

ILILAU, Appellant

v.

IDUB, Appellee

Civil Action No. 132

Trial Division of the High Court

Palau District

February 26, 1959

See, also, 2 T.T.R. 185

Appeal in action brought to determine ownership of certain piece of Palauan money. Defendant, widow of deceased Palauan, presented money to deceased husband's relatives a few days later than she should have under Palau customary law. The Palau District Court held that the money should be divided between the parties as agreed upon by them. On appeal, the Trial Division of the High Court, Chief Justice E. P. Furber, held that defendant's late presentation of money did not absolutely bar her rights or her husband's children's rights in this money if she did in fact produce it and division of interests was acquiesced in, in accordance with Palau customary law.

Affirmed subject to appellant's waiver of new trial.

1. Palau Custom—Widows

Where Palauan widow does not present money promptly at funeral meeting following husband's death as she should under Palau custom, her rights and her husband's children's rights are not absolutely barred if she does in fact produce money a few days later, and division of interests in it is made or acquiesced in, in accordance with Palau custom.

2. Palau Custom—Widows

If there is substantial doubt that Palauan money was presented by widow to deceased husband's family at funeral meeting and that division of interests was agreed upon or acquiesced in, in accordance with Palau custom, parties are entitled to have facts determined on proper evidence at new trial.

FURBER, *Chief Justice*

OPINION

This is an appeal from judgment rendered July 1, 1958, by the District Court for the Palau District, after previous judgment by that court had been set aside on a motion for relief from judgment under Rule 19e of the Rules of Civil Procedure in an action brought to determine the ownership of a certain piece of Palauan money.

Whatever informality or irregularity there may have been in connection with the granting of the motion for relief from judgment and reopening of the trial is considered to have been cured by the evidence presented after the reopening, which is considered to have shown adequate reason for the revising of the judgment, with the possible exception of the matter discussed below.

The trial judge seems to have proceeded on the assumption that the appellee Idub, who was defendant in the lower court, had presented the money in question to her husband's relatives a few days later than she should have, and that the portion of the value of the money which was awarded to her for herself or her deceased husband Rehekemur's children by the second judgment was then agreed upon or acquiesced in.

[1, 2] The evidence clearly shows that she did not present this money promptly at the funeral meeting following Rehekemur's death as she should have under Palauan custom, but the court holds that this would not absolutely bar her rights or her husband's children's rights in this money, if she did in fact produce it a few days later and division of interests in it was then properly made or acquiesced in in accordance with Palauan custom. This may be one of those cases in which there was either express or implied admission that the money had been presented late, but if so there is nothing that this court can find

in the record to show that that was the case. The court believes that if there is any substantial doubt but what the money was so presented and division of interests agreed upon or acquiesced in, the appellant is entitled to have the facts of this matter determined on a basis of proper evidence. On the other hand, if the assumption upon which the trial court appears to have proceeded was in fact correct, there will be no useful purpose served in a further reopening of the trial, and she may wish to waive her right to have this matter covered by evidence. Consequently, the court is entering the conditional judgment indicated below.

The English translation of the District Court's judgment of July 1, 1958, would appear to indicate that the money in question is to be physically cut up. The official court interpreter, however, informs the court that while the English is a correct literal translation of the judgment, the Palauan does not imply that the piece of money is to be physically cut up, but merely that its value is to be divided, in the same sense that we sometimes speak of "breaking" a Ten Dollar bill into one Five Dollar bill and five One Dollar bills, without at all implying that the actual bill is to be physically broken apart.

JUDGMENT

1. If within thirty days after the entry of this judgment the plaintiff Ililau, in District Court for the Palau District Civil Action No. 189, files in that court a written waiver of right to a new trial, the judgment of that court entered in that case July 1, 1958, shall stand, and, subject to the filing of such waiver, it is affirmed, with the understanding that the Palauan money referred to is not to be physically cut but that its value is to be divided in accordance with that judgment.

2. If within thirty days after the entry of this judgment the plaintiff Ililau, in District Court for the Palau District Civil Action No. 189, has not filed in that court a written waiver of right to a new trial, the judgment of that court entered July 1, 1958, is set aside, and the case referred back to that court for a new trial, subject to the following directions:—

(a) The judge who originally heard the case is to reopen it and take any additional proper testimony either side wishes to offer, but he is also to consider the testimony already in the record without its being reintroduced.

(b) After taking such additional testimony, he shall finish the trial as if no previous judgment had been entered; shall allow the usual opportunity for argument; and shall enter a new judgment consistent with the opinion herein.