CRESENS LIKAOR, Plaintiff
v.
FRANS IRIARTE and ROSARIA, Defendants

Civil Action No. 16
Trial Division of the High Court
Ponape District
June 29, 1953

Action to determine ownership of land in Net Municipality, in which plaintiff claims land as heir of owner in whose name German title document was issued and defendants claim under purported wills of deceased owner. The Trial Division of the High Court, Chief Justice E. P. Furber, held that testamentary disposition of land was not permitted under German land system, and is of no legal effect, so that land passed to heirs set forth in title document.

1. **Ponape Land Law—German Land Title**
   Land on Ponape Island held under German title document is subject to land law stated in standard form of document except for any subsequent changes.

2. **Ponape Land Law—German Land Title—Succession**
   Under German land title document for Ponape Island, upon death of owner, property passes undivided to male relative entitled to inheritance, and testamentary disposition is not allowed.

3. **Ponape Land Law—German Land Title—Wills**
   Attempted will of land on Ponape Island held under German title document is considered to be request for future transfer to be effected by someone else, which request need not be given effect.

4. **Ponape Land Law—German Land Title—Presumption of Ownership**
   Presumption is that ownership of land on Ponape Island under German land title vests in person in whose name document stands or in his heirs under document.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Luis, who held legal title to the land, purported to make two separate written "wills" at different times, both providing that after his death the defendant Frans should take Luis' place and take the land in question after him. The first of these was written in Japanese and stamped by Luis. Policemaster Murakawa, Edourdo (otherwise known as Jakanapon), who was then *Nanmarki* of Not, Antonio Mangarero, who acted as interpreter in the preparation of the "will", and Antonia. The second was written in Ponapean by Tura B. Mandiolo, who was then the Secretary of Not, on or about June 5, 1937, from instructions given him by Luis in the presence of Augustine, then the Naniken of Not, and three others. This second purported "will" was signed or stamped by Augustine at the time it was made and was stamped the next day in the District office by Edourdo, who was then Chief Magistrate and *Nanmarki* of Not, and by Felix, the Section Head of Peila Section of Not, although neither Edourdo nor Felix was present when the purported "will" was made.

2. The above mentioned purported "wills" were not intended as present transfers and were not consented to as transfers by the Governor or anyone on his behalf.

3. After Luis' death in 1937, the inheritance of the land in question by Luis' half-brother Damian was duly acknowledged by the Japanese authorities then lawfully administering Ponape, by endorsement on the German title document for the land transferring it to Damian and he or the plaintiff Cresens, as heir has been in possession of the land ever since Luis died.

4. There has been no clear showing that either Luis or Damian held the land for anyone else.

CONCLUSIONS OF LAW

[1] 1. The land in question was held under the system of private ownership set forth in the standard form of German title document used in Ponape. It was therefore subject to the land law stated in that standard form of document, except for any changes made since. See conclusions of law in the case of *Kilara and others* against *Tomuas Alexander*, 1 T.T.R. 3. No changes appear to have been made which bear upon this case.

[2, 3] 2. Paragraph two of the statement of land law in that standard form of title document contains express provision that upon death of an owner the property passes undivided on to a male relative entitled to inheritance and that decision by testament is not allowed. Paragraph four of the same statement provides that sale, giving away, and rental of property or parts thereof is allowed only with the consent of the *Nanmarki* and the Governor. Consequently Luis' purported "wills" could not take effect as wills in the sense in which that word is ordinarily used in the United States because the system of land law applicable, as explained above, prohibited disposition by will. The stamping of the first will by the Policemaster Murakawa did not change the law. From the casual way in which those who testified who knew about either of these wills treated them, it appears they had little or no understanding of a will as a document which would itself later transfer title, but considered a so-called "will" more as a request for a future transfer to be effected by someone else. This is logical in view of the provisions of the applicable land law and appears to be the understanding of many on Ponape. It is not necessary to decide whether the Japanese authorities with the consent of the *Nanmarki* could have granted this request because they did not, but instead, upon Luis' death, endorsed the title doc-

ument showing transfer to Damian. The making of this transfer, so far as appears from the evidence, was entirely regular and is entitled to be relied on. See conclusions of law in the case of *Augustin Ladore* against *Pisenda Salpatierre and another*, 1 T.T.R. 18.

[4] 3. Since there has been no clear showing that either Luis or Damian held the land for anyone else, the usual presumption that the ownership rested in the person in whose name the title document stood, applies. Consequently on Damian's death, April 22, 1939, the plaintiff Cresens, as his adopted son and heir under the rules of inheritance set forth in the standard form of title document referred to above, became entitled to the land.

JUDGMENT

It is ordered, adjudged and described as follows:—

1. As between the parties and all other persons claiming under them, the lot known as Pondau No. 102, located in the Peila Section of the Municipality of Not (often spelled Net), belongs to the plaintiff Cresens Likaor, a resident of the Panimwinsap Section of the Municipality of Not, with the benefits of and subject to all the rights and obligations imposed by the system of private land ownership set forth in the standard form of title document issued by the German Government on Ponape in 1912, as heretofore or hereafter modified by law.

2. This judgment shall not affect any rights-of-way which may exist over the land.

3. No costs are allowed or taxed in this action.