



IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

FRANCELLA KIMBERLY OLOPAI
IGINOEF,

Plaintiff,

v.

IMMACULADA CONZAGA MELITA
FITIAL OLOPAI and JEFFREY
BENIGNO FITIAL OLOPAI,

Defendants.

GREGORIA FITIAL-OMAR,

Intervenor-Plaintiff,

v.

FRANCELLA KIMBERLY OLOPAI
IGINOEF and IMMACULADA
CONZAGA MELITA FITIAL OLOPAI,

Intervenor-Defendants

CIVIL ACTION NO. 18-0167

ORDER FINDING THAT LOT 1816 IS
CAROLINIAN FAMILY LAND AND AS
THE ELDEST SURVIVING FEMALE
OF THE CAROLINIAN FAMILY
GREGORIA FITIAL-OMAR IS THE
CAROLINIAN FAMILY LAND
TRUSTEE OF LOT 1816; THEREFORE,
FRANCELLA KIMBERLY OLOPAI
IGINOEF OR HER ESTATE HAVE
NO INDIVIDUAL OWNERSHIP
INTEREST IN LOT 1816 BEYOND A
GENERAL USER OF A FAMILY
MEMBER

I. INTRODUCTION

THIS MATTER came before Court on November 21, 2024, at 10:00 a.m. in Courtroom 220A, for an evidentiary hearing on Plaintiff's motion to substitute. Plaintiff Francella Kimberly Olopai Iginoef is deceased, and her Estate appeared by and through its counsel, Attorney Colin M. Thompson. Attorney Steve Payne Pixley appeared on behalf of Defendants Immaculada Conzaga Melita Fitial Olopai and Jeffrey Olopai and Intervenor Gregoria Fitial-Omar, who appeared via videoconference.

1 As a threshold matter, the Court will first address whether Lot 1816 is Carolinian
2 family land.

3 II. PROCEDURAL HISTORY

4 1. On June 8, 2018, Plaintiff Francella Kimberly Olopai Iginoef (“Plaintiff”, “Francella”
5 or “Francella’s Estate”) filed a complaint petitioning the Court for judicial partition of
6 Lot 030 F 01 and Lot 1816. Francella was also known by her maiden name, Francella
7 Kimberly Olopai. Francella is a Carolinian woman.

8 2. Plaintiff Francella, at the time, shared ownership of these lots of land with her siblings,
9 Defendants Immaculada Conzaga Melita Fitial Olopai (“Immaculada”) and Jeffrey
10 Benigno Fitial Olopai (“Jeffrey”) (or collectively “Defendants”). Both Immaculada
11 and Jeffrey are Carolinian.

12 3. Immaculada and Jeffrey refused to consent to partition Lot 030 F 01 and Lot 1816.

13 4. On January 28, 2019, Gregoria Fitial-Omar (“Gregoria” or “Intervenor”) filed a
14 motion to intervene under Rule 24(a) of the Northern Mariana Rules of Civil
15 Procedure. Gregoria is also known by her maiden name, Gregoria Repeki Fitial.
16 Gregoria is a Carolinian woman.

17 a. On March 12, 2019, Gregoria filed an amended motion to intervene. The
18 motion argued that Gregoria had a property interest in Lot 030 F 01 and/or Lot
19 1816 under 8 CMC § 2904, a statute that controls succession of interest in land
20 by Carolinian Custom. Gregoria argues that the property at issue in this case is
21 held in trust under Carolinian Custom.

22 5. On August 1, 2019, the Court granted Gregoria’s motion to intervene.

23 6. On September 16, 2019, Gregoria filed a first amended complaint in intervention.

24 a. Gregoria’s first amended complaint in intervention argued that Lot 1816 is
25 Carolinian family land, originally “brought into the family by Benigno
26

Rabauliman Kapileo” (“Benigno Kapileo”) and determined by the Trust Territory Land Commission in 1952. (¶ 11). Benigno Kapileo was also known as “Benigino [sic] Capileo” and “Benigno Capileo.” Benigno Kapileo was a Carolinian man.

b. Upon the death of Benigno Kapileo, the land passed to Benigno Kapileo’s eldest granddaughter, Dominina Fitial Olopai (“Dominina”), in trust for the benefit of the family. Dominina was also known by her maiden name, Dominina Repeki Fitial. Dominina was a Carolinian woman.

c. Gregoria argues that as the oldest surviving sister of Dominina, the role of Carolinian family land trustee of Lot 1816 should pass to her pursuant to 8 CMC § 2904(a)(1) which states “unless the family consents or agrees otherwise, family land passes to a new customary trustee in the following manner: upon the death of the customary trustee, title passes to the oldest surviving sister of the decedent.”

7. On November 10, 2020, the parties were ordered by the Court to set a date for mediation.

8. On January 21, 2022, the Court permitted the parties to engage in discovery beginning sixty days after the entry of the order.

9. On April 4, 2023, the parties were recognized by the Court to be engaged in discovery and ordered to report to the Court when depositions had been completed.

10. On July 4, 2023, Plaintiff Francella Kimberly Olopai Iginoef died.

11. On September 19, 2023, the Estate of Francella Kimberly Olopai (“Francella’s Estate”) CV 23-0165 filed a motion to substitute itself for the Plaintiff Francella pursuant to rule 25(a)(1). NMI. R. Civ. P.

1 12. On October 16, 2023, Gregoria filed an Intervenor’s response to Francella’s Estate’s
2 motion to substitute.

- 3 a. Gregoria argued that Francella’s Estate’s petition to partition the property is
4 not a claim that can survive Francella’s death, and Francella’s interest in the
5 property was tenuous and may have extinguished upon her death.

6 13. On December 1, 2023, Francella’s Estate filed a reply to Intervenor’s response.

- 7 a. Francella’s Estate argues that Francella’s interest in the property was held as a
8 tenancy-in-common with the Defendants, Immaculada and Jeffrey, and did not
9 extinguish upon Francella’s death.
10

11 14. On January 12, 2024, Gregoria filed an Intervenor’s sur-reply.

- 12 a. Gregoria argued that Lot 1816 is Carolinian family land, and under the law of
13 intestate succession, Francella’s Estate has no interest in Lot 1816.

14 15. On July 1, 2024, Francella’s Estate filed an opening brief in response to the issue of
15 Carolinian family land and other matters.

- 16 a. Francella’s Estate argued that Lot 1816 is not Carolinian family land contrary
17 to Gregoria’s claims. Francella’s Estate argued that several ways in which the
18 land has been inherited and used that are inconsistent with the character of
19 Carolinian family land. Among these is that Lot 1816 was subject to a ten-year
20 lease to a company, that one of the original owners Willed his interest in the
21 land to his granddaughter, and that other family members with a claim in the
22 property executed a relinquishment of interest — all of which Francella’s
23 Estate argues are contrary to Carolinian custom. *Id.* at pg. 10-11.
24

25 16. An evidentiary hearing regarding Francella’s Estate’s motion to substitute was held
26 November 21, 2024, at 10:00 am in Courtroom 220A.

