

**LUHK v. DAVID**

**ARUKO DAVID LUHK, et al., Plaintiffs**

**v.**

**WELTER DAVID, Defendant**

**Civil Action No. 366**

**Trial Division of the High Court**

**Ponape District**

**July 6, 1970**

Action to determine title to land in Leak Section, Madolenimw. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that under the custom a division and transfer of land by a father to his children carries with it a clear obligation to care for and support the father during his lifetime and a failure to do so will cancel the transfer.

**1. Ponape Land Law—Japanese Survey**

A division approved by the Japanese surveyors was to be absolute, and each holder of a part of a divided lot was thereafter to have as complete control over his part as the owner of the whole would have over the whole if there had been no division.

**2. Ponape Land Law—Obligation to Support**

Upon a clear showing of an agreement to support and a gross failure to perform agreement by transferee, transfer may be cancelled and land transferred to another.

**3. Ponape Land Law—Agreement to Support**

Under recognized custom in Ponape, a division and transfer of land by a father to his children carries with it a clear obligation to care for and support the father during his lifetime.

<i>Assessor:</i>	JUDGE CARL KOHLER
<i>Interpreter:</i>	JOANES EDMUND
<i>Counsel for Plaintiffs:</i>	EDWEL SANTOS
<i>Counsel for Defendant:</i>	WILLIAM PRENS

BURNETT, *Associate Justice*

Plaintiffs, who include, in addition to the named plaintiff, her eldest son Rainet David, brought this action to settle title in Lot No. 507 of the land Ponkola, in Leak Section, Madolenimw, Ponape District, covered by German Deed No. 227, issued in the name of Charley, also known as Sale. Lot No. 507 is recorded in the name of defendant Welter David, in Land Office records of the Japanese survey of 1941 and 1942.

The facts are not in serious dispute. At the time of the Japanese survey, Charley divided Ponkola between his children. This division had the approval of the official Japanese surveyors, and the children were then registered as owners of the land, with this defendant receiving Lot No. 507, which is the subject of this dispute. Plaintiff claims that the transfer was subject to an express and, under Ponapean custom, implied obligation to take care of Charley and support him, and that on defendant's failure to stay with him or contribute to his support, Charley revoked the transfer of Lot 507 and directed that Rainet David should inherit.

Defendant, while conceding that Charley had become angry with him, contends that he left the land with his father's permission, and that, in any event, a transfer approved by the Japanese surveyors is absolute and not subject to revocation.

I find it clear from the evidence that defendant Welter David did not stay with his father or contribute to his support, and generally ignored the obligation customarily owed a father by his son. As a consequence, Charley executed a written will on November 14, 1959, in which he

ated that he revoked his land transfer to Welter David, and directed that Rainet David should succeed to ownership; this was approved by the *Nanmarki*, who was also the Chief Magistrate of Madolenimw. Another, undated, document written by Charley, in which he detailed his desertion by defendant and the care given him by his daughters, was introduced in evidence without objection.

[1] Defendant relies on the proposition, frequently stated by this court, that a division, approved by officials in the course of the Japanese survey, is correct. See *Helina Max v. Salpin Sale*, Ponape District Civil Action No. 247 (not reported). This presumption was first set out in *Teresita Phelip v. Ioakim and Eneriko*, 1 T.T.R. 147, 149:—

“The court holds that the natural presumption, under all the circumstances, is that a division approved by the Japanese surveyors was to be absolute, and that each holder of a part of a divided lot was thereafter to have as complete control over his part as the owner of the whole would have over the whole if there had been no division.”

[2] There can be no question at this point that the presumption is correct; it does not, however, negate the possibility that the person in whose name title is registered is under a legal obligation to recognize certain rights of others in the land.

“This principle applies to an agreement to take care of the one who transferred the land. Such agreements are clearly in accord both with Ponape custom and with public policy which was well recognized by the Japanese Administration, and the court holds that upon a clear showing of such an agreement and a gross failure to perform it by the persons to whom the land has been transferred, the transfer may be cancelled and the land transferred to another, as if the original transfer under the agreement to support had never been made.” *Lusama v. Eumpeseun*, 1 T.T.R. 249, 252.

In *Lusama* the division, as in the present case, was one made in the Japanese survey. Finding that the division

and transfer were specifically conditioned by an agreement for support which was violated, the court confirmed cancellation and transfer to another person.

[3] In this case, evidence as to a specific agreement, as conditioning the transfer, is slight. I find, however, that, under recognized custom in Ponape, a division and transfer of land by a father to his children carries with it a clear obligation to care for and support the father during his lifetime. Obviously this was Charley's understanding; it seems equally clear that Welter so understood it as well, in view of his seeking permission, on at least one occasion, to enter the land to make copra.

Charley's will effectively revoked the original transfer, and gave the right of inheritance to Rainet David; Rainet succeeded to ownership upon the death of Charley.

It is therefore ordered, adjudged, and decreed:—

1. As between these parties and all persons claiming under them, Lot No. 507 of the land Ponkola, Leak Section, Madolenimw, Ponape District, is the property of, and owned by, Rainet David. The defendant Welter David has no rights therein, notwithstanding registration of said lot in his name in District Land Office records.

2. No costs are assessed against any party.

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