

no such items can be allowed. The same can be said for a remaining item having to do with his costs and expenses incident to this action.

Defendants Itosi and Stella entered an appearance and filed an answer pursuant to order of the court at pre-trial conference, but did not appear at the trial. It appears, however, that the land has been sold to them by Tohter who admits partial payment and states that the sale is not completed.

It is hereby ordered, adjudged, and decreed:-

1. As between these parties, title to the land Liksarwei in Ngatik Island, Ponape District, is in the defendant Tohter, subject only to whatever rights defendants Itosi and Stella have acquired by reason of their contract to purchase the land.

2. Plaintiff Welsin Salmon has no rights in the land Liksarwei and his claim to the land or, in the alternative, money damages is denied.

3. No costs are assessed any party.

NENJIR, Plaintiff

v.

RILAN, Defendant

Civil Action No. 330

Trial Division of the High Court

Marshall Islands District

January 31, 1969

Action to recover certain money belonging to a deceased *iroij lablab*. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that where there are alleged debts or there is no proper and clear agreement between heirs then the estate must be administered and in such case the estate should not be distributed or disposed of or debts paid until such administration of the estate.

1. Decedents' Estates-Distribution

The question of whether the widow or other persons are entitled to the assets of the estate can be determined on a request for distribution after a probate administration of the estate of the deceased.

2. Executors and Administrators-Appointment-Petition

A petition for administration can be filed by the surviving spouse or any person having or claiming to have a right in the estate of the deceased.

3. Executors and Administrators-Appointment-Petition

Upon filing of an application for letters of administration an order setting forth the notice of the application will be made by the High Court.

4. Decedents' Estates-Claims Against Estate

Administration of an estate will enable settlement of the question of whether there are any debts which were owed by the deceased which should be paid out of his estate, and if such question cannot be settled between alleged creditors and the administrator the question can be settled by an appropriate court action against the administrator.

5. Decedents' Estates-Settlement Without Administration

In a proper case a small estate can be distributed under Section 343 of the Trust Territory Code or the general powers of the High Court if it is clearly shown that all debts have been paid and it has been agreed between the possible heirs as to how the estate should be distributed. (T.T.C., Sec. 343)

6. Decedents' Estates-Settlement Without Administration

Where there are alleged debts or there is no proper and clear agreement between the possible heirs, an estate must be administered and until such administration the estate should not be distributed or disposed of or debts paid by anyone.

Counsel for Plaintiff:

ATAJ BALOS

CLIFTON, *Temporary Judge*

OPINION

Plaintiff's daughter Jortake A. filed this action against the defendant Rilan, alleging that the defendant had unlawfully taken and used the *iroij's* money from three *watos*, South Lonit, North Lonit and Lobikle, and that he has held these *watos* from 1963 and had given her only \$26.00. She

further alleged that he had also taken money belonging to *Iroj* Leben from Mr. Jibloch and that the younger brother of Rilan, Mr. Inok, has \$300.00 in his possession and she requested that the court determine who was the heir to *Iroj* Leben's chair, his younger sister Nenjir or the defendant Rilan.

Defendant Rilan filed an answer alleging that he was the heir to the chair of *Iroj* Leben.

A restraining order was then made by the Chief Justice, substituting Nenjir as plaintiff instead of her daughter, Jortake, and restraining Rilan until the case was tried, from collecting any money or other property belonging to the deceased *iroij*, Leben, and from acting as *iroij lablab* over the *watos* of South Lonit, North Lonit and Lobikle and ordering Rilan to turn over for safekeeping to plaintiff Nenjir all properties collected by him since the death of *Iroj* Leben.

When the case was called on the calendar on November 7, 1968, the plaintiff's counsel, Ataj Balos and Rilan stated to the court that the case had been settled. Initially plaintiff's counsel stated that the case had been settled and that the action should be dismissed, but then he requested that a judgment be entered declaring that the plaintiff Nenjir had succeeded *Iroj* Leben as the *iroij* as to all of *Iroj* Leben's properties. The defendant Rilan agreed to such a judgment and stated that he did not claim to have the *iroij lablab* rights which had belonged to *Iroj* Leben and that he agreed to a judgment declaring that the plaintiff had succeeded *Iroj* Leben. As to moneys he had received, he stated that he had paid expenses for the burial and ceremonies connected with *Iroj* Leben's death.

As to the money which the defendant Rilan had collected as the *iroij's* share of the copra, the judgment should award that to the plaintiff and if an agreement cannot be reached

as to the exact amount due plaintiff, either party can request a hearing to determine the correct amount. As to the personal property and moneys from a source other than from the land involved herein, the question of the amount of the same and as to how it will be distributed can be determined by an administrator of the estate of Leben.

The court called the attention of the parties to the fact that the magistrate of Arno had taken possession of a number of items of personal property belonging to *Iroij* Leben, including a generator, out-board, out-board motor, scooter, gifts of condolence, money and *iroij's* share of money besides numerous other items of personal property and that the magistrate stated that Rilan had stated that "he has given the District Court the amount in money and number of items."

