

MARIA GIBBONS, Plaintiff

v.

EMAIMELEI BISMARCK, Defendant

Civil Action No. 46

Trial Division of the High Court

Palau District

February 14, 1958

Action to determine ownership of chief's title land in Koror Municipality, in which plaintiff represents lineage of which deceased owner was a member, and defendant claims as alleged transferee of land from deceased. The Trial Division of the High Court, Chief Justice E. P. Furber, held that alleged transfer was of no legal effect under Palau customary law where "strong" senior members of lineage objected to transfer.

1. Palau Land Law—Chief's Title Land—Transfer

Under Palau custom, chief's title land of lineage cannot be transferred by chief of lineage alone, even if he is sole surviving actual blood member of lineage in female line, if there are other "strong" senior members who stand in position like that of blood members in female line.

2. Palau Land Law—Chief's Title Land—Transfer

Under Palau custom, transfer of chief's title land of lineage requires consent of any "strong" senior members of lineage there may be.

3. Palau Land Law—Chief's Title Land—Transfer

Under Palau custom, "strong" senior members of lineage whose consent is necessary for transfer of chief's title land are those who have been brought up in lineage and faithfully fulfilled their obligations to it, or

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are related to lineage by blood as members of another lineage closely connected with it in same clan and who have been adopted into lineage and faithfully fulfilled obligations to it.

4. Palau Land Law—Chief's Title Land—Transfer

Under Palau custom, where at least one "strong" senior member of deceased's lineage refused to consent to alleged transfer of chief's title land by deceased, transfer is of no legal effect.

5. Evidence—Documents—Witnesses

When person signs document as a witness he is certifying he was personally present and saw document executed.

6. Evidence—Documents—Witnesses

Purpose of witnessing document is to facilitate proof of execution of document and to remove doubt about it.

7. Evidence—Documents—Witnesses

To give support to witnesses document, witness should be able to show that person executing it did so physically and knew what he or she was doing and intended document to have effect.

3. Evidence—Documents—Witnesses

When person signing document cannot read it, witnesses are of little value unless they can testify to what person indicated he knew about document and what he intended in putting his signature on it.

3. Evidence—Documents—Witnesses

Where alleged witnesses to document were not present when deceased signed document and only know who signed it and under what circumstances it was signed from what witnesses were told by person to be benefited from it, they are not persuasive witnesses to execution of document.

1. Evidence—Documents—Witnesses

Consenting to transaction shown by document is quite different matter from witnessing execution of document.

1. Evidence—Documents—Witnesses

If person merely consents to document and does not witness it, he should not sign it as a witness.

URBER, *Chief Justice*

FINDINGS OF FACT

1. Ibedul Mariur never intended to transfer the land known as Omtilou to the defendant Emamelei as her individual land, but only to give or assign it to her as a

member of the Omtilou Lineage to be used by her as a member of that lineage (in the male line) and as lineage property.

2. Omtilou is Chief's title land of the Omtilou Lineage.

3. Ngerdoko, a "strong" senior member of the Omtilou Lineage, objected to Ibedul Mariur's transferring the land in question to the defendant Emamelei as her individual land, and so did the plaintiff Maria, who is Ngerdoko's daughter by adoption.

CONCLUSIONS OF LAW

[1-4] 1. Chief's title land of a lineage in the Palau Islands cannot be transferred by the Chief of the lineage alone, even if he is the sole surviving actual blood member of the lineage in the female line, if there are other "strong" senior members who stand in a position like that of blood members in the female line. Such a transfer requires the consent of any such "strong" senior members of the lineage there may be, such as those who have been brought up in the lineage and have faithfully fulfilled their obligations to it or are related to the lineage by blood as members of another lineage closely connected with it in the same clan and have been adopted into the lineage in question and have faithfully fulfilled their obligations to it. It is clear that at least one such "strong" senior member refused to consent to the transfer that the defendant claims was made of this land to her as her "personal" or "individual" land. The court therefore holds that even if Ibedul Mariur attempted such a transfer, it is of no legal effect.

[5-11] 2. In this action the defendant has relied, in part, upon a written document of transfer appearing on its face to have been signed by Ibedul Mariur with an "X" supported by the signatures of four witnesses. It has been

clearly shown that two of these witnesses did not see Ibedul Mariur place his "X" on the paper at all, also that Ibedul Mariur couldn't read it, and that another of these witnesses who signed the document had no idea what Ibedul Mariur knew about the paper or for what purpose he placed his "X" on it. According to one of these witnesses, there was nothing written on the paper when he signed it. The fourth of the witnesses who signed the document did not testify at the trial at all. All this indicates a very loose and inaccurate idea of the purpose of having a document signed by witnesses and of what witnessing a document means. Attention is invited to the fact that when a person signs a document as a witness, he is certifying that he was personally present and saw the document executed. The purpose of this is to facilitate proving the execution of the document and remove doubt about it. To give any support to the document, however, such a witness should be able to show that the person executing it not only did so physically, but also knew what he or she was doing at the time and intended to have the document have effect. Especially when the person signing a document cannot read it, the witnesses who sign it are of little value or importance unless they can testify to what the person indicated he knew about the document and what he intended in putting his "X" or signature on it. Alleged witnesses who frankly admit in court that they were not present when the document was signed and only know who signed it and under what circumstances it was signed from what they were told by the person to be benefited by it, are not at all persuasive as to the execution of a document. Consenting to a transaction shown by a document is quite a different matter from witnessing the execution of the document; but if a person is merely consenting to a document and did not witness it, he should not sign it as a witness.

JUDGMENT

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

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

(a) The land known as Omtilou, located in Koror Municipality in the Palau District, and consisting of about 275.3 tsubo, bounded on the north by the public highway, on the east by land now or formerly of Ikelau, on the south by land or formerly of Milong, and on the west by land now or formerly of Rosang, is Chief's title land owned by the Omtilou Lineage of the Idid Clan of Koror, which lineage is represented in this action by the plaintiff Maria Gibbons, who lives in Koror.

(b) This land has been assigned to the defendant Emamelei Bismark, who now lives on it, as a member in the male line of the Omtilou Lineage. She is entitled to use it so long as she fulfills her obligations to the Omtilou Lineage with regard to it and recognizes that lineage's rights in it.

2. The document dated July, 1953, signed with an "X" by Ibedul Mariur, purporting to transfer the above-described land to the defendant Emamelei Bismark as her personal or individual property, is of no legal force and effect, except as evidence of assignment of the land to the defendant Emamelei Bismark to be administered for the Omtilou Lineage.

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

4. No costs are assessed against either party.