

From all the attending circumstances disclosed by the evidence together with the law applicable to that evidence, the court is convinced beyond a reasonable doubt that the defendant committed the crime of rape upon the person of the 14-year-old prosecutrix.

The defendant, Pio Ona, is found guilty as charged.

TEKLA PAUL, Plaintiff

v.

EDWIK MESANAUAI, Defendant

Civil Action No. 577

Trial Division of the High Court

Truk District

March 31, 1972

Action to determine ownership of land in the Mortlock Islands. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that while decedent had given control of lineage land to a member of the lineage, such a transfer would not raise the presumption of individual ownership and all involved were obliged to cooperate with each other in regard to the land.

1. Truk Custom—Lineage

Under Trukese custom lineage members are obliged to cooperate with each other in the use of land and to generally advance each other's interests.

2. Truk Custom—Succession

Under Trukese custom an adopted child is treated in the proper order of succession the same as a natural child.

3. Truk Land Law—Mortlock Islands

In the Mortlocks, granting control of lineage land to a member of the lineage does not raise a presumption of individual ownership.

TURNER, Associate Justice

This action was filed in the District Court on Lukunor Atoll in the Mortlock Islands, Truk District. It involves a dispute between "mother and child", under Trukese custom

in the *Soumoch* clan who are both under Enrike as their elder leader.

In accordance with outer-island practice, the Associate Judge of the Truk District Court assigned to the Mortlocks took jurisdiction as a Master, holding pre-trial conference, hearing testimony from eleven witnesses called by the parties and thereupon preparing a Master's report with findings of fact and recommendation for judgment. This report was served upon both counsel.

None of the parties nor their counsel appeared at the call of the calendar, nor did they file any written objections to the Master's report nor request hearing. A time was set for hearing but there were no appearances then. There was adequate time for the parties or their counsel to appear or submit written memorandum from the date of service of the Master's report to the date of hearing. It also is noted that Enrike, the present lineage leader, is a resident of Moen Island and is an employee of Truk Trading Company. He did not appear at the hearing.

In the absence of any objection, the Master's report is approved except to the extent modified by this judgment.

[1] The lands in question, consisting of six dry-land parcels and six *taro* swamps, were under the control and use of the plaintiff from 1962 when her brother by adoption, Simion, died. The defendant and her son, Nikanor, in total disregard of Trukese custom obligating lineage members to cooperate with each other in the use of land and to generally advance each other's interests, undertook to oust plaintiff and her family, including her son, Antimo, from the lands.

Nikanor admitted on the witness stand he and his mother, the defendant, intended to drive plaintiff and her family from the land and to deprive her of any interest in the land. He also admitted that he "dug up or harvested the *taro* planted by Tekla."

[2] The justification given for this changed conduct after the death of Simion apparently was because the defendant came to the conclusion the plaintiff had not been adopted by Konelia, Simion's mother, and therefore was not a member of the *Soumoch* clan and consequently could have no interest in the property in question. The evidence does not support this theory because it is clear Tekla was adopted and that upon the death of Simion was entitled, under the custom, to his interests in the land. An adopted child is treated under the custom in the proper order of succession the same as a natural child.

There was no justification whatever for the defendant's decision to force plaintiff from the land even though there is considerable uncertainty in the record as to whether the land was lineage land or was individually owned by Simion.

Before his death, Simion did not help clarify this question as it appears he told plaintiff that she and her son, Antimo, should have the lands under the supervision of the lineage leader, Enrike. Simion acquired some of the lands from his mother, Konelia, and some parcels from others. The plaintiff registered ownership with the island magistrate as being Enrike, Antimo and herself. However, Aisea Tilipau, an island leader (see *Wanter v. Fertun* 3 T.T.R. 172), testified Simion sent for him to make a "dying declaration" to the effect Tekla was to "take care of our brothers and sisters" who were to "live together in a peaceful manner."

[3] The Master concluded, and we agree, Simion passed on occupancy and control to plaintiff as if the lands were lineage properties. However, some of the *taro* swamps were clearly plaintiff's individual properties and since they did not come from Simion, he could not control their disposition. Even though Simion treated the property as lineage land, it is in accord with custom that he should pass control over them to Tekla but intending also that food would be

available to others. Granting control to Tekla did not raise a presumption of individual ownership.

Judge Furber described the Mortlock custom in *Sirom v. Piranis*, 3 T.T.R. 522, 524:—

“Once it is established that a piece of land in the Mortlocks is lineage land, the granting of use rights in it, even to a member of the lineage, is not any more readily to be presumed to constitute a transfer of ownership than in the case of permission to an *afokur*, which was discussed in *Nusia v. Sak*, 1 T.T.R. 446.”

The limitation of control to one person, under the lineage leader, as is the situation here is also familiar practice. In *If v. Simalet*, 2 T.T.R. 243, it is said:—

“. . . it is so common in the Mortlocks to think of rights as family matters even if only one member's name is mentioned that the court believes Sori's intention was to provide for all his children”

Simion's purpose may thus be paraphrased. He gave control to Tekla but intended also to provide for others including Edwik. He could do this only as to the lands under his control and could not grant use rights as to *taro* swamp parcels which did not go from him but were obtained by Tekla from others.

The Master found all of the dry land was passed on by Simion to Tekla and the lineage. The Master evenly divided the six *taro* swamps between Tekla's individual ownership and lineage ownership under Tekla's control. This, however, appears contrary to the testimony.

It is indicated Antimo, plaintiff's son, received two *taro* swamps from his father, Benito Paul. Another parcel went from Titus to his wife, Risinia, and his son, Benito Paul, who gave to plaintiff and Antimo. One parcel was owned by Afakun, plaintiff's relative who gave it to her. The sixth parcel was given by Pilimon to his son, Simion, who passed it on to Tekla as lineage property. The testimony from which it appears the Master drew his conclusion was given

by Natis R., a clan member, who made the following answer to the following question:—

“Q. You stated that Konelia adopted Tekla. Which one of Tekla and Edwik has more power over the properties owned by Konelia and Simion?”

A. I think Tekla has more power over the properties.”

Whatever Tekla’s rights of control are, either as individual owner or control for the lineage, it is clear from the evidence, and in this respect we affirm the Master, Edwik and her son, Nikanor, had no right to oust Tekla from any of the lands in question. Furthermore, Edwik and those claiming under her are obligated to observe their traditional obligations to other clan members, including specifically Tekla and those claiming under her, to cooperate with each other and advance their mutual interests.

The Master’s report is therefore approved to the extent indicated in the following.

It is ordered, adjudged, and decreed:—

1. That the following lands: Ulong, Likilemal, Lelolo, Pailewel, Likinpialluk and Faukach; and the *taro* swamp Mesankilifo are lineage lands under the control of the plaintiff, Tekla and those claiming through her; that defendant, Edwik, and Nikanor and those claiming through them may harvest food from them after first obtaining permission from Tekla and Antimo. Defendant and those claiming through her are not to destroy trees or food plants.

2. That the following *taro* swamps are individually owned by Tekla and Antimo and are not to be shared with defendant and those claiming through her who have no interest or rights in them: Lemachchairau, Sopoichan, Leuanun, Palik and Fanoneop.

3. Time for appeal is extended to ninety (90) days after entry of judgment.