

Ponape District, is denied relief and that her complaint be and hereby is dismissed with prejudice.

2. That this judgment does not determine the claim of title to the land by the defendant Luther Neth but that his action for summary judgment be and the same is denied without prejudice to his rights to initiate an action in his own behalf.

3. That the defendant Luhkas Osaias has waived any claim to the land in favor of his natural son, the defendant Luther Neth, and is therefore denied any relief.

4. That the motion to intervene of plaintiff's counsel Kapuha Diopulos, be and the same is denied but without prejudice to his right to commence an action asserting title to the land in his own behalf.

5. No costs are assessed against any of the parties.

KASIANO S. SEHPIN, Plaintiff

v.

ATTA, Defendant

Civil Action No. 311

Trial Division of the High Court

Ponape District

June 14, 1968

Action to determine title to land located in Sokehs Municipality, Ponape District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that plaintiff had failed to overcome record in prior action which found that defendant's father was older than plaintiff's father and thus, was entitled to inherit all the lands of their adoptive father.

Defendant's motion for judgment granted.

1. Illegitimate Children-Recognition-Ponape

The Ponapean text of the German land code provided that an illegitimate child may be legitimized by the subsequent marriage of its biological parents, however, where no further action is taken by the father an illegitimate child has very low status as an heir.

2. Illegitimate Children-Recognition-Ponape

From long established practice on Ponape, an illegitimate child of a man is not to be considered as his child or issue, within the meaning of the inheritance laws there, unless such child is either adopted or legitimized by being publicly acknowledged and accepted into his family by the man as his child.

3. Illegitimate Children-Inheritance--Ponape

After an illegitimate son has been legitimized by adoption such a son should have the same status and rights to inherit as an adopted child.

4. Illegitimate Children-Inheritance--Ponape

Ponape District Legislative enactment No. 3-17-59 names as last in order of succession an illegitimate son who is subsequently legitimized by the marriage of the biological parents and -places third in order of inheritance, following true sons and daughters, the eldest adopted son, without reference to whether or not that son is an illegitimate child or not.

5. Ponape Land Law-Inheritance

Under the land law prevailing on Ponape in 1957 the oldest adopted son was entitled to inherit all of the lands of the adoptive father.

Assessor:

ANTONIO RAITONG, *Associate
Judge, District Court*

Interpreter:

IOUNES EDMUND

Reporter:

NANCY HATTORI

Counsel for Plaintiff:

CARLOS PHILLIP

Counsel for Defendant:

YOSTER CARL

TURNER, *Associate Justice*

When this matter came on for trial, counsel for plaintiff requested amendments to the pre-trial order as to contested matters and accordingly amendments were made by the court. At the request of the court, the parties agreed spelling of the defendant's name was "Atta" and spelling of the plaintiff's father's name was "Sepino". At the close of plaintiff's case, counsel for defendant moved for judgment and the court, after hearing oral argument, granted the motion.

OPINION

Title to the two parcels of land in dispute located in Sokehs Municipality, Ponape District, was determined to be vested in Atta, defendant in this case, by the judgment of this court in *Tikses Sehpin, Ahda Sehpin (Atta), and Matihna Sehpin v. Kosmi Sehpin Pite, Samans, and Piu-tiana Pite*, Ponape District Civil Action No. 249, decided September 10, 1965.

In Civil Action No. 249, Atta, the defendant in the present case and one of the plaintiffs in the prior action, was held to be the oldest living adopted son of Sehpin, the predecessor in ownership of the disputed lands. However, neither Kansiano, the present plaintiff, nor his natural father, Sepino, who died before Civil Action No. 249 was filed, were parties to that action. Because Kansiano's father's rights in the disputed land were not formally adjudicated in Civil Action No. 249, the court considered it to be fair to give Kansiano his "day in court" in the present action.

Even though he was not a party in Civil Action No. 249, Kansiano's interests in this land which he claims by inheritance through his deceased father, Sepino, were inferentially determined as evidenced from the record in Civil Action No. 249, which the court now takes judicial notice of because of the answer of the defendant Atta.

It was apparent the only way Kansiano's claim to the land could prevail as against the judgment in favor of Atta in Civil Action No. 249, was to prove by the weight of the evidence that his father, Sepino, had inheritance rights superior to Atta's rights. This, the plaintiff failed to do.

