

JUDGMENT

Ordered, adjudged, and decreed that Ennato and Anipeno be forthwith released from custody of the chief of police of Tol Island and that the order of commitment issued by the Municipal Court of Tol Island be set aside and vacated.

RESENAM, Plaintiff

v.

**NOPUO and TINOPAN, Defendants
and**

NIKUCH, Intervenor

Civil Action No. 469

Trial Division of the High Court

Truk District

July 9, 1970

Action to determine ownership of land on Uman Island, Truk District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that court would not delve into ancient times to right wrongs or change determinations then made and where nothing has happened since such time to suggest that such decision should be upset, it would be confirmed.

1. Truk Land Law—German Title Document

The "owner" named in the German title document on Truk usually represented a family group.

2. Former Administrations—Redress of Prior Wrongs

Court will not delve into ancient times to right wrongs or change determinations then made.

3. Truk Land Law—Family Land—Transfers

The rule for transfer of family land on Truk requires the consent of the children to the transfer or distribution.

4. Truk Land Law—Family Land—Transfers

Whether clan or lineage members were present at a meeting relating to the transfer of family land was immaterial as their consent to such transfer was not required.

RESENAM v. NOPUO

<i>Assessor:</i>	F. SOUKICHI, <i>Presiding District Court Judge</i>
<i>Interpreter:</i>	SABASTIAN FRANK
<i>Reporter:</i>	SAM K. SASLAW
<i>Counsel for Plaintiff and Defendant Nopuo:</i>	NORY ONEITAM
<i>Counsel for Defendant Tinopan:</i>	KEICHIRO
<i>Counsel for Intervenor:</i>	NESIUO

TURNER, *Associate Justice*

This case involved ownership of the land Witin, also spelled Uiten in German times, in Sanuk Village, Uman Island, Truk District. Plaintiff purchased Nopuo's claimed portion of Witin and in conformity with his obligation to defend the title he had transferred to Resenam, Nopuo acted not only in his own behalf but also in behalf of the plaintiff. The intervenor claimed the remaining one-half of Witin. The defendant, Tinopan, disputed that Witin had been divided and claimed the entire parcel in behalf of Rongou Clan, usually referred to by the parties and their witnesses as lineage.

Witin was one of 12 parcels certified by the German administration district governor in Ponape as being owned by Alefen, or as he was referred to by the parties and their witnesses as Fauno. (Ex. 2.) The title document was executed February 17, 1909.

This certification, and others not material to the case, were made when the Rongou Clan members divided the clan lands and distributed them to lineages or family groups and the four lineage heads then distributed to their descendants.

[1] This is contrary to defendant Tinopan's theory of the chain of title of Rongou Lineage lands but his account does not take into consideration the German title document. Tinopan's contention that the only clan land was Witin is contradicted by Exhibit 2. In *Kono v. Mikael*, 2 T.T.R. 466,

the court relied upon "Land Tenure Patterns" Vol. 1, p. 167, to hold that the "owner" named in the German title document usually represented a family group. The evidence is clear Fauno received the land as the representative of the Samson group. Samson was one of the four lineage heads to whom the Rongou land had been distributed.

[2] It is clear Tinopan did not dispute or attempt to upset in the Japanese courts, or otherwise, the distribution and ownership certified in Exhibit 2 by the German authorities in 1909. Apparently, only within the last ten years has he attempted to exercise any control or use of the land Witin. This court has said many times since *Wasisang v. Trust Territory*, 1 T.T.R. 14, and *Jatios v. Levi*, 1 T.T.R. 573, that we will not delve into ancient times to right wrongs or change determinations then made. The German authorities certified ownership of Witin (Uiten) to be either individually or as the head of a family group in Fauno. There is nothing that has happened since then to suggest that the German certification should be upset.

The next step in the distribution of the land in question was during the Japanese administration when on October 25, 1933, Fauno, his children and other family group members appeared before the Uman Island Chief, Artie Moses (sometimes referred to as Achi Moses) and in accordance with the prevailing custom had the Chief record in writing the distribution of his land. (Exhibit 1.) One-half of Witin (spelled Uitin) in the Chief's document was given by Fauno to "his brother and his sister's children," in which Nopuo was included, and the other half of Witin to "his own child Karilina" in which Nikuch is now the claimant.

This division of Witin and distribution to the predecessors of the parties occurred in the year of Fauno's death.

that the remaining one-half of Witin is owned by Nikuch and all those claiming under him.

2. That defendant Tinopan has no rights to nor interest in either division of Witin.
3. That this decision does not affect any rights-of-way that may exist over the land Witin.
4. That no costs are assessed.

TRUST TERRITORY

v.

CHRISTINA TARKONG

Criminal Case No. 128

Trial Division of the High Court

Yap District

July 22, 1970

Information charging defendant with having unlawfully caused the miscarriage or premature delivery of a fetus from herself. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that Section 405 of the Trust Territory Code relating to abortion was so vague and indefinite its attempted enforcement in case constituted a denial of due process and was invalid.

1. Abortion—Intent

The only certainty contained in the abortion statute is that the intent to cause the abortion must be present and this simply precludes abortion by accident. (T.T.C., Sec. 405)

2. Abortion—Persons Liable

Abortion statutes by their terms are applicable to the person causing the abortion and do not apply, without specific provision to the pregnant woman who is the victim of the act. (T.T.C., Sec. 405)

3. Abortion—Persons Liable

As far as the woman herself is concerned, unless the abortion statute expressly makes her responsible, it is generally held, although the statute reads any "person", that she is not liable to any criminal prosecution, whether she solicits the act or performs it upon herself. (T.T.C., Sec. 405)

4. Abortion—Constitutionality

Under the abortion section of the Code the persons liable are determinable by inference only and such indefiniteness and vagueness constitutes a denial of due process. (T.T.C., Sec. 405)