

KILEMENT, Plaintiff
v.
ALPET PETTLY ESKALEN, Defendant
Civil Action No. 69
Trial Division of the High Court
Ponape District
April 30, 1957

Action to determine ownership of land in Metalanim Municipality, in which parties dispute division of land which was approved by *Nanmarki* and Ponape Branch Office. The Trial Division of the High Court, Chief Justice E. P. Furber, held that each party had complete ownership rights over one-half of land, and that presumption of valid division resulting from Japanese survey of 1941 overcame any suspicion arising from delay in bringing action.

Ponape Land Law—Japanese Survey

Presumption that determinations of Japanese land survey of 1941 are correct will overcome any suspicion as to validity of division arising from long delay in bringing action.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Meninsir divided the land in question and gave or purported to give the part toward the water to the plaintiff Kilement and the upland part to the defendant Alpet.
2. This division and the transfer of one part to Kilement and the other part to Alpet were consented to by or on behalf of the *Nanmarki* and by the official Japanese Government surveyors on behalf of the Head of the Ponape Branch Office, in connection with the survey of private land on Ponape which began about 1941.
3. The official Japanese Government surveyors, in connection with the above mentioned survey, determined that Kilement was the owner of the part near the water, that Alpet was the owner of the upland part, and that the dividing line ran in a straight line from a marker con-

sisting of a pile of stones in the boundary line going up from the water on one side of Utunjoliti to a marker consisting of a pile of stones in the boundary line going up from the water on the other side of Utunjoliti.

CONCLUSIONS OF LAW

1. This action is controlled largely by the principles set forth by this court in its conclusions of law in *Teresita Phelip v. Ioakin and Eneriko*, 1 T.T.R. 147, and in paragraph 2 of its conclusions of law in *Thomas Weirland v. Kenio Weirland*, 1 T.T.R. 201.

2. Any suspicion as to the validity of the division and purported gifts of the land, that might arise from the long delay between Meninsir's action and the necessary consents to it by or on behalf of the *Nanmarki* and the government is overcome by the strong presumption, explained in paragraph 2 of the conclusions of law in *Belimina and Klaukus v. Pelimo*, 1 T.T.R. 210, that determinations made in the official Japanese survey of private lands on Ponape, which began about 1941, are correct. It should also be noted that the delay arouses less suspicion in this case than it otherwise might because all parties concerned had admittedly acquiesced in the division for years so far as it affected the use of land so that the delay caused no immediate difficulty or inconvenience.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the land known as Utunjoliti, located in the Ohua Section of Metalanim, Ponape Island, is owned as follows:—

(a) The part lying toward the water from a dividing line running straight from a pile of stones in the

boundary line of one side of Utunjoliti to a pile of stones in the boundary line on the other side of Utunjoliti, this part being shown as C on the sketch attached to the pre-trial order in this action, is the property of the plaintiff Kilement, who lives on this part of the land.

(b) The part lying upland from that dividing line is the property of the defendant, Alpet Pettly Eskalen, who lives on that part of the land.

(c) Each of these parts is the property of the person named above, with the benefit of and subject to all the rights and obligations imposed by the system of private land ownership set forth in the standard form of title document issued by the German Government on Ponape in 1912, as heretofore or hereafter modified by law.

(d) Each of the parties has as complete control over his part of the land as he would have if a separate German title document had been issued for each of these parts.

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

3. No costs are assessed against either party.