

POLYCARP R. BASILIUS, Plaintiff

v.

OMOTO RENGIL, Defendant

Civil Action No. 255

Trial Division of the High Court

Palau District

June 10, 1963

Motion for order in aid of judgment in which plaintiff, who was previously awarded judgment against minor defendant, seeks order directed to older brother of defendant, and contends that under Palau customary law, one's relatives are liable to pay fines, judgments or debts against him if he is unable to pay. The Trial Division of the High Court, Associate Justice Paul F. Kinnare, held that plaintiff fails to prove custom on which he relies. Order denied.

1. Custom—Judicial Notice

If local custom is firmly established and widely known, court will take judicial notice of it. (T.T.C., Sec. 21)

2. Custom—Burden of Proof

Where there is dispute as to existence or effect of local custom, and court is not satisfied as to its existence or applicability, custom becomes mixed question of law and fact.

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3. Custom—Burden of Proof

Where there is dispute as to existence or effect of local custom, party relying upon it must prove it by evidence satisfactory to court.

4. Palau Custom—Family Obligations—Civil Liability

Where party fails to cite any case arising out of automobile accident in which any person other than wrongdoer has been ordered to pay damages resulting from wrong, plaintiff fails to prove alleged Palau custom by which relatives of wrongdoer are liable for judgments against him.

KINNARE, *Associate Justice*

OPINION

This matter came on to be heard upon the plaintiff's motion for an order in aid of judgment. The record shows that the plaintiff was awarded judgment against the defendant in the sum of \$651 on October 4, 1962. At the hearing on the motion neither side offered evidence but it appeared in argument that the plaintiff seeks an order directed to the older brother of the defendant (the defendant is a male high school student, 19 years old). The court ordered the plaintiff to file an amended application for an order in aid of judgment, setting out in detail the exact terms of the order applied for, and ordered both sides to file written briefs. The plaintiff did not file an amended application but both sides did file written briefs.

The plaintiff relies upon what he says is a well established Palauan custom; that is, that a person's relatives are liable to pay fines, judgments, or debts against him if the person himself is unable to pay the same. The plaintiff cites cases in Palau where judgments or debts have, in fact, been paid by the debtor's relatives. The defendant concedes that under Palauan custom certain types of debts or certain damages, particularly in cases involving adultery or divorce, have been paid by the debtor's relatives.

It is certainly true that, not only in the Trust Territory but in most other parts of the world, an individual's rela-

tives often feel a moral obligation to pay the debt that the individual cannot or will not pay. However, the plaintiff is here seeking an order directed to an individual who was not a party to the original proceedings, who was not served with notice, who had no opportunity to be heard, and who is a complete stranger to the record.

[1-4] Furthermore, neither in his oral argument nor in his written brief, did plaintiff bring to the court's attention any case arising out of an automobile accident in which any person other than the wrongdoer has been ordered to pay damages resulting from the wrong.

"If a local custom is firmly established and widely known, this court will take judicial notice of it (Trust Territory Code, Section 21). When, however, as in this case, there is a dispute as to the existence or effect of a local custom, and the court is not satisfied as to either its existence or applicability, such custom becomes a mixed question of law and fact, and the party relying upon it must prove it by evidence satisfactory to the Court (Teitas vs. Trust Territory of the Pacific Islands, Truk District, Criminal Case No. 146)."

The court finds that the plaintiff has failed to prove the custom on which he relies.

Accordingly the application for an order in aid of judgment is denied without prejudice.