- 1 a. Three witnesses were called: (1) Gregoria Fitial-Omar, (2) Benigno Repeki
2 Fitial, (3) Jeffrey Benigno Fitial Olopai. The Court finds the sworn testimony
3 of the three witnesses credible.
- 4 b. Twenty-one exhibits were admitted into evidence.
- 5 c. Lot 1816 is on Saipan, generally situated in the Chalan Ruedo area, located on
6 the hillside east of the village of Gualo Rai

7
8 **III. FACTUAL FINDINGS**

- 9 1. In a Statement of Benigno Kapileo prepared by the American administration after the
10 Battle of Saipan (June 15, 1944 to July 8, 1944), Lot 1816 is owned by Benigno
11 Kapileo and his brother, Antonio Kapileo, and is reported to be inherited from their
12 father, Ignacio Capileo, in 1912. (Exhibit 4).
- 13 a. The family name of “Capileo” is now more commonly spelled as “Kapileo.”
14 For clarification, throughout this Order and the admitted exhibits, the names
15 “Benigino [sic] Capileo,” “Benigno Capileo,” and “Benigno Kapileo” are
16 referring to the same person. Also for clarification, throughout this Order and
17 the admitted exhibits, the names “Antonio Capileo” and “Antonio Kapileo” are
18 referring to the same person.
- 19
20 2. On January 17, 1945, a Statement of Ownership or Lease by Benigno Kapileo reports
21 that Lot 1816 was leased in 1938 to “N.K.K. for 10 years at ¥ 105 per year all paid in
22 advance.” (Exhibit 3). The Nanyo Kohatsu Kaisha, commonly referred to as N.K.K.,
23 was a sugar company that was owned in part by the Japanese Government and
24 monopolized the sugar cane industry in Saipan.
- 25
26

3. On September 18, 1952, a determination of ownership recognized the owners of Lot 1816 as Benigno Kapileo and his brother, Antonio Kapileo.¹ (Exhibit 8.1).
4. Benigno Kapileo was a devout Catholic and a lay servant of the Catholic religion.
5. Benigno Kapileo’s family patron saint, San Isidro, was celebrated annually in Chalan Kanoa prior to the relocation of the chapel to Lot 1816.
6. Annex “A” to Determination of Ownership describes Lot 1816 as consisting “of 5.5 hectares, more or less, subject to survey.” (Exhibit 8.2).
7. On September 29, 1963, in his Last Will and Testament, Benigno Kapileo leaves all his interest in “land containing 5.5 hectares in Chalan Rueda described in T.D. 356” to his “grand foster daughter”² Dominina Repeki Fitial Olopai. (Exhibit 11.1).
 - a. Of all of Benigno Kapileo’s female grandchildren, Dominina was the oldest.
 - b. Benigno Kapileo had male grandchildren that were older than Dominina.
8. On October 13, 1963, Benigno Kapileo died. (Exhibit 1.1).
9. On August 14, 1986, the intestate successors of Benigno Kapileo executed a relinquishment of interest in Lot 1816. (Exhibit 17).
10. In Civil Action 88-0630, a Decree for Final Distribution dated March 27, 1990, transfers Lot 1816 from the Estate of Benigno Kapileo to his eldest granddaughter, Dominina. (Exhibit 14.1).

¹ The Court recognizes that documentation made by Benigno Kapileo show he represents Lot 1816 as belonging to himself and his brother, Antonio Kapileo (Exhibit 3, Exhibit 4, Exhibit 6, Exhibit 7, Exhibit 8.1, Exhibit 9.1), and the American administration accepts the claims. The Statement of Benigno Kapileo states that Antonio Kapileo is on Truk Island at the time the statement was written. (Exhibit 4) In subsequent years, Antonio Kapileo is not mentioned again. Antonio only had sons Felipe Kapileo and Enrique Kapileo (Exhibit 15.1), neither of whom inherited individual interest in Lot 1816. As Lot 1816 transformed into Carolinian family land, the land trustee and stewardship of Lot 1816 was passed through the matrilineal female member of the family.

² The label “grand foster daughter” speaks to the Carolinian custom of cultural adoption of “mwei mwei” that at times, can be difficult to find an equivalent word in U.S. land tenure terms — especially in the early years of the U.S. trust territory administration of the Northern Mariana Islands.

1 11. A Certificate of Title dated March 27, 1990, states that Dominina is the owner of Lot
2 1816. (Exhibit 13).

3 12. On November 21, 1992, Dominina died.

4 13. On February 28, 2000, a petition for the letters of administration were filed regarding
5 the Estate of Dominina Fitial Olopai. Civil Case 00-0104D.

6 14. On October 4, 2001, an Order for Final Distribution was entered in the Estate of
7 Dominina Fitial Olopai. (Exhibit 16.1, 16.3)

8 a. The order assigned Lot 1816 to Immaculada Melita Fitial Olopai
9 (“Immaculada”), Jeffrey Benigno Fitial Olopai (“Jeffrey”), and Francella
10 Kimberly Fitial Olopai (“Francella”) in equal undivided interests. (Exhibit
11 16.2).
12

13 15. According to a survey prepared in 2015, Lot 1816 is approximately 36,500 square
14 meters or 3.6 hectares. (Exhibit 2).

15 16. On November 21, 2024, Gregoria Fitial-Omar (“Gregoria”) testified that she is the
16 customary Carolinian family land trustee of Lot 1816 and was not aware that in
17 Dominina’s Probate, Lot 1816 was included and assigned to Dominina’s children,
18 namely Immaculada, Jeffrey, and Francella.
19

20 17. Since June 8, 2018, the family members have attempted to settle the dispute³.

21 a. In 2000, the Estate of Dominina Fitial Olopai, CV 00-0104D assigned Lot 1816
22 to Immaculada, Jeffrey, and Francella during the probate of their mother,
23

24 ³ In *Rios v. Marianas Pub. Land Corp.* 3 NMI 512 (1993), the Supreme Court determined that 7 CMC § 2502
25 barred claims for recovery of land made 20 years after the date of accrual. This case involving assignment of Lot
26 030 F 01 and Lot 1816 to Immaculada, Jeffrey, and Francella during the probate of their mother, Dominina,
occurred in 2000 and was filed in 2018 when the contested issue of Lot 030 F 01 and Lot 1816 came to light.
Between 2018 and 2024, the family members have tried repeatedly to settle their dispute of Lot 030 F 01 and
Lot 1816. When the lengthy negotiation ultimately failed, the Court held the evidentiary hearing and received
sworn testimonies and exhibits. The 20-year statute of limitations does not apply to this case, and more
specifically to Lot 030 F 01 and Lot 1816.

1 Dominina. The current case, CV 18-0167, was filed in 2018 when contested
2 issue of Lot 1816 came to light. Between 2018 and 2024, the family members
3 have tried repeatedly to settle their dispute. When the lengthy negotiation
4 ultimately failed, the Court held the evidentiary hearing and received sworn
5 testimonies and exhibits.

- 6 b. On September 5, 2018, a status conference hearing was set for October 30,
7 2018. Due to Super Typhoon Yutu, the status conference was moved to
8 December 18, 2018. On December 14, 2018, the Court granted a request to
9 continue the status conference to January 15, 2019. On January 9, 2019, for
10 good cause, the Court moved the status conference to January 29, 2019, in
11 Courtroom 220A. On January 29, 2019, the Court ordered an
12 evidentiary/motion hearing for May 20, 2019. On March 13, 2019, the Court
13 granted a request to continue the evidentiary/motion hearing to July 29, 2019.
14 On July 29, 2019, the evidentiary/motion hearing was held in Courtroom 220A.
15
16 c. On October 20, 2020, the Court issued an order setting a status conference for
17 November 10, 2020. On November 10, 2020, the status conference was held.
18
19 d. On September 15, 2021, the Court ordered a status conference for October 12,
20 2021. On September 15, 2021, the status conference was held in Courtroom
21 220A.
22
23 e. On February 6, 2023, the Court ordered a status conference for April 4, 2023.
24 On April 4, 2023, the status conference was held in Courtroom 220A.
25
26 f. On September 21, 2023, the Court issued a notice of hearing for October 17,
2023. On October 17, 2023, the motion hearing was held in Courtroom 220A.
g. On October 4, 2023, the Court set a motion hearing for November 14, 2023.
On November 14, 2023, a motion hearing was held in Courtroom 220A.

1 h. On January 22, 2024, the Court ordered an evidentiary hearing to the motion
2 to substitute for May 14, 2024. On February 17, 2024, the Court granted the
3 parties stipulation to continue the evidentiary hearing to June 13, 2024. On
4 March 14, 2024, the Court granted the parties stipulation to continue the
5 evidentiary hearing to August 13, 2024. On May 28, 2024, the Court granted
6 the parties stipulation to continue the evidentiary hearing to October 1, 2024.
7 On June 8, 2024, the Court granted a motion to continue the evidentiary
8 hearing to October 15, 2024. On October 11, 2024, the Court granted the
9 parties stipulation to continue the evidentiary hearing to November 21, 2024.
10 On November 21, 2024, the evidentiary hearing was held in Courtroom 220A.
11

12 18. Gregoria was made aware of the contested landownership of Lot 1816 when this case
13 was filed in 2018.

