

PINAR, Plaintiff
v.
KANTENIA, Defendant
Civil Action No. 196
Trial Division of the High Court
Truk District
May 6, 1966

Action for determination of rights in land in Polle Municipality. The Trial Division of the High Court, Chief Justice E. P. Furber, held that *afokur* have no rights in lineage land except that granted by permission of lineage; if lineage exchanges land with another lineage, *afokur* have no right to interfere with exchange even though they have been using exchanged land.

1. Truk Land Law-Lineage Ownership-Use Rights

Under Truk custom, use of lineage land by *afokur* with consent of lineage is in accord with custom, but rights of *afokur* depend upon permission, and extended permission gives no right of ownership.

2. Truk Land Law-Lineage Ownership-Transfers

Under Truk custom, *afokur* have no right to interfere with disposition of land by lineage.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Ununong gave the land in question to his daughter Neipurosom, who gave it to her lineage, consisting of the descendants in the female line of her mother's mother and of which her brother Baunus (sometimes written Paulus) was the leader the latter part of his life.

2. Baunus asked Neipurosom and Nakamiso for permission to give the land to his second wife Papainuk, which was refused except for five coconut trees for which she was later paid.

3. The defendant Kantenia was allowed by the lineage to use the land with them and she did so without any trouble from about the end of World War II up to 1960, but there was no agreement as to how long she might do so.

OPINION

This action involves a dispute between a Trukese lineage, represented by the plaintiff Pinal', and two of its "*ajokur*" (in this instance, children of a former male leader of the lineage), represented by the defendant Kantenia, as to the ownership of a piece of land in Truk Atoll. This action is governed largely by the principles discussed in the Conclusions of Law in *Nusia v. Sak*, 1 T.T.R. 446.

[1,2] As explained in that case, under Trukese custom a certain amount of use of lineage land by its "*ajokur*", with the consent of the lineage, is to be expected and is in accord with custom, but the rights of the "*ajokur*" are strictly dependent upon the permission of the lineage and the granting of such permission, even over an extended period, gives no rights of ownership. In this instance, no difficulty arose until the lineage desired to exchange the land for some in another village which was more conveniently located for use by the plaintiff, but not so conveniently located for the defendant. The court holds that the defendant Kantenia and her sister, on whose behalf she also makes claim, have no rights of ownership in the land in question and no right to interfere with whatever disposition of the land the lineage wishes to make. If an exchange is effected, the defendant Kantenia and her sister may, if they cooperate well with their father's lineage, expect to be allowed by the lineage

some use of the land obtained in the exchange, but their interference with the proposed exchange will naturally make it more difficult for them to obtain such permission.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the land known as Towong, located in Leironom Village in Polle Municipality, Truk District, is owned by the lineage consisting of the descendants in the female line of Neipurosom's mother's mother, represented in this action by the plaintiff Pinar, who lives in Sapou Village of Polle Municipality, and is a member of that lineage.

2. The defendant Kantenia, who lives in Leironom Village, and her sister Nena, for whom she also makes claim in this action, have no rights in the land in question except the right to use it to the extent, if any, that the lineage may permit. Kantenia and Nena and all persons acting for either or both of them are permanently enjoined and prohibited from interfering with whatever disposition of the land the above-named lineage wishes to make.

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

4. The plaintiff Pinar is awarded such costs as she may have had which are taxable under the first sentence of Section 265 of the Trust Territory Code provided she files a sworn itemized statement of them within thirty (30) days after the entry of this judgment; otherwise she will be awarded only one dollar (\$1.00) costs for the filing fee.