

In the Matter of the Ownership Claims to Pre-War Private
Property, Lots 199 & 202, Marpi Area, before the
Marianas District Land Commission,
VICTORIA N. IGITOL, Appellant

v.

FRANCISCO NEKAI, CARMEN BABAUTA (deceased) by her
personal representative, and NIEVES NEKAI TAMAN,
Appellees

Civil Appeal No. 391

Appellate Division of the High Court

Northern Mariana Islands District

January 19, 1984

Appeal from trial court judgment in land ownership dispute. The Appellate Division of the High Court, Hefner, Associate Justice, held that the fact that appellant's grandfather, through whom appellant claimed an interest in the land, at one time cleared and worked on the land in dispute, only showed the existence of customary "use right" and did not provide a basis to find or conclude that the grandfather could or did pass his "use right" by custom, and therefore trial court decision was affirmed.

Real Property—Use Right

In a land ownership dispute, fact that claimant's grandfather had cleared and worked the disputed land did not provide a basis for determining ownership rights of claimant; the grandfather simply had "use right" by Carolinian custom.

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Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate Justice*, and HEFNER¹, *Associate Justice*

HEFNER, *Associate Justice*

From what appears at the outset to be a rather compli-

¹ Chief Judge of the Commonwealth Trial Court, Northern Mariana Islands, designated as Temporary Associate Justice by Secretary of Interior.

cated Carolinian family land dispute, this matter is simplified by an agreed genealogy and the fact that the appellant basically does not disagree with the trial court's findings of fact.

BACKGROUND

The findings of fact of the trial court are as follows:

1. The lands involved herein are situated in Matuis/Marpi, Saipan, formerly identified as Lots 199 and 202, and currently identified as Lots 002 A 01, 001 A 02, and 002 A 03, containing an area of approximately 4.146 hectares.
2. That all of the aforementioned property is located in Matuis, Saipan.
3. That Carmen Nekai had four brothers and sisters, two of whom, Guadalupe Nekai and Juan Nekai, had children.
4. That Victoria N. Igitol is the daughter of Fabiana Nekai and the granddaughter of Juan Nekai.
5. That Gregoria Nekai, daughter of Guadalupe Nekai, had four children, Francisca Nekai, Carmen Nekai Babauta, deceased, Nieves Nekai Taman, and Maria Nekai Boyer, deceased.

The trial court concluded that based on these facts the property passed on the death of Carmen Nekai by Carolinian custom to the appellees through their mother, Gregoria Nekai, and her mother, Guadalupe, to the exclusion of the appellant.

The appellant concedes that by Carolinian custom the conclusion of the trial court is correct. (See *Camacho v. Mettao and Rabauliman* (Tr. Div. 1979), NMI Civil Actions 193-76 and 994, *aff'd* Civ. App. Nos. 312 and 314, 8 T.T.R. 273.)

However, appellant argues that this case does not demand that Carolinian custom be followed since it is asserted that Juan Nekai, the grandfather of appellant, owned a portion of the land in his own right and therefore the appellant should share in the land.

The trial court did not accept this assertion and unless the record demonstrates its findings are clearly erroneous, they must stand.

The appellant urges two events to buttress her claim. One is the fact that Juan lived on the land in dispute (Lots 199 and 202) and farmed it for a number of years prior to his death. Second, Fabiana did share in some of the other Nekai family land.

Of significance to appellant's claim is an old German land document which showed Juan Nekai as owner of some lots in the Marpi area. Lots 199 and 202 are not listed as being included.

Suffice it to say that the record demonstrates clearly that the land in dispute was Nekai family land. Carmen as the oldest female was the administrator of the land and she held the land for the general benefit of her lineage. This includes the right of Juan, as a male sibling, to farm and live on the land. *Camacho v. Mettao and Rabauliman*, supra.

Appellant, in her brief, states that:

"Simply stated, appellant's claim through her mother, Fabiana Nekai, is based upon the fact that Fabiana's father, Juan Nekai, had cleared and worked the land containing lots 199 and 202; Fabiana worked and lived on these parcels as well, and when her father died she inherited his interest."

Since parcels 199 and 202 were held by Carmen Nekai as Carolinian family land, Juan Nekai simply had use rights for his lifetime. There is no basis to find or conclude that Juan could or did pass his use rights to Fabiana by Carolinian custom.

The decision of the trial court is affirmed.