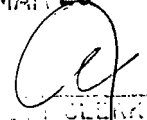


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IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF THE	)	Civil Action No. 92-1360
ESTATE OF	)	
	)	
AGUIDA AMIREZ,	)	<b>MEMORANDUM DECISION ON</b>
	)	<b>PETITION FOR FINAL</b>
Deceased.	)	<b>DISTRIBUTION</b>

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This matter came before the Court for trial on January 17, 1994 through January 20, 1994, and was submitted on post-hearing memoranda on February 18, 1994. The parties dispute the ownership of two adjoining lots in Tanapag, Saipan, raising the following questions: 1) whether Decedent Aguida Amirez owned the lots individually, or whether she acted as land trustee for her siblings' children pursuant to Carolinian custom; and 2) whether Administratrix Blandina I. Tenorio and Cecelia L. Taitano were entitled to land ownership rights as Decedent's adopted children.

**FOR PUBLICATION**

1 **I. FACTUAL BACKGROUND**

2 **A. THE AMIREZ FAMILY**

3 Decedent Aguida Amirez died on December 24, 1952.<sup>1/</sup> She was  
4 the youngest child of Angel Amirez, the owner of the land at  
5 issue. Decedent had two elder sisters, Rosa and Maria. Both died  
6 sometime before the Second World War. Each of Decedent's sisters  
7 had children, most of whom had died by the time of trial, and  
8 grandchildren, most of whom are still living. See Plaintiff's  
9 Exh. M.

10 Decedent married Jose Rapugau on November 7, 1922 (see Exh.  
11 5-42). They had no natural children. According to the evidence  
12 presented at trial, Decedent "adopted," "raised," or "took in" two  
13 children sometime in the 1920's: Administratrix Blandina I.  
14 Tenorio, born in 1915 (Exh. J-2); and Cecelia L. Taitano, born in  
15 1913 (Exh. J-4). Cecelia bore a child, Cypriano L. Taitano.  
16 Cypriano grew up in Decedent's household. Cecelia and Cypriano  
17 died prior to this action. Blandina survived to testify at trial.  
18 Cecelia, Cypriano and Blandina all have living children.

19 **B. THE LAND**

20 The land in dispute is part of a larger tract in Tanapag,  
21 Saipan known as Achugao. This land has been the subject of  
22 numerous claims and transactions since it was originally held by  
23 Angel Amirez in the nineteenth century. The Administratrix claims  
24 two specific parcels. They are Lots 583 and 585. Japanese land  
25

26  
27  
28 

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<sup>1/</sup> See Exh. A to Petition for Letters of Administration; Book of Trial Exhibits ("Exh."), Exh. B-10 (this set of exhibits was admitted to evidence by stipulation of the parties at the beginning of the trial).

1 documents list Decedent and three children of her sister Maria as  
2 "co-owners" of these lots (see Exh. A-4).

3 In 1953, the Land Commission of the Trust Territory issued,  
4 Title Determination 748. It found that Lots 583 and 583 were  
5 owned by "the heirs of Aguida Amirez, represented by Jose Rapugao  
6 as land trustee." Exhs. B-1, B-2. The file on this Title  
7 Determination contains a Statement of Ownership executed by  
8 Decedent in which she indicates that she inherited the land from  
9 "Amires." Exh. B-15. In 1970, a Land Registration Team likewise  
10 found that the land was owned by the "heirs of Aguida Amirez."  
11 This finding was based on testimony taken from Cypriano Taitano  
12 (Exh. C-2) and the children-in-law of Decedent's sister Maria  
13 (Exhs. C-3, C-6). In 1972, the children of Maria quitclaimed a  
14 portion of the property to Cypriano Taitano, who in turn sold the  
15 same parcel for cash. Exhs. C-7, C-8, C-9.

16 The following year the children and grandchildren of  
17 Decedent's other sister, Rosa Amires, filed claims with the Land  
18 Commission asserting an ownership interest in the property. Exhs.  
19 D-1 through D-26. The Land Registration Team adjudicated the land  
20 to be owned by "the heirs of Agida Amires" [sic], (Exh. D-15), and  
21 Determinations of Ownership were issued in that name. Exhs. D-16,  
22 D-18.

