



IN THE NAURU COURT OF APPEAL
AT YAREN
CIVIL APPELLATE JURISDICTION

**Civil Appeal No. 07
of 2020
Supreme Court
Civil Case No. 08 of
2020**

BETWEEN

JANELLA TSIODE of Ewa District

AND

APPELLANT

DARAN ADEANG of Ewa District

RESPONDENT

BEFORE:

**Justice R. Wimalasena,
President
Justice Sir A. Palmer
Justice C. Makail**

DATE OF HEARING:

2 August 2024

DATE OF JUDGMENT:

22 November 2024

CITATION:

Janella Tsiode v Daran Adeang

KEYWORDS: Publication of Notice and Roles of Curator - Succession, Probate and Administration Act 1976, section 55; Validity of Family Agreement and Determination of the Nauru Lands Committee and the Deputy Curator – Succession, Probate and Administration Act 1976, sections 63(1) and (2), (5) and (7); Effect of Validation provisions – section 9 of the Nauru Lands Committee (Amendment) Act 2012.

APPEARANCES:

COUNSEL FOR the Appellant: **B. Duburiya**

COUNSEL FOR the Respondent: **D. Aingimea**

APPEAL Allowed/Dismissed **Dismissed**

JUDGMENT

1. This is an appeal against the decision of the Supreme Court (Khan (ACJ.)), dated 1st December 2020, giving vacant possession to the house situated on Portion 10 of Ewa District, (“the House”), which belonged to Anzac Dediya (the Respondent’s Grand-uncle) to the Respondent (Plaintiff in the Supreme Court).

The grounds of Appeal.

2. There were initially five grounds of appeal filed on the 9 December 2020. This was amended on the 31st January 2021 and reduced to four grounds. The final Supplementary Notice of Appeal filed on 22 July 2024 and relied on in this appeal sets out a total of eight grounds and an alternative ground. These are set out as follows:

1. *The judge erred in law and fact on the face of the document particularly Government Gazette No. 67 of 2003, in holding that the Curator was exercising his authority under section 63(7) of the Succession, Probate and Administration Act 1976 (hereinafter referred to as SPA).*

- *The publication expressly stated that it was a notice under section 55 of the SPA.*
- *Section 55 and Section 63(7) do not empower the Deputy Curator to make a determination nor does their application and interpretation correspond to the action of the Deputy Curator.*

2. *The judge erred in law and fact as to the application of section 63(7) of the Succession, Probate and Administration Act 1976 in relation to the actions of the Curator in publishing the section 55 notices in Gazette No. 67/2003.*
 - *Section 63(7) of the SPA must be read in its entirety as it applies to when the Court issues an order to the Curator to administer the estate of a person “whenever it is made to appear to the Court that there is a reasonable ground to suppose that any person has died either in or out of Nauru leaving property within Nauru, the Court may grant an order to the Curator to administer the estate of such person both real and personal.” Section 63(7) requires the Curator to act in accordance with the determination of the Nauru Lands Committee (NLC) whether as bound by family agreement or by determination of the NLC or a Court Order.*
 - *Section 63(7) is not an empowering provision that justifies or legitimizes a purported determination by the Curator.*
3. *The judge erred in law by accepting that the Deputy Curator’s notice in Gazette no. 67/2003 constituted a determination of the personalty estate of Anzac Dediya.*
 - *A section 55 of the SPA notice is not a determination but has a role specific to dealing with the liabilities of the Curator in relation to the distribution of the estate. It is a notice that allows for creditors and others who have a claim on the estate to provide notice of their claim to the Curator.*
4. *The judge erred in law in ruling that section 9 of the Nauru Lands Committee (Amendment) Act 2012 validated the distribution of the estate of Anzac Dediya as no determination had been published by the Nauru Lands Committee or the Curator which would be covered under the validation of section 9.*
 - *The Gazette Notice No. 67/2003 was not a determination it was a notice pursuant to section 55 of the SPA.*
5. *The judge erred in law by determining that the Respondent became the owner of the house (located on portion 10 Ewa the subject of this appeal) upon the publication of Gazette No. 67/2003.*
 - *The relevant notice in Gazette 67/2003 was not a determination but a section 55 SPA notice by the Deputy Curator.*
 - *The judge wrongfully held that the Curators distribution was by virtue of section 63(7) which is problematic as discussed in appeal ground 2 above.*

