

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.

BURNETT, *Associate Justice*

This action involves claims to ownership of lands known as Ptiklos No. 150 and Malueseida No. 148, located in Mwahnpaidak, Uh Municipality, Ponape District, held under standard form German Land Deed by Etmont Welliem, *Nanmwarki* of Uh, from whom both parties claim.

Plaintiff contends that the lands in question were given to her by the *Nanmwarki* in a division of all his lands among his children on August 12, 1954, at which time he executed a document providing for such distribution and delivered two German Land Deeds to her.

The sole issue in this case is whether the *Nanmwarki* did in fact convey the two parcels of land to the plaintiff as alleged, since it is not denied that the defendant is the oldest adopted son of the *Nanmwarki* and, thus, in the proper line to succeed him.

Plaintiff produced, as her Exhibit No.1, the document executed by the *Nanmwarki* on August 12, 1954, which bears only his signature. According to her testimony, only she and the defendant's oldest daughter (who was about 16 or 17 years of age) were present at that time; she herself was approximately 18 years of age. She testified that only a single copy of the document was made, and that it was then delivered into her possession together with the two German Land Deeds, Nos. 148 and 150.

[1] As has been stated many times before in decisions of this court, 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. No change in this respect was effected in Ponape District until adoption of Ponape District Order No.9-57, effective April 1, 1957. Thus, if Plaintiff's Exhibit No. 1 is found to be a will, it is void and can be given no effect.

[2,3] Further provisions of the land law, however, permit disposition during the lifetime of the owner with the consent of the *Nanmwarki* and of the Governor. Where the Government has not consented, this court has held there is a defect in the transfer, but one which is subject to challenge only by the administration. I am of the opinion that, while it is correct that such a disposition of land 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. I hold that plaintiff has failed to carry this burden and that the document executed August 12, 1954, constituted in reality an attempt to make a testamentary disposition of the land, and thus is void.

This conclusion is strengthened, not only by the admittedly ambiguous language of the document itself, but by recognition of the fact that the *Nanmwarki*, having the German Deeds in his possession, made no attempt to record any transfer of ownership in appropriate manner on the face of the deed. That plaintiff's name is written on the back of each deed in what appears to be the *Nanmwarki's* hand is not sufficient evidence of any intent to do so. Not only does the writing show unmistakable signs of having been traced over, but other writing, less distinct but still legible, including the name of the defendant on Deed No. 150, appears on each document.

Since I hold that the *Nanmwarki* was still possessed of the properties at the time of his death, they then passed to the defendant as his oldest adopted son, and it is consequently unnecessary to consider Defendant's Exhibit A, a will leaving all the *Nanmwarki's* lands to the defendant.

It is, therefore, ordered, adjudged, and decreed that, as between these parties and all persons claiming under them, the lands known as Ptiklos No. 150 and Melueseida No. 148, located in Mwahndpaidak, Dh Municipality, Po-

nape District, are the property of Andraes Welliem and he is, therefore, entitled to their possession with all of the rights and subject to all of the obligations of ownership in the same manner as though his name were inscribed as owner on the German Land Deeds covering each parcel.

NENA R. PALSIS, Plaintiff

v.

KIOKEN DANIEL, Defendant

Civil Action No. 301

Trial Division of the High Court

Ponape District

January 15, 1969

Action to determine ownership of land on Kusaie Island, Ponape District. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that where a party was given use rights **only** to land in question she was not free to transfer such land to another.

Ponape Land Law-Use Rights

Where person was given only use rights to land in question, she could not transfer that land to another.
