

the usual opportunity for hearing on the question of sentence, and then impose such new lawful sentence as he deems just.

WILLIAM NET, Plaintiff

v.

KAPELE, Defendant

Civil Action No. 269

Trial Division of the High Court

Ponape District

May 27, 1966

Action to determine ownership of land on Pingelap Atoll, in which plaintiff claims land was given to her as individual land by head of family who later attempted to rearrange rights in land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that head of family does not have authority to rearrange rights in land given a long time prior thereto to individual member of family.

Ponape Land Law-Pingelap-Family Ownership

Under Pingelap custom, regardless of rights of head of family over land owned by group of which he is leader, he cannot properly rearrange rights in land which have been given long prior thereto to individual member of family as individual property, nor can he exchange rows of taro without consent of owners of rows to be exchanged.

Assessor:

JUDGE ANTONIO RAITONG

Interpreter:

IOANES EDMUND

Counsel for Plaintiff:

CARLES PHILIP

Counsel for Defendant:

KAPUS DIOFILOS

FURBER, *Chief Justice*

This action came on to be heard before me at Kolonia, Ponape, upon the Master's Report. Neither party presented any evidence other than the Master's Report and the transcript of evidence taken and depositions presented before him.

The defendant Kapele objects to the report because he alleges that if the plaintiff's mother, Luisa, for whom the plaintiff makes claim in this action, gets the land and taro patch in question, the defendant Kapele will, as he alleges, have no inheritance. He claims that they should share the land and taro patch in question half and half. Defendant's counsel acknowledged, however, in answer to a question from the court that the defendant still has the land Nahserep (sometimes spelt Naserep) which he received from Mwakel, who defendant claims is his stepfather although the plaintiff William Net implies that Mwakel was the defendant's true father. It therefore appears that the substance of his argument is that the defendant and Luisa should share equally in the properties of their father Kapwelehla and their stepfather Mwakel. The defendant Kapele further claims that Luisa and he had an agreement that if one of them got Mediap, the other would have the land now in question.

The plaintiff points out that there was no dispute about the land now in question until after the decision of Ponape District Civil Action No. 173 between the same parties (and an additional defendant) in which it was decided that the part of the land Mediap (sometimes spelt Metiap), claimed in that action by both the plaintiff on behalf of Luisa and by the defendant Kapele, belongs to Luisa; and the plaintiff says the defendant Kapele then for the first time purported to divide the land in question and to own one-half of it. The plaintiff further points out that Luisa has had undisputed possession of the taro patch which traditionally goes with the land now in question and that if the defendant really owned a half of the land now in question, he would have had part of the taro patch which goes with it, but which is not involved in this action.

After consideration of the pleadings, the Master's Re-

port, the transcript of evidence and the depositions presented before him, and the arguments of counsel, the court considers that the evidence supports the findings of fact made by the Master and the Master's Report is accordingly approved. The defendant Kapele appears to have raised for the first time at the hearing on the Master's Report, his claim that he and Luisa had an agreement that if one of them got Mediap, the other would have the land now in question, and the court finds no evidence to support this claim.

OPINION

This action involves a piece of land and five (5) rows in ataro patch on the main island of Pinglap Atoll, Ponape District, but strangely the taro patch and the land in question are not traditionally connected as is usual on Pinglap. There is very little dispute about the basic facts involved in this action except as to an alleged exchange of taro patches between the plaintiff or his mother and the defendant, and as found by the Master, the evidence fails to support the defendant's claim of any such exchange.

The parties in this action are two of those who were involved in Ponape District Civil Action No. 173 although in that action the plaintiff's name was spelt "William Neht", and his mother's name for whom he claimed was spelt "Liwisa", and the defendant's name was spelt "Kepwele". In that action, it was determined by this court that Liwisa (that is, the Luisa in this action) was the owner of the part of the land Metiap (spelt Mediap in this action) used by Kepwele (that is, the Kapele in this action). In that action, no specific mention was made of the part of the taro patch Inkepweidi in dispute in this action, which it now appears traditionally went with Metiap. The defendant Kapele and the plaintiff's mother Luisa were admit-

tedly born by the same woman, who was married first to Kapwelehla, and after his death, to Mwakel, Luisa being born during their mother's marriage to Kapwelehla, and Kapele after Kapwelehla's death and, according to some of the testimony, before his mother's marriage to Mwakel. According to the great weight of the evidence, the defendant Kapele purported, as the present head of the family, to readjust the ownership of the land Nahkepidau so as to make more equitable the division between himself and Luisa of the properties of their alleged father, Kapwelehla, and their alleged stepfather Mwakel. Thus, in effect, he is attempting to penalize the plaintiff's mother Luisa for establishing her rights in Mediap. He further appears to have assumed he had power to effect an exchange with Luisa of rows in taro patches without her approval.

The court is satisfied that regardless of what rights the head of a family may have over land on Pinglap, owned by a group of which he is the leader, he cannot properly rearrange rights in land which has been given long prior thereto to an individual member of the family as her individual property, nor can he effect an exchange of rows in a taro patch without the consent of the one who owns as her individual property the rows he attempts to take in the exchange.

JUDGMENT

It is ordered, adjudged, and decreed as follows : -

1. As between the parties and all persons claiming under them, Luisa, the mother of the plaintiff William Net, for whom he makes claim in this action and who lives in Sokehs Municipality, Ponape District, is the owner of the land known as Nahkepidau and the five (5) rows formerly owned by KapwelehJa in the taro patch Inkepeweidi, both located on the main island of Pinglap Atoll,

ponape District, and the defendant Kapele, who lives on Pinglapi Island, Ponape District, has no rights in either of these except such as Luisa may permit him to exercise.

2. This judgment shall not affect any rights of way there may be over either of the properties in question.

3. The plaintiff William Net is awarded such costs as he may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided he files a sworn itemized statement of them within thirty (30) days after the entry of this judgment; otherwise he will be awarded only three dollars and fifty cents (\$3.50) costs to cover the filing fee and the trial fee.

4. Time for appeal from this judgment is extended to and including August 29, 1966.

JOSEPH MOSES, Plaintiff

v.

JOHNY MOSES, Defendant

Civil Action No. 258

Trial Division of the High Court

Ponape District

June 1, 1966

Action to determine ownership of land in Uh Municipality, in which illegitimate son of deceased landowner under German land title claims land by inheritance. The Trial Division of the High Court, Chief Justice E. P. Furber, held that under Ponape custom, illegitimate child is considered neither child nor heir of father, but that plaintiff should have benefit of short-term plantings on land.

1. Ponape Custom-Illegitimate Child

Under Ponape custom, illegitimate child of man is not to be considered his child or issue, within meaning of inheritance laws, unless child is either adopted or legitimized by being publically acknowledged and accepted into family by man as his child.