- *There was no determination of the NLC or Curator published in the Nauru Gazette to legitimize a distribution.*
6. *The judge erred in failing to regard the claim of the Plaintiff through the will of Ruby Thoma as he wrongfully held that the publication of the section 55 SPA notice in Gazette Notice No. 67/2003 was a valid determination as to the personalty intestate estate of Anzac Dediya particularly in the disputed house.*
 7. *The judge erred in law and fact by accepting that the house subject to this appeal as located on portion 10 Ewa was a part of the personalty estate of Anzac Dediya as the house is a permanent attachment to the land which is co-owned by the Appellant and Ruby Thoma.*
 - *The judge failed to consider the status of the house as either realty or personalty estate of Anzac Dediya. This distinction meant that the Appellant's land rights would be replaced to her detriment by rules of personalty.*
 8. *In the absence of a determination published by either the NLC or Curator, the judge erred in finding that the Appellant was residing in the house "without any right" as the judge wrongfully accepted that the gazette notice No. 67/2003 was a determination when it was not.*
 - *An undated (it is not clear as to the dates on which the minutes were entered) extract of a NLC minute is not a determination by the NLC. To be proper and fair a determination must be published in the Nauru Gazette.*

In the alternative

9. *If the Court finds that the section 55 Notice in Gazette No. 67 of 2003 is a determination by the Deputy Curator as to the beneficiaries of the personalty estate of Anzac Dediya which is validated by section 9 of the Act, then the Judge erred in disregarding or not having due consideration for the land rights of the Appellant as co-owner of portion 10 Ewa, the land on which the house claimed by the Respondent to be his is attached as a permanent fixture.*
3. Numerous orders were sought however in essence, it is *inter alia* to have the decision of the Court below quashed and the matter remitted back to the Court below for re-determination on the various matters raised, in particular on the issue of determination of ownership or allocation of the House.

The brief background facts.

4. The dispute in this civil suit is about the ownership claims of the Respondent (Plaintiff in the Supreme Court), over the House (property) located on Portion 10 of Ewa District.
5. That House belonged to Anzac Dediya ("Anzac"), the Respondent's granduncle.

6. Anzac died on the 26 April 1998. Following his death, the distribution of his Estate was to be determined by process of law, in this instance by the Nauru Lands Committee (“NLC”).
7. According to the claim of the Respondent (Plaintiff in the Supreme Court), he relies on a recorded determination made by the NLC sometime in 1999 or 2000. It seems that the details of the records of the actual date such determination was made could not be ascertained but there doesn’t seem to be any issue taken, that records exist of a family meeting held by the NLC during that period, over and in respect of the Estate of Anzac (deceased).
8. The original records relied on were in the Nauruan dialect¹, which subsequently were translated into English², by Darrel Tom, Pleader of DA Law and Associates. Again, there doesn’t seem to be any issue about the accuracy of that translation.
9. According to the records of that meeting, when the question was asked by the Chair of the NLC if there was a will from Anzac Dediya (deceased), Ruby Thoma, who appears to have been nominated as the spokesperson, made the following response:

“Realty:

Half of all of Anzac’s shares go to Liviatta nee Dediya and me as trustee, the other half is divided into half, between Daren which is ¼ share, and the other ¼ distributed between following beneficiaries in 1/48 shares as LTOs:

*Vivian Dediya,
Ruby Thoma,
Victory Dediya,
James D,
Adonis D, and
Laura Tom.*

After LTOs deceased, all their shares go to Daren with Ruby Thoma as Trustee.

If Daren doesn’t reach age of 18 years, all the beneficiaries that share in Anzac’s shares shall be called to a family meeting, along with Daren’s mother and father, to discuss the house owned by Anzac Dediya in Ewa, which James is the Caretaker, up to date Daren comes of age to receive his inheritance.” (Emphasis added).

10. On 17th September 2003, by Gazette Notice No. 266/2003, the following determination of the NLC was published in relation to the property (the House), as follows:

“The house in Ewa owned by the deceased should be granted to Daran Adeang”.

11. At the bottom of the GN, the following notice was issued:

¹ Marked as Exhibit 12, at pages 173 and 174 of the Records of Tendered Exhibits in the Supreme Court (Volume 2).

² Marked as Exhibit 11, at pages 170 and 171 (ibid).

“Creditors and others having claims against the above determinations may send into the Curator of Intestate estate within fourteen days (14) of this Gazette Notice, after which date the said Curator shall distribute the assets of the deceased or any part thereof, amongst the beneficiary having regards only to the claims of which has then received notice.”

