

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.

KRESENSIA, Plaintiff

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendant

Civil Action No. 37

Trial Division of the High Court

Ponape District

June 29, 1954

Action to recover land in Net Municipality, in which plaintiff, adopted daughter of land owner whose land was taken by Japanese Government in 1915, brought suit to recover land from Trust Territory Government. The Trial Division of the High Court, Chief Justice E. P. Furber, held that Court would not upset act of prior administration in taking land without compensation and that plaintiff should direct request for additional land to District Land Office.

1. Ponape Land Law—German Land Title—Eminent Domain

Under German land title, land on Ponape Island could be taken for official purposes without remuneration.

2. Former Administrations—Redress of Prior Wrongs

Request of party for land on Ponape Island identical in size to that taken under prior administration lies outside powers of court and should be presented to District Land Office.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. A German title paper for the land in question was issued to Serapio de Lara in the land distribution of 1912. This title paper was in the standard form used on Ponape by the German Government at that time, except that the provisions with regard to feasts and work for the *Nan-*

marki were struck out as was commonly done in the case of grants to non-Ponapeans.

2. All of Serapio de Lara's interest in the land in question was legally taken by the Japanese Government about 1915. He was paid nothing for the land, but finally was allowed to stay there for a short time until his death (and, as agreed and stated in the pre-trial order, his widow sold the buildings he had on the land and moved away about a year after Serapio's death).

3. The plaintiff Kresensia made no effort to recover this land or any compensation for it from the time of the death of her father by adoption, Serapio de Lara, about August 1915, until the United States took over the administration of Ponape.

CONCLUSIONS OF LAW

1. This case is governed by the principles set out in the conclusions of law by this court in *Wasisang v. Trust Territory of the Pacific Islands*, 1 T.T.R. 14; and *Markarida Christopher v. Trust Territory of the Pacific Islands*, 1 T.T.R. 150.

[1] 2. Attention is further directed to the fact that the standard form of title document issued by the German Government on Ponape beginning in 1912, contained in the German text printed on page 2 of the standard form, a provision of which the following is a translation: "For official purposes the necessary land is to be given without remuneration."

[2] 3. The plaintiff Kresensia's request that she be given another parcel of land of equal size and desirability, if she cannot have the parcel in question in this action, is one lying outside the powers of the court and presents a question that it would seem might well be presented in the first instance to the Ponape District Land Office.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the parcel of land 60 meters in width along the road by the Tansokole River and 70 meters in length running inland, located at the northeast corner of the tract known as Sapwakap in the Kolonia Section of Net, on Ponape Island, is the property of the Alien Property Custodian.

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.

TOTER, Plaintiff

v.

IOUANES and Others, Defendants

Civil Action No. 39

Trial Division of the High Court

Ponape District

June 29, 1954

Action to determine ownership of land on Ngatik Atoll, in which child brought suit for share of deceased mother's land, as child was not provided for in oral instructions of deceased. The Trial Division of the High Court, Chief Justice E. P. Furber, held that last oral instructions of deceased, made voluntarily and when she was of sound mind, will control even though effect is to omit one of her children from any inheritance.

1. Ponape Land Law—Ngatik—Inheritance

Customary law on Ngatik Atoll with regard to wills is entirely different from that on Ponape Island and was not affected by German land reform.

2. Ponape Land Law—Ngatik—Inheritance

Under Ngatik custom, land on Ngatik Atoll may be devised by owner among relatives and those who take good care of him in serious sickness.