

It is therefore ordered as follows:-

1. That Findings of Fact 6, 7 and 8 as above set forth are set aside.

2. The case is re-referred to Presiding District Court Judge Carl Kohler, as Master, for Findings of Fact on the following matters:

(a) Was there a determination by Ludwik as to the right of the Plaintiff to the lands in dispute, and if so what was the determination?

(b) At that time was Ludwik an official of the Japanese Administration authorized to make such determinations ?(See Rules of Evidence 9(2), Judicial Notice.)

(c) What was the date on which Defendant's predecessors in interest assumed possession of the lands in dispute, and have said persons been in continuous possession since that date?

3. When such matters have been determined, amended Findings of Fact will be filed herein.

INEK SEHK, Plaintiff

v.

OHANA SOHN, Defendant

Civil Action No. 270

Trial Division of the High Court

Ponape District

November 16, 1967

See, also, 3 T.T.R. 420

Action to determine ownership of taro patch on Pingelap Atoll, which Master found was transferred to defendant's predecessor in interest, in accordance with prevalent practice on Pingelap. The Trial Division of the High Court, Associate Justice Joseph W. Goss, held that Master's findings are sustained by the evidence, and that since defendant and her mother had successively worked taro patch for over one hundred years, indication of ownership is strong.

SEHK v. SOHN

1. Ponape Land Law-Pingelap-Taro Patch

Under Pingelap custom, it is usual for one who makes outright gift of ownership of some part of taro patch to give, at same time, some dry land with it.

2. Ponape Land Law-Pingelap-Taro Patch

Transfer of taro patch by mother to her daughter is in accordance with prevalent practice of people of Pingelap.

3. Ponape Land Law—Pingelap—Taro Patch

Where party and her mother have successively worked taro patch on Pingelap Atoll for over one hundred years, indication of ownership is strong.

4. Former Administrations-Recognition of Established Rights

Where rights have persisted for many years under prior administration and party has failed to avail himself of agencies and courts of that administration, it is not proper function of courts of present administration to upset rights so long established and recognized by former administration.

Reporter: JOANES EDMUND
counsel for Plaintiff: KAPUS DIOFILOS and NOEL
Counsel for Defendant: ROBERT SAIRENIOS

GOSS, Associate Justice

This dispute comes before the High Court upon a Master's Report of hearings held on Pingelap Atoll, Carl Kohler, Presiding Judge of the Ponape District Court acting as Master.

This dispute involves title to an eight row taro patch known as Ahluhl which is located on the main Island of Pingelap Atoll. The parties were also involved in Ponape Civil Action No. 232.

OPINION

[1] The findings of the Master are sustained by the evidence presented at the hearings. Idinmen, the firsthusband of Emeli, was the owner of the taro patch Ahluhl and conveyed it to his true daughter Apikin to supplement the land Sakarakapw. This was in accord with Pingelap custom.

"It appears that under Pingelap custom it is usual for one who is making an outright gift of ownership of some part of a taro patch to give, at the same time, some dry land with it." *Ens v. Alisina*, 2 T.T.R. 362.

For a general discussion of the unique land law of Pingelap Atoll, see *Kelemend v. Mak*, 2 T.T.R. 55.

[2] Apikin transferred the taro patch to her daughter Ohana Sohn in accordance with the prevalent practice of the people of Pingelap.

Since Plaintiff has failed to show that the ownership of the taro patch was ever in his predecessor, Pelepel, the son of Emeli by a second husband, the testimony of the Plaintiff with respect to an oral will of Pelepel which allegedly transferred the land to the Plaintiff need not be considered.

[3,4] Finally, the Defendant and her mother, Apikin, have successively worked the taro patch for one hundred some years. What better indication of ownership can there be than evidence that the Defendant and her mother treated the land as being theirs for so long a period—*Aneten v. Olaf*, 1 T.T.R. 606. Where rights have persisted for many years under a prior administration and the Plaintiff has failed to avail himself of the agencies and courts of that administration, it is not the proper function of the courts of this present administration to upset rights so long established and recognized by former administrations. *Orijon v. Etjon*, 1 T.T.R. 101.

JUDGMENT

Upon consideration of the Master's Report and the transcript of evidence on file herein, the Master's Report is approved, and it is

Ordered, adjudged and decreed as follows:-

1. As between the parties and all persons claiming under them, the Defendant Ohana Sohn was the owner of

the taro patch consisting of eight rows and known as Ahluhllocated on the main Island of Pingelap Atoll, Ponape District. Said taro patch is supplementary to the land Sakarakapw.

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

3. No costs are assessed against either party.

4. Time for appeal from this judgment is extended to and including February 15, 1968.

KELTNGUUL NGIRUDELSANG, Plaintiff

v.

PIUS ITOL, Defendant

Civil Action No. 357

Trial Division of the High Court

Palau District

November 16, 1967

Action to determine title to land in Koror Municipality, which plaintiff claims on behalf of his clan, and defendant claims as heir of individual who once owned it as his individual land. The Trial Division of the High Court, Associate Justice D. Kelly Turner, granted defendant's motion for judgment based on plaintiff's failure to establish definite location of land and to rebut Japanese survey listing which lists land as individually owned by defendant's predecessor.

1. Palau Land Law-Clan Ownership

Purported descent of house site in male line, either to male's heirs or to his clan, is most unlikely under generally recognized Palau custom of descent through female line.

2. Real Property-Boundaries

When definite boundaries are either uncertain or in dispute, lines agreed upon or generally recognized and accepted, even though erroneous, are accepted by courts.

3. Palau Land Law-Japanese Survey-Presumptions

Japanese survey and Tocho Daicho ownership listing of land in Palau are presumed to be correct.