23 A similar claim between the children of Maria and the  
24 children of Rosa was brought before the Micronesian Claims  
25 Commission, regarding an award of compensation for war damage  
26 inflicted on Lots 583 and 585. The Commission held a hearing at  
27 which both family groups presented testimony. The Commission held  
28 that it had heard "no persuasive evidence to lead it to conclude

1 other than that Maria, Agida and Rosa were all legitimate children  
2 of Amires." Exh. E-6. The Commission awarded the claim to the  
3 "Heirs of Amires," nominating a child of Rosa to receive the award  
4 on behalf of the family. Id. In 1978, Cypriano Taitano and the  
5 children of Maria then filed suit in U.S. District Court, alleging  
6 that Rosa's heir were not sharing the award with them. Exh. G-1.  
7 The case ended in a stipulation that the War Claims money would be  
8 distributed to both sides of the family through a trustee. Exh.  
9 G-10. In 1982, various conveyances took place among the  
10 descendants of Rosa, the descendants of Maria, and Cypriano, which  
11 divided the parcels along family lines. These parcels were  
12 ultimately sold to real estate developers. **See generally** Exhs. H-  
13 1 through H-119.

### 14 15 **C. THIS ACTION**

16 On October 15, 1992, Blandina filed a Petition for Letters of  
17 Administration for Decedent's estate, listing herself, Cecelia and  
18 Cypriano, and their children, as Aguida Amirez' intestate heirs.  
19 A Preliminary Inventory filed March 2, 1993 claimed Lots 583 and  
20 585 as the total amount of Decedent's estate. Objections were  
21 then filed on behalf of the descendants of Rosa, the descendants  
22 of Maria, and the commercial interests which have since developed  
23 the land for tourism. This trial followed.

### 24 25 **II. ISSUES**

26 Two issues are presented: 1) whether Decedent owned Lots 583  
27 and 585 individually or as customary trustee on behalf of herself  
28 and the children of her two sisters; and 2) whether Cecelia,

1 Blandina and Cypriano were adopted by Decedent in a manner which  
2 entitled them to share in this land.

3  
4 **III. ANALYSIS**

5 As the Decedent died intestate prior to the enactment of the  
6 Commonwealth Probate Code, and because the Trust Territory Code  
7 had no provision for intestate succession, the Court looks to  
8 customary law for the principles applicable to this action.  
9 *Willbanks v. Stein*, Appeal No. 93-036, slip op. at 4 (N.M.I. Nov.  
10 8, 1994).

11 **A. NATURE OF LAND OWNERSHIP**

12 When a Trust Territory Title Determination lists title in the  
13 name of a Carolinian individual, the Court must consider all  
14 evidence presented that the individual owned the land as customary  
15 trustee for the family rather than in fee simple. *Estate of*  
16 *Kaipat*, 3 N.M.I. 494, 498 (1993). A finding of customary  
17 trusteeship will be made if supported by a preponderance of the  
18 evidence. *Estate of Kaipat*, Civil Action No. 90-840, slip op. at  
19 7 (N.M.I. Super. Ct. May 3, 1994) (decision on remand).

20 Here, Title Determination No. 748 found that Lots 583 and 585  
21 were owned by "the heirs of Aguida Amirez, represented by Jose  
22 Rapugao as land trustee." Exhs. B-1, B-2. The Objectors argue  
23 that Aguida held this land as customary trustee for herself and  
24 the descendants of her sisters Rosa and Maria. A preponderance of  
25 the evidence presented supports this claim.

26 First, there is no dispute that the lots in question were  
27 originally owned by Angel Amirez. This suggests that Aguida  
28 obtained an ownership interest through "inheritance." Exh. B-15.

1 The available Japanese land records list three children of Maria  
2 as "co-owners" of the land along with Aguida. These records are  
3 proof that the inheritance from Angel Amirez extends to Maria's  
4 children.

