

TOTER, Plaintiff

v.

IOUANES and Others, Defendants

Civil Action No. 39

Trial Division of the High Court

Ponape District

June 29, 1954

Action to determine ownership of land on Ngatik Atoll, in which child brought suit for share of deceased mother's land, as child was not provided for in oral instructions of deceased. The Trial Division of the High Court, Chief Justice E. P. Furber, held that last oral instructions of deceased, made voluntarily and when she was of sound mind, will control even though effect is to omit one of her children from any inheritance.

1. Ponape Land Law—Ngatik—Inheritance

Customary law on Ngatik Atoll with regard to wills is entirely different from that on Ponape Island and was not affected by German land reform.

2. Ponape Land Law—Ngatik—Inheritance

Under Ngatik custom, land on Ngatik Atoll may be devised by owner among relatives and those who take good care of him in serious sickness.

3. Ponape Land Law—Ngatik—Inheritance

Under Ngatik custom, last instructions which are made voluntarily by owner while he is of sound mind will control disposition of land.

4. Courts—Parties

Where defendant parties do not seek determination of rights between themselves, none will be made.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The will of Letise dated Kolonia 12 December 1939, under which Toter is claiming, was modified by later instructions and actions of Letise, which left none of the land in question subject to the operation of that will.

2. Letise gave the following instructions concerning the lands in question to Endy, the Ngatik Municipal Secretary, and others, on or about November 30, 1948:—

(a) One-half of Imindiade should go to Iouanes, and the other one-half to Elmika, otherwise known as Elina.

(b) Nansap should go to Iouanes and Toris.

(c) Pikentu should go to Iouanes and Toris.

(d) Sulet should have her choice of Tierenie and Likinsapa.

3. Shortly thereafter Letise modified the above instructions, so far as Pikentu was concerned, by instructing Endy and others that Pikentu should go to Iouanes, Toris and Toter. These instructions, as so modified, were recorded by Endy in a municipal registration book, which has since been lost.

4. Sulet chose to take Tierenie under the choice allowed her in the above instructions.

5. Some time after the last of the above instructions were given, Letise directed Pitere, her brother by adoption, to do the following things:—

(a) To divide Pikentu in half and give one-half to Iouanes immediately while Letise was still alive, and keep the other half for Letise during her lifetime with the understanding that he should give it to her husband Epel, if Epel stayed with her until her death and buried her.

(b) To divide the taro patch Likinsapa into four pieces and give one piece to Sulet, one to Emma, one to Suister, and one to Elmika, immediately while Letise was still alive.

6. Pitere made the divisions directed and delivered possession to those entitled to immediate possession under the above directions, except that Sulet did not accept her part of Likinsapa. Letise then directed that Toris should take Sulet's place as to this part of Likinsapa.

7. Epel did stay with Letise until she died, took care of her properly, and buried her. Shortly after she died Pitere accordingly told Epel that half of Pikentu was his.

8. Letise had been asking for a long time before her death that Toter come to see her, but Toter had not come.

CONCLUSIONS OF LAW

[1] 1. This action involves entirely land on Ngatik Atoll. The law there with regard to wills is entirely different from that on Ponape Island, and was not affected by the land reform which the German administration put into effect on Ponape Island in 1912.

[2-3] 2. Land on Ngatik may be disposed of by the owner among his or her relatives (including those by adoption) and those who take good care of him or her in serious sickness, and a reasonable portion given to his or her spouse, by either oral or written will. The last instructions that it can be proved were made voluntarily by the owner while he or she was of sound mind will control. It is considered a poor practice to entirely omit

any child, whether true or adopted, but there is no absolute rule that an adopted child cannot be omitted, or that he or she must receive any particular part of the adopting parent's land. The court holds that Letise's successive instructions and directions set out in the findings of fact were effective to transfer the lands in question, some of them before her death and the rest upon her death in accordance with the last of these instructions then outstanding, even though the effect of this was to leave her adopted daughter Toter none of the lands in question.

[4] 3. The defendants have not sought any determination of rights as between themselves, and none is made in this action.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the plaintiff Toter has no right of ownership in any of the following lands located on Ngatik Atoll and formerly owned by Letise:—

(a) A piece of coconut land known as Imindiade, located on Paina Island.

(b) A piece of coconut land known as Pikentu, located on the main island of Ngatik.

(c) Two pieces of land not planted with coconuts, known as Nansap and Tierenie, both located on the main island of Ngatik.

(d) A taro patch known as Likinsapa, located on the main island of Ngatik.

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

3. No costs are assessed against any part.