**ORIJON and JULET, Plaintiffs**

**v.**

**ETJON, GEORGE HIGGINS and LILIE, Defendants**

Civil Action No. 28

Trial Division of the High Court

Ponape District

April 21, 1954

Action to determine ownership of land on Mokil Atoll, in which son of deceased land owner on Mokil who did not receive any share of inheritance brought suit for share of land. The Trial Division of the High Court, Chief Justice E. P. Furber, held that where son does not promptly protest to *Nanmarki*, he is not entitled to upset family arrangements for disposition of land, and that private rights in land which were clear under Japanese Administration cannot be upset some thirty to forty years later under American Administration.

1. **Ponape Land Law—Mokil**
   Under Mokil custom, owner of land may divide it unequally among children and others, and may entrust management and division of land to another relative.

2. **Ponape Land Law—Mokil**
   Under Mokil custom, division of one's land upon death is made in accordance with instructions left by deceased.

3. **Ponape Land Law—Mokil**
   Under Mokil custom, son of land owner has no absolute right to inherit from his father.

4. **Ponape Land Law—Mokil**
Under Mokil custom, if son is left out of division of land without his consent and he promptly protests to *Nanmarki*, latter may induce heirs of land to give up part of land to son.

5. **Ponape Land Law—Mokil**
Under Mokil custom, where son appears to accept family arrangement for disposition of father's land and leads family to reasonably believe he has consented to arrangement, he is not allowed to upset arrangements thirty to forty years later.

6. **Former Administrations—Recognition of Established Rights**
Private rights in land which were clear under Japanese Administration should be equally clear under present administration unless something very specific has happened to change them since end of Japanese Administration.

7. **Former Administrations—Redress of Prior Wrongs**
It is not proper function of courts of present administration to right wrongs which may have been persisted in by former administration, and granting of relief from any hardship imposed by law then in force is matter of policy to be decided by law-making authorities.

8. **Trust Territory—Land Law**
Land law in effect in Trust Territory on December 1, 1941, remains in effect except as changed by express written enactment. (T.T.C., Sec. 24)

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FURBER, *Chief Justice*

FINDINGS OF FACT

1. Tomaj, when he left Mokil for Nauru, entrusted the management and disposition of his land on Mokil to his sister Luje. He trusted her to handle these lands in accordance with Mokil custom. It therefore makes no difference in this action whether Luje and Tomaj each inherited from their father Poaj a half-interest in the lands now in question, or whether Tomaj inherited the entire ownership of these particular pieces of land.

2. Luje largely combined Tomaj' lands with her own, and after his death arranged for their distribution without any exact regard to whether a particular piece or interest in it had been Tomaj' or hers. She included the

plaintiff Julet in this distribution by giving her other land not now in question in this action, but left the plaintiff Orijon out completely. At least one reason for this was that she had assurances that Orijon would be provided with land on Ponape by her mother's relatives. Another reason was that Orijon was making his permanent home on Ponape and was so lame that he could not effectively work the land on Mokil himself.

3. Luje made the following disposition of the lands now in question:

(a) She gave Sakwenmokil to the defendant Lilie.

(b) She transferred about one-half of Tiati to Johnny Higgins in payment for services he had rendered.

(c) She gave the defendant Etjon the rest of Tiati and all of the remaining land in question, with the possible exception of Rillehes.

(d) She gave Rillehes either to Etjon or, with his approval, to Etjon's daughter Aluina. No request has been made in this action for any determination of rights as between Etjon and Aluina, and none is made.

4. Orijon was on Mokil at the time of Luje's death, which the parties agreed was around 1915 or 1916, and knew at that time about the disposition she had made, at least so far as the management of the land was concerned, and appeared to consent to it. Those to whom Luje gave the lands have planted and worked them extensively, as Orijon knew.

