

CLERK OF COURT
SUPERIOR COURT
1992

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IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF THE)	CIVIL ACTION NO. 91-384(P)
ESTATE OF)	
)	
JOSE LANIYO, II,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
Deceased.)	
_____)	

This matter came on for an evidentiary hearing on the Claimant's opposition to the Administratrix' petition for final distribution of the estate. Claimants Patricia Laniyo Rogopes, the heirs of Carmen L. Seman and the heirs of Daniel I. Laniyo, were present with their attorney, Kenneth L. Govendo, Esq. The Administratrix was present with her attorney, Reynaldo O. Yana, Esq.

The Court heard the testimony of Remedio Mike, Maria Laniyo, Patricia Laniyo Rogopes, Crispina Laniyo Norita, and Alejandro I. Laniyo. The sole issue was whether Alejandro I. Laniyo, the son of the decedent, is entitled to a share of the estate of Jose Laniyo, II, or whether he had received his share of the decedent's estate by way of advancement when he was adopted pursuant to Carolinian custom by Juan Laitiran and Rita Kaipat

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when he was two or three years old.

FINDINGS OF FACT

After having read counsels' memorandums and after having heard and considered all evidence before it, the Court hereby finds that Jose Laniyo, II, died in the 1930's leaving Tract No. 1655 as his entire estate. His heirs are Patricia Laniyo Rogopes, Alejandro I. Laniyo, the heirs of Carmen L. Seman and the heirs of Daniel I. Laniyo.

Alejandro I. Laniyo was adopted pursuant to the Carolinian custom of mwei-mwei by Juan Laitiran and Rita kaipat when he was two or three years old. At the time of the adoption, the decedent gave two parcels of land -- one in Garapan and one in Quartermaster -- to Juan Laitiran and Rita Kaipat. Subsequently, the Quartermaster land was exchanged with the Trust Territory Government for land situated in Gualo Rai.

On May 5, 1989, Alejandro I. Laniyo deeded all his undivided interest in Jose Laniyo's estate to his daughter, Crispina L. Norita.

In April of 1991, Crispina L. Norita entered into a 55-year lease for her undivided interest in Lot No. 1655 with some Korean nationals.

Subsequently, this probate matter was filed. Alejandro I. Laniyo filed a claim against the estate stating that he had an interest in the estate.

As part of this proceeding, an evidentiary hearing was held on October of 1991 to determine if Alejandro's deed to Crispina was proper. At the hearing, Alejandro I. Laniyo was represented by counsel, Edward Manibusan, Esq., and this Court determined that Alejandro knew that he conveyed all of his undivided interest in decedent's land to Crispina, his daughter.

On November 19, 1991, the Administratrix filed a petition for final distribution of the decedent's estate. In the petition, the Administratrix proposed to divide Lot No. 1655 into four separate parcels with her claiming one as successor in interest to Alejandro I. Laniyo, one to Patricia Laniyo Rogopes, one to the heirs of Carmen L. Seman and one to the heirs of Daniel I. Laniyo.

On December 10, 1991, the date set for the hearing, Claimants Patricia L. Rogopes, the heirs of Carmen L. Seman and the heirs of Daniel I. Laniyo, through their counsel, Kenneth L. Govendo, appeared and advised the Court that they opposed the division of property as set forth in the petition. The Court ordered counsel to prepare briefs and set a date for an evidentiary hearing.

On July 28, 1992, an evidentiary hearing was held in this Court. The Court heard testimony from Remedio Mike, the daughter of Carmen L. Seman, deceased, and Maria Laniyo, the daughter of Daniel I. Laniyo, deceased. Both testified that they had been told by their deceased parents that decedent had told their

parents that Alejandro I. Laniyo was not to share in his estate because he had already received his share when he was adopted by Juan Laitiran and Rita Kaipat.

The Court then heard the testimony of the Administratrix who was called as a witness by the Claimants. She testified as to the lease transaction she negotiated with the Koreans and how much money she received.

Patricia L. Rogopes, daughter of the decedent, testified that she had been told by the decedent that Alejandro I. Laniyo was not entitled to any share of his estate. When Alejandro was adopted by Juan Laitiran and Rita Kaipat, the decedent had given the adoptive parents two (2) lots as Alejandro's share of the decedent's estate.

Alejandro I. Laniyo testified that he was the son of the decedent, and Francisca Itibus. He testified that he had been adopted by Juan Laitiran and Rita Kaipat when he was very young by way of the Carolinian custom of mwei-mwei and that he received land from the decedent as his share of Jose's land during this time. He also testified that the land was exchanged by Juan Laitiran for property in Gualo Rai which he later inherited from the probate of Juan Laitiran's estate. He also testified that he was not entitled to a share of Jose Laniyo's estate in the present proceeding because he had already received his share.

