

LUISA ENERIKO, Plaintiff
v.
MARINA and AKINO,
a minor represented by MARINA in this action, Defendants

Civil Action No. 117
Trial Division of the High Court
Ponape District

December 18, 1957

Action to determine ownership of land in Kitti Municipality, in which plaintiff claims right to land given her in consideration of agreement to support grantor. The Trial Division of the High Court, Chief Justice E. P. Furber, held that plaintiff was entitled to land since transfer was approved by *Nanmarki* and Ponape Branch Office and there was no substantial failure of support. As between defendants, purported will leaving land held under German title to deceased's widow was invalid and title passed to his adopted son under terms of title document.

1. Ponape Land Law—Obligation to Support

Where land on Ponape Island is transferred upon agreement to take care of grantor and there is gross failure to perform agreement by grantee, transfer may be cancelled and land transferred by grantor to another.

2. Ponape Land Law—Obligation to Support

Right of grantor of land on Ponape Island to cancel gift is dependent upon gross failure of grantee to perform agreement of support, and cancellation must be clearly shown.

3. Ponape Land Law—Obligation to Support

Heirs of grantor of land on Ponape Island do not have standing to revoke gift of grantor for grantee's gross failure of support.

4. Ponape Land Law—German Land Title—Women's Rights

Women could not inherit land on Ponape Island under German title before February 1, 1957. (Ponape District Order No. 8-57)

5. Ponape Land Law—German Land Title

Determination by Committee of Seven in Kitti (advisory administrative body) is of no legal effect in determining ownership of land on Ponape Island held under German land title.

6. Ponape Land Law—German Land Title—Wills

Transfers of land on Ponape Island by will were not permitted under German title document.

7. Ponape Land Law—German Land Title—Wills

Upon approval of *Nanmarki* and Ponape Branch Office, Japanese Administration permitted present transfers of remainder interest in land on Ponape Island with life estate reserved to grantor, but transfer by will was not permitted until 1957. (Ponape District Order No. 9-57)

8. Ponape Land Law—German Land Title—Wills

Where owner of land on Ponape Island died before 1957, attempted will is invalid and land passes in accordance with rules of succession on title document. (Ponape District Order 9-57)

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Estepan Eneriko and Marina adopted Akino.
2. The division of the land by Estepan and the gift of the westerly part of it to Luisa were approved by the official Japanese Government surveyors on behalf of the *Nanmarki* and the Head of the Ponape Branch Office.
3. While Luisa did not always support her father Estepan to his complete satisfaction, she fulfilled her obligations to him substantially as a daughter should who has received land from her father.
4. Estepan did not even try to revoke the gift to Luisa of the westerly part of the land in question.
5. The alleged will of Estepan to the defendant Marina and her children was not consented to by or on behalf of the *Nanmarki* or the "Governor".

CONCLUSIONS OF LAW

1. This action involves land on Ponape Island formerly held by Estepan Eneriko under the standard form of title document issued by the German Administration on Ponape beginning in 1912.

[1-3] 2. The westerly part of the land in question was admittedly given to the plaintiff Luisa by Estepan prior to his death, and the second finding of fact shows

this was done with the necessary consents to effect a legal transfer. The defendants claim, however, that this transfer was revoked by Estepan and that he had a right to do this because Luisa did not support her father Estepan satisfactorily. In the case of *Friderihg Lusama and Others v. Eunpeseun*, 1 T.T.R. 249, the court held that where land was transferred upon an agreement to take care of the grantor, and there was a gross failure to perform the agreement by the persons to whom the land had been transferred, the transfer might be cancelled and the land transferred to another, as if the original transfer under agreement of support had never been made. This right to cancel, however, is dependent upon a gross failure to perform the agreement. Furthermore, the cancellation must be clearly shown. In the present case the plaintiff Luisa, while causing her father irritation at times, substantially performed her obligations, and there has been no clear showing of even an attempt on his part to revoke the gift to her. While it is obvious the present defendants would like to revoke the gift, they have no standing to do so, and the court holds that the gift of the westerly part of the land is still in effect.

[4] 3. The plaintiff Luisa claims that on Estepan's death she inherited the easterly part of the land as his daughter. Under the land law set forth in the standard form of German title document used on Ponape, however, a daughter could not inherit land. Although the Japanese permitted land to be transferred to women during the latter part of their administration, they made no change authorizing daughters to inherit as a matter of right, and no such change was made by the American Administration until Ponape District Order No. 8-57 was issued February 1, 1957, which was after the death involved in this case.

[5] 4. In support of her claim, Luisa has relied, in part, upon the showing of a determination by five members of the Committee of Seven for the part of Kiti in which the land is located, stating that she should succeed. Why the Committee of Seven was interested in making any such determination is not clear. So far as the court is now advised, it appears that these Committees of Seven have been set up as purely administrative bodies with only advisory powers—particularly in connection with the homesteading of government land. The court holds that their determination is in and of itself of no legal effect as to the ownership of the land in question.

[6-8] 5. The defendant Marina claims, as Estepan's widow, under an alleged will from him. The land law set forth in the standard form of German title document referred to above prohibited transfers by will in the American sense. Certain transfers were permitted by the Japanese Administration, when approved by or on behalf of the *Nanmarki* and the Head of the Ponape Branch Office, that cut off the possibility of inheritance by the grantor's heir, although they did not affect the possession until after the death of the grantor, and have been loosely referred to at times as wills. These were, however, in effect present transfers of a remainder interest after a life estate reserved to the grantor and were not wills in the ordinary American sense. No change in the Ponape Island land law permitting transfers by will in the American sense was made until Ponape District Order No. 9-57, effective April 1, 1957, expressly authorized certain wills, provided they were executed in accordance with the order. This order was again after the death involved in this action. The court therefore holds that the alleged will to the defendant Marina is of no legal effect, regardless of any question of the manner in which it was executed, and that on Estepan's death the easterly part

of the land, in accordance with the terms of the standard form of title document, to the defendant Akino as Estepan's adopted son.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties and all persons claiming under them, the land in question is owned as follows, the boundaries between the different parts of Nantipwenna being shown by markers set with the approval of the official Japanese Government surveyors, and the northerly part of the tract not being involved in this action:—

(a) The southwesterly part of the land known as Nantipwenna No. 281, located in the subsection known as Sounkroun in the part of Kiti Municipality known as Wene, is owned by the plaintiff Luisa Eneriko, a resident of that section of Kiti, 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 Administration on Ponape in 1912, as heretofore or hereafter modified by law.

(b) The southeasterly part of the land known as Nantipwenna No. 281, referred to above, is owned by the defendant Akino, who is also a resident of the Sounkroun Section of Kiti, 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 Administration on Ponape in 1912, as heretofore or hereafter modified by law.

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

4. No costs are assessed against any party.