MIAKO, Plaintiff

v.

PEDEREN LOSA, Defendant

Civil Action No. 58

Trial Division of the High Court

Ponape District

March 31, 1955

Action to determine ownership of land in Sokehs Municipality, in which daughter of deceased title holder brings action to recover land from one claiming under Mortlockese system of land inheritance. The Trial Division of the High Court, Chief Justice E. P. Furber, held that there was vacancy in legal title, but that until government acted, right of possession was in daughter, since *Nanmarki* had designated her as successor. Court also held that after 1941, transfer of land to women was not against public policy, and substitution by private agreement of Mortlockese land tenure for German title system was void as contrary to public policy.

1. **Ponape Land Law—German Land Title—Approval of Transfer**
   In order for adopted daughter or son of sister to inherit land on Ponape Island held under German land title, consent of *Nanmarki* and Governor was necessary.

2. **Ponape Land Law—German Land Title—Vacancy in Title**
   Where there are no lawful heirs or transferees of land on Ponape Island held under German title, there is vacancy in legal title, and unless and until government designates owner, right of possession is controlled by worth of claims to it.

3. **Ponape Land Law—German Land Title—Vacancy in Title**
   In absence of proof of action as to ownership by Governor, *Nanmarki's* determination, when based on good reason, gives person he has designated as owner right to possession of land on Ponape so long as title remains vacant.

4. **Ponape Land Law—German Land Title—Women's Rights**
   After 1941, transfers of land on Ponape Island to or for benefit of women were not against public policy.

5. **Ponape Land Law—German Land Title—Succession**
   Although court recognizes that both German and Japanese authorities allowed simple and definite agreements for recognition of rights in person other than title holder, it will not permit substitution of Mortlock system of land tenure which might control land for generations.

6. **Truk Land Law—Mortlock Islands**
System of land tenure in Mortlocks combines matrilineal inheritance with obligation to see that male members of lineage receive land by gift during father's life.

7. **Truk Land Law—Mortlock Islands**
System of land tenure in Mortlocks involves frequent transfers without approval based on degree of cooperation of children.

8. **Ponape Land Law—German Land Title—Succession**
In absence of action of lawmaking authorities to permit it, attempt to substitute Mortlock system of land tenure by private agreement within family for German land title system as to land held under German title is definitely contrary to public policy and of no legal effect in Ponape.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The plaintiff Miako was adopted by Setin.

2. Setin left no brother by adoption nor any issue of any brother by adoption. That is, the plaintiff's true father, Pelis, was not adopted by Setin's father, Sorem.

3. Following Setin's death about 1942, the *Nanmarki* determined that the land in question should belong to the plaintiff Miako and that the defendant Pederen should take care of it for her until she grew up. The official Japanese Government surveyors, on behalf of the Governor, agreed that the defendant Pederen should at least take care of the land until Miako grew up, but neither party has proved what, if anything, these surveyors, or the Governor, or anyone on his behalf, decided as to who should own the land or control it after Miako grew up.

4. Any attempt Sorem may have made to transfer the land in question to Setin's lineage, or to anyone else, was not consented to by the *Nanmarki* or the Governor, or by anyone on behalf of either of them.

5. The plaintiff Miako was born February 18, 1937.

CONCLUSIONS OF LAW

1. This action involves land in Sokaes, within the reef surrounding Ponape Island. The land was admittedly held by Sorem under the standard form of title document issued by the German Government on Ponape, except that paragraphs 6 and 7 of the standard provisions on pages 2 and 3 of the document were struck out, as is common in the case of land in Sokaes. Admittedly, the title document bears an official endorsement in Japanese, dated March 12, Showa 15 (that is, 1940), stating that Sorem having died, his oldest son Setin succeeded him as owner of the land.

