

## Heirs of Shrew Likiaksa v. Heirs of Kilafwa Lonno

State Court (Kosrae)  
King A.J.  
17 October 1988

*Land law—Kosrae State Land Commission—significance of use rights—adverse possession—Japanese Survey of Kosrae records not conclusive as to ownership.*

The appellants' family had exercised use rights to take fruit and produce from a piece of land since about 1926. This arrangement made with Nena Kuang continued until his death in 1970. In 1953 the appellees were confirmed by a judgment of the Trust Territory Chief Justice to be entitled to succeed to Nena Kuang. The appellants now claimed ownership of the land, relying on a Japanese survey of Kosrae in 1932 (which named a member of their family as owner) and title, by adverse possession. Their claims were rejected by the Land Commission.

### HELD:

The Land Commission's determination affirmed as sound and fair.

- (1) The appearance of a person's name on the official Japanese survey in 1932 is by no means conclusive as to ownership. The emphasis of that survey was on determination of boundaries and there was no detailed investigation of ownership rights.
- (2) The Land Commission properly relied on the 1953 court decision as to ownership.
- (3) Continuing to exercise rights of use does not constitute the consistent assertion of ownership that would allow the doctrine of adverse possession to apply.

### Cases referred to in judgment:

*Jessee v. Ebream* I T.T.R. 77 (Pon, 1953)

*Sigrah v. Kuan* civil action no. 47, unreported, 1953

### Counsel:

- A. Palsis for the appellants  
A. B. Aliksa for the appellees

## KING A.J.

### Judgment:

This is an appeal from the Kosrae State Land Commission's determination of ownership made on 21 July 1985, holding that the heirs of Kilafwa Lonno are the owners of certain lands, called Limes, in Lelu, parcel No. 050-K-00. In a hearing held on 28 September 1988, the Court announced its decision in favour of the heirs of

Kilafwa Lonno and explained its reasoning. This is a memorandum of the reasons for that decision.

### I. Factual Background

40 The parties are in basic agreement about the relevant facts. Limes was formerly owned by Nena Kuang. In approximately 1926, he told Likiaksa, the father of appellants Shrew Likiaksa and Fred Likiaksa, that Likiaksa could use, and take fruit and produce from, Limes. Nena Kuang apparently did this because Likiaksa did not own much land himself.

Shrew and Fred Likiaksa also used Limes while Likiaksa was living, apparently under the authorization given to their father. For reasons not explained in the record, Nena Kuang permitted them to continue their use of Limes even after Likiaksa died. In 1932, Shrew Likiaksa, as chief surveyor in Lelu during the Japanese administration, wrote the name of Fred, his older brother, as owner of Limes, which  
50 is shown as lot no. 353 on the Japanese map of 1932.

Before Nena Kuang died in 1970, Trust Territory Chief Justice E.P. Furber entered a judgment in a case called *Sigrah v. Kuan*, Trust Territory civil action no. 47. This judgment, entered with the consent of the parties, confirmed that Nena Kuang had only a life interest in Limes and "cannot transfer any rights in it which will last after his death". No member of the Likiaksa family was a party to the litigation but the Court obviously felt it had before it all parties who had any claim of ownership of Limes. The judgment confirmed that Kilafwa Lonno, Nena Kuang's adopted son, was the owner of Limes, "subject to Nena Kuang's life interest".

60 Nevertheless, when Nena Kuang died, Shrew and Fred Likiaksa continued to use Limes despite the request of Kilafwa Lonno that they not do so. Although no theory has been stated with clarity, the claim of the heirs of Shrew Likiaksa apparently is grounded on some combination of the authorization given by Nena Kuang to Likiaksa in about 1926 and the continued use of the land by Shrew Likiaksa, and then his heirs, to this day.

The Commission rejected this argument and on 21 July 1985 determined that Kilafwa Lonno is the owner of Limes. For the reasons stated in this opinion, the Court affirms that decision.

### II. Legal Analysis

70 Shrew Likiaksa's heirs argue that the Land Commission did not attach enough importance to the Japanese map associating Freddy Likiaksa with Limes. The Trust Territory High Court some twenty-five years ago concluded that appearance of a person's name on the official Japanese survey map of Kosrae is by no means conclusive evidence that the person was owner of the land indicated in 1932.

80 The Court takes judicial notice that in this survey emphasis was placed primarily on determination of boundaries, that the determinations as to who should be shown as owners were made largely in the field at the time the boundary lines were checked, and that there is no assurance either that all claims to ownership were considered or that there was any detailed investigation of the exact extent of or basis of any alleged owner's interest in the land shown under his name. It appears that, in a number of instances, the person in whose name a piece of land was shown in the survey records did not know that that piece of land had been

shown in his name until the records of the Japanese survey were made generally available to the people on Kusaie during the American administration. The showing of a given piece of land under a particular person's name in this survey is, therefore, at best only some evidence as to ownership or control. When such a person's rights are disputed, the court will consider other evidence as well, and determine the ownership on the basis of all of the evidence. (*Jessee v. Ebrean*, 1 T.T.R. 77, 78-79 (Pon. 1953) (Furber, C.J.)) [Ed.: Kosrae State, now one of four states in the F.S.M., was formerly known as Kusaie, administered as part of Pohnpei.]

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Shrew Likiaksa has offered no reason to believe that Chief Justice Furber's characterization of the 1932 Japanese survey of Kosrae was inaccurate. This Court therefore accepts that characterization and concludes that the Land Commission was not required as a matter of law to accept as true the survey map's designation of Fred Likiaksa as owner of Limes in 1932.

The Commission's refusal to do so is particularly apt in light of Shrew Likiaksa's admission that Fred's name appeared on the survey simply because Shrew put it there.

100 There also appears no error in the significance given by the Land Commission to Chief Justice Furber's 1953 judgment in *Sigrah v. Kuan*. The heirs of Shrew Likiaksa trace their claim back to Nena Kuang, and admit that Shrew Likiaksa had no more than use rights in 1953. Thus, the Land Commission properly relied upon civil action 47 as establishing that no rights given the Likiaksa family in Limes could have extended beyond Nena Kuang's death in 1970.

110 The appellants' final claim is based upon the apparently undisputed fact that Shrew and Fred Likiaksa used Limes in some fashion, although not exclusively, for many years. The heirs of Shrew Likiaksa contend that this use, which even now they continue, establishes their ownership by adverse possession. Considering the snatches of testimony read and translated during oral argument, as well as the arguments made orally and in briefs, the Court concludes that there was not the kind of consistent assertion of ownership, as distinguished from a right of use, that would allow the doctrine of adverse possession to apply in this case.

### III. Conclusion

In light of these considerations, the Court concludes that the Land Commission's determination of ownership was sound and fair. It is therefore affirmed.

Reported by: D. V. W.