

KETARI, Appellant

v.

TARO, Appellee

Civil Action No. 418

Trial Division of the High Court

Truk District

May 26, 1967

Action by husband to recover customary damages from wife who had left plaintiff to live with another. On appeal from District Court judgment awarding damages to plaintiff, the Trial Division of the High Court, Chief Justice B. P. Furber, held that damages to soothe injured spouse after customary divorce cannot be split in separate actions, so that adjudication of rights between the spouses in former community court action settled right to damages between them, and plaintiff had no further right of action against spouse for same case litigated in that action.

Reversed.

1. Domestic Relations-Divorce--Custom

Local customary divorces are permitted under Trust Territory law. (T.T.C., Sec. 714)

2. Domestic Relations-Confirmation of Custom

No restrictions or limitations are imposed by Trust Territory law upon granting of annulments, divorces or adoptions in accordance with local custom.

3. Truk Custom-Marriage--Breach of Marital Duty

Chapen assong may become due without any divorce under Truk custom.

4. Truk Custom-Divorce--Civil Liability

If divorce under Truk custom takes place either as result of or as part of same act which gave rise to *chapen assong*, *chapen moula* cannot then properly be demanded in addition to *chapen assong*.

5. Truk Custom-Divorce-Civil Liability

If party in Truk seeks divorce through court action for one of grounds set forth in Trust Territory Code, no question of *chapen moula* should arise in connection with it.

6. Domestic Relations--Divorce

Court divorce is only authorized on proof of one of grounds listed in Code which are recognized by law to constitute good reason, (T.T.C., Sec. 698)

7. Truk Custom-Divorce-Civil Liability

Action brought in Community Court between Trukese spouses for customary damages settles right to damages between them, so that after Community Court judgment becomes final, no further right exists against spouse for same cause litigated in that action.

8. Courts-Pal'ties

Under Truk custom, individual and his lineage are so closely identified as to cause uncertainty as to who are necessary or proper parties to civil actions.

9. Courts--Parties

In accordance with Truk custom, anyone can speak for Trukese lineage in Community, District or High Court who shows normal right to do so, unless some issue is raised about it at the time.

10. Truk Custom-Marriage-Breach of Marital Duty

Action for damages under Truk custom for breach of marital duty can be brought either by injured spouse or by anyone who has traditional authority to speak for his or her lineage.

11. Truk Custom-Marriage-Breach of Marital Duty

Right to damages under Truk custom for breach of marital duty cannot be split, and once adjudication has been made between offending party and injured spouse or his or her lineage, this ends right of both injured spouse and lineage to further damages for incident covered by adjudication.

12. Courts--Parties

Right of lineage to represent individual member is implicit under Truk custom and should be given effect in interests of stability of social relations and avoiding of multiplicity of action.

<i>Assessor:</i>	JUDGE F. SOUKICHI
<i>Interpreter:</i>	SABASTIAN FRANK
<i>Counsel for Appellant:</i>	TIMAS
<i>Counsel for Appellee:</i>	FILORIAN

FURBER, *Chief Justice*

The record was supplemented by the following agreements made in open court: -

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- a. Iulia's spouse was Epi.
- b. Ketari took Epi away from Iulia.
- c. Ketari had been the spouse of Taro.
- d. Nesin is the true mother of Taro.
- e. Taro and Nesin brought the action now appealed from.
- f. Ketari and Nesin testified at the hearing in the District Court.

This appeal arises from a Community Court action in which the records appear to have been lost, which was brought by Taro and his mother Nesin against Ketari to recover what is called in Trukese "*chapen assong*", that is, damages to comfort and soothe the feelings of one injured by breach of martial duties. It would appear that they may also have been seeking to recover "*chapen moula*", that is, damages for divorcing a spouse under Trukese custom by throwing him or her away without good reason. The Community Court decision was appealed by Ketari to the District Court.

Although both counsel agree that the Community Court action here appealed from was brought by both Taro and Nesin, Taro alone is named as a party on his side in the District Court record, and the judgment of the District Court was that there be no "*chapen moula*"-that is, damages for divorcing under the local custom-but that Ketari should pay "*chapen assong*"-that is, damage to comfort and soothe the feelings-"since the law does not permit divorce", and further ordered that Ketari pay to Taro a total of fifty dollars (\$50.00), including two bread-fruit trees allegedly already paid. It is from that decision that the present appeal is taken.

Counsel for the appellant Ketari argued that she should not have to pay any damages in this action because the act complained of, happened more than a half-a-year after the separation between her and her one-time spouse

Taro, and they had become divorced under Trukese custom so that at the time of the act complained of, namely, the taking of Epi from Iulia, she, Ketari, had no SPOuse at all. He further argued that this matter had been tried and determined by the Community Court of Satawan prior to the Community Court case here appealed from, which was heard by the Community Court Judge of Ta, and that there was no reason why the matter should be re-opened.

Counsel for the appellee Taro argued that Ketari had separated from Taro and gone to live with Epi at a time when Taro and Ketari were staying at Ketari's village, that Ketari, after going to live with Epi, had a child by him, and should therefore pay damages to Taro and his mother as well as to Iulia.

OPINION

From the report of the District Court Judge, and the records filed with the Clerk of Courts for the Truk District, it appears that the difficulties caused by Ketari having taken Epi away from Iulia resulted in three separate Community Court actions:-

One by Iulia against Ketari under her full name "Ketarina", which is Community Court of Satawan Civil Action No.11-61, in which Ketari was required to pay damages to Iulia;

One by Taro against Ketari, again under her full name "Ketarina", which is Community Court of Satawan Civil Action No. 10-61, in which it was determined that Ketari need not pay Taro any damages beyond the voluntary payment she had already made, from which decision no appeal was taken; and

The action now appealed from stimulated by Taro's mother Negin, the records of which have not been located.

