

KINARA, Plaintiff

v.

TIPA, Defendant

Civil Action No. 103

Trial Division of the High Court

Truk District

January 22, 1959

Action for determination of title in land held by lineage on Uman Island. The Trial Division of the High Court, Associate Justice Philip R. Toomin, held that plaintiff had no rights in land, as she failed to establish that transfer to her had been approved by all adult members of lineage or generally acquiesced in by them.

1. Truk Land Law—Lineage Ownership—Division

Where party claims that land held by lineage under Truk custom was divided, party must establish division by greater weight of evidence and show that division was consented to by members of lineage.

2. Truk Land Law—Lineage Ownership—Transfers

Under Truk custom, where it is clear that land is owned by lineage, transfer to child of member is not to be presumed but must be established by clear and convincing evidence.

3. Truk Land Law—Lineage Ownership—Transfers

Under Truk custom, transfer to child of member of lineage of lineage land must be consented to by all members or generally acquiesced in by them.

TOOMIN, Associate Justice

I. FINDINGS OF FACT

1. The land Namuanger, located in Peken Village on Uman Island, Truk District, was conquered in warfare between clans during Spanish times by members of the Mew Lineage. The lineage at that time included the brothers Anuk, Awen, Nechemon, Aweicho, and Nowa, their sister Inefito, and their respective descendants.

2. Awen was killed during the clan war and was buried on Nemuanger. The land was absorbed into the land owner-

ship of the lineage, under an agreement between the remaining four brothers that it would never be divided but would always remain lineage land, because of the method by which it was acquired and its use as a burial ground for Awen.

3. The four brothers and Inefito were the first generation of Mew Lineage with respect to the ownership of Nemuanger. The brothers agreed Inefito should hold title and control Nemuanger for the benefit of their respective descendants.

4. The children of Inefito were Nesipan (f), Mongungu (m), and Kinan (f), constituting the second generation. Mongungu, as the oldest male, took over control of Nemuanger as well as other lands of the lineage, and from time to time gave his sisters certain of the lineage lands, but not Nemuanger.

5. Inefito's children had children, who constituted the third generation of the lineage with respect to Nemuanger, as follows:

(a) Nesipan had Pon (f), Nunu (f), Efonn (f), and Ninon (f).

(b) Mongungu had Nipuachen (m), Nimuein (m), and Fonna (m).

(c) Kinan had Ekin (f), Sanemuvar (m), and Kinara (f), plaintiff.

The eldest male of the third generation was Sanemuvar, who became head of the lineage and took over the supervision and control of all its properties. When he left Uman for Tol, the next eldest male assumed control.

6. After Sanemuvar's death in Japanese times, the leadership of the lineage passed to members of the fourth generation. They were successively, Anipich, Eseng, the son of plaintiff, and Tipa, the defendant, who is a son of Pon, the first daughter of Nesipan. Tipa is the present head of Mew Lineage.

7. Production of crops on Nemuanger has been under the supervision and control of the lineage head, from German times until today. Plaintiff, who now lives on Tol, receives a share of production when she comes to Uman. The balance is received by defendant.

8. Plaintiff lived on the land during the lifetime of her mother, who was buried there. After World War II, plaintiff gave up residence on Uman and moved to Tol. Other members of the lineage likewise lived on Nemuanger from time to time.

9. Kinan, the mother of plaintiff, gave plaintiff such rights as she possessed in the subject property, which was only the right to share in the production with other members of the lineage.

10. The lineage was the owner of the taro patch Nefit which it sold in 1951. It was under no obligation to pay any portion of the sale price to any lineage member such as plaintiff.

II. CONCLUSIONS OF LAW

It is clear from the record that the lands in question were owned long prior to German times by the Mew Lineage. All the parties are members of this lineage and are closely related, plaintiff's mother having been a sister of defendant's grandmother.

It was plaintiff's claim that the lands had been divided up during her mother's time, and that her mother received the subject property as her share. Defendant showed, however, that for reasons of pride and sentiment, it had been decided four generations back never to divide this particular land. He also showed it had been under the control of the lineage head for the same period of time. Plaintiff conceded she had received no share in the production since 1943 when she moved away from Uman Island.

[1-3] The court therefore concludes that plaintiff has failed to establish the division she claims by the greater weight of the evidence, nor has she shown that such division, if indeed it ever occurred, was consented to by the members of the lineage. Where it is clear that the land is owned by a lineage, a transfer to the child of a member is not to be presumed, but must be established by clear and convincing evidence. Moreover, such a transfer must be consented to by all the adult members of a lineage, or must be generally acquiesced in by them. Good-enough: Property, Kin, and Community on Truk, p. 36. Fischer: Native Land Tenure in the Truk District, Sec. 5. *Nusia v. Sak*, 1 T.T.R. 446.

III. JUDGMENT

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

1. As between the parties hereto and all persons claiming through them,

(a) The land Nemuanger, located in Peken Village, Uman Island, Truk District, and the use-rights therein, are owned by the Mew Lineage, represented in this proceeding by defendant.

(b) Plaintiff has no right, title, or interest in said land, save the right to go on said land and take a share of its production in accordance with permission granted from time to time by the lineage.

2. This judgment shall not affect any rights of way over, across, or upon the said land.

3. No costs are assessed in favor of or against any party.