent of the other and consent or acquiescence of all other adult members of lineage.

1. Truk Land Law-Mortlock Islands

Sale or gift of family land in Mortlocks to outsider is invalid without unanimous consent of all adult members, and without such consent lineage head has no right of sale.

2. Truk Land Law-Mortlock Islands

Those to whom use rights in lineage property in Mortlocks have been assigned hold under lineage, subject to its control in accordance with local custom, no matter how long they or their predecessors in interest may have been in possession.

3. Truk Land Law-Mortlock Islands

**If** those to whom use rights in lineage property in Mortlocks have been assigned persist in denying lineage rights, this is adequate ground for lineage to reassign use rights to someone else.

4. Truk Land Law-Mortlock Islands

Under Mortlocks custom, lineage members have duty to cooperate and advance their mutual interests, and lack of such cooperation does not give lineage members power to sell or give away lineage properties.

FRED v. AIRINIOS

<i>Assessor:</i>	JUDGE F. SOUKICHI
<i>Interpreter:</i>	SABASTIAN FRANK
<i>Counsel for Plaintiff:</i>	FLORIAN SEADY
<i>Counsel for Defendant:</i>	KALWIN SMITH

FURBER, *Chief Justice*

Counsel for the defendant Fatiol argued that the Master's findings were contrary to the evidence and that the persons who had been using the properties in question up to 1966, although connected with the plaintiff, had been acting in the care of these properties in the name of the defendant.

Counsel for the plaintiff Augusta stated he agreed with the Master's findings, but admitted that the plaintiff was only claiming interests in part of certain of the properties named in the complaint.

OPINION

This action involves a dispute as to the ownership of a part or the whole of at least three pieces of dry land (one of which the plaintiff claims is in two parts), and three taro swamps, all located on Oneop Island in Luku-nor Atoll, Mortlock Islands, Truk District. The plaintiff says she has been designated by agreement of her family to represent all of their interests in this action. As to certain of the properties, she claims for her mother's sister, Linis, and the plaintiff's daughter, Mata; as to one, for Linis alone; as to another, for her sister, Resta; and as to other property, for all of the children of her father, Oloper. Since, however, there appears to be no dispute whatever within the plaintiff's family and the whole issue raised in this action relates to the rights of the defendant as against each and all of the plaintiff's family, no effort is made herein to differentiate the particular rights of the different members of the plaintiff's family.

The defendant Fatiol claims essentially that all of the properties in question are lineage properties and that he has also acquired the use-rights in them, and as head of the lineage, has the right to sell them. As to two of the taro swamps, he also claims to have told the plaintiff and her family to get out of them because they purported to give away one of them.

**In** spite of language at various points which taken literally would appear to indicate claim of individual ownership, the court considers it clear from the Master's Report and the transcript of evidence attached thereto taken as a whole, that all of the properties in question are in fact owned by the lineage of which the defendant Fatiol is the male head and of which the plaintiff Augusta and all those for whom she claims are members.

**[1-3]** For a general description of Mortlockese custom as to lineage or family lands, see Tolerton and Rauch, "Social Organization, Land Tenure and Subsistence Economy of Lukunor, Nomoi Islands", p. 66-73-A, and Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 167-180. The court is firmly of the opinion that the following statement on p. 168 of Land Tenure Patterns outlines the general rule as to lineage or family properties in the Mortlocks : -

"Sale or gift of family land to an outsider is considered invalid without the unanimous consent of all members."

It is to be implied that this consent is only required from the adult members, but, certainly without their consent or acquiescence, the lineage head has no right of sale. Similarly, those to whom the use-rights in such properties have been assigned still hold under the lineage, and subject to its control in accordance with local custom, no matter how long they or their predecessors in interest may have been in possession. **If** they persist in denying the

lineage rights, this will undoubtedly be adequate ground for the lineage to reassign the use-rights to someone else. In the present instance, however, the plaintiff Augusta, on behalf of herself and others, has brought this issue promptly enough to court, acknowledging lineage ownership, so that the court is satisfied any previous threats by her or those for whom she claims to alienate some of the property without the consent of the defendant Fatiol, should not be considered adequate ground to strip her or those for whom she claims of their use-rights which the court firmly agrees with the Master the evidence clearly supports.

[4] Unfortunately, relations within this lineage have deteriorated badly and both sides are trying to stress their individual rights in disregard of their traditional duty to cooperate and endeavor to advance their mutual interests. Such lack of cooperation, however, gives neither one power to sell or give away any of the lineage properties. They should both be content with the limitations on their rights imposed by the system under which they hold them.

The court therefore holds that none of the properties in dispute may be sold by either party without the consent of the other and the consent of acquiescence of all other adult members of the lineage.

#### JUDGMENT

Upon consideration of the Master's Report, the transcript of evidence attached to it and the oral arguments of counsel, the Master's Report is approved with the qualification that the statement therein concerning ownership by Aleso and his giving properties to his wife and children relate only to the ownership and giving of use-rights, and it is

Ordered, adjudged, and decreed as follows:-

1. As between the parties and all persons claiming under them, the following properties, all located on Oneop Island, Lukunor Atoll, Mortlock Islands, Truk District, are owned as follows : —

a. The part of the dry land Olap in dispute, known to the plaintiff Augusta as Olap Kiteu and Olap Kita (sometimes spelt Kitte), but which the defendant Fatiol says is all one section; the part of the dry land Liki Set in dispute; the approximately half of the dry land Liki Sech in dispute (Le., all except the part to which the plaintiff Augusta makes no claim) ; the northern roughly one-third of the taro swamp Fenkiliau; and the taro swamps Lechep and Puennik; are owned by the matrilineal lineage of which the defendant Fatiol is the male head and of which the plaintiff Augusta and those for whom she claims are members.

b. The plaintiff Augusta or one or more of those for whom she claims own use-rights in each of the properties named above, subject to the supervision and control of the lineage in accordance with Mortlockese custom.

c. The defendant Fatiol, as the head of the lineage in question, is entitled to take from each of the said properties whatever produce he reasonably requires for his own personal needs.

2. The plaintiff Augusta and each of those for whom she claims, and the defendant Fatiol, are each permanently enjoined and restrained from selling or otherwise transferring the ownership of any of said properties without the consent of both Augusta and Fatiol.

3. Nothing herein contained is intended to or is to be construed as limiting the right of the lineage to reassign use-rights in any of said properties for good cause arising hereafter.

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