12. The notice was signed off by Lionel Aingimea, Deputy Curator of Intestate Estate, as he then was.

The Issue for Determination in the Supreme Court.

13. The issue for determination in the Supreme Court was whether there was an agreement by the family members in that meeting, regarding the House of Anzac (the House at Ewa), before the NLC sometime in 1999/2000, and whether the determination subsequently published by the Deputy Curator in the GN of 266/2003 reflected the agreements reached by the family in that crucial meeting.
14. The finding of the Supreme Court on this crucial issue, very clear. His Honour, Khan J (Acting Chief Justice), found in favour of such determination of the NLC, which reflected a family agreement, that the said House belonged to the Respondent (Plaintiff in the Supreme Court). It is pertinent to note that the family agreement, nor the publication of the determination by Gazette Notice in 2003, has ever been challenged, in particular, by Ruby Thoma (deceased).
15. His Honour also went on to consider as an additional ground, in endorsing the determination of the Deputy Curator, by considering the effect of the validation provisions set out in the *Nauru Lands Committee (Amendment) Act 2012*, at section 9, which provides as follows:

“9 Validation of decisions of Curator

A decision of the Curator made before the commencement of the Nauru Lands Committee (Amendment) Act 2012 that purports to determine the distribution of the personal estate of a deceased Nauruan is taken to have been made by the Committee.”

16. He found that in the event, the determination was not considered as a determination of the NLC, and was viewed instead as a determination made by the Deputy Curator, this validation clause would have deemed his decision to be one taken by the NLC and therefore binding on all parties and thus removing any impediments or defects, that may be attached to such determination as issued in the Gazette Notice of No. 266/2003. We will say more on this later in the judgment, but we are of the view as well that this is an important provision that cannot be ignored and is relevant to the peculiar circumstances of this case.

The claim of ownership by the Appellant.

17. The claim of ownership of the Appellant can be summarized as follows. She says that she is the rightful owner of the property (the House), by virtue of the fact that after the death of

Anzac, the house was occupied by one, Ruby Thoma (“nee Dediya”), Aunty of the Appellant and the eldest sibling of the Dediya family.

18. Anzac (deceased) is her uncle, so she and the Respondent are closely related.
19. The Appellant claims that Ruby Thoma is the rightful owner of the house, having obtained the consent of the landowners to take over the house and had renovated the house incurring expenses³. She has not been able to point to or produce any document which establishes her claim that Ruby Thoma was given the property by the family or a determination made by the NLC.
20. Ruby Thoma died on 14 January 2019.
21. Upon her death, she left a will, which purports to confer rights of ownership over the House to the Appellant (Mrs. Toside). This is the brunt of the Appellant’s claim, that the house had been bequeathed to her by Ruby Thoma (deceased), in her will.
22. The Appellant had then moved into the House thereafter.

The Submissions of the Appellant.

23. In essence, the submissions of the Appellant are premised on the supposition or view taken that there was no determination by the NLC, or by the Curator on the question of distribution of the House.
24. The appeal grounds raised all relate in form or another to this foundational argument.
25. In her submissions in support of this preposition, Ms. Duburiya of Counsel for the Appellant submits that there was neither any agreement by the family members over the disbursement of that property, nor determination by the Curator.
26. She submits that GN No. 266/2003 was not a determination, but a Notice by the Deputy Curator pursuant to section 55 of the Succession, Probate and Administration Act of 1976 (“the SPA Act 1976”).
27. She also submits that section 55 and section 63(7), are merely empowering provisions that authorize the Curator to make a determination that relate to his duties under the Act.
28. She submits there has never been any determination ever published in the Government Gazette by the NLC or the Curator in respect of the House of Anzac.
29. She submits that section 9 of the *Nauru Lands Committee (Amendment) Act 2012* as well does not apply to the publication by the Deputy Curator as that Notice was not a determination but a notice pursuant to section 55 of the SPA Act 1976.

³ Refer written submissions of the Appellant at paragraph 1.

30. She submits that an extract of an undated minute of the NLC relating to an estate does not suffice as a determination, for a determination needs to be published in the Government Gazette for it to be valid.
31. Finally, she submits that the rights of the Appellant as a co-land owner, was never determined and so in the event there was a valid determination, her rights needed to be taken into account in respect of that property.

The Submissions of the Respondent.

