KIO and PUNG, Plaintiffs
v.
PUESI and ESINGEK, Defendants

Civil Action No. 587

Trial Division of the High Court

Truk District

June 9, 1972

Action to quiet title to and restrain further trespass upon land in Fason Village, Tol Island, Truk District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that regardless of whether lineage owned land or had owned it during the forty or more years during which plaintiffs and their father lived on and worked the land, defendants' claims of lineage ownership were barred where they had not at least obtained some clear and definite acknowledgment of their ownership by words or acts of the users at intervals of less than twenty years.

1. **Truk Land Law—Lineage Ownership—Gifts**

   A gift of land by a lineage to its *afokur* is recognized, and unless there are reversionary strings attached to the transfer, the land will

not go back to the lineage unless both the male and the female lines of descendants from the *afokur* have died out.

2. Equity—Laches

Under the rule of "stale demand", attempt to take control of land in possession of sons whose father had recently died after living on and working the land for forty years, with the sons also doing so the last part of such period, on the ground that the land had been sold to claimant prior to such forty-year period, would be too late to be effective.

3. Truk Land Law—Lineage Ownership—Proof of

Test of whether there was lineage distribution in the distant past depends upon the present treatment of the land in question and of other parcels of what was once lineage land.

4. Truk Land Law—Lineage Ownership—Evidence For or Against

That land has been sold and resold was evidence that, prior to that, there had been a lineage distribution of the land in the distant past.

5. Truk Land Law—Lineage Ownership—Evidence For or Against

Claim that land had been the subject of a lineage distribution in the distant past could not be sufficiently attacked by assertion that those occupying the land, and their father, who had previously occupied the land, occupied and used the land "in behalf of the lineage".

6. Truk Land Law—Adverse Possession

Regardless of whether lineage owned land involved in action to quiet title and restrain further trespass, or had owned it during the forty or more years during which plaintiffs and the father of plaintiffs lived on and worked the land, defendants' claims of lineage ownership were barred where they had not at least obtained some clear and definite acknowledgment of their ownership by words or acts of the users at intervals of less than twenty years.

Assessor:	F. SOUKICHI, *Presiding Judge of the Truk District Court*
Interpreter:	ROKURO BERDON
Reporter:	NANCY K. HATTORI
Counsel for Plaintiffs:	YOSCHUNE
Counsel for Defendants:	KINDIN

TURNER, *Associate Justice*

This case concerned ownership of a portion of the land

Nepokur, located in Fason Village, Tol Island, Truk District. Plaintiffs claimed individual ownership by inheritance through their father, Emok, who acquired from his father, Punusen, who received part of Nepokur and other lands from a division of lineage lands in German times. The defendants insist the lineage had not distributed any of its lands including Nepokur and the disputed parcel was lineage land in which plaintiffs had no rights because their father, Emok, was an *afokur* of the lineage who only had use rights in the land. Under the custom, an *afokur* usually has a lifetime interest in lineage land and may not transfer that, or any other interest, to others, including his own children. This custom has been recognized by this Court in many decisions. *Pinar v. Kantenia*, 3 T.T.R. 158; *Nusia v. Sak*, 1 T.T.R. 446; *Lus v. Totou*, 1 T.T.R. 552.

Whether this provision of Trukese customary law urged by defendants is applicable to the land in question depends upon the facts established by the evidence. If Punusen acquired this land as a result of lineage agreement and distribution to its members, then transfer of the parcel to his son, Emok, did not require lineage consent and Emok, by inheritance from his father, could transfer to his children without lineage consent.

Even if there had been no lineage distribution, Punusen could have given more than just use rights to Emok if there was lineage acquiescence. The defendants claimed to have consented to transfer of other lineage lands to Emok and his children but deny there was consent to the parcel in question.

[1] A gift of land by a lineage to its *afokur* (child of a male member of the lineage) is recognized and unless there are "reversionary strings" attached to the transfer, the land will not go back to the lineage unless both the

female and male lines of descendants from the *afokur* have died out. *Paulis v. Meipel*, 2 T.T.R. 245, 249.

This Court also has said that transfer of lineage land "to the issue of male members of the lineage is not to be presumed without a showing of positive agreement by the lineage as a whole, or clear acquiescence in a definite transfer." *Nusia v. Sak*, supra.

Plaintiffs' problem, in view of the foregoing requirements of legal proof, is how can a showing of "positive agreement" be made when the transaction relied upon took place a half century or more ago, when there are no written records and from all that appeared at the trial, no one now living was alive and present when the lineage made a distribution, if any was made.

This is not the first time this Court and parties disputing land ownership have been confronted with the same problem. In *Oneitam v. Suain*, 4 T.T.R. 62 at 66 it is said:

> "Delving into the past of a culture with unrecorded history requires reliance upon legend and lore handed down from one generation to another and interpreted in accordance with the predilections of the interested parties. Such hearsay has probative value only as to the broad outlines over which there is very little dispute."

