

FEDERICO MOYA, Plaintiff

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS,
ANTONIO, ANNA and PETROS, Defendants**

Civil Action No. 34

Trial Division of the High Court

Ponape District

July 29, 1954

Action brought by former supervisor of Japanese supervised lease of land in Sokehs Municipality, in which plaintiff sought to regain land or secure payments for crops growing on land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that Japanese Government had right under terms of lease to cancel at any time without payment of damages; whatever present government might be willing to do as matter of policy is not for courts to decide.

1. Ponape Land Law—Japanese Supervised Lease—Generally

Japanese agreement of supervised land on Ponape Island was one under which supervisor's continuing to hold possession of land depended primarily on good will and general policy of government rather than upon legal rights.

2. Ponape Land Law—Japanese Supervised Lease—Cancellation

Supervised lease agreement issued by Japanese Administration for lands on Ponape Island gave government right to cancel lease at any time without payment of damages.

3. Ponape Land Law—Japanese Supervised Lease—Generally

Where successor to Japanese supervisor of lease of land on Ponape Island agreed to pay predecessor for crops planted on land at time of change of possession out of government funds, he is not obligated to pay until he receives said funds, and where successor makes no such agreement he has incurred no legal liability for what is growing there.

4. Ponape Land Law—Japanese Supervised Lease—Generally

Remedy available to former lessee of Japanese supervised lease of land on Ponape Island which government may be willing to grant as matter of policy is not for courts to decide.

FURBER, *Chief Justice*

FACTS

1. This action was submitted at the close of the pre-trial conference for determination on agreed facts as to everything except the amount, if any, due the plaintiff Federico. The plaintiff is endeavoring to either secure the return of Lots 285 and 286, constituting part of the land known as Nanimwinsapw, located in the Palikir Section of Jokaj on Ponape Island, or to secure payment for those things he had growing on them.

2. The land in question was held for about 15 years or more by the plaintiff Federico as "supervised" land under the type of document discussed in the case of *Idingel v. Mada*, 1 T.T.R. 164. The Japanese Government then ordered him to give up the land, and in 1942 leased a part of the land to each of the three individual defendants in this action, or his predecessor in title, under a twenty-year lease. In the case of the defendant Antonio, the government had taken away from either him or his father Kilimente, a piece of land known as Ponsakir, in the Tolonier Section of Not, presumably held as "supervised land", told them to take part of the land in question instead under lease, and agreed to pay them a certain amount for the coconut trees, breadfruit trees and banana plants they had on Ponsakir. The Japanese Government directed, in connection with the lease to Antonio's father Kilimente of the major part of the land in question, that when they received their money from the Japanese Government for their things on Ponsakir, Antonio or Kilimente should pay Federico two and one-half yen for each bearing coconut tree, but they have never received anything for their things on Ponsakir. No such direction was given in connection with the leases to the defendants Anna and Petros who had simply applied for lease of government land.

CONCLUSIONS OF LAW

[1, 2] 1. The type of document under which plaintiff Federico held the land in question contained provisions of which the following are translations:

"Article 14. In the event the Gov't deems it necessary, or the supervisor violates any of the articles of this directive, the appointment as supervisor may be cancelled even during the term set forth to the foregoing article.

Article 15. The Gov't will not assume any responsibility for damages which may result from Articles 8, 13 and 14, and damages which may be sustained by the supervisor because he was appointed supervisor."

As explained in the conclusions of law in the case of *Idingel v. Mada* referred to above, this type of agreement was one under which the supervisor's continuing to hold possession of the land depended primarily on the good will and general policy of the government rather than upon legal rights. As indicated above, the agreement expressly gave the government the right to cancel it without the payment of damages. There is, therefore, no legal liability upon the government for doing just this.

[3] 2. The defendant Antonio admits he agreed that either he or his father would pay Federico for whatever bearing coconut trees were on the part of Federico's former land which they took over, at the time they took it over, out of the funds either of them received from the government for the things they had growing on Ponsakir, but since they haven't been paid for those things yet, there is nothing now due the plaintiff on that account. The defendants Anna and Petros made no such agreements, according to the agreed facts, but simply took over land which the government leased to them and thereby incurred no legal liability for what few things may have been growing there.

[4] 3. What, if anything, the present government might be willing to do as a matter of policy or on the basis of any moral claim of Federico under all the circumstances, is not for the courts to decide. It is suggested that that aspect of the matter might well be taken up with the District Land Office.

JUDGMENT

Judgment for the defendants without costs, but this judgment shall not bar a future action by the plaintiff Federico against the defendant Antonio if he or his father Kilimente later receives payment in some form for the things they had growing upon Ponsakir at the time it was taken over by the Japanese Government.