

CHRISTIANA JOSHUA, Plaintiff
v.
ELIZABETH JOSHUA, Defendant
Civil Action No. 332
Trial Division of the High Court
Palau District
November 30, 1966

Action brought by daughter of deceased against deceased's widow, in which plaintiff claims share in death benefits due from Trust Territory Government in connection with death of government employee. Plaintiff contends that High Commissioner's directive that such money be paid in first instance to surviving widow of deceased employee is contrary to Palauan custom, according to which deceased Palauan's widow is only entitled to settlement made at traditional meeting between relatives of widow and relatives of deceased. The Trial Division of the High Court, Chief Justice E. P. Furber, held that widow is entitled to death benefits in question in accordance with High Commissioner's directive.

1. Palau Custom-Widows

Position of widow as considered from Palauan point of view is very different from that of widow under usual American concepts.

2. Palau Custom-Widows

Under Palau custom, except for right to *chelebechiil*, widow's rights in her husband's property are distinctly subordinate to those of his children.

3. Palau Custom-Widows

Under Palau custom, it is function of deceased man's nearest relatives within his lineage to attend to distribution of his property, and widow has no part in this as matter of right once *chelebechiil* has been agreed upon between her relatives and those of deceased.

4. Palau Custom-Widows

Under Palau custom, widow has no responsibility, either legal or moral, for support of her stepchildren, unless they are also members of her lineage.

5. Trust Territory-Employee Death Benefits

Under death benefit plan for Trust Territory Micronesian employees payment is to be made to immediate beneficiary and paid in accordance with Personnel Manual, in absence of designated beneficiary evidenced by signed statement from employee. (Memorandum of High Commissioner, January 17, 1964)

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6. Trust Territory-Employee Death Benefits

Compensation due employee by Government of Trust Territory is payable to employee's beneficiary, and if no beneficiary is designated, it is payable in first instance to widow or widower alive on date title to payment arises. (Trust Territory Personnel Manual, p. 17A.2)

7. Trust Territory-Employee Death Benefits

Provisions regarding payments due beneficiary of deceased employee of Trust Territory Government are based on American precedents rather than on Palau custom.

8. Trust Territory-Employee Death Benefits

Provisions regarding payments due beneficiary of deceased Trust Territory employee control payment of death benefits regardless of whether person specified in directive would be entitled to inherit any funds or property deceased might have. (Memorandum of High Commissioner, January 17, 1964)

9. Trust Territory-Employee Death Benefits

Court will not modify or qualify effect of clear provisions of directive of High Commissioner as to payment of death benefits due under Trust Territory law to beneficiaries of Trust Territory employees. (Memorandum of High Commissioner, January 17, 1964)

<i>Assessor:</i>	JUDGE PABLO RINGANG
<i>Interpreter:</i>	SINGICHI IKESAKES
<i>Counsel for Plaintiff:</i>	JONAS W. OLEKERIL
<i>Counsel for Defendant:</i>	BAULES SECHELONG

FURBER, *Chief Justice*

This is an action by the daughter of a deceased Trust Territory Micronesian employee against her stepmother (who is the widow of the deceased), for a share in the death benefits due under the High Commissioner's memorandum of January 17, 1964, concerning benefits in connection with the death by accident or illness, not related to his employment, of any Trust Territory Micronesian employee. Near the close of the pre-trial conference, the defendant requested summary judgment on the basis of the facts agreed upon at the pre-trial conference, and the court ordered that the action be set down for arguments on the questions of law involved.

Counsel for the plaintiff called attention to Resolution of Palau Legislature 28-57, approved December 16, 1958, as showing that under Palauan concepts a man's children should inherit in preference to his widow. Counsel acknowledged that this Resolution speaks only of inheritance of land owned by an individual and does not mention death benefits, but he argued that the analogy was important. He further pointed out that distribution of death benefits in accordance with Trust Territory Personnel Manual, Page 17A.2, as specified in the High Commissioner's memorandum of January 17, 1964, is contrary to Palauan custom with regard to settlements to be made by a deceased man's family with his widow at the traditional meeting following the man's death. In this instance, he alleged the defendant, as the widow of the deceased, had been given one thousand dollars (\$1,000) in American money and a piece of Palauan money as *chelebechiil* (that is, separation money) at this traditional meeting, that thereafter no further obligation existed between the widow and her deceased husband's family, and that therefore as a matter of fairness, deceased's daughter by an earlier marriage should share in any property or money coming as a result of her father's death. He also called attention to the case of *Imerab v. Fuyuko*, Palau District Civil Action No. 59, as an important precedent showing that children were entitled to share in certain death benefits, although he acknowledged that the payment involved in that case had been made prior to the issuance of either the High Commissioner's memorandum of January 17, 1964, or Trust Territory Personnel Manual, Page 17A.2.

Counsel for the defendant argued that under the provisions of the High Commissioner's memorandum of January 17, 1964, and Page 17A.2 of the Trust Territory Personnel Manual referred to in that memorandum, it was clear that when no beneficiary had been designated and

the deceased left a widow, payment of the death benefits was to be made directly to the widow and no one else should have anything to do with it. He cited two instances in which he alleged that such payment had been made directly to the widow without any trouble. He pointed out that in the case of *Imerab v. Fuyuko*, Palau District Civil Action No. 59, it had been clearly stated that the money involved had been paid to cover claims of all the heirs, so that the situation there was different from that in the present case. He also called attention to Palau Legislature's Public Law 13-4-66 as showing that children were only entitled to support until they were eighteen (18) and that the plaintiff in this action was over eighteen before she brought the action. He acknowledged that this Public Law had to do with the liability of a person responsible for a divorce and did not apply directly to the present situation, but stated that he considered it an important analogy. He argued that under the High Commissioner's memorandum, the death benefits in question were payable to the widow and that whatever had been paid to the widow at the traditional meeting following the death of the deceased should not be considered in this connection.