5 Second, Objectors presented testimony that Rosa, Decedent's  
6 eldest sister, acted as land trustee for some period after the  
7 death of Angel. Julian Taitano, Rosa's grandson, testified that  
8 his mother told him Rosa received the documents to the Achugao  
9 land "because she was the eldest." Similarly, Serafina Noag,  
10 another granddaughter of Rosa, testified that her father worked  
11 the land along with Aguida. The Court finds that this testimony  
12 corroborates the inference that the Achugao parcel was clan land  
13 rather than Aguida Amirez' sole property. None of this evidence  
14 was in any way rebutted by the Administratrix.

15 Conversely, the Administratrix presented no direct evidence  
16 that Aguida inherited this land alone. The sole evidence  
17 presented tending against clan ownership of Lots 583 and 585 was  
18 Exhibit K, the records of Title Determination No. 712, in which  
19 the "heirs of Maria Amirez" received title to Lot No. 637. The  
20 Administratrix offered this evidence at trial to show that Maria  
21 received other land from Angel besides the parcels at issue in  
22 this case. However, these records indicate that Lot 637 was "from  
23 German Gov't." Exh. K-10. The German Administration on Saipan  
24 did not begin until 1899. Estate of Rangamar, App. No. 92-029,  
25 slip op. at 8, n. 13 (N.M.I. Dec. 15, 1993) (citing A. Spoehr,  
26 Saipan: The Ethnology *of* a War-Devastated Island, 41 **FIELDIANA:**  
27 **ANTHROPOLOGY** (Chicago 1954) at 75). Angel Amires died in 1896.  
28 Exh. J-40. Thus, it appears from the records supporting this

1 Title Determination that Maria received this land after Angel's  
2 death, negating any inference that Angel gave Lot 637 to Maria and  
3 the lots at issue here to Aguida.

4 The Administratrix's final argument in favor of Aguida's  
5 individual ownership is that the family in general never acted in  
6 accordance with Carolinian custom in land matters. She points out  
7 that Angel Amirez was a man and asserts that he held the Achugao  
8 property "in his own name" (Closing Memorandum at 12), whereas  
9 traditional Carolinian land ownership was matrilineal and clan-  
10 based. She also claims that the history of leases, sales and  
11 other transactions within the family dating back to the Japanese  
12 times constitute proof that Angel Amirez gave these lots to Aguida  
13 in fee simple.

14 This argument fails for three reasons. First, there was no  
15 evidence presented about the character of Angel's acquisition or  
16 ownership of the land. The fact that no one can trace the history  
17 of the parcels beyond the inheritance from Angel to his children  
18 does not prove that he originally held the land in his name alone.  
19 Compare Estate of Ogumoro, Appeal No. 93-007, slip op. at 12  
20 (N.M.I. June 14, 1994) ("the parties do not dispute that  
21 [Decedent] owned the land individually").

22 Second, while Angel Amirez was indisputably a man, this fact  
23 standing alone does not disqualify his female children from  
24 holding the land as customary trustees when there is evidence in  
25 the record that they in fact did so. The courts of the  
26 Commonwealth and the Trust Territory have repeatedly noted the  
27 changes in Carolinian custom wrought by control from foreign  
28 administrators over the last century. **See** Rangamar, *supra*, at 6-

1 12 (reviewing cases). However, "[m]ere agreement to new ways of  
2 doing things by those to be benefitted, without the consent of  
3 those adversely affected, will not of itself work a change of  
4 customary law." Id. at 11 (citing *Lalou v. Aliang*, 1 T.T.R. 94,  
5 100 (1954)). Here, the evidence indicates that all three of Angel  
6 Amirez' daughters believed they had a share of the land at issue.  
7 There is no evidence of consent by these women to non-customary  
8 land distribution in Aguida's name alone. Compare *Ogumoro*, supra,  
9 slip op. at 12 (where Decedent's surviving children were all  
10 males, they could not inherit land as family land pursuant to  
11 Carolinian custom).