14 a. Gregoria testified that she helped find a contractor to build and financed what
15 is now the permanent structure of the San Isidro Chapel for \$10,000 with
16 Dominina's permission.

17 b. Gregoria testified on the family tree relating to the descendants of Benigno
18 Kapileo.
19

20 19. On November 21, 2024, Benigno Repeki Fitial ("Benigno Fitial"), grandson of
21 original owner Benigno Kapileo, testified that he has a house on Lot 1816 that was
22 built in 1992.

23 a. Benigno Fitial testified that Benigno Kapileo encouraged family members to
24 build their homes on Lot 1816, called Weischugh⁴ in Carolinian. (Exhibit D-
25 1-2).
26

⁴ In Carolinian, *Weischugh* means the crest or peak of a hill or mountain.

- 1 b. Benigno Fitial testified that he currently lives in this house and was urged to
2 build this house on Lot 1816 by Dominina.
- 3 c. Benigno Fitial testified that he never attempted to and has no plans to secure a
4 deed or right in his name to Lot 1816 on which his house is built because he
5 believed Lot 1816 is Carolinian family land.
- 6 d. Benigno Fitial testified that before the death of his grandfather, Benigno
7 Kapileo, that Benigno Kapileo gathered his family and announced that Lot
8 1816 was not ever to be sold or leased.
- 9 e. Benigno Fitial testified that his grandfather, Benigno Kapileo, desired that the
10 San Isidro Chapel be moved from Chalan Kanoa to Weischugh (Lot 1816). A
11 temporary structure was erected on Lot 1816, and a more permanent structure
12 was later built that became the San Isidro Chapel.
- 13 f. It was understood by the extended family that this meant Weischugh would
14 become the gathering place for the family members every May 15th for the
15 celebration of San Isidro feast day.
- 16 g. Benigno Fitial stated that the extended family gathers at the San Isidro Chapel
17 every year in the month of May.
- 18 h. Benigno Fitial says he was previously responsible for the care and upkeep of
19 San Isidro Chapel. Due to his age and health, the responsibility for the care
20 and upkeep of San Isidro Chapel has since passed to Jeffrey Benigno Fitial
21 Olopai.
- 22 i. Benigno Fitial recalls as a youth that he, his grandfather Benigno Kapileo, and
23 other family members regularly traveled to Lot 1816 to harvest food on the
24 land.
25
26

1 j. Last, Benigno Fitial testified that he was not notified of the probate filed in
2 2000 regarding the Estate of Dominina and Lot 1816, even though his house is
3 built on Lot 1816.

4 20. On November 21, 2024, Jeffrey testified that in 2013, he met his sisters Immaculada
5 and Francella at a surveyor's office where he was first made aware of his sister's
6 attempt in partitioning Lot 1816.

7 a. Jeffrey testified that he opposed this partition because he believed that Lot
8 1816 was Carolinian family land.

9 b. Jeffrey states that because he opposed the partition, he never signed the
10 surveyor's map of Lot 1816 with the proposed partitions.

11 c. Jeffrey testified that he is a steward of Lot 1816 and has no ownership claim
12 in the Lot 1816 beyond that of a general user of Carolinian family land.

13
14 21. In 2015, a surveyor prepared a map for Francella and Immaculada of the proposed
15 boundaries of the partition of Lot 1816. (Exhibit 2).

16 a. The survey appears to carve out a 5,692 square meter plot of land, labeled Lot
17 1816-7, and does not assign this plot an owner.

18 i. Benigno Fitial testified that he believes this proposed Lot 1816-7 is
19 where his house is located.

20 b. The survey also reserves another plot of land of approximately 2,000 square
21 meters labeled Lot 1816-4-1 that it assigns to Immaculada.

22 i. Benigno Fitial testified that this area is where the San Isidro Chapel is
23 located.

24
25 22. The Family Tree⁵ (Exhibit 1.1-1.6)
26

⁵ Note that Exhibit 1.1 – 1.6 also contains the Fifth Generation. The relevant portion of the family tree to determine the next Carolinian family land trustee is the surviving family member of the Fourth Generation.

- 1 a. First Generation. **Ignasio Capileo**.
- 2 b. Second Generation. The children of Ignasio Capileo.
- 3 i. **Benigno Kapileo** was also known as “Benigino [sic] Capileo,” or
- 4 “Benigno Capileo.”
- 5 ii. Antonio Capileo
- 6 c. Third Generation. The children of **Benigno Kapileo** and Gregoria Ogarto
- 7 Mettao.⁶
- 8 i. **Angelina** Mettao Repeki
- 9 ii. **Asuncion** Mettao Repeki
- 10 iii. **Antonia** Mettao Repeki
- 11 d. Fourth Generation. The children of **Angelina** Mettao Repeki and Miguel
- 12 Sogoligarai Olaitiman.
- 13 i. Dionisio Repeki Olaitiman
- 14 ii. Angelina Repeki Olaitiman
- 15 iii. Jose Repeki Olaitiman
- 16 iv. Ana Repeki Olaitiman
- 17 e. Fourth Generation. The children of **Asuncion** Mettao Repeki and her first
- 18 husband Mariano Igibar “Eurulifar” Laniyo; and her second husband Jesus
- 19 Igibar Laniyo.
- 20 i. Felix Repeki Laniyo
- 21 ii. Sabino Repeki Laniyo
- 22 iii. Tito Repeki Laniyo
- 23 iv. Perpetua Lucia Repeki Laniyo
- 24
- 25
- 26

⁶ These three children were the children of Gregoria Ogarto Mettao and her first husband, Jose Nelso Repeki. A prior judgment, *Kapileo v. Olopai*, Civil Action No. 260-76, states that “by Carolinian custom, the biological children of Gregoria Ogarto Mettao, namely Angelina, Asuncion, and Antonia are considered the same as if they are natural children of Benigno Kapileo with full rights of inheritance.” *Id.* at ¶2. Therefore, the Court treats the children of Gregoria Ogarto Mettao as Benigno Kapileo’s natural children.

f. Fourth Generation. The children of **Antonia** Mettao Repeki and Jose Satur Fitial.

i. **Dominina** Repeki Fitial

ii. Felix Repeki Fitial

iii. Benigno Repeki Fitial

iv. Pascual Repeki Fitial

v. **Gregoria** Repeki Fitial also known by her married name **Gregoria Repeki Fitial-Omar**.

23. As of the issuance of this Order, the eldest surviving members on the Fourth Generation are:

a. Benigno Repeki Fitial b. November 27, 1945

b. Pascual Repeki Fitial b. October 28, 1950

c. **Gregoria Repeki Fitial-Omar** b. May 9, 1953

24. **Gregoria Repeki Fitial-Omar** is the eldest surviving female of the Fourth Generation.

IV. HISTORICAL BACKGROUND FOR CONTEXT

As the land ownership of Lot 1816 covers a period spanning the German, Japanese, and American Administration period well into the Trust Territory and Commonwealth period, it is helpful to have a brief historical context to the Mariana Islands land tenure system, as there are differences between Chamorro and Carolinian land tenure systems.

Carolinian land tenure custom has its nuances and generally follow a matrilineal ownership. Farm land is “‘owned’ by the women members of a maternal lineage.” Alexander Spoehr, *Saipan The Ethnology of a War-Devastated Island* at 331 (2d ed. 2000). Owned is a term used loosely here because:

1 the land of the lineage was not divided on the death of the members of the
2 lineage but was retained for individual use of lineage members, who might
3 build separate houses upon it and cultivate different parts of it but who did
4 not split ownership of land holdings among themselves.

5 *Id.* at 331. The matrilineal “owner” was a holder of the land for administrative or legal
6 purposes, but her family or descendants of the maternal lineage retained what today closely
7 resembles usufructuary rights to the land.⁷ Upon the death of the matrilineal ‘owner’, “either
8 the next eldest sister or the deceased’s eldest daughter then became the subsequent successor.”