According to the report of the District Court Judge, decision in the third case was that Ketari should not pay

damages, but if that is correct, it is difficult to understand why she appealed unless it was to try to obtain damages on a counter-claim against Taro on the ground that he was the one who had asked for a divorce. According to her notice of appeal, the judgment was that she would "put the damage". In the hearing on the appeal in the Trial Division of the High Court, the appellant did not stress any counter-claim for damages against Taro although still alleging that if any "*chapen moula*" is due, it is from Taro because he was the one asking for divorce.

[1, 2] The statement in the District Court judgment that "the law does not permit divorce" is distinctly in error. Presumably this referred to divorces under local custom since Trust Territory Code, Sections 698 to 705 inclusive, make express and clear provision for divorces through court action. Section 714 of the Trust Territory Code, however, reads as follows:-

"Local custom recognized. Nothing contained in this Chapter, except in the provisions of Section 715, shall apply to any annulment, divorce, or adoption effected in accordance with local custom, nor shall any restrictions or limitations be imposed upon the granting of annulments, divorces, or adoptions in accordance with local custom."

This court has had repeatedly to deal with and has recognized as valid divorces under Trukese custom. In order to clarify the matter, the Chief Justice and the then Associate Justice issued a mimeographed memorandum to the District and Community Court Judges in the Truk District on "Divorces under Local Custom in the Truk District", dated December 20, 1954, to which reference is made, copy of which and a translation in Trukese are available in the Truk District law library. *Miko v. Keit*, 2T.T.R. 582.

[3-6] This discussion about whether "*chapen moula*" or "*chapen assong*" damages should be paid in this in-

stance, however, appears to the court to be beside the point. While it is recognized that "*chapen assong*" may become due without any divorce under Trukese custom, if a divorce under the custom, i.e., a throwing away of one spouse by the other, does take place either as a result of or as a part of the same act which gave rise to the "*chapen assong*", the court is firmly of the opinion "*chapen moula*" cannot then properly be demanded in addition to the "*chapen assong*". If Taro was seeking a divorce through court action for one of the grounds set forth in Trust Territory Code, Section 698, no question of "*chapen moula*" should arise in connection with it since divorce on that basis is only authorized on proof of one of the grounds listed in Section 698, which are recognized by the law to constitute good reason.

[7] The principal new question raised by the situation presented by the appeal is whether the right to damages due under Trukese custom either to soothe the feelings or for a divorce under the custom without good cause, generally considered to belong to the injured spouse and his or her lineage, can be so split that after adjudication of rights between the spouses, someone on behalf of the injured spouse's lineage can bring, either separately or jointly with the injured spouse, a new action for damages. According to all American precedents, the judgment in the Community Court of Satawan in its Civil Action No. 10-61 between Taro and Ketarina settled the right to damages between them, and after that judgment became final on the expiration of time for appeal without any appeal being taken, Taro had no further right of action against Ketarina for the same cause litigated in that action. In other words, as between them, the matter had been finally adjudicated. 30A Am. Jur., Judgments, §§ 324-326.

[8-12] The common Trukese custom of closely identifying an individual with his lineage causes uncertainty as to who are necessary or proper parties to civil actions in a number of situations. Many Trukese speak as if they personally had done things actually performed by their lineage mates-sometimes before the person speaking was born. When questioned about this, they will often say, "It is the same thing". It is also clear that an individual and his or her lineage are expected to present a united front to outsiders and that they normally do this when relations within the lineage are good. This court, as well as the District and Community Courts, has therefore adopted a practice of permitting anyone to speak for a lineage who shows normal right to do so unless some issue is raised about it at the time. Thus, it has been common practice in the Community Courts of the Truk District to permit actions for damages for breach of marital duty to be brought either by the injured spouse or by anyone who has traditional authority to speak for his or her lineage. After careful consideration of the matter and discussion with the Assessor, the court is of the opinion that such right to damages cannot be split and that once adjudication has been made between the offending party and the injured spouse or his or her lineage, on the application of anyone whom the court reasonably admits to present the claim in the absence of any issue being raised at the time as to his authority to do so, this ends the right of both the injured spouse and the lineage to any further damages for the incident covered by the adjudication. It is believed that a similar rule must apply in the case of settlement between the offending party and anyone traditionally authorized to speak for the injured spouse or his or her lineage. Such rights of representation are believed to be implicit under Trukese custom and

should be given effect in the interests of stability of social relations and avoiding of multiplicity of actions.

The court therefore holds that the decision of the Community Court of Satawan in its Civil Action No. 10-61, *Taro v. Ketarina*, bars the action now under appeal and any right to damages by Nesin and her lineage, either jointly with Taro or separately from him, for the same acts complained of in Community Court of Satawan Civil Action No. 10-61.

JUDGMENT

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

1. The judgment of the Truk District Court sitting in the Mortlock Islands in its Civil Action No. M-166 is set aside.
2. The appellee Taro and his mother Nesin, both of whom live on Satawan Island, Truk District, shall recover nothing from the appellant Ketari, otherwise known as Ketarina, who also lives on Satawan Island, beyond the payment she voluntarily made before the bringing of the action involved in this appeal.