

NELIANA, Plaintiff

v.

NILA, PEDER and LIANTOR, Defendants

Civil Action No. 10

Trial Division of the High Court

Ponape District

July 29, 1954

Action to determine ownership of land in Metalanim Municipality. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where petitioner claimed land as heir of owner prior to German land reform, presumption of ownership in person in whose name German land title was issued could not be overcome by evidence of petitioner's rights in the land before the reform.

1. Ponape Land Law—German Land Title—Former Administrations—Official Acts

Issuance of German title documents for land on Ponape Island was official act of government then in power and it is presumed that documents gave ownership in accordance with their terms.

2. Former Administrations—Redress of Prior Wrongs

If there was some error in granting German title document for land on Ponape Island it is now too late to have it corrected as matter of right.

3. Ponape Land Law—German Land Title—Presumption of Ownership

Presumption is that ownership of land on Ponape Island held under standard form of German title document, with rights and benefits and subject to obligations set forth in document, vests in person in whose name document is issued.

4. Ponape Land Law—German Land Title—Presumption of Ownership

Presumption of ownership of land on Ponape Island by person in whose name German land title is issued may be overcome by clear evidence to contrary, but mere testimony that someone else had rights in land before title documents were issued is not sufficient to overcome presumption.

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

Any question as to right of *Nanmarki* to act for government in transferring title document for land on Ponape Island is not defect of which party is entitled to take advantage.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. The issuance of the German title document for the land in question in the name of Augustin has not been shown to have been obtained by any unlawful means.

2. It has not been shown that Augustin held the title document under legal obligation to recognize the rights of anyone else in the property other than in accordance with the terms of the document.

3. During the Japanese survey about 1943, Augustin divided the land into three parts, as shown on the sketch marked "Nila's sketch" attached to the pre-trial order, and gave one part to the defendant Peder, one to the defendant Liantor, and kept one for himself. This division and the transfers involved were approved by the *Nanmarki* (chief), and the official Japanese surveyors on behalf of the head of the Ponape Branch Office.

4. Augustin directed that the defendant Nila should inherit, or take his place on, the part of the land he retained. This was consented to by Augustin's two oldest sons (both of whom survived him) and by the *Nanmarki* who, purporting to act for the government while the United States was administering Ponape, struck out Augustin's name on the face of the title document and substituted Nila's.

CONCLUSIONS OF LAW

1. In this action the plaintiff Neliana claims to have inherited, as the daughter of Apselem who died in 1919, a piece of land on Ponape Island, on which she says her father's sister Atalain took Apselem's place, and that Atalain having died in 1947, the plaintiff Neliana is now entitled to the land as Apselem's surviving daughter. She bases this claim primarily on the ground that the

land, or at least the right to use it, belonged to Apsalem before the issuance of the German title documents in 1912. It is agreed that the title document was issued in the name of Augustin, but Neliana says that that was done wrongfully or erroneously. Augustin was the husband of Atalain and she and Augustin were the adoptive parents of the defendant Nila. The defendants Nila, Peder and Liantor each claim a part of the land in question through Augustin.

[1,2] 2. The issuance of these German title documents for land on Ponape Island was an official act of the government then in power. There is every presumption that these documents gave ownership in accordance with their terms, but even if there was some error in the granting of a particular title document it is now too late to have it corrected as a matter of right, as explained in the conclusions of law by this court in *Wasisang v. Trust Territory of the Pacific Islands*, 1 T.T.R. 14.

[3-4] 3. As explained in the conclusions of law by this court in *Petiele and Wiper v. Max and Arpona*, 1 T.T.R. 26, in the case of land held under the standard form of title document issued by the German Government in Ponape in 1912, the presumption is that the ownership of land, with the rights and benefits and subject to the obligations set forth in the title document, rests in the person in whose name the title document is issued. While this presumption can be overcome by clear evidence to the contrary, mere testimony that someone else had rights in the land before the German title documents were issued is not sufficient to overcome the presumption.

[5] 4. The defendants have not asked for any determination of rights between themselves, and none is made in this action. Any question as to the right of the *Nanmarki* to act for the government in transferring the title

document to Nila's name is not a defect of which the plaintiff Neliana is entitled to take advantage. See paragraph 5 of the conclusions of law by this court in *Godlieb v. Welten and others*, 1 T.T.R. 175.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the plaintiff Neliana has no right, title or interest in the piece of land known as Kapira No. 58, located in the Ponauleng Section of Metalanim, on the Island of Ponape, outside of any right she may have as a relative of the owner of one or more parts of it to live with the owner upon the land under the conditions set forth in the standard form of title document issued by the German Government on Ponape in 1912.
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 party.