

KONO, Plaintiff
v.
MIKAEL, Defendant
Civil Action No. 126
Trial Division of the High Court
Truk District
November 8, 1963

Hearing on Master's Report for determination of title to land on Wonei Island, in which plaintiff claims Master wrongfully excluded title document as evidence. The Trial Division of the High Court, Chief Justice E. P. Furber, held that document contributed nothing to issue at trial and its exclusion was not prejudicial to plaintiff. The Court further upheld findings of Master confirming ownership in defendant.

1. Evidence—Documents

Master's failure to understand German land document is not good reason for excluding it from evidence.

2. Courts—Continuance

Where witness who is necessary to explain land document fails to appear because of breakdown of outboard motor, continuance is warranted until party has reasonable opportunity to present witness.

3. Appeal and Error—Evidentiary Error

Where Master fails to consider land document in land dispute, court reviewing Master's Report will examine it.

4. Truk Land Law—German Title Document

German Administration on Truk, in issuing land documents, did not distinguish between individually owned land and land controlled by person as head of group.

5. Truk Land Law—German Title Document

Person named in German land document issued in Truk usually was representative of group rather than individual owner.

6. Appeal and Error—Evidentiary Error

Where document might have been excluded as evidence as unnecessary, party was not prejudiced by its wrongful exclusion by Master.

FURBER, Chief Justice

This action came on for hearing upon the Master's Report and was argued on behalf of the plaintiff by Olaf W. and on behalf of the defendant by Mitaro S. Danis.

In addition to objecting to the Master's basic finding that the lands here involved had been divided and this particular one given to those through whom the defendant claims, the plaintiff especially objected to the Master's refusal to admit in evidence the German land document allegedly covering the land in question. The Master stated in his findings that this was not accepted "because it was not understood by this court". The plaintiff had offered to present a witness to identify and explain it, and requested a continuance in order to do this, stating that the witness was not available at the time because of a difficulty of transportation. The court was apparently satisfied with the counsel for the plaintiff's explanation as to the witness's absence since the court itself stated the witness was not there "because his outboard motor was broken down". The Master, however, concluded the hearing and made his findings of fact without specifically ruling upon the plaintiff's request for continuance, although the clear effect of what he did was to deny the request.

OPINION

The court considers and holds that there was ample evidence, if believed, to support the Master's basic findings of fact.

[1,2] The only point deserving special consideration is the Master's refusal to admit the German land document. Clearly, the court's failure to understand this was not a good reason for excluding it when the plaintiff had offered to present a witness to explain it, provided the Master was satisfied that the plaintiff and his counsel had made proper and timely effort to have the witness present. It would appear from the remarks of the Master that he was satisfied that the witness's failure to appear was due to the breakdown of his outboard motor. If that was so, and the only reason the Master had for excluding

the document was difficult in understanding it, it would seem in common fairness, that the Master should have given the plaintiff reasonable opportunity to present this witness—especially since the counsel for the defendant stated he had no objection to requested continuance, and the difficulties of and limited facilities for water transportation in the Truk lagoon are well known.

[3-5] This court has accordingly itself carefully examined the land document in question and finds that it is in the usual form used by the German Administration in Truk; that it was issued in the name of Naki which may well be an alternative spelling for the name Lucky mentioned in the claims of both parties; and that it covered among others a piece of land of at least a similar name to that involved in this action. Assuming, however, that the document was issued to Lucky and covered the particular piece of land involved in this action, the document would add nothing to the agreement stated in the pre-trial order to the effect that both parties claimed that their titles were derived from a group of brothers, who owned the land before German times, and of which Lucky is the first one named. The court has several times before taken and here again takes judicial notice that the German Administration on Truk in issuing such land documents did not distinguish between individually owned land and land controlled by a person as head of a group. Therefore, the fact that this document was issued in the name of Lucky did not help in any way to establish, as claimed by the plaintiff, that the land involved therein had become his individual land as distinguished from land of the group which it was agreed owned the land before German times. In fact it would appear that usually the person named in such a document was the representative of a group rather than an individual owner. See *Land Tenure Patterns, Trust Territory of the Pacific Islands, Vol. I, p. 167.*

[6] The document in question therefore might well have been excluded as unnecessary and not contributing anything to the issues in dispute in this action and the plaintiff was accordingly not prejudiced in this particular instance by its exclusion.

The Master's Report is accordingly approved with the exception of the seventh paragraph of his findings of fact.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. As between the parties and all persons claiming under them, the land known as Lemoch (sometimes written Lemach and sometimes Nemach), located in Sapotiu Village on Wonei (sometimes written Wolei and sometimes Ollei) Island, Truk District, is owned by the defendant Mikael, who lives on Wonei Island, as his individual land and neither the plaintiff Kono nor any of those he represents in this action has any rights of ownership in it or any right to share in any part of the purchase price paid for it by Mikael to his predecessor in interest.
2. This judgment shall not affect any rights of way there may be over the land in question.
3. No costs are assessed against either party.