

3. Time for appeal is extended until sixty days from entry of judgment.

4. The Clerk of Courts is instructed to cause this judgment to be docketed, translated, and furnished to Counsel for Plaintiff and to the Defendant.

REHAP JULIOS, Plaintiff

v.

IONIS AMUSTEN, Defendant

Civil Action No. 290

Trial Division of the High Court

Ponape District

June 11, 1968

Motion for summary judgment. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that under the controlling Ponape District Law deceased's eldest adopted daughter inherited his land and as there was no disputed material issue regarding such daughter's status the motion was granted.

1. Judgments-Summary Judgment

Summary judgment may be given only where there is no disputed material issue and the party filing the motion is entitled to judgment as a matter of law.

2. Ponape Land Law-Inheritance

In accordance with Ponape District Law, the eldest adopted daughter who is living inherits all of the adoptive father's land if there are no natural children or adopted sons of the landowner. Ponape District Law 3-17-59.

3. Judgments-Summary Judgment

Where there is no disputed material fact, summary judgment in accordance with applicable law is appropriate.

4. Ponape Land Law-Crops

Where persons harvested food from another's land for their subsistence for seven or eight years that benefit sufficiently compensated them for the long term crops which they had planted on such land.

5. Ponape Land Law-Crops

As to short-term crops persons who had planted such crops on another's land had the right, upon notifying the owner, to harvest any such crops they may have planted and to plant additional crops upon obtaining the owner's permission.

<i>Assessor:</i>	JUDGE CARL KOHLER
<i>Interpreter:</i>	JUDAH C. JOHNNY
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	JOHNNY MAKAYA
<i>Counsel for Defendant:</i>	IAKOPUS OLMES

TURNER, *Associate Justice*

When this case came on for trial, plaintiff moved for summary judgment based upon the agreed findings of the pre-trial order. The court granted the action in part and permitted defendant to amend her answer to claim compensatory damages for loss of crops planted by her family on the land. Trial was held on this issue.

OPINION

This case involved land known as Nanangesak, in the Palikir Section of Sokehs Municipality, Ponape District. The land was owned by Naitaniel, who received quitclaim deed No. JLL 160-459, dated December 29, 1961, and recorded in Book No.2, p. 39 of the land records on file in the office of the Ponape Clerk of Courts. The deed was issued in confirmation of homestead ownership acquired during Japanese time.

Naitaniel adopted the plaintiff and defendant. The defendant was adopted in 1958 and in 1959 or 1960 her family moved on to a part of the land and lived with Naitaniel in a house they built for one or two years. Without getting Naitaniel's permission, they planted coconuts, cacao and perhaps some breadfruit. Because they cut copra from trees already on the land, sold kava and yams and failed to contribute any of the proceeds to Naitaniel, he ordered the defendant's family to leave the land and when they refused, Naitaniel went to Kiti to live. Naitaniel died in 1964.

Although the pre-trial order recited as a contested issue, of fact whether or not Naitaniel also revoked the adoption

of the defendant, the question is not material to ownership of the land decided when plaintiff's motion for summary judgment was granted.

[1, 2] Summary judgment may be given only when there is no disputed material issue and the party filing the motion is entitled to judgment as a matter of law. In this case, both the plaintiff and defendant were adopted daughters of the landowner and in accordance with Ponape District Law 3-17-59, effective October 19, 1959, the eldest adopted daughter who is living inherits all of the adoptive father's land if there are no natural children or adopted sons of the landowner.

The parties agreed plaintiff was the eldest adopted daughter and there were no other heirs. Whether the adoption of the defendant was "voided" is immaterial, even though the court found at the pretrial this was a contested issue.

[3] When there is no disputed material fact, summary judgment in accordance with applicable law is appropriate. 41 Am. Jur., Pleadings, § 340 et seq. 45 A.L.R. 1041.

Even though the court finds title should vest in the plaintiff, it is appropriate to consider defendant's claim that she, through her family, planted both long-term and short-term crops and is entitled to compensation for their loss. This court has on two other occasions adjudicated such claims. *Joseph Moses v. Johnny Moses*, 3 T.T.R. 187. *Pelipe v. Pelipe*, 3 T.T.R. 133.

This court said in the *Moses* case, above:-

"As to the long term crops such as coconut and breadfruit trees which the plaintiff Joseph Moses has planted under permission from the defendant Johnny Moses, it is considered that the former's harvesting from the land during the period he was permitted to work it has sufficiently compensated him. It is believed, however, that in all fairness he should be allowed to obtain the benefit of any short term crops which he has planted during this

period with the pennission of the defendant, such as yams, kava and bananas."

The facts in the present case are quite different than they appeared to be in the *Moses* case. First, it was not shown that the landowner gave his adopted daughter's true parents permission to plant any crops. It is apparent they did plant crops, but we could very well hold defendant's evidence was insufficient to permit the court to determine what crops and how many trees defendant's family planted in order to measure compensatory damage.

[4] But there is a stronger reason for denying compensation. Defendant's true mother testified that she and defendant's true father "lived" on the land for nine years. The evidence is clear they lived there only one or two years but that they harvested food from the land for their subsistence for perhaps seven or eight years. This benefit sufficiently compensated them for the coconut, cacao and breadfruit trees they may have planted.

[5] As to short-term crops, the defendant's family had the right, upon notifying the plaintiff, to harvest any yams, kava and bananas they may have planted and to have planted additional crops upon obtaining plaintiff's permission.

The Ponape District Court, upon the petition of the plaintiff, granted a temporary order restraining the defendant from use of the land on August 29, 1966, but permitted the defendant to "harvest anything from this land" upon first notifying the plaintiff. Any short-term crops that may have existed when the District Court's order was made have long since been harvested and there is no evidence defendant's family has done any planting since then.

Under the circumstances, there is no basis for awarding any compensatory damages to the plaintiff.

JUDGMENT

Ordered, decreed, and adjudged:-

1. That title vested by inheritance in plaintiff, Rehap Julios, to the land known as Nanangesak, in the Palikir Section of Sokehs Municipality, Ponape District, and more fully described in the deed recorded January 9, 1962, with the Ponape District Court Clerk in Book No.2, p. 39.
2. That defendant is denied relief upon her claim for compensatory damages for loss of crops planted upon the above described land.
3. This judgment shall not affect any rights-of-way there may be over the land.
4. No costs are assessed against either party.

LIPIHNA DIOPULOS, Plaintiff

v.

LUHKAS OSAIAS and LUTHER NETH, Defendants

Civil Action No. 332

Trial Division of the High Court

Ponape District

June 12, 1968

Action to determine title to land. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that under the law in effect at the time of decedent's death his adopted daughter could not inherit his land.

1. Judgments-Summary Judgment

Summary judgment is available when there is no disputed issue of material fact and the party moving for it is entitled to judgment upon the law.

2. Judgments-Summary Judgment

Where evidence was required on a disputed issue upon which a party's entitlement to a judgment vesting title in him depended, summary judgment could not be granted.

3. Ponape Land Law-Inheritance

The land law prevailing in Ponape in 1944 denied the right of inheritance to a daughter, natural or adopted.