

**KASPAR GEORGE, Plaintiff**  
**v.**  
**NANAICHY WALDER, Defendant**  
**Civil Action No. 354**  
**Trial Division of the High Court**  
**Ponape District**  
**January 26, 1970**

Action to cancel and set aside a quitclaim deed. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where there was no mutuality of agreement, no meeting of the minds because grantor intended one thing and grantee intended something else, there was no delivery of the deed by the grantor with intent to pass title and such deed was without force and effect.

**1. Ponape Custom—Family Obligations**

Under Ponapean custom a daughter and her husband are obliged to care for and support the daughter's father when they live with him.

**2. Gifts—Generally**

A gift does not involve consideration.

**3. Trust Territory—Applicable Law—Common Law**

The common law, rather than the statutory law, in the United States is applicable in the Trust Territory in the absence of applicable statute in the Trust Territory Code.

**4. Trust Territory—Land Law—Generally**

In the United States the common law relating to land transfers has largely been codified by statute and is therefore not applicable to land transfers in the Trust Territory.

**5. Deeds—Generally**

Under both common law and United States statutory law that may be applied in the Trust Territory, to be effective a deed must be delivered with the intent that it pass title to the land and the common law phrase "signed, sealed and delivered" is applicable regardless of statute when "sealed" is excluded.

**6. Deeds—Delivery—Intention**

The question of delivery or non-delivery of a deed is a question of fact to be determined from the surrounding circumstances of the transaction and to constitute a valid, effective delivery, it must be shown that the grantor intended to divest himself of title.

**7. Deeds—Delivery—Intention**

Whether or not the requisite intent to deliver a deed exists is a question of fact for the trial court or jury.

**8. Deeds—Delivery—Intention**

Where there was no delivery of the deed by the grantor with intent to pass title, the deed was without force and effect.

**9. Deeds—Construction**

The court may not rewrite a deed to conform to what appears to be the intent of the parties.

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<i>Assessor:</i>	JUDGE ANTONIO C. RAIDONG
<i>Interpreters:</i>	JUDAH C. JOHNNY and JOANES EDMUND
<i>Reporter:</i>	SAM K. SASLAW
<i>Counsel for Plaintiff:</i>	FRANCISCO KIRIELMO
<i>Counsel for Defendant:</i>	EDWEL SANTOS

TURNER, *Associate Justice*

Plaintiff in this action sought to cancel and set aside his deed conveying to his then son-in-law, the defendant, Lots Nos. 186 and 188, as shown on Ponape District Drawing No. 71, dated March 1, 1961. Plaintiff obtained these lots by quitclaim from the Trust Territory after homesteading the property.

Grounds asserted for cancellation were that the deed did not represent his intentions and that he had not read it, nor was it read to him when he signed it. The deed was in English, which plaintiff could not read but the defendant son-in-law could read. Plaintiff asked about the content of the deed but the son-in-law neither read it nor explained it.

There was sharp conflict in the testimony as to what the parties intended. Plaintiff asserted he proposed to convey the two lots to his son-in-law and his daughter; that the son-in-law would pay an agreed price of \$350.00 for the lot conveyed to him and that the other lot would be conveyed as a gift to plaintiff's daughter.

Defendant admittedly did not pay for the land and claimed that both lots were conveyed to him as a gift.

Defendant asserted the reason for the gift was that he had been supporting plaintiff and his family "for a long time".

[1] Actually, defendant and his wife lived with the plaintiff after the marriage and the support contributed by the defendant was in accordance with Ponapean custom obligating a daughter and her husband to care for and support the daughter's father when they lived with him. The "long time" defendant mentioned was only a year prior to the purported gift. Defendant and his wife separated and were divorced under the custom three years after the gift.

[2] A gift does not involve consideration and defendant's attempt to justify the gift is not credible. He should have relied upon the usual understanding that a child, including a son-in-law, is the natural object of a parent's bounty.

The evidence also indicates defendant took advantage of plaintiff in that he obtained plaintiff's signature on the deed without witnesses and without explaining the content. If plaintiff's testimony is reliable, there is sufficient reason for cancellation of the deed because of the abuse of fiduciary or confidential relationship between defendant and plaintiff. Generally on the subject of cancellation for misrepresentation, fraud, undue influence, or mistake, see 13 Am. Jur. 2d, Cancellation of Instruments.

It is not necessary to decide this case on equities which justify cancellation because under the common law there was not an effective transfer of title of the two lots to the defendant.

[3, 4] The common law, rather than the statutory law, in the United States is applicable in the Trust Territory in the absence of applicable statute in the Trust Territory Code. In the United States the common law relating to land transfers has largely been codified by statute. Most of it is therefore not applicable to land transfers in the Trust Territory.

