

2. Time for filing of the stipulated survey ordered June 3, 1966, is extended until sixty days from date of this order. When such agreed survey is filed as ordered, parties may stipulate that a Judge of the High Court may reopen the case and include the agreed survey as a part of this judgment.

3. This judgment shall not affect any rights-of-way over, under or upon the lands in question.

4. No costs are assessed against any party.

5. The Clerk of Courts is instructed to have this judgment docketed, translated and furnished to Counsel, to the Headquarters Land Management Officer, and to the District Land Management Officer.

6. Time for appeal in this matter is extended until forty-five days after entry of judgment herein.

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SARINA OPISPO, Plaintiff

v.

MESILENG, Defendant

Civil Action No. 279

Trial Division of the High Court

Ponape District

July 31, 1968

Action to determine ownership of land in Uh Municipality, Ponape District. The Trial Division of the High Court, Joseph W. Goss, Temporary Judge, held that land in question passed to former owner's adopted nephew under German land law in effect but that plaintiff, who was former owner's adopted daughter and presently a widow, was an "unmarried female relative" of the present owner and as such entitled to live on and use the property along with the owner.

1. Ponape Land Law-German Land Title--Women's Rights

Under the law set forth in the standard form of German title document a female was prohibited from inheriting land by hereditary succession or by testamentary gift.

2. Evidence-Documents-Translations

Where the German and Ponapean versions of the standard title documents are not identical the German text prevails.

3. Ponape Land Law-German Land Title-Women's Rights

The law of succession and inheritance to land under German land title was not changed until enactment of Ponape District Order No.8-57 and Ponape District Law 3-17-59 and neither of those laws purported to affect things that happened before they were adopted and to try to adapt either to inheritances that had taken place years before would be improper. (Ponape District Order No.8-57, Ponape District Law 3-17-59)

4. Ponape Land Law-German Land Title-Women's Rights

Transfers of land to women were not recognized by Japanese officials prior to 1941, and the 1941 change in the basic law was not intended to be a retroactive change.

5. Ponape Custom-Adoption

Where defendant was adopted prior to issuance of the German Land Document in 1912 confirmation of the adoption by the *Nanmwarki* and Governor was not required.

6. Ponape Land Law-German Land Title-Succession

Where holder under German land title had no children, adopted son of defendant's true older brother succeeded to the ownership of land in question.

7. Ponape Custom-Adoption

There was no requirement in paragraph 3 of the German Title Document that adoption of a female be approved by the *Nanmwarki* or the Governor, and there was no such requirement in the law of Ponape Custom.

8. Ponape Land Law-German Land Title-Use Rights

The German system of land ownership on Ponape Island was intended to provide for male relatives of the titleholder who had no property, and for unmarried female relatives for so long as the property remained within the family.

9. Ponape Land Law-German Land Title-Use Rights

Adopted daughter, presently a widow, of former owner of land was an "unmarried female relative" of present owner, who was former owner's nephew, and thus entitled to live on and use the property along with the owner.

10. Ponape Land Law—German Land Title-Use Rights

The rights held by unpropertied males and unmarried females under German land title documents are equitable interests in land and as such are protected by the provisions of Section 4, Trust Territory Code, and thus insofar as Ponape District Order No. 3-61 purports to deprive such persons of property rights it is in conflict with such section of the Code and void. (T.T.C., Sec. 4; Ponape District Order No. 3-61)

*GOSS, Temporary Judge*

## FINDING OF FACT

1. Alpios adopted Plaintiff.

## OPINION

This case involves the title to the land Peidi (s'pelled Paiti on German Land Document No. 156) located in Dh Municipality, Ponape District. The parties have stipulated to the following facts:-

1. In 1912, Alpios was registered as the owner of Peidi on a standard form of German title document.
2. Alpios had no natural children.
3. Shol was the true older brother of Alpios. Shol died in 1905.
4. Defendant was adopted by Shol.
5. Plaintiff is a widow.

The Plaintiff claims that she was adopted by Alpios and upon Alpios' death, inherited the land Peidi. She also claims that Alpios told her that she and her daughter Karina would own Peidi.

[1,2] Under the law set forth in the standard form of German title document used to record Alpios' interest in the property, a female was prohibited from inheriting land by hereditary succession or by testamentary gift. It is noted that the German and Ponapean versions of paragraph 2 of the standard title documents are not identical. In such instance the German text will be deemed to prevail. A translation of the German text of paragraph 2 reads as follows:-

"Upon death of the owner, the property passes undivided on to a male relative entitled to inheritance. Decision by testament is not allowed. The hereditary succession is as follows:-

- (1) Oldest living son.
- (2) Oldest living grandson.
- (3) Oldest living brother.
- (4) Oldest living brother's son.

"Lacking these relatives, the owner may adopt a man who he likes to be his heir. Legal confirmation depends on the *Nanmwarki* and Governor. If the owner dies without leaving either a legal or adopted heir, the *Nanmwarki* and the Governor decide about the property." Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, Fischer, p. 88-89. See also *Eneriko v. Marina*, 1 T.T.R. 334.