9 *Id.* at 332.

10 This Carolinian custom was further influenced and modified by Spanish, German, and
11 Japanese administrators prior to the 1944 Battle of Saipan. While the German and Japanese
12 issued certificates of title to land-holders, which could aid in investigating the character of
13 land as family land, unfortunately, many records were destroyed during the Battle of Saipan,
14 and the result is an incomplete written record of land ownership in the Northern Mariana
15 Islands, also known as the chain of title. James B. Johnson, *Land Ownership in the Northern*
16 *Mariana Island an Outline History* at 11 (March 1969). The German administration, which
17 existed in Saipan from 1899-1914, “initiated a homesteading program” where Carolinian Men
18 received title to homestead land. *Id.* at 3. When the Japanese administration replaced the
19 German administration, the Japanese honored ownership titles given during the German
20 administration but discontinued the homesteading program. The Japanese instead allocated
21 public land to sugar farming. The Nanyo Kohatsu Kaisha, commonly referred to as N.K.K.,
22 was a sugar company that was owned in part by the Japanese government and monopolized
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24
25
26 ⁷ Usufruct resemble the lineage members relationship with the family land with some important distinctions. Black’s Law Dictionary defines usufruct rights as “a right for a certain period to use and enjoy the fruits of another’s property without damaging or diminishing it” (9th ed. 2010). This differs from Carolinian custom in that the family land was held for the distinct purpose of supporting the extended family rather than the extended family being granted rights by the individual owner. This custom is not limited to a specific time period and could persist through many generations.

1 the sugar cane industry in Saipan. “For the first years [public land] was leased rent free; later,
2 as operations expanded, a charge was made.” Alexander Spoehr, *Saipan The Ethnology of a*
3 *War-Devastated Island* at 52 (2d ed. 2000). The N.K.K. would also increase their land base
4 by purchasing or leasing land from locals. James B. Johnson, *Land Ownership in the Northern*
5 *Mariana Island an Outline History* at 5 (March 1969). Under the Japanese administration,
6 “the growing and processing of sugar cane dominated the lives and activities of Saipan’s
7 population.” Alexander Spoehr, *Saipan The Ethnology of a War-Devastated Island* at 52 (2d
8 ed. 2000). A 1944 report determined that 32% of Saipan was dedicated to sugar cane
9 agriculture. James B. Johnson, *Land Ownership in the Northern Mariana Island an Outline*
10 *History* at 6 (March 1969).

12 V. LEGAL STANDARD

13 A controlling statute that determined the sequence of successors of Carolinian family land
14 was not created until 1984. In *In re Estate of Rangamar*, the Supreme Court explores the
15 defining features of Carolinian family land and describes:

16 Farm land and town lots and buildings are owned collectively by female
17 members of the matrilineal lineages. . . [t]he land is kept intact for the use of
18 members who may build houses on it and cultivate sections of it but among
whom ownership of the land is never divided. 4 N. Mar. I. 72, 76 (1993).⁸

19 While viewing the ownership status of land under previous administrations can help
20 determine the character of the land when conflict arises, the Supreme Court has cautioned that
21 the legal title held by landowners under the German and Japanese administrations is not to be
22 construed as final determinative evidence of whether a parcel of land is considered Carolinian
23 family land or not. (*See In re Estate of Rangamar*, 4 N. Mar. I. 72, 77 (1993), “We note that
24 the registration of these Carolinian customary lands with the foreign administrative authorities
25

26 ⁸ Quoting Richard G. Emerick, Land Tenure in the Marianas, 1 LAND TENURE PATTERNS: TRUST TERRITORY OF THE PACIFIC ISLANDS 217 (Office of the High Commissioner, Trust Territory of the Pacific Islands, 1958).

1 was done under their auspices and for their administrative purposes only. Such registration
2 practices were in direct conflict with the Carolinian notion of collective ownership. As such,
3 the receipt of documentary title by a Carolinian female was not indicative of the Carolinian
4 land custom but rather of the administrative practices of foreign authorities”). Instead, the
5 Supreme Court concludes that Carolinian family land custom “is a matrilineal system of
6 collective ownership” where the oldest member of the maternal line held title to the land and
7 acted “more or less as a ‘trustee’ for the rest of the lineage members, and can only be judged
8 by whether it fits this standard.” *Id.* at 77.

9
10 On February 15, 1984, the Northern Mariana Islands Probate Law, 8 CMC § 2101-2927
11 took effect. Under the NMI Probate Law § 2102, persons who died prior to February 15, 1984,
12 were subject to the laws of the Trust Territory Code Title 13. The NMI Probate Law
13 effectively replaced the Title 13 of the Trust Territory Code. Title 13 of the Trust Territory
14 Code contained no special laws concerning Carolinian Custom, or family land, or intestate
15 succession. Instead, Title 13 focused on the legality of will-making, and estates of a limited
16 value. However, the Trust Territory Code legitimized local custom as long as it was not in
17 conflict with the law and the Court permitted intestate succession according to custom of the
18 people of the Northern Mariana Islands. 1 TTC § 102⁹.

19
20 Under the NMI probate code “family land” is defined as:

21 land acquired by any person by law or decision of the family or by inheritance
22 from one or more Carolinian ancestors, and held by the person as a customary
23 trustee for the use of the family members. Any land where a title determination
24 vests title in the heirs or a person where the person was Carolinian or a person
25 who adopted and followed Carolinian custom shall be deemed family land. 8
26 CMC § 2107(l).

⁹ The code states “the customs of the inhabitants of the Trust Territory not in conflict with the laws of the Trust Territory shall be preserved.” 1 TTC § 102

1 This definition gives broad discretion to determining what is family land and creates a
2 presumption that any land owned by a Carolinian is family land. If a party challenged the
3 family land status or a Carolinian owner, they must show that “there has been some significant
4 and discernable departure from Carolinian customs of use.” *In re Estate of Lairopi*, 2002 MP
5 10, ¶ 16. The most significant departure from Carolinian custom is descent to heirs not
6 consistent with maternal lineage; (See *In re Estate of Ogumoro*, 4 N. Mar. I. 124, 128 (1994),
7 “. . . after Jose's death his surviving children were all males, precluding any possibility of the
8 land's ownership being transformed in character from individual male ownership to
9 matrilineal ownership.”), (See also *In re Estate of Rangamar*, 4 N. Mar. I. 72, 78 (1993) all of
10 the heirs, including the males, are entitled to an equal undivided interest pursuant to the deed
11 of conveyance . . .). The Supreme Court urges courts to examine the basis of ownership to
12 determine if a tract is family land. In *In re Estate of Kaipat*, the Court considered whether a
13 Carolinian woman inherited land from her mother individually or on behalf of her clan. The
14 *Kaipat* Court remanded the case and held that:

16 [o]nly by examining the basis for [a decedent's] ownership in her name alone
17 and determining whether it passes muster factually in the light of Carolinian
18 land law would there be a basis for a literal reading of the title determination
19 issued to [Decedent]. If there is no basis for her to hold title in her name alone,
20 then the land remains clan land. In that event, the title determination should be
corrected and the right of the other heirs to the use of the land. 3 N. Mar. I.
494, 499-500 (1993)

21 The *Kaipat* Court states that with enough evidence to the contrary, even a title
22 determination that vests property rights in an individual can be overcome and corrected to
23 show trustee status of the individual in keeping with the Carolinian family land custom. In *In*
24 *re Estate of Lairopi*, the Supreme Court affirmed a Superior Court ruling that the
25 preponderance of evidence showed that land had been used in such a way consistent with
26 Carolinian custom, making the land Carolinian family land. 2002 MP 10, ¶ 15.

Under 8 CMC § 2904(c), a family can depart from customary succession of Carolinian family land by consent or mutual agreement and choose to pass the land by will, sale, lease, exchange, mortgage, or partition. 8 CMC § 2909 gives the procedure for granting consent:

Unless the family consents or agrees otherwise, the requirement in this law that all of the members of the family with title to or use right in land consent is met if the customary trustee and his surviving brothers and sisters consent; provided, that the children, if any, of a dead brother or sister of the customary trustee may exercise the consent rights of the decedent. The children shall determine by majority consent/vote among themselves if consent will be granted. Unless otherwise agreed, the oldest child of the decedent shall give the consent in accordance with the determination made by the majority of the children.