Without compliance with statutory requirements, a deed is invalid. In the Trust Territory there are, unfortunately, no statutory provisions relating to land transfers except Code Section 1023 providing for recordation with the Clerk of Courts. There is no requirement that a written instrument is necessary to take the transaction out of the statute of frauds, and when there is a written document that it either be witnessed or acknowledged under oath.

The deed in this case was signed by two witnesses but neither actually saw the plaintiff sign it, nor apparently did they sign in the presence of each other, nor was the deed acknowledged. Either of these failures would be sufficient to make the deed inoperative under a statute governing land transfers.

[5] There is, however, another requirement under both common law and United States statutory law that may be applied in the Trust Territory. That is, that to be effective, the deed must be delivered by the grantor with the intent that it pass title to the land. The common law phrase "signed, sealed and delivered" is applicable regardless of statute when "sealed" is excluded. 23 Am. Jur. 2d, Deeds, see 76 et seq. *Kelly v. Bank of America*, 246 P.2d 92, 34 A.L.R.2d 578.

[6, 7] In the *Kelly* case the California court said at 34 A.L.R.2d 586:—

"The question of delivery or non-delivery of a deed is a question of fact to be determined from the surrounding circumstances of the transaction and to constitute a valid, effective delivery, it must be shown that the grantor intended to divest himself of title." . . . "Whether or not the requisite intent exists is a question of fact for the trial court or jury."

The issue on which this case turns is whether or not the plaintiff, when he signed the deed and handed it to his son-in-law without knowing or understanding its content and effect, intended to pass legal title to the two lots.

The believable evidence preponderantly shows the plaintiff did not intend to pass title to two lots to the defendant.

Even defendant said plaintiff intended to give him one parcel of land. The deed purportedly conveyed two parcels. The plaintiff did not intend the conveyance of one parcel to defendant to be a gift. He believed he would receive \$350.00 and that defendant had promised to pay him "next June". It also is evident that plaintiff was willing to make a binding, irrevocable sale of one parcel to defendant and a gift to his daughter of the second parcel.

Because the defendant accepted the deed as a gift of two parcels there was not a delivery with intent to pass title. There was no mutuality of agreement, no meeting of the minds, because plaintiff intended one thing and defendant intended something else.

[8, 9] As a matter of law applied to the acceptable testimony, it must be decided there was no delivery of the deed by the grantor with intent to pass title. The deed upon which defendant relies is without force and effect. The court may not rewrite the deed to conform to what appears to be the intent of the parties. If plaintiff wants to sell and defendant wants to buy, they must enter into a new transfer agreement.

#### JUDGMENT

It is ordered, adjudged, and decreed:—

1. That the instrument labeled "Quitclaim Deed" recorded in Book 4, page 66, records of the Ponape District Clerk of Courts, on July 1, 1965, be and the same hereby is canceled, set aside and abrogated and the Clerk of Courts shall make appropriate entry in the land transfer recordation book.

2. That the plaintiff is the individual owner of Lots Nos. 186 and 188 shown on Ponape District Drawing No. 71, dated March 1, 1961, filed in the office of the Ponape

District Clerk of Courts, said lots containing 2.517 *hectares*.

3. That this judgment shall not affect any rights-of-way there may be across the above-described land.

4. That no costs are assessed.

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ROMAN SOUWELIAN, a minor, by OKIN SARAPIO, Plaintiff

v.

KADARINA, Defendant, and  
EHLA KLEMEDE, Intervenor

Civil Action No. 360

Trial Division of the High Court

Ponape District

January 29, 1970

Action to determine inheritance to land in Kitti Municipality, Ponape District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where neither a written instrument nor an attempted oral disposition of land were effective as wills, the deceased died intestate and pursuant to Ponape District Public Law 3-17-59, as between adopted children the adopted son takes ahead of any adopted daughter.

**1. Civil Procedure—Witnesses**

Where a witness' testimony was contradicted by so much of the testimony from both sides, it was not credible.

**2. Wills—Revocation—Destruction**

Where a will which cannot be found following the death of the testator is shown to have been in his possession when last seen, the presumption is, in the absence of other evidence, that he destroyed it *animo revocandi*.

**3. Wills—Revocation—By Will**

An attempted oral testamentary disposition, in the form of a nuncupative or oral will, cannot revoke a prior written instrument.

**4. Wills—Oral—Requirements**

Under the Code, an oral testamentary gift is only effective when made in the presence of impending death. (T.T.C., Sec. 349)

**5. Wills—Oral—Realty**

The Code provision relating to oral testamentary gifts does not permit transfer of land by oral will unless authorized by local custom or written statute. (T.T.C., Sec. 349)