32. Mr. Aingimea of Counsel for the Respondent on the other hand submits that there is no error of law that can be identified in the finding and determination of the Supreme Court, or any finding of fact that was erroneous.
33. He submits that the issue of land rights and consent of Anzac to erect a house on Portion 10, are separate to the claims of the Appellant as a co-owner of the House. He submits that the question of ownership of a house is a separate right made by family agreement, as is the case here, and not affected by any subsequent change in land ownership, which is what the Appellant is seeking. He submits that if this submission is accepted, there would be utter chaos where family agreements on usage of lands and houses on lands would subsequently be voided by acceding to any such subsequent claims.
34. It seems that there has never been any issue about rights of co-landowners, which was reflected in the family agreement made in 1999/2000, but the issue of ownership of the House, seemed to be never in doubt by the family members when they met on that date.

Discussion.

35. The primary issue therefore on appeal is whether a valid determination has been made regarding the ownership of the House. The Appellant submits no determination had been made, the Supreme Court however, had made a finding of fact on the evidence before it and according to law, that a valid determination had been made.
36. We have considered the submissions of learned counsel, Ms. Duburiya on this issue but find no error of law had been committed in respect of the finding of the learned Acting Chief Justice on this issue.
37. We are satisfied the evidence is clear, distinct and definite, supported by facts and in accordance with the relevant law in application.
38. We are satisfied the evidence of a family meeting before the NLC in 1999 has never been disputed or challenged. While the date may not be discernible, however the document on which the records were kept shows that it was written on the pages of a diary which contains certain particulars. The top part of the page for instance, contains the month November, Week 45, and a date Tuesday 9.
39. We form the view that judicial notice can be taken that week 45 in 1999, falls on the dates of the 8th November, a Monday, to the 14th November, a Sunday. So it is plausible that the meeting occurred on either Monday 8th November 1999, or Tuesday 9th November 1999.

In any event, what is important to note is that there has never been any challenge to the accuracy of the records kept of that meeting.

40. It is also important to note the wording of the first paragraph which states:

“Ruby entered the Nauru Lands Committee Conference Office relating to determination of Anzac’s estate”.

41. We form the view, that this couldn’t be clearer, that there was a meeting conducted in the “Nauru Lands Committee Conference office” and chaired by someone, who we may deduce was the Chairperson of the NLC at that time.

42. The subsequent records are also consistent with this view, for the next paragraph records the “Chair” as asking if there was a will from the mother and father of Anzac.

43. The second point to note from the records of this meeting is that it is equally clear from the records, that the item or subject for discussion, related to the “*determination of Anzac’s estate*”, which would have included and did include, the issue of the House.

44. What transpired thereafter also has never been challenged, that the House, the subject of the dispute **was discussed and determined** by the family members present or authorized to speak on that subject. The relevant part which addresses this subject states:

“Realty:

Half of all of Anzac’s shares go to Liviatta nee Dediya and me (“Ruby”) as trustee, the other half is divided into half, between Daren which is ¼ share, and the other ¼ distributed between following beneficiaries in 1/48 shares as LTOs:

*Vivian Dediya,
Ruby Thoma,
Victory Dediya,
James D,
Adonis D and
Laura Tom,*

After LTOs deceased, all their shares go to Daren with Ruby Thoma as trustee.

If Daren doesn’t reach age of 18 years⁴, all the beneficiaries that share in Anzac’s shares shall be called to a family meeting, along with Daren’s mother and father, to discuss the house owned by Anzac Dediya in Ewa, which James Dediya is the caretaker, up to the date Daren comes of age to receive his inheritance.” (Emphasis added).

45. Again, the interpretation or translation of the original records in Nauruan dialect could not be clearer. In other words, after the death of all the LTOs identified therein, all their shares, held in trust, are to go to Daren. Even the other half held by Liviatta nee Dediya, and Ruby Thoma were to be held as trustee for Daren.

⁴ This assumes that in the event that Daren dies before reaching 18 years.

46. On the other hand, in the event that Daren dies before reaching his 18th birthday, the matter of ownership over the said property (House) is to be resolved by them in a family meeting.
47. On reaching his 18th birthday, he will become entitled to receive his inheritance, being the right to ownership of the House.
48. It is clear to us that this interpretation of the family agreement, has never been contested or challenged, even after the Gazette Notice of 266/ 2003 was published and opportunity given for any disputes to be lodged with the Deputy Curator within 14 days thereafter. That notice therefore is binding on all the parties and the Deputy Curator was entitled thereafter to have that House distributed or allocated to Daren on his reaching 18 years of age.

Section 55 of the Succession, Probate and Administration Act, 1976.

