

**DUANE LONG, DWIGHT LONG, DOROTHY LAUDERDALE,
DELORIS BANKER, and THERESA SILARA, Plaintiffs**

v.

**THOMAS SUSUMU (MANASA) and KESNER HADLEY,
Defendants**

Civil Action No. 28-74

Trial Division of the High Court

Ponape District

June 16, 1976

Contest over inheritance of land of intestate, located in Metelanimw Municipality of Ponape. The Trial Division of the High Court, Brown, Associate Justice, held that the claim of adoptive son took precedence over claim of allegedly adoptive daughter.

1. Adoption—Evidence

Defendant would be found to be adoptive son of deceased, and plaintiff would not be found to be adoptive daughter, where "Family Relation Book" which was a public record, and believable, trustworthy oral testimony, supported defendant's claim, and oral testimony and written statement supporting plaintiff's claim were not persuasive.

2. Ponape Land Law—Inheritance

In Ponape District action regarding inheritance of land in Metelanimw Municipality, claim of intestate's adoptive son takes precedence over claim of adoptive daughter.

3. Evidence—Depositions—Admissibility

Purported deposition sought to be introduced in evidence during argument after the parties had rested their cases, the file containing no motion for any discovery, no order permitting discovery and a pre-trial order silent on the matter, was not admissible.

<i>Assessor:</i>	NONE
<i>Reporter:</i>	NONE
<i>Interpreter:</i>	DAHKER D. DANIEL
<i>Counsel for Plaintiffs:</i>	JOHNNY MAKAYA
<i>Counsel for Defendants:</i>	IOANIS EDMUND

BROWN, Associate Justice

On December 28, 1936, Julien Manasa became the owner of the land, Soukrou, in Metipw Section, Metelanimw

Municipality, Ponape; and it remained his land until he died intestate on November 28, 1958. He had no surviving widow and had no natural children.

Plaintiff, Theresa Silara, claims that she owns the land either by virtue of one or more oral wills allegedly made by Julien in 1956 and in 1958, or, in the alternative, by intestate succession, Plaintiff alleging to be Julien's only adopted child.

Defendant, Thomas Susumu (Manasa) alleges that it was he, not Plaintiff, who was adopted by Julien and thereby took title to the land by intestate succession.

Defendant, Kesner Hadley, alleges that he purchased the land from Thomas in 1970 and therefore is the owner. It is conceded that whatever title may be held by Kesner depends entirely upon what title, if any, Thomas held; for the latter could convey no more than he owned. Likewise, it is not contested that Thomas did convey to Kesner whatever title he held.

The allegations concerning the acquisition of ownership by virtue of a purported oral will may be disposed of summarily. Until February 1, 1957, real property in Ponape could not be conveyed by will. Thereafter, and until after Julien's demise, real property could be conveyed by will, but only by a written will. (See Ponape District Order No. 9-57.) Even if Julien had attempted to devise the land by oral will, he could not have done so.

[1] The evidence, as usually is the case, was in sharp conflict. However, the preponderance of the evidence, both oral and written, established that Thomas was, indeed, Julien's adopted son. The "Family Relation Book" of Metelanimw, a public record which was received in evidence, reveals that Thomas was a member of Julien's family. Significantly, the name of Theresa is not to be found in that book. Oral testimony that was believable, appeared to be trustworthy, and which was consistent with

the public record received in evidence strongly fortified Thomas' claim.

Theresa's claim that she was Julien's adopted child, and that Thomas was not, was based upon oral testimony as well as upon a written statement. These were not persuasive. Plaintiff did not establish her case by a preponderance of the evidence and thus failed to carry the burden of proof required of her.

After Julien's death, and on November 24, 1959, Section 12-101 of the Ponape District Code came into effect. This statute makes specific provisions as to intestate succession. Had it been the law as of the date of Julien's death, Thomas unquestionably would have taken title to the land. Since Julien died in 1958, that statute cannot be considered here. However, and based upon the authority of *Sehpin v. Atta*, 4 T.T.R. 33, 37-38 (Tr. Div.), the oldest adoptive son was entitled to inherit all of the lands of his adoptive father. This, of course, must be understood to apply only to circumstances such as prevailed under the facts of the case now before this Court. Obviously, if there were a surviving widow or natural offspring, a different rule would apply.

[2] Even if it were to be assumed, arguendo, that Theresa were an adoptive child of Julien, as was Thomas, she could not prevail over the latter; for the claim of an adoptive son necessarily takes precedence over the claim of an adoptive daughter; their respective ages are of no consequence.

[3] It should be noted that during argument, Plaintiff sought to introduce into evidence a purported deposition taken from her mother. This was not received, nor could it have been received. All parties had rested; the file contains no motion for any discovery, no order permitting discovery, and the pre-trial order is silent on the matter. To have received the proffered "deposition" would have constituted error and would have been grossly unfair to Defendants.

Further, it could not have established any fact which conceivably could have caused the Court to apply law different from that which has been applied.

Accordingly, it is the Judgment of this Court that:

1. Judgment herein be, and it is in favor of Defendants, and each of them, and against Plaintiff;
2. Defendant, Thomas Susumu (Manasa) is declared to be, and he is the oldest adoptive son of Julien Manasa;
3. Plaintiff, Theresa Silara, is hereby declared not to be, and she is not an adoptive child of Julien Manasa;
4. Defendant, Kesner Hadley, is declared to be, and he is the purchaser from Defendant, Thomas Susumu, of all of the latter's right, title, and interest in and to the land, Soukrou, Metipw Section, Metelanimw Municipality, Ponape, title to the said property having been acquired by said Thomas Susumu on or about November 28, 1958 by right of intestate succession; and
5. Costs incurred herein are hereby awarded to Defendants, and each of them.