

LIKIAKSA, Plaintiff

v.

HENRY SKILLINGS and ISAIAH N., Defendants

Civil Action No. 56

Trial Division of the High Court

Ponape District

December 11, 1953

Action to determine rights in land on Kusaie Island, in which plaintiff objects to sale of land by husband after he had received it as gift from her in connection with their marriage. The Trial Division of the High Court, Chief Justice E. P. Furber, held that sale was valid since under Kusaie customary law it is presumed that gift from wife to husband in connection with marriage transfers all rights of ownership to husband; Court will not upset transfer made ten years before end of Japanese Administration and clearly recognized by former administration as effective.

1. Ponape Land Law—Kusaie—Transfers

Under Kusaie custom, gift of land by woman or her family to husband in connection with marriage (*tuka*) transfers all rights of ownership in the land.

2. Ponape Land Law—Kusaie—Transfers

Under Kusaie custom, transfer of land by woman or her family to husband in connection with marriage is presumed to be *tuka* unless there is clear evidence to contrary.

3. Former Administrations—Redress of Prior Wrongs

It is not proper function of courts of present administration to right wrongs which may have persisted under former administration for many years.

4. Former Administrations—Recognition of Established Rights

Present administration has obligation to recognize private property rights which were established under former administration except in cases where wrong occurred so near time of change of administration that there was no opportunity for it to be corrected through courts or other agencies of that administration.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. In connection with her marriage to Nena Tinteru, Sra gave all of her land, including that now in question, to Nena Tinteru, with the consent of her father Kufus, from whom the land in question had come, and her brother Alik Yela.

2. Nena Tinteru had the complete ownership and full right to sell the land in question at the time he purported to sell it to the Nanyo Kohatsu Kaisha about 1934.

3. The later transfers from the Kohatsu to the defendant Henry Skillings and from the defendant Henry Skillings to the defendant Isaiah N., therefore passed the complete ownership.

4. When the sale from Nena Tinteru to the Kohatsu was objected to by Alik Yela, the father of the present plaintiff, who brought the matter to the attention of the Japanese administration shortly after the sale, that administration clearly recognized the sale as having passed the ownership of the land.

CONCLUSIONS OF LAW

[1, 2] 1. The gift of land by a woman or members of her family to her husband in connection with her marriage is a common custom on Kusaie, known as "Tuka". A gift made in accordance with this custom transfers all rights of ownership in the land which the givers or any of them may have, including any right that any of them may have to revoke any previous gift of the land. This custom is so well known on Kusaie that the court will presume that a land transfer made on Kusaie under these circumstances is intended to take effect in accordance with the custom, unless there is clear evidence to the contrary.

[3, 4] 2. As explained in the conclusions of law by this court in the case of *Wasisang against the Trust Territory of the Pacific Islands*, 1 T.T.R. 14, the general rule is that it is not a proper function of the courts of the present administration to right wrongs which may have been persisted in by a former administration for many years. The present administration has an obligation to recognize private property rights which were established under the former administration and is not required as a matter of right to correct wrongs which the former administration may have done, except in those cases where the wrong occurred so near the time of the change of administration that there was no opportunity for it to be corrected through the courts or other agencies of the former administration. So, even if the court disagreed with the view of the Japanese administration that the attempted transfer in question passed the ownership of the land, this court could not ordinarily be expected to upset such a transfer made some ten years before the end of the Japanese administration, and clearly recognized by that administration as effective.

JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, the lower part of the land known as Wiyu, located in Tafonsak Village, Kusaie, which was sold by Nena Tinteru to the Nanyo Kohatsu Kaisha about 1934, and consisting of about two (2) to four (4) acres, belongs completely to the defendant Isaiah N., who lives in Tafonsak.

2. Neither the plaintiff Likiakasa nor Sepe Katinlik (otherwise known as Sepe Alik Monkoeya), for whose benefit the plaintiff brought this action, has any rights of ownership whatever in the part of Wiyu described in paragraph 1 of this judgment. Both Likiakasa and Sepe Katinlik live in Tafonsak, Kusaie.

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

4. No costs are assessed against any party.