With majority vote, consent can be granted by the Carolinian family to depart from Carolinian custom, and the family land can be disposed of in any way agreed upon by the family. In *In re Est. of Kileleman*, the Court determined that a spouse of a deceased Carolinian man did not have any ownership interest in the deceased's Carolinian family land absent consent from the family members to partition the land and give the surviving spouse an ownership interest. Civ. Case No. 04-0431 (NMI Super. Ct. Aug. 16, 2021) (Order Denying Distribution of Carolinian Family Land Because Family Members' Consent Or Agreement Have Not Been Obtained In Order To Depart From Custom As Required By 8 CMC Section 2909). The Court in *In re Est. of Kileleman* ultimately determined that the majority consent required to depart from Carolinian custom had not been met. *Id.* at 15. In *In the Matter of Mariano Taroligai Lisua*, the Court approved a partition and distribution to family heirs as tenants-in-common of Carolinian family land. This was possible because the 'stipulation of heirs' was signed by the customary trustee, her surviving siblings, and the surviving children of predeceased siblings of the customary trustee. Civ. Case No. 20-0273, (NMI Super. Ct. Aug. 16, 2021) (Order Granting Petition To Depart From Carolinian Custom And Distribute The Family Land Based On The Family's Consent And Agreement Pursuant To 8 CMC Section 2909). The stipulation created a unanimous agreement among the family members and fulfilled the requirements put

1 forth in 8 CMC § 2909 to depart from Carolinian custom and change the character of the land
2 from Carolinian family land to land owned individually. *Id.* at 19-20. In the *Estate of Antonio*
3 *Pua*, the Court determined that less than a majority of the family had agreed orally to partition
4 a plot of Carolinian family land, thus it was not sufficient to fulfill the requirements for consent
5 under 8 CMC § 2909. Civ. Case No. 19-0015 (Super. Ct. Nov. 5, 2021) (Order Denying
6 Request to Approve Partition Of Carolinian Family Land By Quitclaim Deed As Edward
7 Atalig Pua Failed To Get The Consent Or Agreement Of the Family Pursuant to 8 CMC
8 Section 2909).

9 10 V. ANALYSIS

11 After the death of the Plaintiff Francella Kimberly Olopai Iginoef, her Estate made a
12 motion to substitute for Plaintiff.

13 Intervenor Gregoria objected, arguing that Francella has no interest in Lot 1816 and
14 Francella's Estate cannot be substituted for her in a matter in which Francella has no interest.

15 To decide the Francella Estate's motion to substitute, the Court now considers the nature
16 of the ownership of Lot 1816.

17 *a. Lot 1816 becomes Carolinian family land and Dominina is the Carolinian* 18 *family land trustee.*

19 The crux of this issue is what makes a property Carolinian family land and how does the
20 Court distinguish Carolinian family land from property owned by an individual.

21 Intervenor Gregoria argues that Benigno Kapileo, the original owner of Lot 1816 post
22 world-war II, bequeathed Lot 1816 to his eldest granddaughter, Dominina, with the
23 expectation that it be treated as Carolinian family land. Benigno Kapileo had a chapel for the
24 family patron saint San Isidro erected on Lot 1816. When Benigno Kapileo died, his eldest
25 granddaughter, Dominina, was designated the Carolinian family land trustee, and Lot 1816
26 was treated as Carolinian family land. Benigno Kapileo had other male descendants older than

1 Dominina, but it was Dominina that was the person designated to be the trustee of the
2 Carolinian family land. In her role as Carolinian family land trustee, Dominina's permission
3 and guidance was sought by other family members to build on Lot 1816, such as when her
4 brother, Benigno Fitia, built his house on Lot 1816 as well as the site where the San Isidro
5 Chapel was built.

6 Plaintiff Francella argues that Lot 1816 is not Carolinian family land because early
7 documents show that Lot 1816 was owned by Benigno Kapileo and his brother, Antonio
8 Kapileo, who inherited Lot 1816 from their father, Ignacio Kapileo; and this trend of male
9 ownership is inconsistent with the matrilineal succession that defines Carolinian family land.
10

11 Plaintiff Francella further argues that Benigno Kapileo defied Carolinian custom by
12 transferring by Will that upon his death, Lot 1816 be transferred to his eldest granddaughter
13 Dominina rather than his eldest daughter, and that the remaining heirs — by executing a
14 relinquishment of interest in favor of Dominina. — in effect, Dominina receiving ownership
15 of Lot 1816 in fee simple. On August 14, 1986, Benigno Kapileo's three daughters¹⁰ signed
16 a Relinquishment of Interest. The Relinquishment of Interest was signed by Angelina's heirs,
17 Asuncion, and Antonia.
18

19 Angelina's heirs, Asuncion, and Antonia collectively gave up their rights and in effect
20 their descendants from inheriting as individuals a portion of Lot 1816. The relinquishment of
21

22 ¹⁰ For context, it is worth noting that the three children of Gregoria Ogarto Mettao are the biological children of
23 her first husband, Jose Nelso Repeki. The three children are: Angelina Mettao Repeki, Asuncion Mettao Repeki,
24 and Antonia Mettao Repeki. A prior judgment, *Kapileo v. Olopai*, Civil Action No. 260-76, states that "by
25 Carolinian custom, the children of Gregoria Ogarto Mettao are considered the same as the natural children of
26 Benigno Kapileo with full rights of inheritance." *Id.* at ¶2. Here, Benigno Kapileo took in his wife's biological
children, Angelina, Asuncion, and Antonia, and raised them as his own. Therefore, the Court treats the children
of Gregoria Ogarto Mettao as Benigno Kapileo's natural children. The Carolinian custom of cultural adoption
of "mwei mwei" that at times, can be difficult to find an equivalent word in U.S. land tenure terms — especially
in the early years of the U.S. trust territory administration of the Northern Mariana Islands. Furthermore, on
September 29, 1963, in his Last Will and Testament Benigno Kapileo leaves all his interest in "land containing
5.5 hectares in Chalan Rueda described in T.D. 356" to his "grand foster daughter"¹⁰ Dominina Repeki Fitia
Olopai. (Exhibit 11.1). Here, the label "grand foster daughter" makes more sense in the context that Benigno
Kapileo took in his wife's biological children — Angelina, Asuncion, and Antonia and raised them as his own.
And more importantly for the purpose of the determination of the nature of Lot 1816.

1 Angelina's heirs, Asuncion and Antonia allows Lot 1816 to remain intact for the collective
2 benefit of all the family members. Instead of allowing Lot 1816 to be divided into three
3 separate lots and given to Angelina's heirs, Asuncion, and Antonia, Lot 1816 was given to
4 one person, Dominina, to hold as the customary Carolinian family land trustee. Keeping
5 family land intact to be use and benefit the whole family is a hallmark of Carolinian family
6 land. See *In re Estate of Rangamar*, the Supreme Court stated a defining feature of
7 Carolinian family land:

8 Farm land and town lots and buildings are owned collectively by female
9 members of the matrilineal lineages. . . **[t]he land is kept intact for the use of**
10 **members** who may build houses on it and cultivate sections of it but **among**
11 **whom ownership of the land is never divided**. 4 N. Mar. I. 72, 76 (1993).¹¹
(emphasis in bold).

12 *b. A pre-World War II lease of land to a Japanese sugar company by a*
13 *Carolinian owner does not strip the land of family-land status alone.*

14 Plaintiff Francella argues that Benigno Kapileo, by leasing a portion of Lot 1816 in 1938
15 for a term of 10 years, acted contrary to Carolinian custom.

