

**PETIELE (also written PETITELE
and also known as SURUKO) and WIPER, Plaintiffs**
v.
**MAX (also written MAKIS and also known as SEPIN)
and ARPONA, Defendants**

Civil Action No. 5
Trial Division of the High Court
Ponape District
December 23, 1952

Action to determine ownership of land in Metalanim Municipality. The Trial Division of the High Court, Chief Justice E. P. Furber, held that a woman was proper transferee of interest in land after 1941 but that transfer to her was still subject to approval of *Nanmarki* and Governor.

1. Ponape Land Law—German Land Title—Presumption of Ownership

Although it is presumed that person in whose name German land deed is issued is owner of land on Ponape Island, presumption may be overcome by clear evidence showing that person is under legal obligation to recognize certain rights of others in property.

2. Ponape Land Law—German Land Title—Equitable Interests

Court will recognize arrangement for issuance of title document in name of one person with understanding that some other person will have equitable life interest in land.

3. Ponape Land Law—German Land Title

As far as private ownership of land on Ponape Island under German land title is concerned, land law stated in document is still in effect except for changes made under subsequent administrations. (T.T.C., Sec. 24)

4. Ponape Custom—Adoption

Under Ponape custom, recognized by Japanese Administration, legally adopted child of deceased inherited land with rights which were superior to true brother of deceased.

5. Ponape Land Law—German Land Title—Women's Rights

In accordance with policy of Japanese Administration, transfer of land to women after 1941 was not against public policy.

6. Ponape Land Law—German Land Title—Women's Rights

Since a woman was not within one of categories of German land title document as entitled to inherit land, her interest in lands on Ponape Island under such document is subject to approval of *Nanmarki* and Governor.

7. Ponape Land Law—German Land Title—Women's Rights

Person claiming land on Ponape Island must recognize right of woman transferee to hold land pending approval of *Nanmarki* and Governor.

8. Ponape Land Law—German Land Title—Approval of Transfer

High Commissioner or his authorized representatives may exercise powers reserved to Governor under German land title document pertaining to land on Ponape Island.

FURBER, *Chief Justice*

FINDINGS OF FACT

1. Prior to the German land reform in 1912 the right to use the land in question in this case was held by the defendant, Max, subject to the underlying ownership of the *Nanmarki*.

2. In the making of German land distribution in 1912 the title document was issued in the name of Kalio under an agreement between him and the defendant Max that the land should belong to Max for his lifetime and on his death should become the property of Kalio.

3. This agreement between Max and Kalio was made with the knowledge and acquiescence of the German officials handling the land distribution.

4. The plaintiff Petiele was legally adopted by Kalio.

5. The plaintiffs, Petiele and Wiper took possession of the left half of Ponjau (as one stands on the shore facing the land) under an agreement with the defendant Max that they would make copra there and give him half of the proceeds as long as he lived. Their possession was also consented to by the defendant Arpona, who has expressly agreed in open court that Petiele is entitled to share this left half of Ponjau equally with him. Other land was assigned to Arpona in accordance with a family understanding that Petiele would have an interest in this land.

6. On the death of Kalio no disposition of his interest in this left half of Ponjau was made with the consent of the *Nanmarki* or the Governor, or by anyone authorized to consent for either of them.

CONCLUSIONS OF LAW

[1, 2] 1. In the case of land held under the standard form of title document issued by the German Government on Ponape in 1912, the presumption is that the ownership of the land, with the rights and benefits and subject to obligations set forth in the title document, rests in the person in whose name the title document is issued. This presumption, however, can be overcome by clear evidence showing that the person in whose name the title document stands is under legal obligation to recognize certain rights of others in the property. Thus in this case Kalio having obtained the title document by an agreement with the defendant Max, who had a prior interest in the land, that the defendant Max should own the land for his lifetime, Kalio and those claiming under him are under an obligation to recognize Max' equitable life interest in the land. The court takes judicial notice that such arrangement for issuance of title documents in the name of one person with the understanding that some other person should have the beneficial ownership for his life, was common on Ponape and not considered necessarily contrary to public policy. See Anthropological Report CAU Ponape, Eastern Caroline Islands, dated 5 June, 1951, on "Contemporary Ponapean Land Tenure", page 10.

