

WELENTEN PERNANDO, Plaintiff
v.
PAULUS and LIWI SILIVER, Defendants
Civil Action No. 12
Trial Division of the High Court
Ponape District
December 23, 1952

Action to determine ownership of land in Kitti Municipality, in which petitioner claims rights to land as eldest son of land holder in whose name German land title was issued. The Trial Division of the High Court, Chief Justice E. P. Furber, held that rights of heir under German title document could be cut off by inter vivos transfer with approval of *Nanmarki* and Governor, and that transfer subject to agreement to hold part of land for third party, if proved by clear evidence, would be recognized by court.

1. Ponape Land Law—German Land Title—Succession

Under German land title, eldest son of title holder of land on Ponape Island did not have absolute right of inheritance since prospective interest could be cut off by transfer to another with approval of *Nanmarki* and Governor.

2. Ponape Land Law—German Land Title—Presumption of Ownership

Presumption is that ownership of land on Ponape Island rests in person in whose name German title document stands, but presumption may be overcome by clear evidence showing that owner is under legal obligation to recognize rights of others in property.

3. Ponape Land Law—German Land Title—Equitable Interests

Where title to land on Ponape Island is transferred to another under agreement that transferee hold part of land for third party, and division is approved by *Nanmarki* and Governor, transferee is under obligation to recognize rights of third party.

4. Ponape Land Law—German Land Title—Approval of Transfer

Head of Ponape Branch Office (Japanese official) was lawful successor to Governor and was authorized to exercise power of approval of transfers of land.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Pernando directed that the land in question should be divided between the plaintiff Welenten and the defend-

ant Paulus, Welenten to have the right-hand portion of the land (as one stands on the shore facing the land) and Paulus the left-hand portion. Pernando also arranged to have the German title paper to the property transferred before his death to the name of Welenten by endorsement dated 12 July, 15 Showa. This was done with the consent of the *Nanmarki* and the Head of the Ponape Branch Office, who was the one then exercising the powers of Governor.

2. This endorsement was not obtained by fraud, misrepresentation, mistake, or any other wrongful means, it was subject to and in accordance with an undertaking by the plaintiff Welenten, to hold the left-hand portion of the land for the defendant Paulus.

3. Disagreement having arisen between the plaintiff Welenten and the defendant Paulus, as to the exact location of the dividing line they, after negotiations engaged in personally and through representatives, finally agreed upon the dividing line shown by the line "C-Y" on Paulus' sketch attached to the pre-trial order in this case. This line runs from a pile of stones at the shore approximately 50 meters to the left of an orange tree (as one stands on the beach facing the land) in a straight line to the point on the upland boundary of the land marked by the first marker to the left (as one stands on the shore facing the land) of a point marking the boundary line between land now or formerly of Peli and land now or formerly of Antereas, otherwise known as Andreas. This division was approved by the *Nanmarki* and by the Japanese surveyors on behalf of the governor in accordance with publicly announced policy of the governor at the time of the Japanese survey, to permit division of lots.

CONCLUSIONS OF LAW

[1] 1. In the case of land held under the standard form of title document issued by the German Government on Ponape in 1912, the eldest son of the title holder did not have an absolute right of inheritance but his prospective interest in the land could be cut off by a transfer by the title holder to someone else made with the approval of the *Nanmarki*, and the Governor. In view of the findings of fact made in this case, it is therefore immaterial whether the defendant Liwi Siliver was or was not the son of Pernando since legal title was duly transferred, with the necessary consents, to the plaintiff Welenten, subject to the undertaking set forth in the second paragraph of the findings of fact above.

[2, 3] 2. As indicated in the conclusions of law in the case of *Petiele and another against Max and another*, 1 T.T.R. 26, the presumption is that the ownership of land with the rights and benefits and subject to the obligations set forth in the title document rests in the person in whose name that document stands. This presumption, however, can be overcome by clear evidence showing that the person in whose name the document stands is under legal obligation to recognize certain rights of others in the property or some part of it. Thus in this case the title document having been transferred to the plaintiff Welenten, under agreement that he would hold part of the land for the defendant Paulus, and the division having been approved by the *Nanmarki* and the Governor, Welenten is under obligation to recognize Paulus' ownership.

[4] 3. As held in the case of *Lukas Ladore against Kuan Ladore and another*, 1 T.T.R. 21, the Court takes judicial notice that the Japanese official whose title is regularly translated as "Head of the Ponape Branch Office" or "Ponape Branch Office Head" was the lawful successor of the German Official whose title is regularly translated

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as "Governor", and was authorized to exercise the powers of the Governor under the standard form of German title document referred to above.

JUDGMENT

It is ordered, adjudged, and decreed as follows:

1. As between the parties and all other persons claiming under them, the right-hand portion (as one stands on the shore facing the land) of the lot known as Sakarantu, located in the Sainuar Section of Kiti, belongs to the plaintiff Welenten, a resident of the Sainuar Section, and the left-hand portion belongs to the defendant Paulus, a resident of the Satawan Section of Sokas. The dividing line between the two parts runs from a pile of stones at the shore about 50 meters to the left of an orange tree (as one stands on the shore facing the land) in a straight line to a marker in the upland boundary at land now or formerly of Peli which is the first marker to the left (as one stands on the shore facing the land) of a marker showing the division between the land in question and land now or formerly of Peli and that now or formerly of Antereas, otherwise known as Andreas. All of the rights here decreed are with the benefit of and subject to all the rights and obligations imposed by the system of private land ownership set forth in the standard form of title document issued by the German Government in Ponape in 1912, as heretofore or hereafter modified by law.

2. This judgment shall not affect any rights of way which may exist over the land, nor any rights which the Catholic Church may have to a church and feast house, or Sarnis, also known as Peli, may have to a store, or Aniseto may have to a boathouse, all of which are upon or built over the water and connected with the portion of the land herein decreed to Paulus.

3. No costs are allowed or taxed in this action.