There was an additional element in the present case which plaintiff did not touch upon in his evidence. Atta, as a result of his judgment in Civil Action No. 249, and prior to the present trial, sold the two parcels in question. How-

ever, because of the plaintiff's inability to establish this claim, the court does not need to consider the relief Kansiano might have been entitled to in view of the land sale by Atta.

Plaintiff's evidence largely consisted of testimony from the same witnesses who had previously appeared in behalf of the defendants in Civil Action No. 249. Their testimony then was not sufficient to overcome Atta's entitlement to the land, nor was it any more effective in the present case.

Plaintiff's principal theory of entitlement was that (1) Atta was not adopted by Sehpin, and (2) his father, Sepino, was the natural son of Sehpin. The evidence completely failed to upset the prior determination of Atta's adoption. As to the second point, the evidence disclosed that Sepino was a son "related by blood" to Sehpin, but it failed to show, because it could not, that Sepino was the legitimate natural son of Sehpin, whose entitlement, therefore, would be superior to an adopted son. It appears from the record in Civil Action No. 249 that Sepino was adopted by Sehpin and that the "blood relationship" was that of an illegitimate son.

[1,2] The court's research discloses recognition of this practice in Ponape of adopting an illegitimate son or by legitimatizing the son by subsequent marriage of the natural parents. In the publication, *Land Tenure Patterns*, the article by John L. Fischer on "Contemporary Ponape Island Land Tenure" says at p. 111 and 112:-

"The Ponapean text of the Gennan land code provides that an illegitimate child may be legitimatized by the subsequent marriage of its biological parents. It is not known whether this provision was taken from Ponapean custom or not. Cases do not seem to be frequent. Where no further action is taken by the father an illegitimate child has very low status as an heir."

In *Moses v. Moses*, 3 T.T.R. 187, the court said:-.

"From long established practice on Ponape, the court holds that an illegitimate child of a man is not to be considered as his child or issue, within the meaning of the inheritance laws there, unless such child is either adopted or legitimized by being publicly acknowledged and accepted into his family by the man as his child."

[3] Since neither Land Tenure Patterns nor the *Moses* case shed any further light on the right to inherit by such a son after he has been legitimized by adoption, we believe such a son should have the same status and rights as an adopted child. The additional fact, as in the present case, that the adopted son is "related by blood" to the adoptive father does not enlarge or otherwise affect his rights.

[4] This conclusion seems to be supported by the Ponape District Legislative enactment No. 3-17-59, approved and effective November 24, 1959, which names as last in order of succession the illegitimate son who is subsequently legitimized by the marriage of the biological parents. This Act places third in order of inheritance (following true sons and daughters) the eldest adopted son, without reference to whether or not that son is an illegitimate child or not.

This legislation is said to modify the German land law imposed in 1912 to be more in accord with Ponapean custom. Only because it reflects custom is the Act mentioned here because the predecessor owner died and the interests of the parties in the present case therefore became vested before the enactment of the law.

[5] Upon our conclusion that the plaintiff's father was an adopted son whose rights are those of any other adopted son, we must hold that the defendant Atta must prevail over the plaintiff because the record in Civil Action No. 249 shows that Atta is four or five years older than Sepino and was in fact the oldest adopted son of Sehpín. Under the land law prevailing at the time of Sehpín's death, Jan-

uary 11, 1957, the oldest adopted son was entitled to inherit all of the lands of the adoptive father.

The inability of the plaintiff to produce any evidence to upset the prior determination in favor of Atta as against Sepino's entitlement as a younger adopted son requires the court to grant defendant's motion for judgment at the conclusion of plaintiff's case.

JUDGMENT

Ordered, adjudged, and decreed:-

1. That plaintiff Kansiano S. Sehpin and all those claiming under him be and hereby are denied relief upon his claim to the lands known as Pahnipwal and Pohnipwal (also known as Welshpw), located in the Ipwal Section of Sokehs Municipality, Ponape District.

2. That no costs are assessed against either party.

NISIO, IRAPUNG and KANERI, Plaintiffs

v.

OUKA and MASAE, Defendants

Civil Action No. 390

Trial Division of the High Court

Truk District

June 17, 1968

Action to determine ownership of four parcels of land on Fefan Island. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that the evidence supported claims to ownership based upon support of a former owner for a long period of time and claims based on continuous and unopposed possession covering a long period of time.

1. Truk Land Law-Individual Ownership-Care of Owner During Last Illness

Evidence that a person had taken care of former titleholder most of his life and evidence that such person had also taken care of such person's parent for a long period of time showed good reason for the gift of land to such person.