16 In 1938, Kapileo rented a portion of Lot 1816 to "N.K.K. for 10 years at ¥105 per year
17 all paid in advance." (Exhibit 3). Francella argues that this is against Carolinian custom.
18 While it is true that Carolinian family land was unlikely to be leased when following custom,
19 the context of the lease is worth noting; "Carolinians do not rent land from one another,"
20 Alexander Spoehr, *Saipan The Ethnology of a War-Devastated Island* at 33 (2d ed. 2000),
21 The lease was made during the Japanese administration of the Northern Mariana Islands, to
22 the Japanese part-government owned sugar company N.K.K. During this period, Japan
23 devoted most of Saipan land towards agriculture and ended the German policy of offering
24 land for homesteading. This, coupled with an influx of Japanese immigrants, put pressure on
25
26

¹¹ Quoting Richard G. Emerick, *Land Tenure in the Marianas*, 1 LAND TENURE PATTERNS: TRUST TERRITORY OF THE PACIFIC ISLANDS 217 (Office of the High Commissioner, Trust Territory of the Pacific Islands, 1958).

1 local owners to lease their land, best expressed by Alexander Spoehr in the following passage
2 from *Saipan the Ethnology of a War-Devastated Island*:

3 The result was that both Chamorros and Carolinians leased most of their land
4 and lived on the proceeds, retaining enough farm land for a farm house, with a
5 garden and possibly a bit of pasturage. Bowers (1950:114) states that at least
6 75 per cent of the Chamorros and Carolinians rented the greater part of their
7 land. I would estimate an even higher percentage. Also, as it was no longer
8 possible to increase land holdings through homesteading, the amounts of land
9 individually owned tended to become frozen. . . . Land became valuable in the
10 eyes of the Chamorros and Carolinians for the rent that could be obtained, *not*
11 *as a resource to be developed*. *Id* at 54 (emphasis added).

12 Although not wholly in line with Carolinian custom, the pre-war lease to the Japanese
13 sugar company by Benigno Kapileo likely represents life under the land tenure policy of the
14 Japanese administration, rather than a willful departure from Carolinian custom by Kapileo.
15 *See In the Matter of Mariano Taroligai Lisua*, Civ. Case No. 20-0273 at 17 – 18, (NMI Super.
16 Ct. Aug. 16, 2021) (Order Granting Petition To Depart From Carolinian Custom And
17 Distribute The Family Land Based On The Family’s Consent And Agreement Pursuant To 8
18 CMC Section 2909) (“the fact that title was held by men suggests a possible departure from
19 customary Carolinian land tenure, in which title generally vests matrilineally. Yet this is
20 simply indicative of the historical land registration practices of foreign administrations. As
21 stated previously, the German and Japanese administrations routinely placed land title in the
22 name of a Carolinian man. . . . [that title to land was vested in a man] simply indicates that
23 customary law was not taken into account by the German and Japanese administrations in
24 registering Carolinian land”).

25 This case can be distinguished from *In re Estate of Rangamar* where the Supreme
26 Court held that a lease weighed against finding the land was family land. In *Rangamar*, the
 lease at issue was executed in 1989 when the CNMI had already joined the American Political
 family and for a much longer term of 55 years pursuant to the CNMI Constitution. 4 N. Mar.
 I. 72, 74 (1993).

Furthermore, where the purpose of family land was to exist for matrilineal families to derive benefit from, this concept of benefits is not on its face inconsistent from utilizing land for rental money if that rental money was used for the greater benefit of the family the same way a harvest would.

c. Patrilineal succession and male ownership of family land is contrary to Carolinian custom.

There is no dispute by parties that in the aftermath of the Pacific War, Benigno Kapileo petitioned the American government for recognition of his ownership of Lot 1816 together with his brother Antonio Kapileo and received it. It is unclear exactly how Benigno Kapileo and Antonio Kapileo came to own Lot 1816, as any written record of conveyance, inheritance, or other transfer of land was likely destroyed during the Battle of Saipan; however, Exhibit 4 and the testimony of Benigno Fitial state that Benigno Kapileo and his brother, Antonio Kapileo, inherited the land from their father, Ignacio Capileo.¹² (Exhibit 4). Exhibit 4 also states that the land is from the German government, making it likely land received for homesteading purposes under the German administration. In *Rangamar*, the Supreme Court held that a plot of land was not family land because the parcel “did not descend to the heirs under the traditional maternal lineage . . . all the heirs, including the males are entitled to equal undivided interest. . . this is in direct opposition to Carolinian land custom.” 4 NMI 72, 78 (1993). In *In re Estate of Ogumoro*, the Supreme Court also held that land held by a male land owner, “because of his gender, could not have owned Carolinian family land.” 4 N. Mar. I. 124, 128 (1994). The Court continued and expressed that even once the land was inherited, it

¹² On the other hand, Exhibit 15.1, a Judgment from *Antonio R. Kapileo v. Dominina F. Olopai*, states that Benigno Kapileo acquired Lot 1816 “from Luisa Malite, his godmother.” Civ. Action 260-75 at ¶ 6 (Trust Territory Court Aug. 28, 1978). However, Exhibit 15.1 is an order prepared after the death of Benigno Kapileo while Exhibit 4 is a statement of Benigno Kapileo himself made during his life. Even if Benigno Kapileo may have inherited Lot 1816 from his godmother Luisa Malite it does not change the outcome or analysis based on the ownership of Lot 1816 by Benigno Kapileo.

1 could not become family land because the “surviving children were all males, precluding any
2 possibility of the land’s ownership being transformed in character from individual male
3 ownership to matrilineal ownership.” *Id.* at 128.

4 Here, because Lot 1816 was owned by Benigno Kapileo and his brother, Antonio
5 Kapileo, and likely inherited from their father Ignasio Kapileo, Lot 1816 cannot be considered
6 family land while it was owned by the male successors Benigno Kapileo and Antonio Kapileo,
7 or where it passed by patrilineal lineage from a father to his sons.¹³

8 In 1912, while the Northern Mariana Islands were under the German administration,
9 the Statement of Benigno Kapileo stated that Lot 1816 is owned by Benigno Kapileo and
10 Antonio Kapileo and is reported to be inherited from their father, Ignasio Kapileo. (Exhibit
11 4). The Court notes that, Ignasio Kapileo did not have any daughters to pass the land through
12 the female line of the family. What is significant is that Benigno Kapileo married Gregoria
13 Ogarto Mettao, and when Benigno Kapileo died in 1963, Lot 1816 was vested in the eldest
14 granddaughter of Benigno Kapileo and Gregoria Mettao, namely Dominina. It is under
15 Dominina that Lot 1816 transformed to Carolinian family land.
16

17 ***d. A tract of land can gain the characteristic of Carolinian family land if the***
18 ***family treats it as such.***

19 Intervenor Gregoria argues that Benigno Kapileo bequeathed Lot 1816 to his
20 granddaughter, Dominina, with the intention that Lot 1816 be treated as Carolinian family
21 land, and Dominina as the customary Carolinian family land trustee. Case law supports the
22 premise that a tract of individual owned land can transform into Carolinian family land.
23 “While some of [the men who received land via the German homestead act] gave their land
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¹³ It is worth noting that after February 15, 1984, there are some exceptions to this rule; 8 CMC § 2904(a) permits succession of Carolinian family land to a brother of decedent if there is no surviving sister of decedent, or to a son if there is no surviving sister or daughter of decedent. In some instances, the statute allows family land to pass to a grandson or nephew of decedent.

1 to both female and male heirs, others chose to give the land only to their daughter(s) who then
2 subsequently founded a new matrilineal lineage.” *Rangamar*, 4 NMI 72, 76 (1993). Land
3 could transform from individual land held by a Carolinian male to Carolinian family land held
4 in trust by a member of the matrilineal lineage, similar to the facts in this case.

