

KUGUTNAM, Plaintiff
v.
FALOCHA, Defendant
Civil Action No. 39
Trial Division of the High Court
Yap District
August 30, 1968

Action to determine right of control over lands in the Yap Islands. The Trial Division of the High Court, E. P. Furber, Temporary Judge, held that, wishes of deceased male head of extended family group that his wife succeed him in control was subject to the effect the extended family group desired to give to his wishes and the continued control if given would be subject to the wishes of such group.

1. Yap Land Law-Patrilineal Ownership-Succession

Under Yapese customary law the expressed desire of the male head of the extended family group that his wife succeed him in the control of the lands gave her no absolute right of control, rather it is for his extended family to decide whether to give effect to his wishes and whatever control the wife would be allowed to exercise would remain subject to the wishes of the family group.

2. Yap Land Law-Patrilineal Ownership---Supervision

The male head of the extended family group is the one normally expected to speak for the group and control its land rights, but in the exercise of such control he is expected to act in accordance with the wishes of the group and with due regard for its previous commitments.

3. Yap Land Law-Patrilineal Ownership-Supervision

In land matters, the male head of the extended family group must give special weight to the desires of one who stands under the custom in the position of a daughter of the former male head of such group.

4. Yap Custom-Widows-Remarriage

Ordinarily under Yapese custom when a widow marries she goes to live with her new husband and her rights in the lands of her former husband's family cease, however, this may be modified by agreement with the family group.

FURBER, *Temporary Judge*

FINDINGS OF FACT

1. Shortly before he died Ngorngor expressed the desire that his wife Kugutnam should succeed him in control of the lands in question.

2. Kugutnam's proposed marriage to Fanasog and his going to live with her on lands formerly controlled by Ngorngor was discussed at a meeting of Ngorngor's extended family and were expressly agreed to by the then senior members of the family group and acquiesced in by the defendant Falocha.

3. Kugutnam has not done anything wrong to, or failed in her obligations to Ngorngor's extended family since her marriage to Fanasog and his coming to live with her on the land Uluch.

OPINION

This action involves the right to control over lands in the Yap Islands proper and the question of the plaintiff's right to live on one of them with her present husband. It is controlled largely by the principles of Yapese customary law discussed in the conclusions of law in *Duguwen v. Dogned*, 1 T.T.R. 223, and in the early part of the opinion in the Supplemental Judgment Order in *Moolang v. Toruuan*, 3 T.T.R. 219.

[1-3] The court considers that the rights to immediate possession and use of the lands in question are owned by the extended family group of which Ngorngor was the male head at the time of his death and of which the defendant Falocha is now the male head. Under Yapese customary law Ngorngor's expressed desire that the plaintiff Kugutnam succeed him in the control of the lands gave her no absolute right of control. It was for Ngorngor's extended family to decide whether to give effect to Ngorngor's wishes and whatever control the plaintiff was allowed to exercise would remain subject to the wishes of the family group. The defendant Falocha is the one now normally expected to speak for the group and control its land rights, but in the exercise of such control he is expected to act in accordance with the wishes of the group and with due regard for its previous commitments. One difficulty appears to be that the members of the group who now survive are somewhat distantly related to each other, but it is believed clear that the defendant Falocha must give special weight to the desires of Mangarpin, who stands under the custom in the position of a daughter of Ngorngor.

[4] The court recognizes that ordinarily under Yapese custom when a widow marries she goes to live with her new husband and her rights in the lands of her former husband's family cease. The court holds, however, that Yapese custom is flexible enough so that this may be modified by agreement of the family group and has been so modified in this instance by the action set forth in the second finding of fact, which the defendant Falocha is under obligation to honor.

It is believed that both parties to this action are trying to act with greater independence than is contemplated or permitted under Yapese custom.

JUDGMENT

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

1. As between the parties and all persons claiming under them:-

a. The plaintiff Kugutnam, who lives temporarily in Rull Municipality, Yap District, is entitled to live on the land known as Uluch (further identified below) with her present husband Fanasog as long as she lives and does no wrong to and does not fail in her obligations to her former husband Ngorngor's extended family group according to Yapese customary law.

b. Subject to the foregoing, the defendant Falocha, who lives in Dalipebinaw Municipality, Yap District, is entitled to control the rights of immediate possession and use in the following lands in said Dalipebinaw, for said family group so long as he does so in accordance with Yapese customary law and respects the wishes of said family group and especially those of Ngorngor's daughter under the custom Mangarpin:-

The lands in Aringel Village known as
Deboch,
Towoway,
Lelat,
Maror, and
Fanaad.

The lands in Tagegin Village known as
Uluch,
Tanifeng (3 pieces bearing the same name),
Mububuw, and
Googbal.

Also all associated lands and *taro* patches connected with any of said lands in either of said villages.

c. All of the above mentioned rights are subject to all

the obligations and limitations of the Yapese system of land ownership.

2. No costs are assessed against either party.
3. Time for appeal from this judgment is extended to and including October 30, 1968.