49. We will touch briefly on section 55 of the SPA Act 1976 to distinguish and clarify the terms of that provision. That section reads as follows:

“DISTRIBUTION OF ASSETS AFTER NOTICE

55. Where an executor or administrator has given such or the like notices as in the opinion of the Court in which the executor or administrator is sought to be charged would have been given by the Court in an administration suit for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, **the executor or administrator may**, at the expiration of the time named in those notices, or the last of them, for sending in such claims, **distribute the assets of the testator or intestate, or any part thereof**, amongst the persons entitled thereto, having regard to the claims of which he has then received notice; and he shall not be liable for the assets or any part thereof so distributed to any person of whose claim he has not had notice at the time of such distribution.” (Emphasis added).

50. This provision relates to the powers of a **court appointed executor or administrator**, to be able to distribute the assets of an estate after publication of notice in the Gazette. It sets out the powers of such executor or administrator to be able to distribute the assets of the testator or intestate, or any part thereof, *after notice had been duly given* and protects him or her from liability to any claim thereafter.
51. It is important to distinguish this from the powers of the Curator or the Deputy Curator as set out in Part III of the SPA Act 1976, and in particular sections 6 and 7 of the Act.
52. Further, it is important to distinguish the powers of the Court and the Curator as they relate to section 63, subsections (1) and (2), subsection (5), and subsection (7).
53. Subsection 63(1) and (2) for instance, relate to the powers of a Court-appointed Curator to administer the estate of **any person**, who has died in or out of Nauru and leaving property within Nauru. Section 63(1) in particular provides as follows:

“63. (1) Whenever it is made to appear to the Court that there is reasonable ground to suppose that any person has died either in or out of Nauru leaving property within

Nauru, the Court may grant an order to the Curator to administer the estate of such person both real and personal.”

54. Subsection 63(2) on the other hand provides powers to the Court-appointed Curator to administer the estate as set out in paragraphs (a) to (d). Subsection 63(2) provides as follows:

“(2) Every such order shall be valid until revoked, and shall empower the Curator to-

(a) collect, manage, control and deal with the personal estate of the supposed deceased person;

(b) execute leases of all or any of the real estate of that person to the Nauru Phosphate Corporation for the purpose of mining phosphate;

(c) enter upon and receive the rents and profits and otherwise manage the real estate; and

(d) pay and discharge the debts and liabilities of that person,

in like manner as if he were certainly dead and administration had been granted to the Curator.”

55. Subsection 63(5) on the other hand, is directly relevant to this case for it relates to the circumstances **where the estate had been administered pursuant to a family agreement** (as is the case here), or a determination by the NLC, or on appeal to the Court. Subsection 63(5)(c) provides as follows:

“(5) Where the Court has, under the provisions of subsection (1), granted an order to the Curator to administer the estate of any person, the Court shall revoke that order-

(a) on application by that person or the Curator, upon being satisfied that that person is alive;

(b) upon granting probate or administration in respect of the will of that person or his estate; or

(c) where that person is a Nauruan, upon being satisfied that he is dead and that the persons entitled to his estate and the extent of their respective beneficial interests therein have been finally determined by

(i) agreement of his family, or

(ii) in default of such agreement, the Nauru Lands Committee or, where an appeal is taken against the decision of the Nauru Lands Committee, the Court.” (Emphasis added).