5 *i. Lot 1816 was used for the benefit of the larger extended family*

6 Testimony from Benigno Fitial and intervenor Gregoria, both grandchildren of Benigno
7 Kapileo reveals that the family referred to Lot 1816 as “Weischugh.” Benigno Fitial recalls
8 going to Weischugh with his grandfather, Benigno Kapileo, and other family members to clear
9 the land and harvest fruit, sweet potatoes, taro, yam, mangoes, coconut, and breadfruit.
10 (Exhibit D-1-2). Cultivation and harvest of crops on Carolinian family land is the central way
11 that Carolinian family land brings together and supports the extended family:
12

13 ...the Carolinians rely largely on kinfolk to provide co-operative labor in
14 farm work. This co-operative labor is confined primarily to the clearing of
15 fields and to the building of farm houses. The relatives on whom a man can
16 call need not be only those of his own or his wife’s lineage . . . Just as
production activities may involve a number of kinfolk, a number of relatives
may share in the harvest, even though they did not plant the crop.¹⁴

17 Here, the Court finds that the use of Lot 1816 is consistent with Carolinian custom, and Lot
18 1816 was treated as Carolinian Family Land.

19 *ii. Benigno Kapileo announced at a family meeting before his death that he*
20 *intended Lot 1816 for the benefit of the family*

21 Benigno Fitial testified that before the death of his grandfather, Benigno Kapileo
22 gathered his family and announced that Lot 1816 was not ever to be sold or leased and desired
23 that the San Isidro Chapel be moved from Chalan Kanoa to Weischugh (Lot 1816). It was
24 understood by the family that this meant Weischugh would become the gathering place for
25
26

¹⁴ Spoehr, *supra* note 1, at 336-337.

1 the family members every May 15th for the celebration of San Isidro feast day. Benigno
2 Kapileo also encouraged family to build their homes on Weischugh. (Exhibit D-1-2).

3 *iii. Benigno Kapileo bequeathed Lot 1816 to Dominina Fitia Olopai with the*
4 *intention that she become the new matrilineal customary trustee of the land*

5 Benigno Kapileo bequeathed Lot 1816 to his granddaughter Dominina Fitia Olopai
6 via his Last Will and Testament. (Exhibit 11.1). Plaintiff Francella argues that this succession
7 is inconsistent with Carolinian custom, as Dominina was a granddaughter and Benigno
8 Kapileo had three living daughters at the time of his death, custom would dictate that the land
9 pass to his eldest daughter. Francella is incorrect as she wrongly assumes that Lot 1816 was
10 Carolinian family land under Benigno Kapileo. During Benigno Kapileo's life Lot 1816 did
11 not yet fully take on the characteristic of Carolinian family land until Dominina inherited Lot
12 1816. This is because the Court already found that while Lot 1816 was under male ownership,
13 it was not yet Carolinian family land. Instead, Benigno Kapileo treatment of the land up until
14 his death shows his intent for it to be Carolinian family land.
15

16 The focus is not that Benigno Kapileo chose to not give the lot to his eldest daughter, **a**
17 **defining feature of Carolinian family land that transformed Lot 1816 into Carolinian**
18 **family land is that Benigno Kapileo chose not to divide up Lot 1816 among several**
19 **owners**, which, under intestate succession, would have been his children, Angelina, Asuncion
20 and Antonia. Instead, Benigno Kapileo chose his eldest granddaughter Dominina to take
21 control of the land. (Exhibit 1.1-1.5). Instead, Benigno Kapileo transferred all of Lot 1816
22 intact to Dominina. **It is Dominina that started a new matrilineal lineage when she took**
23 **on the role of Carolinian family land trustee and treated Lot 1816 as Carolinian family**
24 **land.** Dominina succeeded all the other male family members as Lot 1816 took on the
25 characteristics of Carolinian family land with Dominina being the founder of the new
26 matrilineal lineage. This is consistent with *Rangamar*. In other word, if the land morphed to

1 Carolinian family land under Dominina, who founded a new matrilineal lineage, the record
2 does not need to show that any prior owners were part of the matrilineal lineage or that
3 Dominina was the next successor of the matrilineal lineage under Carolinian custom.¹⁵

4 Furthermore, the fact that Lot 1816 did not transfer to any of Benigno Kapileo's living
5 daughters to take ownership of Lot 1816 further supports that the transfer of land to Dominina
6 was done under the approval of the daughters of Benigno Kapileo. More telling is the
7 Relinquishment of Interest dated August 14, 1986, and signed by Angelina's heirs, Asuncion,
8 and Antonia. The document relinquishes any interest as heirs of Benigno Kapileo and
9 recognizes Dominina as the owner of Lot 1816 pursuant to Benigno Kapileo's Last Will and
10 Testament.
11

12 Francella argues that the Relinquishment of Interest is a reason to presume Lot 1816
13 is not family land, if it ever was, pursuant to the probate code. 8 CMC § 2904(c) states "unless
14 the family consents or agrees otherwise, family land shall not be passed on by will, devised,
15 sold, leased, exchanged, mortgaged, partitioned, or otherwise disposed of by the customary
16 trustee." Francella is mistaken and incorrectly focuses on Lot 1816 transferring to Dominina
17 by Will. In fact, it is Dominina that became the owner of Lot 1816 and started a new
18 matrilineal lineage. The significance of Benigno Kapileo's Will and the Relinquishment of
19 Interest by Angelina's heirs, Asuncion and Antonia were meant to keep Lot 1816 intact for
20 the benefit of the extended family.
21

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26 ¹⁵ It is worth noting that the final distribution *In the Matter of Estate of Benigno Kapileo* was not issued until March 27, 1990, and the Certificate of Title issued for Lot 1816 in Dominina's name was issued in 1991, more than 27 years after Benigno Kapileo's death in 1963. Furthermore, Dominina inherited Lot 1816 via Will after the death of Benigno Kapileo in 1963. The Will, as a legal instrument that gives Dominina an interest in Lot 1816, predates the NMI Probate Code which did not take effect until 1984.

1 *iv. Dominina regarded herself as the customary Carolinian family land trustee*
2 *of Lot 1816 and treated the land as if it were Carolinian family land*

3 Weighing against the inference that Lot 1816 transformed to Carolinian family land is
4 that the Certificate of Title was issued to Dominina in fee simple. (Exhibit 13). If the Court
5 finds enough factors to support that Lot 1816 became family land, the Certificate of Title
6 issued in 1991 is in error and Dominina should have been considered the trustee of Lot 1816.

7 Dominina regarded herself as the customary Carolinian family land trustee for Lot
8 1816. In the Declaration of Benigno Fitial (Exhibit A-1-4), Dominina is reported to have
9 reminded her brother that Lot 1816 is Carolinian family land. Dominina requested help from
10 her brother, Benigno Fitial, to improve Lot 1816, and Gregoria Fitial-Omar testified that she
11 helped finance an upgrade for the San Isidro Chapel on Lot 1816. Benigno Fitial stated that
12 at Dominina's request, he helped repair the road leading to Lot 1816, facilitated the installation
13 of utilities for Lot 1816, and helped with the construction of the permanent San Isidro Chapel,
14 which still stands on Lot 1816 today. (Exhibit A-1-4 pg. 3 Ln. 4-5).

15 With Dominina's encouragement, Benigno Fitial chose to build a house on Lot 1816.
16 Although Benigno did not complete construction until after Dominina's death in November
17 1992, Benigno Fitial testified that Dominina encouraged him to build his house on the land
18 with the understanding that Lot 1816 was Carolinian family land. Benigno Fitial's decision to
19 build a house on Lot 1816 is consistent with Carolinian family land custom:

20 . . .the land of the lineage was not divided on the death of the members of the
21 lineage but was retained for the individual use of lineage members, who might
22 build separate houses upon it and cultivate different parts of it but who did not
23 split ownership of land holdings among themselves.¹⁶

24
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¹⁶ Spoehr, *supra* note 1, at 331.

1 Benigno Fitial testified that his house was built and remains on Lot 1816 for the past 30 years.
2 Benigno Fitial also testified that he did not and never would seek a deed, ownership interest,
3 or otherwise for the land that his house sits on. These actions are also consistent with
4 Carolinian custom. Benigno Fitial, as a male member of the family does not expect to be an
5 owner or trustee for the land, and instead maintains his rights to use the land from the maternal
6 lineage that he is related to.

