

tiff with a claim for relief. The court has found none and in fact it appears that the appointment power of the High Commissioner does not violate any separation of powers theory. See Public Officers and Employees, 63 Am.Jur.2d 684 to 685; Constitutional Law, 16 Am.Jur.2d 459.

[10, 11] In the final analysis and construing plaintiff's complaint in the most favorable light possible, it alleges that his specified term expired and he was not reappointed. That from August 2, 1974 to November 7, 1974 he was a holdover judge or a de facto judge. 46 Am.Jur.2d, pages 105-106. This status was terminated on November 7, 1974. 5 TTC Sec. 251 provides no other conclusion than the High Commissioner had the complete authority and discretion to not reappoint. The claim for relief by injunction fails for this reason and those further reasons specified in this court's order dated December 2, 1974. Plaintiff's claim for damages likewise fails for failure to allege any facts upon which to base such a claim.

It is therefore ordered that plaintiff's complaint be dismissed and plaintiff take nothing by way of his action. Defendants shall be entitled to any court costs incurred.

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**JOHN HADLEY, Plaintiff**

v.

**EWALT HADLEY, Defendant**

Civil Action No. 480

Trial Division of the High Court

Ponape District

January 20, 1975

Land ownership dispute. The Trial Division of the High Court, Brown, Associate Justice, held that eldest son of decedent who died in 1956, was, under then applicable German Land Code, entitled to his father's lands to the exclusion of illegitimate son whose parents never married.

**1. Judgments—Summary Judgment**

Where no fact questions were presented, court would decide issues of law and would enter summary judgment where that was an appropriate disposition of the case.

**2. Ponape Land Law—Inheritance**

German Land Code, which governed succession and inheritance on Ponape until enactment of District Order in 1957, governed disposition of property of decedent who died in 1956.

**3. Deeds—Japanese Confirmation**

Trust Territory Government was entitled to rely upon Japanese administration's 1934 confirmation of German deeds.

**4. Ponape Land Law—Inheritance**

Eldest son, and not illegitimate son whose parents never married, was entitled, under the then applicable German Land Code, to land owned by his father, who died in 1956.

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*Assessor:*

CARL KOHLER

*Interpreter:*

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*Reporter:*

MISSY F. TMAN

*Counsel for Plaintiff:*

JOANES EDMUND

*Counsel for Defendant:*

JOHNNY MAKAYA

**BROWN, Associate Justice**

Plaintiff moves the Court for summary judgment herein. The motion is meritorious and is granted.

This case involves a dispute as to the ownership of certain lands on Ponape Island, all being covered by German land deeds numbers 343, 345 and 346, and all of which lands are possessed by defendant. Plaintiff sues and claims to be the owner thereof, except for that portion heretofore conveyed by him to Joanis Iriarte.

The parties agree, and there is no argument, that the following facts are true:

1. Plaintiff is the eldest legitimate son of one Kulian;
2. Defendant is an illegitimate son of Kulian;
3. Kulian died intestate in 1956;

4. The deeds to which reference has been made show that Kulian was the owner of the land in question; and

5. No other record can be located which varies ownership as revealed in the German land deeds; on the contrary, the German land deeds bear Japanese endorsements confirming title.

[1] No factual question is presented; thus this Court may and should decide any issue of law before it and enter summary judgment, which is an appropriate disposition of a case where there is no dispute as to a material fact. *Likidimus v. Likidimus*, 4 T.T.R. 331; *Julios v. Amusten*, 4 T.T.R. 25.

It being clear that Kulian died intestate in 1956 and was the owner of the land at the time of his death, the only question before the Court is one that requires an application of the law of intestate succession in Ponape.

[2] The law of succession and inheritance on Ponape is governed here by the German Land Code which remained unchanged until the enactment of Ponape District Order No. 8-57 which became effective on February 1, 1957. Since Kulian died in 1956, no discussion of that order is necessary. Instead, it is necessary only to examine the German Land Code, the pertinent part of which reads:

"If a man, owner of a land, should die, his land shall remain undivided; his first born son shall succeed him. An illegitimate child will own his father's land as though he were a real child if his father and mother later married. . ."

There is no claim that Kulian ever married defendant's mother. Thus, it is clear that defendant's status is that of an illegitimate child.

[3] The German deeds establishing title in Kulian were confirmed by the Japanese administration in 1934, and the present administration is entitled to rely on and respect

these acts of the former administration. *Oneitam v. Suain*, 4 T.T.R. 62; *Raimato v. Trust Territory*, 3 T.T.R. 269.

The precise boundaries of the land which forms the subject matter of this case are believed to be reasonably correct under the circumstances, but to minimize the likelihood of further dispute, a survey thereof is necessary.

Accordingly, it is

Ordered, adjudged and decreed that:—

- [4] 1. Plaintiff have judgment against defendant;
2. Plaintiff is hereby declared to be and is the owner of that certain land on Ponape Island described as:
- a. The center of Mwudok as indicated by four rock monuments, and described in German land deed No. 343;
  - b. Niseres, described in German land deed No. 345, except for one half (1/2) hectare thereof, more or less, which, for valuable consideration, plaintiff heretofore conveyed to Joanis Iriarte;
  - c. Paniau, described in German land deed No. 346;
3. The Land Commission is directed to survey said lands within ninety (90) days of this judgment and, if necessary, to correct its records to accurately describe said lands and the ownership thereof so as to conform to this judgment; and
4. Costs herein are awarded to plaintiff.