[3] The law of succession and inheritance to land was not changed until enactment of Ponape District Order No.8-57 on February 1, 1957, which made provision for inheritance by women. That District Order has now been superseded and changed by Ponape District Law 3-17-59, which was approved by the High Commissioner on November 24, 1959. Neither of these laws purports to affect things that happened before the law was adopted, and to try to apply either law to inheritances that have taken place years before would be most improper and clearly cause great confusion: *Makdalena v. Aluis Ligor*, 2 T.T.R. 572.

[4] Transfers of land to women were not recognized by Japanese officials prior to 1941, and the 1941 change in the basic law was not intended to be a retroactive change: *Kehler v. Kehler*, 1 T.T.R. 398. Assuming that Plaintiff could not have received title to Peidi by hereditary succession nor by inter vivos or testamentary gift, it is necessary to consider Defendant Mesileng's claim through his adoption by Alpios' brother, Shol.

[5, 6] Shol adopted the Defendant prior to issuance of the German Land Document in 1912, therefore confirmation of the adoption by the *Nanmwarki* and Governor was not required. *Pelipe v. Pelipe*, 3 T.T.R. 133. Shol prede-

ceased Alpios. Under paragraph 2 of the German Title Document the Defendant succeeded to ownership of Peidi.

[7-9] The court has found that Plaintiff was adopted by Alpios. There is no requirement in paragraph 3 of the German Title Document that adoption of a female be approved by the *Nanmwarki* or the Governor, and there was no such requirement in the law of Ponape custom. *Pelipe v. Pelipe*, supra. The remaining question concerns the right of the Plaintiff, a widow, to "live on and use the property along with the owner" as an unmarried female relative pursuant to paragraph 3 of the German Title Document. A translation of the German text of paragraph 3 reads:-

"3. All male relatives who have no property of their own and all unmarried female relatives have the right to live on and use the property along with the owner." Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, Fischer, p. 89.

The German system of land ownership on Ponape Island was intended to provide for such relatives for so long as the property remained within the family. Since Plaintiff is the adopted daughter of former owner' Alpios, who was the brother of Defendant's foster father Shol, Plaintiff must be considered an unmarried relative of the owner Defendant Mesileng.

In 1961, however, Ponape District Order 3-61 was issued purporting to abolish all restrictions of the German land title deed so thafhenceforth the documents would be construed only as evidence of ownership. The legal effect of the order has been of serious concern'to those versed in the law of the Ponape' District:-

"... there may be a serious gap in the present land law structure. Particularly in light of the stringent requirements on wills ... it is uncommon for a man to dispose of his land by devising it ill divided shares to his children. With the emphasis in the inheritance law of undivided ownership in the eldest son or daughter, and in the absence of any provisions for 'use rights' by y(mnnger

brothers and unmarried sisters in the German land title, there may be a serious inadequacy in the provision of land and resources for the younger children in the family. At present, it may be argued that the homesteading laws provide the opportunity for these children. However, when homesteading land grows less attractive as it progresses into the mountainous interior, this alternative may become less feasible. . . . Undoubtedly, customary extended family possession of land continues despite the legal ownership of land, so that many conflicts are avoided simply because the customary 'use rights' to live on the land are still recognized by the legal owner; however, this does not minimize the problems that are always confronted when the actual practices followed differ from the form of the law and the legal rights thereunder. For one thing, it permits intrafamily quarrels to grow into legal disputes, often unexpectedly throwing people off their land." 1 Micronesian Advocate 4, 9, Bliss, The Law of Real Property of the Ponape Island.

**[10]** Despite its language it is not believed that Ponape District Order No. 3-61 was intended to cut off unpropertied males and unmarried females throughout Ponape Island from their rights to share land with their title holding relatives. The rights held by male and female relatives under the German land title documents are equitable interests in the land concerned. As such, these rights are protected by the provisions of Trust Territory Code, Section 4:-

"Section 4. *No deprivation of life, liberty, or property without due process.* No person shall be deprived of life, liberty, or property, without due process of law; . . . ."

Insofar as the Ponape District Order No. 3-61 purports to deprive persons of property rights, it is in conflict with Trust Territory Code, Section 4 and void.

During such periods as Plaintiff may be unmarried, and for so long as the land Peidi shall remain in the family of Alpios, Plaintiff Sarina Opispo shall have the right to live on and use Peidi along with the owner, pursuant to paragraph 3 of the German Title Document.

## JUDGMENT

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

1. As between the parties and all persons claiming under them, the land Peidi located in Dh Municipality, Ponape District, is owned by the Defendant Mesileng and his successors in interest.

2. During such periods as Plaintiff may be unmarried, and for so long as the land Peidi shall remain in the family of Alpios, Plaintiff Sarina Opispo shall have the right to live on and use Peidi along with her relative Defendant Mesileng, pursuant to paragraph 3 of the German Title Document.

3. This judgment shall not affect any rights-of-way there may be on, over, or beneath the land in question.

4. No costs are assessed against either party.

5. Time for completion of the survey ordered herein on April 6, 1967, is extended until sixty days following entry of this judgment. At such time as the survey is completed and agreed to by the parties as provided in said order, this case may be reopened and a Judge of the High Court may on stipulation of the parties incorporate the survey into this judgment.

6. The Clerk of Courts will cause this judgment to be docketed, translated, and furnished to counsel, to the Headquarters Land Management Officer, and to the District Land Management Officer.

7. Time for appeal is extended until forty-five days following entry of judgment.