

KISINA KONANG, Plaintiff

v.

ANGKEN, Defendant

Civil Action No. 351

Trial Division of the High Court

Truk District

January 30, 1969

Action to determine title to land in Moen Village, Truk District. The Trial Division of the High Court, H. W. Burnett, Associate Justice, held that where lineage land was placed under the control of individuals and worked under their authority, upon their death, no members of the lineage surviving, the land passed to the survivors of such persons.

Truk Land Law-Lineage Ownership--Transfers

Where lineage lands were placed by the lineage under the control of individuals and worked under their authority, upon their death, there being no surviving members of the lineage, that land passed to the survivors of those placed in charge.

BURNETT, *Associate Justice*

FINDINGS OF FACT

1. The *taro* swamp designated as "Neutimas No.2" on the Plat of Survey, filed April 12, 1967, is a part of the *taro* patch Naputa.
2. Naputa was originally owned by the Wisusu lineage; no members of the lineage are still living.
3. Joseph and Eniesar received possession of Naputa from the Wisusu lineage and controlled it during their lifetime.
4. Suru and Kisina succeeded Joseph and Eniesar, with the portion here in dispute going to Kisina.

OPINION

The original complaint in this action was filed jointly by Hirosi and Kisina Konang, and concerned the areas designated on the Plat of Survey as Neutimas No.2 and Neutimas No. 1. Hirosi withdrew before trial and this action consequently is concerned only with the disputed claim to that area designated as Neutimas No.2, located in Mechitiw Village, Moen Island, Truk District.

The foregoing Findings of Fact essentially dispose of the issue herein. Briefly stated, plaintiff's claim, which I find to be supported by credible evidence, is that the area in dispute is a part of larger holdings originally possessed by the Wisusu lineage which were placed by the lineage under the control of Joseph and Eniesar. Under the authority of Joseph, the brother of Eniesar who is the true father of plaintiff, Kisina and Konang, her husband, worked the *taro* patch since approximately 1926 until during the war when possession was taken by the Japanese soldiers. Following the death of both Joseph and Eniesar, there being no surviving members of the Wisusu lineage, possession passed to Suru, the son of Joseph, and to Kisina, with the portion in dispute going to Kisina and Suru receiving other holdings not here in issue.

Defendant has claimed that it was his mother who received the *taro* patch from the lineage and that at all times prior to the war it was worked by Nepou, his mother's brother. Defendant concedes that he himself entered the patch only following the war. Nepou is deceased and thus not available to give evidence. Plaintiff, however, presented credible testimony as to Nepou's disavowal of any interest at the time of a hearing conducted before Kolus, the chief of Mechitiw Village, some time after the war. No direct testimony other than that of defendant himself was presented to sustain his contention.

Plaintiff's delay in asserting her claim in this court might

well have been fatal were it not for the evidence of efforts to assert her rights before Kolus, and my conclusion that defendant's entry was wrongful and his claim without merit.

It is, therefore, ordered, adjudged, and decreed:-

1. That as between these parties all rights of possession and ownership in and to that portion of the *taro* swamp Naputa designated on the Plat of Survey as Neutimas No.2, located in Mechitiw Village, Moen Island, Truk District, is in the plaintiff Kisina Konang.

2. No costs are assessed against either party.