

TORIS, Plaintiff
v.
NUSIO, and RUKAN FAREK, Defendants
Civil Action No. 213
Trial Division of the High Court
Truk District
May 9, 1966

Action for determination of title to land on Fefan Island. The Trial Division of the High Court, Chief Justice E. P. Furber, held that defendants had no rights in land since cooperation between relatives under Trukese custom in use of land did not establish right of ownership.

i. Truk Land Law-Use Rights

Cooperation between relatives in use of land is common under Truk custom and does not establish rights of ownership.

2. Real Property-Adjudication of Ownership

Magistrate and Assistant Magistrate have no authority to adjudicate ownership of land.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Niker (sometimes spelled Niger) owned the land in question as his individual land.
2. Niker gave it to his son Sawas as his individual land.
3. Sawas gave it to all his children.
4. Neither the plaintiff Toris nor anyone for her group agreed to whatever decision Enis as Magistrate or Assistant Magistrate of Fefan Municipality made as to rights in this land.

OPINION

This action involves the ownership of a piece of land on Fefan Island in the Truk Atoll of the Truk District. It is controlled almost entirely by the foregoing findings of fact.

[1] The parties' predecessors in interest have tolerated, if not expressly permitted, considerable use of the

land by each other, which has clearly contributed to considerable confusion as to the ownership in the minds of the present generation. The court, however, considers that this use in years past before active dispute arose was an example of cooperation between relatives which is common and approved under Trukese custom and should not be held to establish any new rights of ownership or interfere with or encumber the ownership shown by the above findings of fact.

[2] About 1952, Enis as Magistrate (referred to as Chief in the pre-trial order) or as Assistant Magistrate of Fefan tried to settle at least certain rights in the land and made a decision favoring the claims now advanced by Nusio. The basis and exact extent of that decision are not clear, but as indicated in the fourth finding of fact above, Toris and her group did not agree with that decision and the court takes notice that neither the Magistrate nor Assistant Magistrate of a municipality had then or has now any authority to adjudicate ownership of land. The most he could do in that regard would be to try to bring about an agreement between the parties. Since that effort failed, his decision does not control the rights of the parties.

JUDGMENT

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

1. As between the parties and all persons claiming under them:-

a. The land known as Fanmeikoch located in Sopo Village on Fefan Island, Truk District, is owned by the children of Sawas and their descendants in the female line, represented in this action by the plaintiff Toris, who lives in Sapota Village on Fefan Island.

b. The defendants Nusio and Rukan Farek, both of whom live in Sapota Village, and the groups for which they claim, have no rights in Fanmeikoch, although as

relatives they may reasonably expect under Trukese custom to be allowed some use of the land, if they cooperate well with Sawas' children.

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

3. The plaintiff Toris is awarded such costs 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 she will be awarded only three dollars and fifty cents (\$3.50) costs to cover the filing fee and the trial fee. The costs are assessed one-half against the defendant Nusio and one-half against the defendant Rukan Farek.