7 And lastly, and perhaps more telling: Francella's own siblings, namely Jeffrey and
8 Immaculada, to their own detriment, view Lot 1816 as Carolinian family land. In effect,
9 Jeffrey and Immaculada are giving up a substantial and sizable real property interest by
10 supporting the position that Lot 1816 is Carolinian family land.
11

12 ***e. The NMI Probate Code, effective February 15, 1984 controls the succession***
13 ***of Lot 1816 after Dominina's death in 1992.***

14 Dominina's probate of her estate differs from Benigno Kapileo in that Dominina died
15 intestate and after the date the NMI Probate Code became effective. This means the NMI
16 probate code controlled the disposition of Dominina's estate, rather than the Trust Territory
17 Code. Title 8 CMC § 2904 states that "unless the family consents or agrees otherwise,
18 [Carolinian] family land passes to a new customary trustee in the following manner: (1) Upon
19 the death of the customary trustee; title passes to the oldest surviving sister of the decedent. .
20 ." Dominina's eldest surviving sister at the time of her death is Intervenor Gregoria Repeki
21 Fitial-Omar. Gregoria did testify that she considers herself the customary Carolinian family
22 land trustee of Lot 1816 since the death of her sister Dominina.
23

24 ***i. The Court that probated Dominina's estate did not determine the character***
25 ***of Lot 1816, contrary to In Re Estate of Kaipat***

26 In *In Re Estate of Kaipat*, the Supreme Court held that the lower court erred by failing to
examine whether a tract of land was Carolinian family land or individually owned, even where

1 the determination of title showed the decedent owned the land individually. The Supreme
2 Court opined:

3 There is also evidence in the record which shows that Rita held title to Lot No.
4 1772 as if she were a customary trustee for all Vicenta's heirs. Thus, the trial
5 court should have looked behind T.D. 277, examine the facts surrounding the
6 ownership of Lot No. 1772, and determine whether it should be read literally,
or whether Rita's ownership of the land placed *customary* legal title in her, on
behalf of all the clan members, at the time of Vicenta's death...."¹⁷

7 Here, according to the Certificate of Title (Exhibit 13) dated June 12, 1991, Dominina
8 inherited Lot 1816 as an individual; but the record shows there is evidence and testimony that
9 Dominina was a Carolinian family land trustee of Lot 1816 and held Lot 1816 on behalf of
10 her extended Carolinian family. The Court that presided over Civil Action 00-0104D *In the*
11 *Matter of the Estate of Dominina Fitiaf Olopai*, which was filed with the Court 8 years after
12 her death in 2000, did not consider whether any of the land in Dominina's estate, including
13 Lot 1816, was Carolinian family land. Furthermore, Dominina's siblings, Benigno Fitiaf and
14 Gregoria Fitiaf-Omar, testified that they were not notified of Dominina's probate. Aside from
15 a general notice published in the local newspaper, Benigno Fitiaf and Gregoria Fitiaf-Omar
16 were not given personal notice as required by Rule 16. Rule 16 NMI R. PROB. P. (effective
17 1996-07-15). Benigno Fitiaf in particular should have been given personal notice because he
18 literally has a house built on Lot 1816¹⁸.

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24 _____
25 ¹⁷ *Kaipat*, 3 N. Mar. I. 494, 498-99 (1993).

26 ¹⁸ It is worth noting that although Dominina's probate was started in 2000, this lawsuit was initiated in 2018. Supreme Court case law has stated that interest in land must be initiated within 20 years. As such, the lawsuit was initiated within twenty years. Between 2018 and 2024, the parties and family members have attempted to negotiate a settlement of their dispute over Lot 030 F 01 and Lot 1816. Only after the lengthy negotiations ultimately failed did the Court hold an evidentiary hearing to receive sworn testimony and evidence. The 20-year statute of limitations does not apply to this case, and more specifically to Lot 030 F 01 and Lot 1816.

1 ***f. The record shows by preponderance of evidence that Lot 1816 was treated in***
2 ***a manner consistent with Carolinian custom and is Carolinian family land***

3 The testimony of Benigno Kapileo’s grandchildren Benigno Fitial and Gregoria Fitial-
4 Omar show that Benigno Kapileo intended Lot 1816 to be treated as Carolinian family land.
5 Dominina encouraged the family to use the land and build their homes on Lot 1816. The San
6 Isidro Chapel was erected on Lot 1816 and later updated to a permanent structure financed by
7 the family members with the expectation that the annual feast would take place on Lot 1816.
8 Furthermore, Dominina’s surviving children, Immaculada Conzaga Melita Olopai and Jeffrey
9 Benigno Fitial Olopai, declared that Lot 1816 is Carolinian family land (Exhibit C, Exhibit
10 D). Under stewardship and trusteeship of Dominina, Lot 1816 became Carolinian family land.

11 “Family land” as defined in the NMI Probate Code specifies that “[a]ny land where a
12 title determination vests title in the heirs of a person where the person was Carolinian or a
13 person who adopted and followed Carolinian custom shall be deemed family land.” 8 CMC §
14 2107, Dominina was a Carolinian woman, thus that creates a presumption that land owned by
15 Dominina is Carolinian family land. (*See In re Est. of Pua*, 2021 N. Mar. I. Trial Order LEXIS
16 15, *6. “Commonwealth Courts presume that land originally owned by a Carolinian is
17 Carolinian family land owned according to the traditional Carolinian custom” (citing *In re*
18 *Estate of Lairopi*, 2002 MP at ¶ 20); *See In re Estate of Kaipat*, 3 N. Mar. I. 494, 498 (1993),
19 “Only where the original owner clearly decides to depart from Carolinian customary law may
20 a devise to an heir stand” (citing *In re Estate of Lorenzo Igitol*, 3 CR 907 (N.M.I. Super.Ct.
21 1989)).
22 1989)).

23 Here, the Court finds that in line with Benigno Kapileo’s intention that Lot 1816 be
24 treated as Carolinian family land under the care of Benigno Kapileo’s granddaughter,
25 Dominina. Dominina treated Lot 1816 as Carolinian family land, and upon Dominina’s death,
26 Dominina treated Lot 1816 as Carolinian family land, and upon Dominina’s death,

1 Lot 1816 should have passed to the next customary Carolinian family land trustee pursuant to
2 8 CMC § 2904, namely, Gregoria Repeki Fitial-Omar.

3 Therefore, the Court finds by a preponderance of the evidence and pursuant to 8 CMC
4 § 2904 that Lot 1816 is Carolinian family land and Gregoria Repeki Fitial-Omar is the current
5 Carolinian family land trustee. As Lot 1816 is Carolinian family land, Francella Kimberly
6 Olopai Iginoef's interest in Lot 1816 is only that of a general user, the same rights any other
7 family member has to a Carolinian family land.
8

9 VI. CONCLUSION

10 THEREFORE, the Court finds by a preponderance of the evidence that Lot 1816 had
11 been used in such a way consistent with Carolinian custom, making Lot 1816 Carolinian
12 family land.
13

14 THUS, as the eldest surviving Carolinian female, the Court finds that Gregoria Repeki
15 Fitial-Omar is the current Carolinian family land trustee of Lot 1816.
16

17 FURTHERMORE, as Lot 1816 is Carolinian family land, the Court finds that
18 Francella Kimberly Olopai Igineof's interest is only that of a general user, the same rights any
19 other family member has to a Carolinian family land, meaning Francella Kimberly Olopai
20 Igineof has no individual ownership rights to Lot 1816.
21

22 THEREFORE, Francella Kimberly Olopai Igineof does not have inheritance rights
23 beyond a general user of Lot 1816, a Carolinian family land.
24

25 //
26 //
//
//

IN CONCLUSION, the Estate of Francella Kimberly Olopai Igeof's Motion to Substitute for the Plaintiff Francella Kimberly Olopai Igeof as it pertains to Lot 1816 is DENIED¹⁹.

SO ORDERED this 24th day August, 2026.

/s/
JOSEPH N. CAMACHO, Presiding Judge

¹⁹ The focus of the Parties has been Lot 1816. There has been little to no briefing, discussion and arguments as to Lot 010 F 01. Therefore, the Court reserves ruling on Lot 010 F 01 until the Court has heard more from the Parties.