

**MIKELINA, Plaintiff**

v.

**SIMON, Defendant**

**Civil Action No. 19**

**Trial Division of the High Court**

**Ponape District**

**June 29, 1954**

Action to determine ownership of land in Sokaes Municipality, in which plaintiff claims right to Japanese leased land issued to absent lessee. The Trial Division of the High Court, Chief Justice E. P. Furber, held that lease could not be transferred without permission of Trust Territory Government as successor to Japanese Administration as lessor, and that until such permission was granted, defendant, as lawful possessor, could continue in possession.

**1. Ponape Land Law—Japanese Supervised Lease—Generally**

Where Japanese lease of land on Ponape Island reserved great powers of supervision in government, it cut off rights of any former possessor of land.

**2. Ponape Land Law—Japanese Supervised Lease—Succession**

Japanese supervised lease of land on Ponape Island could not be inherited as of right, and on death of holder permission of Director of South Seas Bureau was necessary for transfer.

**3. Ponape Land Law—Japanese Supervised Lease—Generally**

Government of Trust Territory has succeeded to rights of Japanese Administration under supervised leases of land on Ponape Island issued by former administration.

**4. Ponape Land Law—Japanese Supervised Lease—Succession**

Where neither party claiming right to succeed as lessee under Japanese land lease on Ponape Island has applied to government for transfer of lease, neither has right to balance of leasehold, and question of disposition of land rests in discretion of government, which may consider questions of policy and moral rights not proper for court to pass upon.

**5. Ponape Land Law—Japanese Supervised Lease—Succession**

Until such time as some person acquires permission from Land Office for transfer of Japanese lease of land on Ponape Island, person who originally gained possession may continue in possession.

FURBER, *Chief Justice*

## FINDINGS OF FACT

1. Penno had cleared the land in question and had been working it for some twenty years before he left Ponape for the Palau Islands on August 16, 1939. During the latter part of this time he was assisted in working the land by his adopted son Alponso.

2. When Penno left Ponape for the Palau Islands (from which he has not returned), he turned possession of the land in question over to his adopted son Alponso without any agreement with the Japanese Government about the transfer of his rights in the land, and without any agreement with Alponso as to how he was to hold or use the land, but trusting Alponso as the natural one to succeed Penno to show reasonable consideration for their relatives, including Penno's adopted daughter Mikelina.

3. Both Penno and Alponso had told the plaintiff Mikelina informally that she could take produce from the land, but in the latter years of Alponso's life Mikelina had not shown much interest in him.

4. Alponso, during his last sickness, told Simon to take the land if Alponso died.

## CONCLUSIONS OF LAW

1. This action involves the question of inheritance of rights in land on Ponape Island under a lease from the Japanese Government in the form, a translation of which will be found on page 3 of one of the annexes to "Anthropologist's Report CAU Ponape, E. Caroline Is., 5 June 1951" by Mr. J. L. Fischer. The annex containing this translation is headed "CAU Ponape, 14 May 1951. Translation: Japanese Land Lease, Ponape. Translator: J. L. Fischer." The form in question is one beginning "Via Ponape Branch Office, Order No. 1902." Both parties

agreed at the pre-trial conference that the lease presented by the defendant Simon was the one covering the land. This lease ran from the Japanese Government to Alponso, was dated 19 November 1941, stamped by the Ponape Office 19 December 1941, and covered the period from 30 July 1941 (the date it says request for the land was submitted) to 31 March 1961, at a yearly rental of 3 yen 33 sen (subject to revision in accordance with the form of the lease referred to above). It was agreed that Alponso died in September 1944 without ever having had any children, either real or adopted, that the defendant Simon is Alponso's true brother, and that Penno wrote Simon about February 1951 that he wanted Mikelina to have the land.

2. The court takes notice that about 1941 the Japanese administration at Ponape engaged in a general program of replacing the various forms of permission or lease previously granted to Ponapeans to use government land, with leases of the form in question in this action, in cases where land had been satisfactorily developed, and that it was made clear to the Ponapean public that one of the objects of the Government in making leases to individuals was to secure constructive development and use of the land. In a number of instances where the land had not been satisfactorily developed, previous permissions were revoked or not renewed. In connection with this replacement program the Government required that the person in whose name the lease was to be issued should be present on the land when it was surveyed by the Government for the lease. It was agreed that Alponso was the one present when this land was so surveyed, and that he took care of the land from the time Penno left Ponape until Alponso died. The provisions of the lease, of which the following are translations, are considered particularly material to this action ;

"Article II. The leased property will be used for the cultivation of coconuts, breadfruit, bananas, and root crops.

Article X. The following acts may not be performed without the permission of the Director of the South Seas Bureau:

1. Using it for other purposes than are recorded in Article II.
2. Subleasing the leased property, or transferring the rights to it or using it as security.

Article XII. In the following circumstances permission for the lease may be revoked at any time or the provisions may be altered.

1. In the event the necessity arises for public use, official use, or use for the general welfare.
2. In the event that work is permanently abandoned or temporarily abandoned for more than a year or it is recognized that there are no prospects of success of the work.
3. In the event that the regulations in this order are violated or the performance of the obligations prescribed in this order is neglected.

The Head of the South Seas Bureau is not responsible for compensation for any damages to the lessee produced in the event of revocation of lease or revision of conditions in accordance with subparagraphs 2 or 3 of the foregoing paragraph."

[1-4] 3. Construing the lease in question in the light of the circumstances under which it was issued, the court holds that it involved a personal reliance upon the lessee Alponso, with broad powers of supervision reserved to the Government; that substitution of this lease for whatever form of permission had been given Penno, cut off any rights of control he may have had over the land; and that the lease could not be inherited as of right; but that on the death of the holder, permission of the Director of the South Seas Bureau, in accordance with Article X, was necessary for its transfer. The Government of the Trust Territory of the Pacific Islands has succeeded to the rights of the Japanese administration under the lease. Admittedly neither party has even applied to either the

Japanese Government or the Government of the Trust Territory for a transfer of the lease. The court therefore holds that neither party has any right to the balance of the leasehold as a matter of law, but that the question of the disposition of the land in question is one now resting in the discretion of the Government of the Trust Territory; and that in exercising that discretion the Government may consider questions of policy and moral rights which it would not be proper for this court to try to pass upon in this action.

[5] 4. Attention of the parties is directed to the fact that under Section 927 of the Trust Territory Code, as amended by Executive Order No. 40 of October 6, 1953, immediate responsibility for administration, management and control of public lands within the District is placed on the Ponape District Land Office. It is accordingly suggested that they take up with that office the question of permission for the transfer of this lease, or other arrangements for the use of this land. Unless and until some action is taken by the Government of the Trust Territory as to the disposition of the land, however, the defendant Simon, as one who originally gained possession lawfully, may, as between the parties, continue in possession.

#### JUDGMENT

It is ordered, adjudged and decreed as follows:—

1. As between the parties and all persons claiming under them, neither the plaintiff Mikelina nor the defendant Simon has any right of ownership in the land known as Pansonamwai in the Palikir Section of the Municipality of Sokaes, beyond the right of the defendant Simon to continue in possession pending action by the Government of the Trust Territory of the Pacific Islands as to the disposition of the land or the right to possession of it.

2. This judgment shall not affect any rights of way there may be over the land in question.
3. No costs are assessed against either party.