The dispute in this case turns on whether the grandfather of plaintiffs owned the land in question as a result of lineage distribution or whether his son, Emok, as lineage *afokur*, held mere use rights. The defendants, claiming the parcel in question as lineage land in which the rights of Emok, the *afokur*, terminated at his death in 1970, put forth an almost "stylized" defense to plaintiffs' claim. It represents the traditional conflict between claimants in behalf of a lineage as against claimants of individual ownership.

The defense theory of lineage grant of use rights to an *afokur* had very little relationship to the actual facts

relating to the history of the land in question. The "stereotyped" testimony reciting recognized Trukese customary land law given by defense witnesses had no regard to the actual events of the last half century with relationship to the land in question.

The evidence clearly shows there were at least three subdivisions of the parcel known as Nepokur. The lineage began with Kuwie according to the evidence. One of her children was Inop, whose children included Punnuin. His son was Esefang. He occupies one subdivision of Nepokur. There is no dispute as to this parcel and it is therefore unnecessary to decide whether Esefang is an *afokur* with use rights from the lineage or is an individual owner.

The second subdivision was occupied and controlled, if not actually owned, by Kanaka, who was the son of Neidom, who was the daughter of Nieireng who was the younger sister of Inop and daughter of Kuwie. This division was purchased from Kanaka by Max Mori in 1933. The purchase was at the request of Emok to give to his wife, Fitiam. Emok and Fitiam worked for Mori.

[2] It is possible the same parcel was sold by Kanaka to Taro Mori, brother of Max Mori, shortly before or after 1930. According to the testimony of Taro Mori, the parcel was the individual land of Kanaka. In any event, Emok and his child, the plaintiff Kio, lived on and worked the parcel from not later than 1933. This was done under claim of right by acquisition from Max Mori. Taro did not attempt to assert any control over the parcel until after Emok's death in 1970 when he instructed the defendant Puesi to "take care" of the land. This attempt to control the parcel after some forty years of use and occupancy by plaintiffs and their father comes too late to be effective under the rule of "stale demand." *Naoro v. Inekis*, 2 T.T.R. 232, 237; *Kanser v. Pitor*, 2 T.T.R. 481; *Rochunap v. Yosochune*, 2 T.T.R. 16.

Except for the claim of Taro Mori, who was not a party to this action, this parcel was not specifically disputed by defendants. The parcel in dispute is the third subdivision which has been used and occupied by the plaintiffs, their father and his father since early Japanese times and perhaps longer—in any event prior to 1933.

This parcel was sold by plaintiffs to Marino in 1971. It was shortly thereafter that defendants attempted to oust plaintiffs from the portion sold and the portion Emok acquired from Max Mori that resulted in this action by plaintiffs to quiet title and to restrain defendants from further trespass.

[3, 4] The test as to whether or not there was lineage distribution in the distant past is met by the present treatment of the land in question and other parcels of what once was lineage land. Kanaka's two sales of one of the parcels in question indicates this. Other sales by plaintiffs corroborate the fact of distribution.

It is an insufficient defense for the defendants to say all sales were with lineage approval or acquiescence. The evidence of this was entirely too uncertain to be persuasive.

[5] More significantly, it was an entirely inadequate defense for the defendants to assert the plaintiffs plus Emok had occupied and used the land " in behalf of the lineage."

[6] This Court held a similar defense was insufficient in *Nukas v. Marsian*, 5 T.T.R. 400, 407, and that ruling is followed again here. The plaintiff Kio received the land from Emok in 1946 and has lived on it and used it since then. Defendants took no action until after 1970. This Court said in *Nakas v. Upuili*, 2 T.T.R. 509 at 511:

". . . if a person who believes he owns certain land stands by for many years and raises no objection to someone else using it

on the theory that such other person is using it for the person who believes he owns it, the person claiming the ownership should at least obtain some clear and definite acknowledgment of his ownership by words or acts of the user at intervals of less than twenty (20) years."

This, the defendants failed to do. Their claims of lineage ownership are now barred regardless of whether or not the lineage now owns or has owned the parcels in question during the last forty or more years.

Accordingly, it is

Ordered, Adjudged and Decreed:

1. That plaintiffs and those claiming through them hold all right, title and interest in the parcels of the land Nepokur, located in Fason Village, Tol Island, Truk District, which were the subject of this action.

2. That the plaintiffs and those claiming through them have no right, title and interest in the subdivision in the land Nepokur occupied by Esefang and claimed by defendants as lineage land.

3. That the defendants, their agents and representatives, shall be enjoined from interfering with the use and occupancy of the parcel in Nepokur now used and occupied by plaintiffs and the parcel plaintiffs sold to Marino.

4. That this Judgment shall not affect any rights-of-way on said lands.

5. That plaintiffs are awarded such costs as they may claim in accordance with law.