In answer to questions from the Assessor, defendant's counsel admitted that under Palauan custom, the plaintiff would be entitled to share in the children's money due under the custom from the deceased's relatives following his death, but again alleged that this custom had no application to the present case which should be governed solely by the High Commissioner's directives. Counsel for the plaintiff stated that plaintiff had been so included in the payments made to all the deceased's children by deceased's relatives under the leadership of his father.

OPINION

[1-4] This case emphasizes the very different position of a widow as generally considered from a Palauan

point of view, from that of a widow under usual American concepts. The court recognizes that, except for the right to *chelebechiil* (that is, separation money), a widow's rights in her husband's own property under Palauan custom are distinctly subordinate to those of his children and that certain under olden custom, it was the function of a deceased man's nearest relatives within his lineage—presumably his brothers, if any—to attend to the distribution of his property and that his widow had no part in this as a matter of right once the *chelebechiil* had been agreed upon between her relatives and those of the deceased. It undoubtedly seems, therefore, from the Palauan point of view, very harsh that the deceased's daughter by his earlier marriage should be denied any share of the death benefits in the situation here disclosed. It is further recognized that under Palauan custom a widow has no responsibility, either legal or moral, for the support of her stepchildren unless they happen to also be members of her lineage.

In the case of *Imerab v. Fuyuko*, Palau District Civil Action No. 59, cited by counsel for the plaintiff, the money involved was paid by the High Commissioner on the basis of equity to compensate the heirs of a former employee who was killed in the course of his employment and was stated to cover "all claims for compensation arising out of" the death. At that time, there was no express law or stated policy to cover the distribution and this court held that, out of the four thousand dollars paid by or for the Trust Territory Government, the plaintiff Imerab (who was the mother of deceased) was entitled to one thousand dollars to be used primarily for the benefit of deceased's daughter by a previous marriage and secondarily for the benefit of the plaintiff herself and such of the deceased's brothers and sisters as were under eighteen years old, un-

married, and living in the same household as the deceased at the time of his death.

[5] In the present case, however, the applicable directives of the High Commissioner are clear and explicit. The crucial provision of the memorandum of January 17, 1964, outlining the death benefit plan reads as follows:-

"Essentially, the plan provides a lump-sum payment to the immediate beneficiary, and will be paid in accordance with the Personnel Manual, page 17A.2, in the absence of a designated beneficiary evidenced by a signed statement from the employee."

[6] The parts of the Trust Territory Personnel Manual, Page 17A.2 material to the issues involved here read as follows: -

"Unpaid Compensation. All unpaid compensation due an employee by the Government of the Trust Territory is payable to the employee's beneficiary. If there is no designated beneficiary living any unpaid compensation which becomes payable up to the death of the employee will be payable to the first person or persons listed below who are alive on the date title to the payment arises:

1. To the widow or widower.
2. If neither of the above, to the child or children in equal shares with the share of any deceased child distributed among the descendants of that child.
3. If none of the above, to the parents in equal shares or the entire amount to the surviving parent.
4. If there is none of the above, to the duly appointed legal representative of the estate of the deceased employee, or if there be none, to the person or persons determined to be entitled thereto under the law of the domicile of the deceased employee."

[7, 8] These provisions appear to be based quite definitely on American precedents rather than Palauan custom. The court holds that these constituted a part of the terms of the deceased's employment and that payment of the death benefits is controlled thereby regardless of whether the person specified in the directives would be entitled to inherit any funds or property the deceased might

have. The court considers that these directives control in the same way that a specification in a death injury act of persons entitled to compensation for a death will control the disposition of that compensation, even though the persons so specified are different from those who would be entitled to inherit from the deceased under a statute of descent and distribution. 58 Am. Jur., Workmen's Compensation, § 171, note 16.

[9] It is believed that it would be presumptuous and entirely improper for the court to try to modify or qualify the effect of the clear provisions of the High Commissioner's directives in this situation. The court holds that, in the absence of any designation by the deceased of a beneficiary, the defendant, as his widow, is entitled to the death benefits in question on the basis of the facts agreed upon, even if all the plaintiff's disputed contentions are correct and she was never adopted by others and was recognized and supported by deceased as his daughter right up to the time of his death.

JUDGMENT

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

1. As between the parties and all persons claiming under them, the defendant Elizabeth Joshua, who lives in Korol' Municipality, Palau District, is entitled to the whole of the one thousand two hundred forty-six dollars and forty cents (\$1,246.40), represented by check forwarded by the Trust Territory of the Pacific Islands to the District Finance Officer for the Palau District, payable to defendant as death benefits due on the death of Marino Joshua, and is entitled to hold the same free and clear of any claims of the plaintiff Christiana Joshua, who also lives in Korol'.

2. This judgment terminates the restraining order issued by the Palau District Court in its Civil Action No.

1168, in accordance with the terms of that restraining order, and the defendant Elizabeth Joshua is authorized to withdraw said check from the District Finance Officer for the Palau District forthwith.

No costs are assessed against either party.