[3, 4] 2. As explained in the conclusions of law in the case of *Kalera and others* against *Tomuas*, 1 T.T.R. 3, as far as private ownership of land held under the standard form of German title document issued in Ponape is concerned, the land law as stated in that document is still in effect, except for any changes that may have been made

by the German authorities during their regime, the Japanese authorities during their regime, or the American authorities during their occupation. The defendant Max, claims not only that he holds a beneficial life interest in the land in question, but also that he inherited the legal title upon the death of Kalio as Kalio's older brother, although it is agreed by all the parties that Kalio on his death left the defendant Arpona as his adopted son. The argument in favor of Max' inheritance of the legal title is that paragraph 2 of the provisions printed on pages 2 and 3 of the standard form of German title document prohibits an adopted son from inheriting unless the deceased leaves no relatives by blood in any of the categories mentioned in that paragraph. The provision in question expressly authorizes adoption of a man to be the heir with the confirmation of the *Nanmarki* and the Governor when there are no relatives within the categories named. From this it has been argued that an adopted child cannot be construed to come within the terms of eldest living son. The court takes judicial notice, however, that under Ponapean customary law a legally adopted child was considered to be a legal child and furthermore that the Japanese authorities in construing this provision considered that it did not prohibit inheritance by an adopted child even though the deceased had at the time of his death a brother living. In the interests of stability of land law, the court feels that it should follow the construction adopted by the Japanese authorities and recognize that an adopted son may inherit even though the deceased left a true brother living.

[5] 3. In accordance with the public announced policy of the Japanese Government on Ponape made in connection with the land survey which was interrupted by World War II that transfers of land might be made to women,

the Court holds that at least after 1941 transfers to or for the benefit of women were not against public policy.

[6-8] 4. Since the plaintiff Petiele is not in one of the categories named in the standard form of German title document as entitled to inherit without the consent of the *Nanmarki* and the Governor and they have not consented to the transfer to her, her interest, to which Arpona agreed, is still subject to the approval of the *Nanmarki* and the Governor. As against the government the legal title is in Arpona. The defendant Arpona, and any person claiming under him, is, however, under obligation to recognize Petiele's interest pending action by the *Nanmarki* and the Governor. Under the present organization and laws of the Trust Territory, the High Commissioner, or his authorized representative, may exercise the powers reserved to the Governor in the standard form of German title document.

5. No determination is made in this action as to the right half of Ponjau since, as stated in the pre-trial order, all the parties agree that half is owned by the plaintiff Wiper.

RECOMMENDATION

It is recommended that the plaintiff Petiele seeks to have the transfer to her of the undivided one half interest in the left half of Ponjau herein decreed her as between the parties, or such physical division as she and the defendant Arpona may agree upon, approved by the *Nanmarki* and the High Commissioner, or his authorized representative, as successor of the Governor, in order to complete her legal title, subject to the defendant Max's life interest.

JUDGMENT

It is ordered, adjudged and decreed as follows:

1. As between the parties and all other persons claiming under them, the left half (as one stands on the shore

facing the land) of the lot known as Ponjau (sometimes written Ponsau) No. 182, located in the Aru Section of Metalanim, belongs to the defendant Max (sometimes known as Makis), a resident of the Kinakapw Section of the Municipality of Metalanim, for his life and that subject to this beneficial life interest this land belongs beneficially to the defendant Arpona, a resident of the Kinakapw Section, and the plaintiff Petiele, a resident of the Aru Section of Metalanim, in equal shares, each having an undivided half interest. The plaintiff Petiele's interest, however, is subject to any action adverse to her that may be taken by the *Nanmarki* and the High Commissioner, or his authorized representative, as successor of the Governor. All the rights herein decreed are with the benefit of and subject to all the rights and obligations imposed by the system of private land ownership set forth in the standard form of title document issued by the German Government on Ponape in 1912, as heretofore or hereafter modified by law.

2. The plaintiffs Petiele and Wiper are indebted to the defendant Max, for one half the proceeds of all copra made by them upon the land described in the preceding paragraph since they ceased payments to him in 1950 until they vacate the land or make a new agreement with the defendant Max, or until his death, whichever happens first. If the plaintiffs and defendant Max are unable to agree upon the amounts due, either party may apply to this court for a determination of the amount due.

3. Plaintiffs Petiele and Wiper are to be allowed a reasonable time in which to remove the buildings erected by them on the land described in paragraph numbered 1 of this judgment and any other property they may have there.

4. This judgment shall not affect any rights of way that may exist over the land.

5. No costs are allowed or taxed in this action.