The court also called the attention of the parties to the fact that a petition was filed in this action by Joaje Alsak stating that *Iroij* Leben was indebted to him in the sum of \$355.00 and requesting that he be paid this out of the money held by the Arno magistrate. Plaintiff's counsel contended that all of the personal property of *Iroij* Leben should be distributed to the plaintiff and denied that the alleged debt of Joaje Alsak was owed by *Iroij* Leben.

In the interests of justice, it is proper that the plaintiff and the defendant should be allowed to settle between themselves their dispute as to who is legally entitled to succeed *Iroij* Leben as *iroij lablab* and as between themselves who should take his property. However, they cannot by an agreement between themselves settle or determine the rights of anyone other than themselves. Accordingly, the court, on stipulation of the plaintiff's counsel and Rilan, is entering the judgment hereinafter set forth.

As to the items of personal property which belonged to *Iroij* Leben or his estate including those listed by the Arno

magistrate, such personal property must be held intact until the High Court determines who if anyone besides the parties to this action is entitled to succeed to said personal property and also to determine the just debts of *Iroij* Leben and see that they are paid out of the assets of his estate.

The said *Iroij* Leben left surviving him his wife, Jeilon Leben, and it may be that he left children or other persons including plaintiff who might be entitled to share in the estate of said deceased. The court is not in the judgment herein deciding who is entitled to inherit from *Iroij* Leben, excepting that it is adjudicating as between the plaintiff and the defendant Rilan their rights as between themselves to succeed *Iroij* Leben as *iroij*. As to the possible rights of the wife of Leben, it may be observed that Chief Justice Shoecraft in an order in Probate Case No.6 in the Marshall Islands District with relation to the sum of \$10,000.00 in a savings account in the Bank of Hawaii, Kwajalein, where the deceased was a resident of Ujoe and who died at Rongelap, Marshall Islands, ordered that all of the estate be distributed to the widow.

[1-3] However, the court in the present action is not at this time making a determination as to whether the widow or other persons are entitled to the assets of the estate. That can be determined on a request for distribution after a probate administration of the estate of the deceased *Iroij* Leben. A petition for letters of administration should be filed so that the administration of the estate can be made. Such petition can be filed by the said wife or the plaintiff or any other person having or claiming to have a right in the estate of the deceased. Adequate notice of the application will have to be given to all persons who may have an interest and upon the filing of an application for letters of administration, an order setting forth the notice to be given will be made by the High Court.

[4-6] Such an administration will also enable the question of whether there are any debts which were owed by the deceased which should be paid out of his estate. If this question cannot be settled between alleged creditors and the administrator of the estate, the question of whether the debt or debts are owing or not can be settled by an appropriate court action against the administrator of the estate. Although in a proper case a small estate can be distributed under Section 343 of the Trust Territory Code or the general powers of the High Court if it is clearly shown that all debts have been paid and it has been agreed between the possible heirs as to how the estate should be distributed. However, where there are alleged debts or there is no proper and clear agreement between the possible heirs, the estate must be administered. See 31 Am. Jur. 2d, p. 30 and 31. Until such administration the estate of the deceased Leben should not be distributed or disposed of or debts paid by the Arno magistrate, by the parties to this action, or by anyone.

JUDGMENT

On the stipulation of the plaintiff Nenjir through her counsel and the defendant Rilan, entered into before the court on November 7, 1968, at Uliga, Marshall Islands District, before Temporary Judge Robert Clifton, Judge Solomon of the District Court acting as Assessor, and Langinmo Jacob acting as Clerk of the Court, and the court being fully advised in the premises,

It is ordered, adjudged, and decreed, as between the plaintiff and defendant Rilan, but as to no other persons, that Nenjir is entitled to succeed *Iroi*j Leben as *iroij lablab* as to the *watos* of South Lonit, North Lonit and Lobikle and all land and other property held by *Iroi*j Leben as *iroij lablab* and that the defendant Rilan has no right to succeed *Iroi*j Leben as *iroij lablab*. In the event that the parties

to this action cannot agree as to the amount of money or other personal property due to the plaintiff under this judgment, either party may apply to the High Court for a further hearing to determine the specific amounts or personal property, if any, there may be due to the plaintiff under this judgment.

This order shall not affect the rights of any other persons except those set forth in this order and is made only to settle disputes between the plaintiff and the defendant as to their rights to succeed *Iroj* Leben.

TITER, Plaintiff

v.

TEIFIS and KAPELEI, Defendants

Civil Action No. 374

Trial Division of the High Court

Truk District

January 31, 1969

Action to determine ownership of land on Losap Island, Truk District. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that where land in question was lineage land it could not be sold by individuals of the lineage.

Truk Land Law-Lineage Ownership-Sales

Where those under whom defendants claimed had occupied and used the land in question only as members of the lineage and not in their own right, possession was in the lineage and the land could not be sold by such individuals.

Counsel for Plaintiff:

TOSI

Counsel for Defendant Teifis:

SICTUS, B.

BURNETT, *Associate Justice*

This matter comes before the court upon the Master's Report entered August 7, 1968, by the Honorable Olaf W.,