

**KILARA, ANA, JOHANNES,
ANTON, ROPINA and NOA, Plaintiffs**

v.

TOMUAS ALEXANDER, Defendant

Civil Action No. 1

District Court for Ponape District

January 31, 1951

Action to quiet title to land in Uh Municipality. The District Court for Ponape District, Judge E. P. Furber, held that defendant was owner of land in accordance with German land law which is still in effect except where specifically changed by subsequent administrations.

1. Ponape Land Law—German Land Title

Land law in Ponape was changed drastically by German Government in 1912 by issuing land titles with numerous provisions which changed customary law.

2. Ponape Land Law—German Land Title

German land law introduced to Ponape Island system of extended family ownership with title placed in one man who had imposed upon him obligation to allow his male relatives without land and his unmarried female relatives to make their livelihood on land.

3. Ponape Land Law—German Land Title—Approval of Transfer

Under German land law on Ponape Island inheritance was subject to fixed rules and gifts or sales of land were not allowed without consent of Governor and *Nanmarki*.

4. Ponape Land Law—German Land Title—Easements

Where land on Ponape Island held under German land title is traversed by roads not mentioned in title document, said roads are rights of way across property.

5. Ponape Land Law—German Land Title

Land law on Ponape Island as stated in German title document is still in effect outside of any changes that may have been made by German authorities during their regime, or American authorities since American occupation. (T.T.C., Sec. 24)

FURBER, *District Judge*

FINDINGS OF FACT

1. The plaintiff, Kilara, was not adopted by Alexander.
2. The defendant, Tomuas, was adopted by Alexander and was, at the time of the latter's death about 1940, his eldest son.
3. The defendant, Tomuas, gave the plaintiffs no rights in the land in question outside of revocable permission to use the North-easterly part of the land consisting of about 2 Chobu which he had marked off by division markers placed on the land about 1941. This permission was revoked when he ordered them off the land in 1950.
4. Alexander gave no valid directions that anyone other than the defendant, Tomuas, should own the land after his death. No finding is made as to the execution or effect of the document referred to at times as "a written will of Alexander". This document was apparently treated by all concerned up to the time of the American Administration as of very little consequence and intended primarily as a confirmation of Tomuas' adoption by Alexander.
5. The land in question in this action was inherited by the defendant, Tomuas, upon the death of Alexander about 1940.

CONCLUSIONS OF LAW

[1-3] 1. The basic law concerning private ownership of land in Ponape was drastically changed by the German Government in 1912 and was set forth in a series of provisions printed in both German and Ponapean upon the standard form of deed or title document issued to land owners by the German Government at that time. This system of land law was basically different both from previous indigenous land concepts on Ponape and from the usual concepts of private land ownership existing in the United

States and in many parts of the western world. It contains some aspects of both. It is what might be referred to as a system of extended family ownership. The title was placed in the name of one man, who in turn, had imposed upon him the obligation to allow his male relatives who had no land of their own and also his female relatives who were unmarried, to live with him upon the land and work the land under his supervision. It appears clear that the title holder was required to allow these relatives to at least make their livelihood on the property, beyond that, much appears to be left to his own conscience. A fixed rule of inheritance was provided and no sale or gift of the land was allowed unless permission was granted by the Governor and the *Nanmarki*.

[4] 2. In the laying out of the land to which these title documents were given, no express provision appears to have been made for public highways. Many of the lots are traversed by roads which it is considered constitute rights of way across the property even though these are not mentioned in the title document.

[5] 3. The land law, as far as private ownership is concerned, as stated in the standard form of German title document issued in Ponape is still in effect outside of any changes that may have been made by the German Authorities during their regime, the Japanese Authorities during their regime, or the American Authorities since the American occupation. No changes appear to have been made by any of these authorities which bear upon this case. The court recognizes that in a proper case a title holder or heir might, by his agreements or conduct, prevent himself from objecting to the use of the whole or a part of his land by another. In some cases this might amount in effect to a conveyance of a beneficial interest in the land involved. In view of the findings of fact made above in this action, however, that question does not arise here.

JUDGMENT

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

1. As between the parties and all other persons claiming under them, the land known as Nanpok No. 171 in the Depek Section of the Municipality of U, consisting of about 4.9 Chobu, is the property of the defendant, Tomuas Alexander (sometimes known as Tomuas Senda), a resident of the Depek Section of U, with the benefit of and subject to all the rights and obligations imposed by the system of private land ownership set forth in the standard form of title document issued by the German Government on Ponape in 1912, as heretofore or hereafter modified by law.

2. Neither the plaintiffs nor any of them have any right, title, or interest in said land outside of the right as relatives of the defendant, Tomuas, to live with him upon the land under the conditions set forth in said title document. The defendant, Tomuas, is, however, ordered to allow the plaintiffs reasonable opportunity to remove any of their personal property from the land.

3. This judgment shall not affect any rights-of-way which may exist over the land.

4. No costs are allowed or taxed in this action.