

PATENINA, Plaintiff

v.

NIPOPO, Defendant

Civil Action No. 442

Trial Division of the High Court

Truk District

January 14, 1971

Action to determine ownership of land Nepinong, Mechitiu Village, Moen Island. The Trial Division of the High Court, H. W. Burnett, Chief Justice, held that the last surviving member of a lineage could dispose of lineage land as he wished and in case in question, absent proof of a previous transfer, a death bed disposition of lineage land by sole survivor was valid.

Truk Land Law—Lineage Ownership—Transfers

The last surviving member of a lineage is free to dispose of the lineage land as he wishes.

Assessor:

JUDGE SOUKICHI FRITZ

Interpreter:

SABASTIAN FRANK

Counsel for Plaintiff:

FUJITA PETER

Counsel for Defendant:

RU K.

BURNETT, *Chief Justice*

The land here in dispute, Nepinong, Mechitiu Village, Moen Island, was originally owned by the lineage of Fining, husband of the plaintiff, and Puaseka, father of defendant. Fining, the last surviving member of the lineage, died in 1964.

Plaintiff claims through gift from Fining, just before he died in the Truk hospital. Defendant does not deny that Fining stated on his death bed that Patenina should get the land, but claims that he had given it to her in 1959 in exchange for other land, belonging to her, which he sold.

There was no evidence of any transfer of Puaseka's interest in the land to the defendant. That, following the death of her father, she worked on the land does not sup-

port such a claim; as an *afokur* of the lineage she might reasonably expect to receive benefits from the land.

Nor is defendant's claim that Fining gave her the land supported by convincing evidence. Testimony of impartial witness established, to the satisfaction of the court, that there was no mention of the land Nepinong in connection with Fining's sale of other land in 1959.

There is, however, clear and direct evidence that Fining gave the land to Patenina before he died. As the last surviving member of his lineage he was free to dispose of the land as he wished.

It is, therefore, ordered, adjudged, and decreed:—

1. As between these parties and all those claiming under them, title to the land Nepinong, located in Mechitiu Village, Moen Island, Truk District, is in the plaintiff Patenina, who lives in Mechitiu Village; the defendant Nipopo and others of her lineage have no rights therein.

2. No costs are assessed against either party.