

THOMAS WEIRLAND, Plaintiff

v.

KENIO (also known as EUGENIO) WEIRLAND, Defendant

Civil Action No. 26

Trial Division of the High Court

Ponape District

August 4, 1954

Action to determine ownership of land in Net Municipality, in which petitioner claims right by inheritance to entire lands of deceased owner. The Trial Division of the High Court, Chief Justice E. P. Furber, held that land was properly divided between plaintiff and defendant, such division having been approved by *Nanmarki* and by official Japanese surveyor; rights of government in another plot of land will not be determined where government is not a party to suit, but party may continue in possession thereof pursuant to agreement in open court.

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

Where two parties, each claiming to be oldest son of deceased, holder of German land title, have agreed to divide land on Ponape Island, and division has been approved by *Nanmarki* and by Japanese surveyor, court will uphold division.

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

If land on Ponape Island has been divided with approval of *Nanmarki* and official Japanese surveyor, it makes little or no difference in whose name German title document was left or transferred to where government had given notice that it would be replaced by Japanese documents showing divisions.

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

There is presumption that division of land on Ponape Island with required consents and which is later confirmed by parties effectively divides ownership of land.

4. Courts—Parties

Where government has interest in land but is not party to action, no determination of government's rights will be made.

FURBER, Chief Justice**FINDINGS OF FACT**

1. The German title document for the land known as Lukopos No. 6 has an official endorsement on it in Japanese, dated July 20, 1940 (stated as the 15th year of Showa), saying that on the death of the person whose name is on the certificate, his eldest son Ikenio inherits it. This endorsement bears the stamp and official chop of the Ponape Branch Office Head. This title document also bears a notation consisting of the date September 28, 1942 (stated as the 17th year of Showa) and the personal chop of Marumo, who was one of the official Japanese Government surveyors.

2. The German title document for the land known as Ponmeiti No. 24 has an endorsement on it dated July 20, 1940, exactly like that of the same date on the document for Lukopos No. 6, but does not have the notation dated September 28, 1942.

3. Lukopos No. 6 was divided, at the suggestion and with the assistance of the *Nanmarki* (chief) of Not, by agreement between the plaintiff Thomas and the defendant Kenio by a dividing line running from an ivory nut tree near the shore in a straight line to a pile of stones at the upland boundary of the lot. Under the terms of this division, Thomas was to own the land on the right of this line (as one stands on the shore facing the land), and Kenio was to own the land to the left of this dividing line. This division was approved by the *Nanmarki*, and by the

official Japanese surveyor on behalf of the Ponape Branch Office Head. It was also consented to by the defendant Kenio's mother and by the Kucho (an official having a large responsibility in Japanese times to see that affairs were conducted properly in his area, and to keep what is now the municipal office advised concerning them) of Parem Island. It was later confirmed by both the plaintiff Thomas and the defendant Kenio in American times, in consultation with the *Nanmarki* and the *Naniken* (head of the other line of traditional title holders than that headed by the *Nanmarki*).

4. The plaintiff Thomas has agreed in open court that so far as he is concerned, the defendant Kenio may have Ponmeiti No. 24.

CONCLUSIONS OF LAW

[1] 1. The original dispute between the parties in this action arose out of a difference of opinion as to which is to be considered the oldest son of Piscente, within the meaning of that term as used in the standard form of title document issued by the German Government on Ponape beginning in 1912. The plaintiff Thomas was adopted by Piscente and his wife long before the defendant Kenio was born. Piscente's wife died, he remarried, and the defendant Kenio was born to Piscente by this later marriage. In view, however, of the agreements made by the parties, it is not necessary to decide which was the oldest son, or whether the endorsements on the title documents were properly obtained. Whichever one inherited Lukopos No. 6 has given up a part of it to the other by the division they agreed upon with the approval of the *Nanmarki*, and the official Japanese surveyor on behalf of the Government.

[2, 3] 2. So far as Lukopos No. 6 is concerned, this action is controlled by the principles set out in the conclusions

of law by this court in the case of *Teresita Phelip v. Ioakim and Eneriko*, 1 T.T.R. 147. In the case of lands which were divided with the approval of the *Nanmarki* and the official Japanese surveyor in connection with the Japanese survey of private land on Ponape Island beginning around 1941, it makes little or no difference which part-owner's name the title document was left in or transferred to, since the Government had given notice that these were to be recalled and replaced by the Japanese documents which would show the divisions approved by the surveyors. The defendant Kenio claims that the division of the lot was just an agreement about the portion which each might work, and had nothing to do with the title, but in view of the findings of fact above and the presumption discussed in the case of *Teresita Phelip v. Ioakim and Eneriko* referred to above, the court holds that the division, with the required consents and later confirmed by the parties, divided the ownership.

[4] 3. It was agreed by the parties at the pre-trial conference that the Japanese Government had taken possession of Ponmeiti No. 24 about 1939, and that the parties had received 680 yen between them from the Japanese authorities for the property. Both parties acknowledge that no final determination or adjustment has been made with the American authorities concerning any interest the Japanese Government acquired in this land, but that the American authorities have given oral notice to the Not office that former owners of land on Langar Island may go back there pending a decision as to title. Neither has sought any determination in this action of rights as against the Government, which is not a party, and no such determination is made, but in accordance with Thomas' agreement in open court, defendant Kenio is considered, as between them, to now hold whatever rights Piscente's successor in interest may have in this piece of land.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the land known as Lukopos No. 6, located on Parem Island in the Municipality of Not (within the reef surrounding Ponape Island), is owned as follows:—

(a) The part lying to the right (as one stands on the shore facing the land) of a dividing line running from an ivory nut tree near the shore in a straight line to a pile of stones at the upland boundary of the lot, is the property of the plaintiff Thomas Weirland, a resident of the Tolokei Section of Not.

(b) The part of Lukopos No. 6 to the left of that dividing line is the property of the defendant Kenio Weirland, a resident of the Ninseitam Section of Not.

(c) Each of these parts is the property of the person named above, 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 on Ponape in 1912, as heretofore or hereafter modified by law.

(d) Each of the parties has as complete control over his part of the land as he would have if a separate German title document had been issued for each of these parts.

2. Whatever rights Piscente's successor may have in the land known as Ponmeiti (sometimes called Nipuelipuel) No. 24 located on Langar Island in the Municipality of Not (within the reef surrounding Ponape Island) are the property of the defendant Kenio Weirland, a resident of the Ninseitam Section of Not.

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

4. No costs are assessed against either party.