12 Third, the Court gives little weight to the evidence of  
13 leases and other land transactions among the family from Japanese  
14 times to the 1980's. The question before the Court is how the  
15 land was inherited at Angel Amirez' death in 1896, not how it was  
16 treated by the family thirty to ninety years later. If Angel  
17 conferred the land upon his three daughters pursuant to custom,  
18 later decisions by those three daughters or their children to  
19 lease or sell parts of the land does not transform it into one  
20 daughter's individual property. If the land was clan land at the  
21 turn of the century, then the descendants of Angel Amirez' three  
22 daughters are entitled to a share, even if subsequent generations  
23 of the family by their conduct took the land out of the  
24 traditional mold sometime after the Second World War.

25 In sum, the Court finds that Lots 583 and 585 were family  
26 land when inherited by Decedent Aguida Amirez, and that she held  
27 these lots as customary trustee for the descendants of her sisters  
28 Maria and Rosa, as well as for her own heirs.



1  
2 **B. ADOPTION**

3 It is appropriate for the Court to determine matters of  
4 customary adoption in the course of a probate action, so long as  
5 the due process requirements of notice and hearing are met.  
6 Estate of Rofag, 2 N.M.I. 18, 27 (1992). Customary adoption may  
7 be proven by a preponderance of the evidence. Id. at 29-30.  
8 Here, two types of evidence were presented: 2) expert testimony  
9 describing the prevailing Carolinian customs relating to adoption  
10 and land rights; and 2) lay testimony as to whether Blandina  
11 Tenorio, Cecelia Taitano and Cypriano were in fact entitled to  
12 share land pursuant to such custom.

13 1. Expert Testimony. The Court heard three expert  
14 witnesses regarding Carolinian adoption practices. Margarita  
15 Sarapao testified for the Administratrix. Jose M. Taitano and  
16 Abel Olopai testified for the Objectors. This expert testimony  
17 indicated that the Carolinian custom of mwei-mwei involves  
18 adoptive parents who are already married and who do not have  
19 children of their own. Under this custom, the adoptive parents  
20 request to adopt a child from within the family. Ms. Sarapao  
21 testified that mwei-mwei involved adoption of an infant weaned  
22 from the mother's breast, rather than of an older child. This  
23 expert testimony generally coincides with Spoehr, supra, at 356,  
24 and with the Commonwealth Supreme Court's pronouncements on  
25 Carolinian adoption, (see Rofag, supra, 2 N.M.I. at 23, n.3),  
26 although Rofag indicates that there are exceptions to these  
27 customary rules. Id. (cases of single women adopting and adoption  
28 of children up to eleven years old).

1           The experts testifying here disagreed as to whether a child  
2 adopted by mwei-mwei shared land rights without them being  
3 expressly granted by an adoptive parent. The Objector's experts  
4 testified that the adoptive parent must tell the child of such  
5 land rights. The Administratrix' expert testified that children  
6 adopted by mwei-mwei share land rights without being told. The  
7 Administratrix' view more closely coincides with the findings  
8 implicit in Rofag, supra, 2 N.M.I. at 23, n.3: "[o]nce the child  
9 is adopted under this custom, he/she is treated and considered as  
10 a natural child for all purposes." On the other hand, the  
11 Objectors' opinions square with the findings of Spoehr, supra, at  
12 357: "[i]f a foster mother states that her adopted child will  
13 share in land rights with her own children, the latter are  
14 obligated to share these rights with the ,adoptedchild" (emphasis  
15 added). After weighing the credibility of the witnesses, the  
16 Court finds the preponderance of the evidence presented at trial  
17 to favor the Objectors' position that land rights must be  
18 conferred explicitly on mwei-mwei adoptees.<sup>2/</sup>

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22           <sup>2/</sup> No Commonwealth precedents exist discussing treatment of  
23 expert testimony on matters of custom when, as here, the weight of  
24 that testimony conflicts with prior findings of a higher court.  
25 If custom is treated as a matter of fact, the evidence presented  
26 at trial is conclusive. If custom is a matter of law, then the  
27 pronouncements of the Supreme Court are binding on this Court no  
matter what the evidence presented at trial. The oft-repeated  
rule that matters of custom are mixed questions of law and fact  
(see Rangamar, supra, slip op. at 2) begs the question entirely  
and leaves the Court without guidance.

