

LUKAS MALARME, FRANCISCO ROSARIO, KIRESENS
LIMKOHR and TRUST TERRITORY OF THE
PACIFIC ISLANDS, Plaintiffs

v.

ESTANIS LIGOR, IONAIK LIKOR, MAX IRIARTE
and PETER IRIARTE, Defendants

Civil Action No. 278

Trial Division of the High Court

Ponape District

January 10, 1969

Action to determine ownership of land located in Nett Municipality, Ponape District. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that failure to present claims to land in a timely manner will bar actions because such claims are stale and that defects in establishing approval required by law to certain transfers cannot be taken advantage of by one having a lesser right to the land.

1. Trust Territory-Suits Against

Where Trust Territory Government had not consented to suit, and as the Government is immune from suit without its consent, Government's motion for dismissal would be granted.

2. Real Property-Quiet Title--Laches

Trust Territory courts in handling actions to quiet title to land are expected to aid those who have been reasonably active in pressing their claims, but to refuse relief to those who have not made proper efforts to press their claims.

3. Ponape Land Law-Japanese Survey

It is presumed that determinations made in the official Japanese survey are correct.

4. Ponape Land Law-German Land Title--Approval of Transfer

Failure of evidence to show all approvals required by German land law of any transfers made outside of the ordinary line of inheritance is not a defect of which anyone having a lesser right may take advantage.

BURNETT, *Associate Justice*

FINDINGS OF FACT

1. Francisco Rosario was adopted by Santiako but made no legal claim following his coming of age in June of

1926 until filing of complaint in intervention in March of 1967.

2. Aluis Ligor was the oldest surviving brother of the last registered owner, Kilemende, who died in 1942, and succeeded him as to land not previously disposed of.

3. The area designated as Lot No. 5 on the trial sketch was awarded to Lukas Malarme in a division of the land pursuant to order of the Japanese court in 1935.

4. A further division of the land into lots as shown on the trial sketch was made by the Japanese surveyors in 1941.

5. The sale of portions of Lot No. 1 to Max and Peter Iriarte has been consented to by all persons having rights in the land.

OPINION

[1] All the parties to this action, except Francisco Rosario, agree that a portion of the land Pahnsapw Kahmar No. 51 is owned by the Trust Territory Government. The Government was consequently mentioned variously as a party to the action in previous orders of this court, none of which appear to have been served upon it. The Government has filed no pleadings nor have any pleadings been served upon it, and the District Attorney by motion filed October 10, 1968, requested dismissal as to the Trust Territory. It appearing from the record that the Trust Territory Government has not consented to this action and that, on authority of *Alig v. Trust Territory*, 3 T.T.R. 603, the Government is immune from suit without its consent, the motion is granted, and the Trust Territory of the Pacific Islands is no longer a party.

This action involves various conflicting claims of ownership of the land Pahnsapw Kahmar, located in Nett Municipality, Ponape District, held under standard form German Land Deed No. 51. The parties all agree that the

original registered owner was Santiako, and that following his death the land passed to Mikel and from him to Damian, whose name was not registered as owner. With the exception of the plaintiff in intervention, Francisco Rosario, all of the parties derive their claims from Kilemende, the last registered owner who succeeded Damian. Kilemende died in 1942.

Francisco Rosario claims title to the whole of Pahnsapw Kahmar as the sole adopted son of Santiako who died in 1921. He has alleged that, prior to his death, Santiako gave him the title document and that Mikel obtained it from him through fraudulent means. At the time of Santiako's death Rosario was 16 years old and thus reached the age of 21 in 1926. He presented no evidence of any effort on his part to assert his claim to ownership until the filing of his petition in intervention in March of 1967, other than his unsupported testimony that he went to the police station in an attempt to get help to find the title document.

[2] Notwithstanding the fact that the Japanese courts were available for the determination of conflicting claims to land ownership, Rosario asserted no claim in that forum. An allegation of fraud, coming at this point, over forty years after the date of his coming of age, would be as impossible to disprove as Rosario has found it to prove. This court has previously held that it is not available for the enforcement of a stale demand.

"Furthermore, these are very 'stale demands'. Ating has shown no good excuse for standing by over twenty years after he came of age before bringing these actions. Our courts in handling such actions to quiet title to land are expected to aid those who have been reasonably active in pressing their claims, but to refuse relief to those who have not made proper efforts to press their claims. For a discussion of this basic idea see *Kanser v. Pitor*, 2 T.T.R. 481." *Seson v. Edwin* and *Seson v. Alpet* (tried together), 2 T.T.R. 568.

I hold accordingly that Francisco Rosario has established no legitimate claim of right in the land here in dispute.

It is not disputed by any party to the action that Aluis Ligor, the original defendant in Civil Action No. 278, who is now deceased and succeeded by Estanis Ligor, was the oldest surviving brother of Kilemende who died without issue and, thus, in the proper line of inheritance to succeed him. There is therefore no question as to his right to succeed as owner of such land as remained in Kilemende's possession at the time of his death in 1942. Defendant Estanis Ligor contends that there has been no division of Pahnsapw Kahmar and that he is entitled to have his claim recognized as to the land in its entirety, with the exception of those parcels transferred by Aluis to Max and Peter Iriarte. As appears from the findings above, however, the court is satisfied by the evidence that Kilemende had, in fact, set aside certain parcels for the benefit of other parties to this action, which division was confirmed by the Japanese survey in 1941.

