

ELIAS CAIPOT, Plaintiff

v.

ROBERT NARRUHN, HARUKO, and KANTESI, Defendants

Civil Action No. 197

Trial Division of the High Court

Truk District

January 28, 1965

Action for determination of title and rights in land located on Moen Island. The Trial Division of the High Court, Chief Justice E. P. Furber, held that party who is son of Japanese national holds title to land, and fact that his father was subject to disqualification as prior owner cannot be used against party except by government.

CAIPOT v. NARRUHN

1. Truk Land Law-Ownership Disqualification

During Japanese times, a Japanese was prohibited from owning land in Truk unless he was married to a Trukese, and he could then hold land only in name of Trukese wife or children.

2. Trust Territory-Land Law-Ownership Disqualification

Disqualification from holding title to land is matter of which only government can take advantage. (T.T.C., Sec. 900)

3. Trust Territory-Land Law-Ownership Disqualification

Person subject to disqualification as land owner can continue to exercise rights of ownership until government acts on matter. (T.T.C., Sec. 900)

4. Truk Land Law-Ownership Disqualification

Transfer of land by Japanese owner who was subject to disqualification, to son who is Trukese and entitled to hold land, passed lawful ownership to son.

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FURBER, *Chief Justice*

FINDINGS OF FACT

1. Hilario Narruhn sold the land in question to Kakuta about 1938 with the aid of the plaintiff Elias, who acted for Kakuta but had no beneficial interest in the transaction other than as an employee of Kakuta.

2. Kakuta gave the land to his daughter Chiako while she was a small child, and in January of 1945 asked Petrus Mailo to help the child's mother, Haruko, to take care of it for Chiako.

OPINION

**[1-3]** The plaintiff in this action has laid great stress on the fact that, at the time Kakuta, who it appears was a Japanese, acquired this land, he was married to a Japanese and a Japanese was prohibited at that time from owning land in Truk unless he was married to a Trukese and could then hold land only in the name of or for the benefit of his Trukese wife or half-Trukese child or children. This may all well be, but this court has already held

that the disqualification from holding title to land under the Trust Territory Code, Section 900, is a matter of which only the government can take advantage and that, as against all others than the government, a person subject to this disqualification can continue to exercise all the rights of ownership unless and until the government acts on the matter. *Maria Ngurun Acjalle v. Carlus V. Aguon*, 2 T.T.R. 133.

This holding is in accord with well recognized general principles of law concerning disqualification from owning land because of nationality, and it is believed should apply equally to the prohibition against Japanese owning land on which the plaintiff relies. 3 Am. Jur. 2d, Aliens and Citizens, §§ 13, 16, and 26.

[4] Regardless of what action the Japanese authorities might have taken, had this matter been brought to their attention during the period he was disqualified, it appears clear that they took no action on the matter, and that in 1941 Kakuta married a Trukese-Haruko-who bore him a child, Chiako, to whom he transferred the land and who, in accordance with the plaintiff's own statement of the policy of the Japanese administration, was entitled to hold it. The court, therefore, considers, in accordance with the principles above-mentioned, that the transfer passed lawful ownership to Chiako, regardless of any prohibition there may have been against Kakuta's ownership prior to his marriage to Haruko or the birth of Chiako.

#### JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. As between the parties and all persons claiming under them, the land known as NEPIMUAR, located in Muan Village on Moen Island, Truk District, is owned by Chiako, who lives on Moen Island, and for whom her mother, the defendant Haruko, makes claim in this action, neither the plaintiff Elias Caipot, who lives sometimes on Moen

Island and sometimes on Saipan Island in the Mariana Islands District, nor the defendant Kantesi, who lives on Moen Island, has any rights of ownership in said land, and the defendant Haruko was entitled to control said land for Chiako from the time of the gift to her until the latter reached eighteen (18) years of age.

2. The defendant Kantesi, however, is entitled, on the basis of permission granted by Haruko, to continue to occupy the land, provided she acknowledges Chiako's ownership, unless and until Chiako gives Kantesi reasonable notice of her desire to revoke or change the permission given by Haruko.

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

4. The defendant Haruko is awarded such costs, if any, of this action as she may have had which are taxable under the "first sentence of Section 265 of the Trust Territory Code, provided she files a sworn itemized statement of them within thirty (30) days after the entry of this judgment. Otherwise no costs will be allowed. Said costs, if any, are assessed against the plaintiff Elias Caipot.

5. Time for appeal from this judgment is extended to and including March 29, 1965.