28           Fortunately, the Court's findings on whether Blandina,  
Cecelia and Cypriano were in fact adopted by mwei-mwei makes it  
unnecessary to resolve the conflict here. Nevertheless, the issue  
remains an open one to be faced in future cases.

1           2.    Lay Testimony. The Court heard testimony from a number  
2 of percipient witnesses on the subject of whether Blandina,  
3 Cecelia and Cypriano were adopted children of Decedent.

4           Among the testimony presented, the most significant was that  
5 of Blandina herself, who testified that she had been adopted by  
6 Aguida and Jose Rapugao, and that she did not know that Aguida was  
7 not her birth mother, Rosa Iguel, until Blandina got married.  
8 Blandina also testified that she cared for Aguida in her old age  
9 and farmed the Achugao property. Id. Blandina's birth mother is  
10 not a relative of Aguida Amirez. Blandina also testified that  
11 Cecelia and Cypriano were likewise adopted children of Aguida and  
12 Jose Rapugao, and that they shared a household at Achugao. She  
13 said that Cypriano, being himself the child of Cecelia, was  
14 adopted at birth. This direct testimony'wassupported by second-  
15 hand and reputation testimony by other witnesses, such as  
16 Margarita Sarapao, Rosa Castro, Augustine Taitano, and Juan  
17 Tenorio.

18           However, none of these witnesses presented direct testimony  
19 that the claimed "adoptions" conferred upon Cecelia or Blandina  
20 any rights to share in the Achugao land. Indeed, Blandina herself  
21 stated that she never received any "authority"<sup>3/</sup> from Aguida to  
22 share in the land. Indeed, the substance of her testimony is that  
23 she believed she did not have a right to the land. Blandina's son  
24 Juan Tenorio stated his understanding of the family custom in this  
25 way:

26           I think that my mother and [sic] Blandina and my auntie,  
27 Cecelia, and of course, the late Sopriano [sic], are

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28           <sup>3/</sup> In her testimony she used the word "pudet," which in Chamorro means "have authority, be able, power."

1       Aguida's children. I might be wrong but if they were  
2       raised by Aguida since birth, especially, then I have to  
3       believe Aguida is their mother. So, from that  
4       standpoint, I feel they do have a rights to the property  
5       up in Achugao ....

6       Despite this belief, Mr. Tenorio confirmed that neither Cecelia  
7       nor Blandina ever told him they believed they had land rights.  
8       This view squares with the expert opinion of Margarita Sarapao  
9       that mwei-mwei adoption of a newborn child conferred automatic  
10      entitlement to land.

11      The Court gives this lay testimony great weight along with  
12      the expert testimony presented. In the last analysis customary  
13      law must be flexible enough to reflect the actual practices of the  
14      persons involved. See *Cabrera v. Heirs of De Castro*, 1 N.M.I.  
15      172, 177 (1990). Of course, this principle has its limits, lest  
16      customary law devolve into an amorphous aggregate of  
17      "practices."<sup>4/</sup> Nevertheless, where a recognized custom has been  
18      practiced with some variations over time and across different  
19      communities, the courts should respect and give legal effect to a  
20      particular instance of variation that is supported by competent  
21      evidence.

22      The evidence that neither Cecelia nor Blandina ever received  
23      explicit land rights is further corroborated by the evidence that  
24      the family treated Cypriano differently from Blandina and Cecelia.  
25      Of the three people allegedly adopted by Aguida and Jose, only  
26      Cypriano was taken in as a newborn. Birth records confirm that  
27      Blandina was born in 1915 (Exh. J-2) and Cecelia were born in 1913

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28      <sup>4/</sup> See *Estate of Carnacho*, 1 C.R. 395, 402 (Com. Tr. Ct. 1983)  
    (court cannot give legal status of "customary" practices which are  
    not based on "long usage as by common consent," citing *Lalou v.*  
    *Aliang*, 1 TTR 94 (Tr. Div. 1954)).

