

IN RE ESTATE JUARO

its title. Therefore, the argument of the plaintiff has no application to the facts in this case. For the reasons stated in this opinion and those set forth in this Court's order dated June 14, 1974 (but which are not repeated here),

It is the Judgment of this Court that:

1. The land known as Ibobang, being a portion of the tract of land known as Ngerdubech, Old Ngetpang and described in the determination of Ownership and Release No. 126, Palau District Land Office, is owned by the Chartered Ngetpang Municipality.
2. The Municipal Council of Ngetpang legally entered into a lease for said land with the School of the Pacific, Inc., which lease has been approved by the High Commissioner of the Trust Territory of the Pacific Islands pursuant to the laws of the Trust Territory.
3. Plaintiff shall not be entitled to any relief from his complaint.
4. No costs shall be allowed to either party.

In the Matter of the Estate of LALUO JUARO, Deceased

Probate Case No. 12

Trial Division of the High Court

Marshall Islands District

August 30, 1974

Claims on personal estate of intestate decedent. The Trial Division of the High Court, Turner, Associate Justice, held that the decedent's two adopted daughters were entitled to share equally in half the estate, the mother of decedent to receive the other half for distribution to the *bwij*, which consisted of the full and half brothers and sisters of decedent.

1. Decedents' Estates—Distribution

Where decedent died intestate, leaving money his estate received for his wrongful death, and was survived by a mother, brothers, and sisters and two adopted daughters, person who was either the cousin or a younger brother of decedent's father, who had raised decedent and considered him his son under the custom, was not entitled to share in the distribution of the money.

2. Decedents' Estates—Distribution

Where decedent died intestate, leaving money his estate received for his wrongful death, the money was to be distributed one-half to decedent's two adopted daughters, to share equally in the half, and one half to be paid to his mother, to be divided by her among the members of the *bwij*, which was comprised of decedent's full and half brothers and sisters.

TURNER, Associate Justice

Thirteen persons asserted claims to the estate of the decedent. A duly appointed Master, the presiding judge of the District Court, heard the claims and reported to this court the basis of each. He suggested a plan of distribution, but left the decision to the court.

Hearing was held on the Master's report with the claimants present. One group was represented by counsel who objected to the Master's findings. The largest group objected to the hearing for the reason their counsel was off island. They had no objection to the Master's report but insisted they were unable to adequately respond to argument advanced by other claimants because of the absence of their counsel. Their request for continuance was denied because it appeared from information given the court the counsel would not return to Majuro for three or more weeks. In view of this decision substantially affirming the Master's report, further delay is deemed to be undesirable because all of the claimants, most of them from outer islands, attended the Master's hearing and were present before this court.

The Master applied Marshallese custom applicable to inheritance of land interests to this case which involves personal property—money for wrongful death—rather than land.

If this case was concerned with the descent on intestacy of land ownership interests no problems would have arisen. The parties would have agreed and the court would have

ordered distribution in accordance with the traditional land tenure system. However, because the estate consists of money only, there is no applicable recognized custom.

In the absence of both custom and legislative enactments, the Code requires application of the common law. 1 TTC 103. The common law of descent of personal property as recited in the Restatement of the Law of Property cannot be said to be applicable for the reason it has been superceded, both in the United States and England, by enactments of the legislature.

In its comment on the statutory changes of the common law canons of descent of real property and distribution of personal property, it is said in 23 Am.Jur.2d, Descent and Distribution, Sec. 7 et seq.:

"Roman and Anglo-Saxon law generally provided for the devolution of a decedent's property, both real and personal, in a common course and manner to the same persons. . . . The English common law, however, through feudal influences, distinguished between the descent of real property and the distribution of personal property of a decedent. (Sec. 5.) . . .

With respect to (the distribution of personal property) American statutory changes have been so great that it seems proper to say the essential features of the English law of descent have been rejected and each state has established a law for itself. (Sec. 9.)"

The court concludes there is little, if any, help in solving the present case to be derived from the common law because it has been codified by legislative enactment in both England and the United States. To say, as this Court did in the *Estate of Chong Hee*, 5 T.T.R. 144, and 5 T.T.R. 185, that an adopted daughter was the "sole heir and next of kin" erroneously rests on statutes and not the ancient common law. It also begs the question of distribution by referring to "next of kin" as being entitled to inherit money. There are many "next of kin," who are related to a decedent who may or may not be entitled to share equally in an estate.

There have been only two cases involving distribution of personal property, as distinguished from land, and they are in conflict with each other and with the Master's proposed scheme of distribution. We believe none of them is entirely accurate and they should be modified.

The first of the two cases was the *Chong Hee*, decision. The *Chong Hee* decision subsequently became notorious for reasons other than the result reached. The first trial judge to make a ruling on the estate determined that the adopted daughter of the decedent was the "sole heir and next of kin."

The second trial judge who dealt with the case denied a petition to establish a will and concluded all that was necessary to be done was to "carry into effect the Interlocutory Judgment Order entered" in the prior decision. Accordingly, it was ordered that upon the finding that the adopted daughter was the sole heir and next of kin she was "entitled to receive all personal property of the decedent and that no real property was known to exist."

