

AKNES v. WELI

to hold possession subject to the obligation to permit use of the land on the same basis as for many years before 1954 and to permit the defendant Julia to participate in this use whenever she is in Ponape, until the *Nanmarki* and the "Governor" determine who should succeed Simiram as owner.

2. This judgment shall not affect any rights of way there may be over the land in question.
 3. No costs are assessed against either party.
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AKNES, Plaintiff

v.

WELI, Defendant

Civil Action No. 90

Trial Division of the High Court
Ponape District

May 7, 1957

Action to determine ownership of land in Sokehs Municipality, in which daughter of former lessee of Japanese lease claims right to lease over present lessee, her uncle. The Trial Division of the High Court, Chief Justice E. P. Furber, held that daughter had no right in land as rights of her father in leased land expired on his death or when lease was issued to uncle, and obligations under Ponapean custom of uncle to daughter of deceased brother do not establish any rights in property.

1. Ponape Land Law—Japanese Lease—Termination

Under Japanese lease of land on Ponape Island, rights of lessee expire on death or later issuance of lease to another, and instructions of lessee cannot absolutely control its disposition.

2. Ponape Land Law—Japanese Lease—Succession

Japanese lease of land on Ponape Island can neither be inherited nor disposed of by will as matter of right, and designation of successor has no controlling effect although it may be considered by government.

3. Ponape Custom—Family Obligations

Under Ponape customary law, obligation of uncle to support and assist daughter of deceased brother is personal one and does not give property rights to niece.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Andreas planted most of the land in question, but not all of it, and the planting was completed by the defendant Weli.

2. Andreas gave instructions to Anton to hold the land for the plaintiff Aknes. The defendant Weli was not present when these instructions were given, but he learned of them before the lease referred to in the next finding was issued to him.

3. The land is covered by a 20 year lease issued to the defendant Weli by the Japanese Government in 1941 in the same general form as that involved in *Mikelina v. Simon*, 1 T.T.R. 153.

4. There has been no proof that the defendant Weli agreed to hold this lease for the plaintiff Aknes as distinguished from expressing a willingness to perform his personal obligations to her under Ponapean customary law because of the blood relation between them.

CONCLUSIONS OF LAW

1. The situation in this action is much like that in *Ukau and Others v. Mairid*, 1 T.T.R. 153, except that here the lessee in the long term Japanese Government lease involved is himself the defendant. The plaintiff Aknes is the daughter and only child of Andreas to whom the original lease of or permit to use the land was issued. Andreas admittedly died in 1929 when Aknes was quite young. Anton is Andreas' older brother and the defendant Weli is his younger brother. The terms of the earlier lease or permission have not been shown. For the history of the general practice and policy of the Japanese Administration as to making government land on Ponape available to individuals, see the mimeographed "Anthropologist's

Report, CAU Ponape, E. Caroline Islands, 5 June 1951"
by Mr. J. L. Fischer.

[1] 2. The plaintiff Aknes started out with the claim that the land should be turned over to her because her father Andreas' instructions were that it was to be taken care of for her until she got old enough, but her special desire appears at all times to have been to upset, or have set aside, the defendant Weli's designation of his adopted son, William Prens, to succeed him. During the trial she appears to have shifted her position to a request to be allowed to take things her father planted and to succeed to the leasehold after her father's brothers Weli and Anton have died. In the absence of any showing to the contrary, it must be presumed that any rights Andreas had under his lease or permit expired either on his death or on the later issuance of the lease to Weli. See *Idingel v. Mada*, 1 T.T.R. 164, and *Ukau v. Mairid* mentioned above. Andreas' instructions, therefore, could not impose any binding trust on the land or absolutely control its disposition.

[2] 3. This court has already held that the type of lease involved here can neither be inherited nor disposed of by will, as a matter of right. See *Mikelina v. Simon*, referred to in the third Finding of Fact, and *Elina and Meri v. Danis and Makio*, 1 T.T.R. 206. Weli's designation of his adopted son to succeed him has no controlling effect. It is just one factor to be considered by the government, along with others, such as Andreas' work on the land and his instructions about it, in deciding what shall be done with the land when Weli dies or his lease expires.

[3] 4. The decision in this case is not intended to affect in any way the defendant Weli's obligations under Ponapean customary law to support and assist the plaintiff Aknes, under certain circumstances, as the daughter

of his deceased brother. That obligation is considered a personal one not giving Aknes property rights in this particular land or the lease of it, as distinguished from any other property of Weli's.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the plaintiff Aknes, who lives in the Palikir Section of Jokaj, has no rights of ownership in the land known as Aumor, located in the Palikir Section of Jokaj, Ponape Island, or in the lease of it from the Japanese Government to the defendant Weli, who also lives in the Palikir Section of Jokaj, and Weli is entitled to exercise the rights the lease purports to give him over this land.

2. This judgment shall not affect any rights of way there may be over the land in question nor shall it affect any obligations of support and cooperation there may be between the parties because of their blood relationship.

3. No costs are assessed against either party.