1 (Exh. J-4). Aguida and Jose were not married until 1922 (Exh. J-  
2 42). Thus, Blandina and Cecelia (who were not related to Aguida  
3 by blood) were taken in as older children, whereas Cypriano was  
4 born in Aguida's household. These facts indicate that Cypriano  
5 was accorded land rights not given to Cecelia or to Blandina.  
6 From the testimony, it appears that these two grew up in an  
7 ambiguous position: not fully treated as Aguida's children, but  
8 not expressly excluded. As Juan Tenorio stated his mother's  
9 position regarding war claims awards: "If they wanted to give her  
10 some, she will welcome it. If she's not getting any, she will  
11 also welcome it."

12 Additional corroboration for this view is found in the  
13 documentary evidence of Blandina's, Cecelia's and Cypriano's  
14 conduct prior to this probate action. *See United California Bank*  
15 *v. Prudential Ins. Co.*, 681 P.2d 390, 418 Ariz. App. 1983)  
16 (conduct of parties prior to dispute given great weight in  
17 interpreting ambiguous transactions); *Brown v. Cowden Livestock*  
18 *Co.*, 187 F.2d 1015 (9th Cir. 1951) (same). Here, various  
19 documents, dating from as early as 1970, mention Cypriano as being  
20 the adopted child of Aguida and/or as having an interest in Lots  
21 583 and 585. *See* Exh. C-6 (Statement of Santiago Iguel, April 24,  
22 1970); Exh. F-16 (Inter-Office Memo,, Micronesian Claims  
23 Commission, Nov. 21, 1975). As noted above, Cypriano also  
24 participated extensively in negotiations over the land during the  
25 1970's and received shares of both the land and the war claims  
26 awards.

27 In contrast, no documentary evidence indicates any claim or  
28 assertion, prior to this action, that either Cecelia or Blandina

1 had land rights derived from any customary adoption by Aguida. At  
2 trial, the Administratrix<sup>1</sup> son sought to explain her failure to  
3 assert an earlier claim to the land on the grounds that she feared  
4 retaliation. However, the Court does not find this evidence  
5 completely credible. This testimony is also outweighed by the  
6 evidence that Blandina did not assert a claim because she did not  
7 believe she had one. Nor does the Administratrix' rationale  
8 explain why Cypriano was so vigorous and successful in advancing  
9 claims on his own behalf but made none for his birth mother  
10 Cecelia nor for his adoptive aunt Blandina.

11 In sum, the Court finds that Blandina and Cecelia were  
12 brought into Decedent's household as older children. Further,  
13 they were not related to Aguida by blood. These two facts are  
14 outside the traditional parameters of the Carolinian *mwei-mwei*  
15 adoption practice, as described by the experts here and as  
16 discussed in other authorities. See Rofag, *supra*, 2 N.M.I. at 23,  
17 n. 3; Spoehr, *supra*, at 357. From the both the expert testimony  
18 on custom and the lay evidence on adoption practices of this  
19 family, Cecelia and Blandina are entitled to land rights only if  
20 Aguida had expressly granted them such rights. Since no such  
21 express grant was present here, the Court finds that neither  
22 Cecelia, Blandina, nor their descendants, have any share in Lots  
23 583 and 585.

#### 24 25 **IV. CONCLUSION**

26 For the foregoing reasons, the Court ORDERS:

27 1. The petition of Administratrix Blandina I. Tenorio for  
28 distribution of the estate of Aguida Amirez is hereby DENIED, on

1 the grounds that the property claimed to have been in the estate  
2 has already been distributed to the legitimate heirs of Aguida  
3 Amirez.

4 2. Neither Blandina I. Tenorio, Cecelia L. Taitano, nor  
5 their descendants, are heirs of Aguida Amirez for the purposes of  
6 inheriting land.

7  
8 So ORDERED this 23 day of March, 1995.

9  
10   
11 EDWARD MANIBUSAN, Associate Judge