No reason in law was given for this conclusion which was contrary to Marshallese custom pertaining to inheritance of land interests and eliminated consideration of other relatives. The inheritance pattern for land rights is discussed by Jack Tobin in "Land Tenure" in the Marshall Islands, p. 16 et seq. The descent of *bwij* land, the principals for which were applied by the Master to the money here involved, is discussed at length in *Jabwe v. Henos*, 5 T.T.R. 458, and cases therein cited.

The other Marshalls District case was *In Re Estate of Rose*, 5 T.T.R. 648, in which a decree was issued in the Master's report distributing money "in accordance with Marshallese custom." The error in this statement is that it is clear from the record in the present case that there is no custom relating to distribution of personal property as distinguished from land inheritance.

In the *Rose* decision, the Master did not follow the same pattern of land inheritance as he now proposes. In *Rose*, it was held each child was entitled to an equal share in their mother's estate and that the surviving spouses of two of the children who were deceased should share in lieu of their spouses. Also the decree provided for a share to Rose's adopted daughter and to the decedent's surviving spouse. The decedent's share was held to have been inherited equally by the decedent with his other brothers and sister from their deceased mother who received an "ex gratia" payment as a resident of Ronelap atoll.

These distributions were, of course, in direct variance with the *Chong Hee* decision, and they also did not entirely conform to customary law applicable to inheritance of land. Neither the custom governing inheritance of land, nor the common law of descent, which presumably was the basis of the *Chong Hee* decree, can be said to be applicable to inheritance of money or personality generally in the Marshall Islands.

The Master proposed in *Rose*'s estate and in the present report that the decision should be somewhere in between land inheritance custom and common law inheritance of personal property. Applying this principal, the court can apply with modification the Master's report for the present factual situation.

The Master divided the thirteen claimants into three groups as follows:

1) Rota, the mother of the decedent, and her children, the full and half brothers and sisters of the decedent, represent the *bwij*. The Master would have substantially all of the estate go to the *bwij* in accordance with land interest inheritance custom. With this we do not agree.

2) The second group comprised the two adopted daughters of the decedent. If we followed *Chong Hee*, they would be entitled to the entire estate.

[1] 3) The third group was represented by one individual who was either the cousin or younger brother of the decedent's father. His only claim under the custom, or otherwise, was because he raised the decedent as a child and considered him his "son" under the custom. The relationship is entirely too tenuous to be included among those entitled to inherit. If he is entitled to anything, it is from the *bwij* and that is a matter for the decedent's mother to decide as the head of the *bwij*.

The responsibility for enactment of statutes governing inheritance of property is vested in the district legislature. 3 TTC 2. Unlike other districts, where such laws have been enacted, no law governing inheritance has been adopted by the Nitijela (the district legislature) either by way of codification of the custom or in accordance with statutes based upon the common law governing inheritance of personal property. The court must, therefor, apply the Master's report, based on land inheritance, to inheritance of personal property which is not governed by Marshallese custom.

[2] Applying the foregoing to the factual situation found by the Master, it is

Ordered, adjudged and decreed:—

1) That the adopted daughters of decedent shall share equally in one-half of the estate of decedent.

2) That the remaining one-half shall be paid to Rota Jallo, the mother of decedent, to be divided by her to members of the *bwij* comprising the brothers and sisters of the decedent.

3) That the duly appointed co-administratrix of the estate of Laluo Juaro, deceased, having made their first and final account of administration, shall distribute the estate in accordance with this decree and upon filing receipts of distribution they shall be discharged as co-administra-

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trix and the estate of Laluo Juaro, deceased, shall be closed.

ISEKO NGIRAMELKEI, Plaintiff

v.

BAULES SECHELONG and EBILEDIL MEKESONG,
Defendants

Civil Action No. 57-73

Trial Division of the High Court

Palau District

September 13, 1974

Dispute over title to land. The Trial Division of the High Court, Hefner, Associate Justice, held that the evidence showed that decedent had been given permission by the clan's title holder to use the land when it was village land, that the use of the land and the building of a house on the land gave decedent no rights, and that the land was to be held, on decedent's death, by the title holder for the clan and could not be passed, either by will or deed, by decedent to his wife.

1. Palau Land Law—Village Land—User's Rights

Where evidence showed that land decedent had used and built a house on was public or village land, not decedent's individual land, decedent had no authority to will or deed the land to his wife as her individual land and the land was to be held and administered for the village by the clan's title holder.

2. Palau Land Law—Village Land

Public or village land is held by the title holder for the village and can be disposed of only in certain ways.

3. Palau Land Law—Village Land—User's Rights

An individual may be given permission to use village land, but vested rights in the land do not accrue to the individual either by the permission or the use.

4. Palau Land Law—Village Land

It is the custom that village land is held in the name of the title holder of the clan.

Assessor:

BENJAMIN K. OITERONG, Associate Judge, District Court

Interpreter:

AMADOR D. NGIRKELAU