[3] It is presumed that determinations made in the official Japanese survey are correct. *Belimina v. Pelimo*, 1 T.T.R. 210.

All parties to the action, again with the exception of Francisco Rosario, have consented to the sale of portions of Lot No.1 to Max and Peter Iriarte and their title is not here in question.

There is a remarkable degree of uniformity in the claims made and testimony presented by the plaintiffs Lukas Malarme and Kiresene Lihkohr and the defendant Ioanis Likor. No purpose would be served by a recounting of the evidence presented; it is sufficient to say that the court finds creditable evidence that Kilemende did in fact divide the land and set aside the area designated as Lot No. 3 on the trial sketch to Lukas Malarme, Lot No. 1 to Kiresene Lihkohr, and Lot No.2 to Ioanis Likor. Lukas Ma-

larme also laid claim to Lot No. 5 and established to the satisfaction of the court that this portion was his as a result of a judgment of the Japanese court in a trial between him and Damian in 1925.

There was likewise a remarkably blank point in the testimony with respect to Kilemende's wishes as to Lot No.4, though it appears to be generally conceded that this portion was for Aluis. While at first glance it might seem strange that the parties could remember with such clarity Kilemende's disposition of all other parcels, while knowing nothing as to Lot No.4, it may well be that Kilemende found no necessity for making specific provision for Aluis at the time of the survey, knowing that he would succeed him as to any retained portion in any event.

[4] The evidence as a whole was not entirely satisfactory in terms of showing all approvals required by the German land law of any transfers made outside of the ordinary line of inheritance. This court has held, in a number of prior decisions, that this is not a defect of which anyone having a lesser right may take advantage. See *Godlieb v. Welten*, 1 T.T.R. 175:-

"The failure to obtain these consents is not a defect of which any of the parties to this action is entitled to take advantage. See the second paragraph of the conclusions of law in *Plus v. Pretrik*, 1 T.T.R. 7.'

The only individual who has appeared in this matter who might conceivably be entitled to raise the issue is Aluis Ligor. I note that his first assertion of claim to the entire land of Pahnsapw Kahmar came with his publication of notice of claim in 1965, some 23 years after the death of Kilemende. During all of this time the other claimants were in possession of and working those portions to which the court now holds they were entitled. See *Kilement v. Eskalen*, 1 T.T.R. 309:-

"Any suspicion as to the validity of the division and purported gifts of the land, that might arise from the long delay between Meninsir's action and the necessary consents to it by or on behalf of the *Nanmarki* and the government is overcome by the strong presumption, explained in paragraph 2 of the conclusions of law in *Belimina v. Pelimo*, 1 T.T.R. 210, that determinations made in the official Japanese survey of private lands on Ponape, which began about 1941, are correct. It should also be noted that the delay arouses less suspicion in this case than it otherwise might because all parties concerned had admittedly acquiesced in the division for years so far as it affected the use of the land so that the delay caused no immediate difficulty or inconvenience.

I, accordingly, hold that Estanis Ligor, who succeeds Aluis Ligor, is not in a position to raise the issue in bar of their claims at this point.

It is, therefore, ordered, adjudged, and decreed:-

1. As between the parties and all persons claiming under them, the land known as Pahnsapw Kahmar, Nett Municipality, Ponape District, is owned as follows (all references being to designations made on the trial-sketch) : -

a. (1) The portion of Lot No.1 marked as "Max I" is the property of the defendant Max Iriarte.

(2) The portion of Lot No.1 marked as "Peter I" is the property of the defendant Peter Iriarte.

(3) The remaining portion of Lot No.1 is the property of Kiresene Lihkohr.

b. Lot No. 2 is the property of the defendant Ioanis Likor.

c. Lots Nos. 3 and 5 are the property of the plaintiff Lukas Malarme.

d. Lot No.4 is the property of the defendant Estanis Ligor.

2. Each of these parts is the property of the person named, with the benefit of and subject to all the rights and obligations imposed by the system of land ownership set forth in the standard form German title document, as

heretofore or hereafter modified by law. Each of the parties has as complete control over his part of the land as he would have if a separate title document had been issued for each of these parts.

3. This judgment shall not affect any rights-of-way there may be over the land.

4. No costs are assessed against any party.

AGNES WELLIEM, Plaintiff

v.

ANDRAES WELLIEM, Defendant

Civil Action No. 327

Trial Division of the High Court

Ponape District

January 10, 1969

Action to determine ownership of lands in Uh Municipality, Ponape District. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that while disposition of land outside of normal lines of inheritance could be made, one claiming such a transfer has the burden of establishing conclusively that that was in fact the intention of the owner and where such proof was lacking the land in question passed through the normal lines of inheritance.

1. Ponape Land Law-German Land Title-Wills

The German land law, which remains in effect except to the extent it may have been modified in some particulars by succeeding administrations, specifically prohibits testamentary disposition of land and no change in that respect was effected in Ponape District until adoption of Ponape District Order No.9-57, effective April 1, 1957. (Ponape District Order No.9-57)

2. Ponape Land Law-German Land Title-Approval of Transfer

Provisions of the German land law permit disposition of land during the lifetime of the owner with the consent of the *Nanmarki* and of the Governor.

3. Ponape Land Law-German Land Title-Presumption of Ownership

While a disposition of land, held under German land law, outside of normal lines of inheritance may be made, one claiming such a transfer has the burden of establishing conclusively that that was in fact the intention of the owner.