Documents were received into evidence and both counsel had the opportunity to summarize to the Court. The Court requested

both counsel to prepare proposed Findings of Fact and Conclusions of Law and present them to the Court on or before September 30, 1992.

CONCLUSIONS OF LAW

It has been established in *In Re Estate of Rofag*, No. 89-019 (N.M.I. Feb. 22, 1991) that the Carolinian custom of mwei-mwei is a question of fact to be determined by the trial court. The Court finds that Alejandro I. Laniyo was adopted by Juan Laitiran and Rita Kaipat according to the custom of mwei-mwei. The Court has no information about "advancements" under mwei-mwei and neither party has offered any expert testimony. The Court is of the opinion that there probably is no expert opinion on this subject and there may or may not be a custom which would apply to the scenario before the Court.

Accordingly, the Court must look to established precedents under Commonwealth law. The Court recognizes that because of the uniqueness of probate proceedings in the CNMI where proceedings are commenced decades after the decedent has died, almost all testimony presented is hearsay. As such, the Court must carefully scrutinize witnesses' testimony and observe their demeanor. The Court also recognizes that inconsistencies in testimony and actions result from the long time lapse between the death of the decedent and the probate proceeding.

The issue to be decided is whether Alejandro I. Laniyo is

entitled to a share of Jose Laniyo's estate or whether he received an advancement by way of custom or the intent of the deceased. 8 CMC, § 2919 states:

"If a person dies intestate as to all his or her estate, property which the person gave in his or her lifetime to an heir by partida or otherwise is treated as an advancement against the latter's share in the estate only if it can be shown that the property was given pursuant to custom....."

The common law doctrine of advancements rests on the supposed desire of an ancestor to equalize his estate among his heirs, not only as to the property left at the time of his death, but as to all property that came for him, so that one child will not be preferred to another child in the final settlement of the estate. There is a presumption that a parent means to treat his children equally. *See, 3 Am Jur 2d, Advancements, Section 4.*

Although this case involves Carolinian land, there is nothing to indicate that advancements are not accepted in Carolinian custom. *In Re Estate of Barcinas*, No. 90-024, (N.M.I. Jan. 30, 1992) leaves no doubt that if some heirs received an advancement from the deceased while he was alive, they are not entitled to a share in the estate when the deceased dies intestate.

It was also established in *Barcinas* that the Court must attempt to fulfill the decedent's intentions and this is the law in the NMI. The Court recognizes that it can only do this by

hearing hearsay testimony that could very well be self-serving by all parties. Thus, the Court must decide as a trier of fact whether each witness is telling the truth.

After having heard the testimony of all witnesses, including Alejandro I. Laniyo, who testified that he is not entitled to any share of the estate, the Court is not convinced that the parcel of land that Juan Laitiran and Rita Kaipat received from the decedent was in fact an advancement. Alejandro's initial assertion that he is entitled to a share of decedent's estate; the transfer of his interest therein to his daughter Crispina L. Norita long before this action was filed; and, his battle against the validity of the deed to Crispina strongly suggest that there was never an advancement.

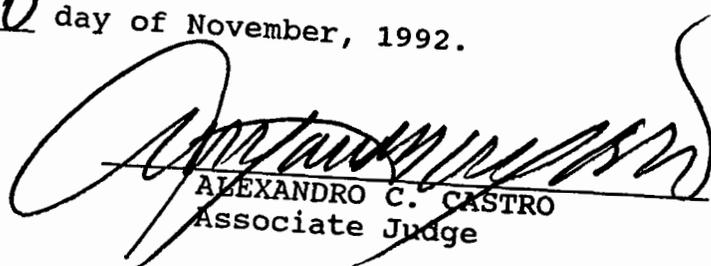
Accordingly, IT IS HEREBY ADJUDGED and DECREED that all of Lot No. 1655 shall be divided as follows:

1. One-fourth undivided interest to Patricia Laniyo Rogopes;
2. One-fourth undivided interest to the heirs of Carmen L. Seman, deceased.
3. One-fourth undivided interest to the heirs of Daniel I. Laniyo, deceased.
4. One-fourth undivided interest to Crispina L. Norita.

The Court orders that the Administratrix file an accounting for costs of the estate and the parties set a date for a hearing

on those costs and an apportionment, if any.

SO ORDERED this 30 day of November, 1992.



ALEXANDRO C. CASTRO
Associate Judge