

PEDRO KEHLER and SOLIK, Appellants

v.

CRESENSIA KEHLER and JULIDA, Appellees

Civil Appeal No. 10

Appellate Division of the High Court

February 21, 1958

See, also, 1 T.T.R. 398

Appeal from the Trial Division of the High Court, Ponape District, involving land dispute. The Appellate Division of the High Court, Chief Justice E. P. Furber, held that German land law on Ponape Island is still in full force except as modified by present or past administrations.

Reversed and remanded.

Ponape Land Law—German Land Title

Land law established by German Administration in 1912 for Ponape Island is still in force except so far as modified by law by either present or past administrations.

Counsel for Appellant: ANTON MANGARERO
Counsel for Appellee: FRITZ WEILBACHER

Before FURBER, *Chief Justice*, SHRIVER and MANIBUSAN, *Temporary Judges*

FURBER, *Chief Justice*

OPINION OF THE COURT

This is an appeal from a judgment of the Trial Division of the High Court in an action involving the inheritance or alleged oral transfer at or just before his death, of real and personal property on Ponape Island, in the Ponape District, owned by a resident of that island who died September 16, 1953.

The appellants in their notice of appeal, although using distinctly lay terms, have raised essentially two points:—

First, that the judgment and several of the findings of

fact on which it is based are contrary to or not supported by the evidence; and

Second, that the judgment is contrary to the laws as to inheritance and transfer of land on Ponape.

From an examination of the record it appears that, as to the land owned by the deceased, the trial judge entirely disregarded the land law on Ponape established by the German Administration in 1912 and set forth in the standard form of German Title Document issued by the German Administration on Ponape beginning in 1912. The Trial Division, beginning with its decision rendered under its former name of District Court on January 31, 1951, in *Kilara and Others v. Tomuas Alexander*, 1 T.T.R. 3, has heretofore repeatedly held that this land law is still in force, except so far as modified by law by either the present or the past administrations. We fully concur with the holding in the *Kilara* case, which accords with our opinion in *Kumtak Jatios v. L. Levi et al.*, 1 T.T.R. 578. No modification of this land law which would affect this case can be discerned. Certain changes have since been made by Ponape District Orders Nos. 8-57 and 9-57, but those did not take effect until years after the death involved in this case.

It also appears that, as to the land held by the deceased under a lease from the Japanese Government, the trial judge entirely disregarded the lease and the question of its terms. It is also difficult to see on what evidence the trial judge based his decision as to the disputed ownership of the personal property in question.

In view of the above, we believe that justice requires a new trial.

ORDER

The judgment of the Trial Division is set aside and the action remanded to that Division for a new trial.