5. Orijon raised no question whatever about the disposition made by Luje for over twenty years after her death, or until about thirty years after Tomaj' death, and failed to bring any action in Court or make any formal demand for any governmental action in the matter until he brought this action approximately 40 years after the death of Tomaj, from whom he claims he and his sister inherited the part of the land in question in which he claims an

interest. Julian, the adopted sister of Tomaj and Luje, who would presumably have been an important witness as to the family arrangements, if question had been raised promptly, has now died.

6. At least since 1915 or 1916, some one of the defendants, or those under whom they claim, was in peaceful and unopposed possession, under claim of ownership, of each part of the land claimed in this action, and was generally recognized as the owner.

CONCLUSIONS OF LAW

[1–5] 1. Under Mokil customary law, an owner of land may divide it unequally among his children and others, and may entrust the management and division of the land to another relative. The land law of Mokil is very different from that in force on Ponape Island. On Mokil, the division of a person's land upon his death in accordance with instructions left by him, is the usual and accepted practice. The plaintiff Julet received some land in the division involved, and has, under the customary Mokil law, no ground for objection to it. The plaintiff Orijon received nothing under the division, but a son has no absolute right to inherit from his father any particular portion of his father's land. It is generally expected that a son will receive some of his father's land, and if he is left out of the division entirely without his consent and protests promptly to the *Nanmarki* (that is, the traditional chief of Mokil Atoll), the *Nanmarki* may, if he thinks justice requires, put pressure on those to whom the land has been left under the father's instructions, to induce them to give up a part of the land to the son. It is not necessary to decide in this action, however, whether any such readjustment can be forced as a matter of right, or depends upon the consent of the person or persons to whom the land was left under the father's instructions.

In this instance no prompt protest was made. When a son appears to accept the family arrangements made for disposition of his father's lands, and leads the family to reasonably believe he has consented to the arrangements, and stands by while they plant and work the lands and while one who would be an important witness as to the details of the family arrangements dies, it is unfair that he should be allowed to upset these arrangements some thirty to forty years later. The court, therefore, in this situation, will not upset the disposition—in this instance made by Luje.

[6–8] 2. Furthermore, in this action, an attempt is being made to upset a situation which continued during most, if not all, of the period of the Japanese Administration of Mokil. The inference is strong that neither plaintiff felt there was anything he or she could legally do to upset the disposition in question during the period of the Japanese Administration, and that they are trying to appeal to some more favorable principle of law of the present administration. Any such claim has no merit. Private rights in land which were clear under the Japanese Administration should be equally clear under the present administration, unless something very specific has happened to change them since the end of the Japanese Administration. As explained in the conclusions of law in the case of *Wasisang v. Trust Territory of the Pacific Islands*, 1 T.T.R. 14, the general rule is that it is not a proper function of the courts of the present administration to right wrongs which may have been persisted in by the former administration, and the granting of relief from any supposed hardships imposed by the law in force under the administration is matter of policy to be decided by the law-making authorities and not by the courts. Section 24 of the Trust Territory Code provides as follows:

"Sec. 24. Land Law not affected. The law concerning ownership, use, inheritance, and transfer of land in effect in any part of the Trust Territory on December 1, 1941, shall remain in full force and effect except insofar as it has been or may hereafter be changed by express written enactment made under the authority of the Trust Territory of the Pacific Islands."

JUDGMENT

1. As between the parties and those claiming under them, the land in question in this action is owned as follows:—

(a) About one-half of the land known as Tiati, located on Monton Island in the Mokil Atoll, belongs to the defendant George Higgins, and the rest of it to the defendant Etjon.

(b) The land known as Sapwenmokil, located on the main island of Mokil, belongs to the defendant Lilie.

(c) The land known as Tomwas, and the land known as Mosinwio, both located on the main island of Mokil, belong to the defendant Etjon.

(d) The land known as Rillehes, located on Urek Island in Mokil Atoll, belongs either to the defendant Etjon or his daughter Aluina. No determination, as between their rights, has been requested in this action, and none is made.

(e) Neither of the plaintiffs has any right of ownership in any of the lands named in this judgment.

2. This judgment shall not affect any rights of way there may be over the lands in question.

3. No costs are assessed against any party.