

LOF, Plaintiff
v.
LUKEREN, Defendant
Civil Action No. 343
Trial Division of the High Court
Truk District
April 22, 1968

.FURBER, *Temporary Judge*

This action came on to be heard upon the Master's Report. Neither counsel having requested to be heard upon the Master's Report and neither making any response when the case was called at the opening of the sitting follow-

ing the filing of the Master's Report, the action was taken under advisement on the basis of the Master's Report and the transcript of testimony submitted therewith. The Master's Report is approved.

OPINION

This action involves the ownership of a piece of land known as Likin Letifou on Lukunor Island, Mortlock Islands (otherwise known as Nomoi Islands), Truk District, which it clearly appears was once owned by the defendant's mother, Emeren, who was the sister by adoption of the plaintiff's father.

It also clearly appears that during the plaintiff's father's last illness, an arrangement was made whereby one-half of the land in question was given, with the consent of Emeren, to the plaintiff Lof, and Emeren was given in exchange by Lof's lineage or a member or members thereof, the land Likin Lemal (sometimes written as one word "Likilemal").

Later the plaintiff Lof left the Mortlock Islands and turned his part of the land Likin Letifou over to his brother or brothers. Down to this point, there is little conflict in the testimony.

The defendant Lukeren claims, however, that the plaintiff's brother, Lusio, on behalf of the plaintiff's lineage, revoked the exchange and took back from Emeren the land Likin Lemal and gave her back possession of Likin Letifou. Emeren has died and whatever rights she had in the land in question have passed to her daughter, the defendant Lukeren.

The plaintiff Lof claims it was Emeren who initiated the re-exchange of the two pieces of land, but the evidence is clear that the exchange was reversed and that Lof's lineage now has possession of the land Likin Lemal and the court believes the Master was justified on the evi-

dence in finding that the plaintiff's own brother took back Likin Lemal first, thereby entitling Emeren to recover the half of Likin Letifou. While this matter of exchange of lands has been discontinued in Lukunor since about 1935 or 1937, it was a well-established practice at the time of the original exchange which was well before that date. See: Social Organization, Land Tenure and Subsistence Economy of Lukunor, Nomoi Islands, by Tolerton and Rauch, p. 71-73A. Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. 1, p. 170-173.

[1] Once an exchanged parcel is reclaimed by one side, it is only fair and equitable that the other be allowed to reclaim their parcel originally given up in the exchange, and the court holds that the other has the right to do so both under the custom on Lukunor and common law principles. Restatement of the Law of Contracts, Vol. II, Sec. 354.

[2] The plaintiff Lof, as an "*ajokur*" of the defendant's lineage, while having no absolute rights to the land in question, may reasonably expect to be allowed a certain amount of use of the land, along with the defendant Lukeren, provided he cooperates with her. For a description of the general practice concerning "*ajokur*" see: *Pinar v. Kantenia*, 3 T.T.R.158. *Nusia v. Sak*, 1 T.T.R. 446. The defendant Lukeren has acknowledged that her mother said that, if Lof came back, she was to see if Lof was good to her and, if he was, she was to "take care of" him, but otherwise she need not.

JUDGMENT

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

1. As between the parties, both of whom live on Lukunor Island, Truk District, and all persons claiming under them, the land known as Likin Letifou located on

Lukunor Island, in the Mortlock Islands, Truk District is owned by the defendant Lukeren.

2. The plaintiff Lof has no rights of ownership in the land in question, except the right to use it with the defendant Lukeren to the extent, if any, that she may permit him to.

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

4. The defendant Lukeren is awarded such costs, if any, as she may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code, provided she files a sworn, itemized statement within sixty (60) days after the entry of this judgment; otherwise no costs will be allowed.

5. Time for appeal from this judgment is extended to and including July 19, 1968.