[1, 2] 2. The facts found by the court, plus those agreed upon by the parties, establish that Setin left no one within the list of relatives entitled to inherit from him as of right under the standard form of title document. Neither party claims any transfer or attempted transfer by Setin. The plaintiff Miako is his adopted daughter and only child, while the defendant Pederen is the only son of Setin's only sister (who had died before Setin). The transfer of legal title to either of them to be valid would, in accordance with the terms of this standard form, have to be by decision of the *Nanmarki* and the "Governor". As indicated in the findings of fact, neither side has succeeded in proving any final determination on behalf of the "Governor", under either the Japanese or the American Administration, as to who should own this land after Setin or control it after Miako grew up. Construing these words "grew up" in the light of usual practices on Ponape, the court holds that they mean until she reached 18 years of age, which would be last month. Therefore, there is a vacancy in the legal title as in the case of *Dieko Plus v. Pretrik*, 1 T.T.R. 7. As held by this court (under its former name of District Court) in that case,

unless and until the government interests itself in designating the owner for such land, the right of possession and use of the land is controlled by the worth of the claims to it.

[3] 3. In the case of *Fridorihg Lusama, and others v. Eunpeseun*, 1 T.T.R. 249, this court has taken judicial notice that the American Administration has not yet set up any routine method for obtaining consent of the "Governor" for transfers of land on Ponape under these German title documents, and has informally left the matter largely in the hands of the *nanmarkis*. The same situation exists as to decisions as to who should succeed to the ownership when no one is left within the list of relatives entitled to inherit as of right under the terms of the title document and there has been no transfer or attempted transfer by the deceased title holder. Here, however, the range of choice open to the *Nanmarki* and the "Governor" is so wide that the effect of the American Administration's informally leaving the matter to the *nanmarkis* may not be as clear as in the case of an attempted transfer, but the court holds that in the absence of proof of any further action as to ownership by or on behalf of the "Governor", the *Nanmarki's* determination, at least when based on a good reason, gives the person he has designated the right to possession and use of the land so long as the legal title remains vacant.

[4] 4. It has already been established in the case of *Petiele v. Max*, 1 T.T.R. 26, that at least after 1941 transfers of land on Ponape to or for the benefit of women were not against public policy. Accordingly, the *Nanmarki's* determination in this case that the land should belong to the deceased title holder's only child, even though she was an adopted daughter, is considered based upon a good reason.

[5] 5. One of the defendant Pederen's principal claims is that the land should pass as lineage land in accordance with Mortlock custom. He bases this primarily on an alleged announcement by Sorem at a family meeting and supports it inferentially by the fact that those concerned are of Mortlock ancestry and that they live and the land is located in a section of Sokaes where "we just talk Mortlock among us". Sorem's announcement is alleged to have been that this land should belong to the lineage. What lineage, is not too clear. The defendant's principal witness refers at one point to Sorem as the head of the lineage and at another to Sorem's desire to transfer the land to Pederen's father to take care of Pederen and his sister, but he says this was "just talk but not make a will about land". Under Mortlock custom it is clear that a father and son would not be of the same lineage, but assuming Sorem did wish to have his son Setin's lineage own the land under Mortlock custom and told his family so, it is believed that this in itself could have no legal effect upon the ownership of the land, although it might have a strong influence in inducing the legal owner, or successive legal owners, to make certain transfers which would, under the terms of the standard form of title document, require in each instance the consent of the *Nanmarki* and the Governor. This court has recognized that both the German and Japanese authorities allowed, as consistent with public policy, some simple and definite agreements for recognition of rights in a person other than the title holder, or those mentioned in the title document, such as particularly the retention of a life estate. See *Petiele v. Max* and *Fridorihg Lusama, and others v. Eunpeseun*, both cited above. Substituting another system of land tenure, which might control the land for generations, however, is quite a different matter.

