

HANAKO MOSES and ATAR MOSES,
a minor who brings this action by his mother,
HANAKO, as next friend, Plaintiffs

v.

SIMAKO MOSES, Defendant

Civil Action No. 122

Trial Division of the High Court

Ponape District

December 18, 1957

Action to determine rights in land in Kitti Municipality, in which plaintiff claims right to land given to him after previous gift to son of defendant allegedly had been revoked. The Trial Division of the High Court, Chief Justice E. P. Furber, held that second transfer was invalid since first gift of land could not be revoked; when *Nanmarki* makes later determination which is inconsistent with his original approval of gift of land, such later determination is of no legal effect.

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

Effect of American Administration's inaction regarding consent to transfer of land in Ponape held under German title has been to consent tentatively to *Nanmarki's* determinations where they are reasonable and made around time of transfer.

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

While not preventing government from taking other action later, consent of *Nanmarki* gives transferee of land in Ponape held under German title right to be treated as title holder as against all persons except government.

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

Nanmarki, having once consented to transfer of land on Ponape Island, cannot change or upset determination without good reason, and any later conflicting determination will be of no legal effect.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Moses gave Nandol to Hanako. This transfer was approved by the official Japanese Government surveyors on behalf of the *Nanmarki* and the Head of the Ponape Branch Office.

2. About 1941 or 1942 Moses divided the ownership of Pohnteleng, giving one part to the defendant Simako, one to his wife, Emeli, and retaining one for himself. This division and the transfers involved in it were approved by the official Japanese Government surveyors on behalf of the *Nanmarki* and the Head of the Ponape Branch Office.

3. Moses and Emeli adopted the plaintiff Atar, and Alfred, who is the son of the defendant Simako.

4. Moses, during the period of the American Administration, gave to the plaintiff Atar the part of Pohnteleng which Moses had reserved for himself, and Emeli, also during the period of the American Administration, gave to Alfred the part of Pohnteleng which Moses had given to her. These transfers were each approved on behalf of the *Nanmarki* by Chief Magistrate Linter Epen, to whom the *Nanmarki* had left decision on these matters.

5. Emeli later attempted to revoke the transfer to Alfred and give her part of Pohnteleng to Hanako, but no facts which would justify this revocation have been shown.

CONCLUSIONS OF LAW

1. This action involves land on Ponape Island held under the standard form of title document issued by the German Administration there beginning in 1912, and is largely controlled by the principles explained in conclusions of law in the case of *Luisa Eneriko v. Marina and Akino*, 1 T.T.R. 334.

[1, 2] 2. The difficulty of obtaining any formal consent by or on behalf of the "Governor" for transfers of Ponape land during the period of the American Administration was discussed by this court in the fourth paragraph of its Conclusions of Law in the case of *Friderihg Lusama and Others v. Eunpeseun*, 1 T.T.R. 249. The court holds that under all the circumstances the effect of the American Administration's inaction in these matters has been to

tentatively consent to the *Nanmarki's* determinations, where these are reasonable and are made at or about the time of the transfer. While not preventing the Government from taking other action later, such an attempted transfer made with the consent of the *Nanmarki* given at that time gives the person to whom the attempted transfer is made the right to be treated as the title holder as against all persons except the Government.

[3] 3. Both Hanako and Simako claim that after the transfers to Atar and Alfred, shown in the fourth finding of fact, and the *Nanmarki's* consent to them, he later made determinations inconsistent with these transfers. Hanako claims he consented to Emeli's transferring her part of Pohnteleng to Hanako. Simako claims he determined she should succeed to the ownership of all the land in question. There is some evidence to support both of these claims, but the court holds that the *Nanmarki*, having once consented to a transfer such as these here involved, cannot change or upset his determination without good reason, and that no good reason has been shown here. Therefore, the court considers these later alleged determinations to be of no legal effect.

JUDGMENT

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

1. As between the parties and all persons claiming under them, rights in the lands in question are held as follows:—

(a) The land known as Nandol No. 255, located in the Pahnais Section of Kiti on Ponape Island, is owned by the plaintiff Hanako Moses, who is a resident of the Pahnais 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

beginning in 1912, as heretofore or hereafter modified by law.

(b) The two parts now in question of the land known as Pohnteleng (sometimes spelled Pantalan) No. 258, located in the Pahnais Section of Kiti, are to be treated as follows (the plaintiffs make no claim to the part given to Simako in the division made by Moses about 1941 or 1942) :—

(i) The part which was retained by Moses in the division made about 1941 or 1942 is to be treated as the property of the plaintiff Atar Moses, who lives in the Pahnais 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, unless and until the Government of the Trust Territory of the Pacific Islands takes action to upset or affirmatively disapprove the transfer of this land from Moses to him.

(ii) The part which was given to Emeli in this division is to be treated as the property of Alfred, who is not a party to this action, but is the son of the defendant Simako Moses and lives in the Pohsein 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, unless and until the Government of the Trust Territory of the Pacific Islands takes action to upset or affirmatively disapprove the transfer of this land from Emeli to him.

3. No determination is made in this action as to rights between Alfred and anyone claiming for or through him, except that the plaintiff Hanako has established no such rights.

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

5. No costs are assessed against any party.