[6, 7] 6. The system of land tenure in the Mortlocks (islands in the southeastern part of the Truk District) combines strictly matrilineal actual inheritance with a strong sense of obligation on the part of all concerned to see that loyal and dutiful children of male members of a lineage receive land by gift during their fathers' lives. The exact amount of land going to the children of male members appears to depend largely on the influence of those concerned and the standing of the children with their father's lineage, which, in turn, is strongly affected by the degree of cooperation they have shown. The operation of the system involves frequent transfers, exchanges, combinations, and divisions of land as private lineage or interlineage matters, without any governmental approval of the individual transactions. There are many more features of the system, which those interested will find described in Chapter IV of "Social Organization, Land Tenure and Subsistence Economy of Lukunor, Nomoi Islands", by Burt Tolerton and Jerome Rauch, pages 57 to 96. The above comments and the following quotations from that Chapter, however, will indicate a number of the sharp differences between the Mortlock system and that set forth in the standard form of title document issued on Ponape under which the land in question was held:—

"This land is owned and inherited through the female line by members of the constituent matrilineal subdivisions of the various exogamous sibs in the area. These have representative lineages on most of the islands."—Page 58.

"Today most of any lineage's land is held as a result of gifts exchanged with others. Ideally, 50 percent of any group's holdings should go to the children of the males as their portion from their father (meren sangai semeir), and 50 percent remain with the maternal line. Actually there always was a tug of war between the two principles, and the relative amounts depended on the strength of the parties concerned.

"All land that comes into the lineage from whatever source is thought of as an entity and is said to be put together (apashfongen) under the jurisdiction of the lineage headman. If these lands pass down in the maternal line they are spoken of as lands of we blood kin, (fanuan ash pwi pwi); but although worked under the general supervision of the headman they are not communal property as is 'big food' for each is understood to be potentially restricted to the usufruct of a particular individual, and he pays first fruits to the particular donor, to validate his use of the land."—Pages 66–67.

"Land may pass from the lineage of one sib to that of another through inheritance and testaments, by marital exchanges, indemnities and payment in goods, services or money."—Page 68.

[8] In the absence of any action by the lawmaking authorities to permit it, any attempt to substitute the Mortlock system by private agreement within a family for the system set forth in the title document under which the land was acquired from the government is considered to be definitely contrary to public policy as indicated by the Ponapean land law and therefore of no legal effect.

JUDGMENT

1. As between the parties and all persons claiming under them, the plaintiff Miako, a resident of the Daa Section of Sokaes, is entitled to the possession and use of the land known as Rate No. 46, located in the Daa Section (sometimes spelled Ta or Tah) in the Municipality of Sokaes (within the reef surrounding Ponape Island), subject to the obligations imposed by the system of private land ownership set forth in the standard form of title document issued by the German Government on Ponape in 1912, as heretofore or hereafter modified by law, omitting the provisions of paragraphs numbered 6 and 7 on pages 2 and 3 of that standard form.

2. The plaintiff Miako is, however, ordered to allow the defendant Pederen and his father, Enisar, reasonable opportunity to remove any of their property from the land.

3. This judgment shall not affect any rights of way which may exist over the land in question.

4. No costs are assessed against either party.

RAIMES, Appellant

v.

TRUST TERRITORY OF THE PACIFIC ISLANDS, Appellee

Criminal Case No. 32

Trial Division of the High Court

Truk District

April 12, 1955

Appeal from conviction in Truk District Court of drunken and disorderly conduct in violation of T.T.C., Sec. 427. Appellant contends that room in which movie was shown was not "public place" within meaning of statute. The Trial Division of the High Court, Associate Justice James R. Nichols, held that room where number of persons have assembled, although privately owned, may be public place within meaning of criminal statute.

Affirmed.

1. **Drunken and Disorderly Conduct—"Public Place"**
   A public place is any place, even though privately owned or controlled, where persons have assembled, through common usage or by general invitation, express or implied. (T.T.C., Sec. 427)

2. **Drunken and Disorderly Conduct—"Public Place"**
   Any place may be made "public" by temporary assemblage, especially when assemblage is gathered to witness exhibition for hire. (T.T.C., Sec. 427)

3. **Drunken and Disorderly Conduct—"Public Place"**
   Room in which movie is shown and in which people are assembled may be public place within meaning of criminal statute defining drunken and disorderly conduct. (T.T.C., Sec. 427)