56. The difference with this provision (section 63(5)(c)), is that it recognizes and gives effect to three situations that may arise in respect of the distribution of the estate of a deceased Nauruan, who had died intestate. These are:
- (i) **Where the estate had been finally determined pursuant to a family agreement;**
 - (ii) Where in default of a family agreement, the NLC had made a determination over it; and
 - (iii) Where an appeal had been taken against the decision of the NLC to the Supreme Court.
57. We are satisfied, the first situation (paragraph 63(5) (c) (i)), applies on all fours to the circumstances of this case, where it has never been contested that a family agreement had been entered into in a meeting convened sometime on or about the 9th November 1999, and where it was agreed that on coming of age, on his 18th birthday, *that the House shall be given to Daren.*
58. Subsection 63(7) in turn, merely gives effect to the implementation of the determination of a family agreement by the Curator, or as in this case, the Deputy Curator, being that, *“the Curator shall not distribute the assets except in accordance with a family agreement or the decision of the Nauru Lands Committee as to the persons entitled thereto or, where any appeal is taken against such decision of the Nauru Lands Committee, with the decision of the Court on that appeal”.*
59. That being the case, we are unable to accept the submission of the Appellant, that the learned Acting Chief Justice had committed any error of law in his findings on this point, that the Deputy Curator had acted without any legal authority or, usurped the powers and functions of the NLC, when he published the GN No. 266/2003 regarding the distribution of the estate of Anzac as it related to the ownership of the House.
60. We find no error of law in respect of the determination that the House in Ewa owned by the Deceased to be granted to Daran Adeang (the Respondent), the only qualification being, on reaching his 18th birthday.
61. When the learned Deputy Curator therefore published that determination, it was not a determination made by him, **he was merely re-stating the determination of the family agreement** entered into on or about the 9th November 1999, that *“after LTOs deceased, all their shares go to Daren with Ruby Thoma as trustee”,* and *“up to the date Daren comes of age to receive his inheritance.”*
62. The family agreement regarding that House was very clear in our considered view. It was either, if he pre-deceased his 18th birthday, or survives to his 18th birthday, which is the case here. In either of those circumstances, the family agreed that the House was to be awarded to him. Before reaching his 18th birthday, it was to be held *in trust* as set out in the determination of the family, but on reaching his 18th birthday, it was to be awarded to him.
63. We find further and additional evidence in support of the family agreement in the affidavit of Laura Tom, dated 15th May 2020. She is the only surviving sibling of the late Anzac.

64. She confirms at paragraph 3 of her affidavit, that the house built on portion 10, Ewa, was built by Anzac. She states:

“Upon Anzac’s death, the house was gifted by our family to Daran Adeang”.

65. At paragraph 4, she emphatically states, that the Respondent should take rightful possession of the house. She explains the reason why the family had agreed to give the house to the Respondent as follows:

“The reason we agreed to give Daran the house was because Anzac loved Daran. We knew it was Anzac’s intention to adopt Daran but his premature death did not complete the event.”

66. At paragraphs 9 – 10, she continues as follows:

“9. By the same token, we agreed that the realty component of Anzac’s estate would revert to Daran once each sibling passed away. We inherited Anzac’s realty on a “life time only” basis. In line with that family decision, Daran has been inheriting Anzac’s realty over the years as each sibling passed away.

10. Daran was still small when we made this decision. As I said earlier, we felt at the time that Anzac would have been happy for Daran to inherit his estate since he died without issue. Ruby looked after Anzac’s house on a caretaker basis, and it is my understanding that Daran didn’t disturb her living there out of respect and love for Ruby.”

Notice of Appeal – Grounds 1 and 2.

67. We will now deal with the Grounds of Appeal herewith.

68. We are satisfied Appeal Grounds 1 and 2 should be dismissed herewith. We find no error of law in the finding of the learned Acting Chief Justice that the Deputy Curator’s actions were consistent with the law as set out in section 63(7) of the SPA Act 1976. He was merely implementing what the family had agreed to regarding the distribution of the House to the Respondent.

Notice of Appeal – Grounds 3, 4 and 5.

69. We are satisfied these appeal grounds should also be dismissed for the reasons given above in this judgment.

70. We find no error committed by the Court below in its judgment.

71. Section 63(5)(c) of the SPA Act 1976 provides for three situations in which the estate of a deceased Nauruan who had died intestate may be distributed.

72. One of those situations is **where the estate had been finally determined pursuant to a family agreement**. No issue has been taken regarding the agreement entered into by the family in the meeting in the *Nauru Lands Committee Conference Office* in or about the 9th November 1999 before the Chairman of the NLC.

73. No appeal has been made against that family agreement to the NLC.
74. The effect and purpose of section 63(7) is to empower the Curator or in this case, the Deputy Curator, to administer the estate of the deceased Nauruan in accordance with that family agreement. That is precisely what has happened in this instance.
75. We further note that even if the decision published by the Deputy Curator in the GN No. 266/2003 on 17th September 2003 may be perceived as a Notice under section 55 of the SPA Act 1976, it is important to bear in mind the effect of such notice in **giving opportunity to anyone who disagreed with what was said in the Notice**, being *“The house in Ewa owned by the deceased (“Anzac”), should be granted to Daran Adeang.”*, **to lodge any claims that they may have over that House within fourteen (14) days of the Gazette Notice**, being 17th September 2003.
76. It is not in issue that no one, including Ruby Thoma, has taken up any adverse claim against that determination, as reflected in the family agreement of 9th November 1999.
77. This is where section 9 of the Nauru Lands Committee (Amendment) Act 2012 becomes relevant, for it will validate any decision of the Curator (or Deputy Curator), **which purports to make a determination of the personal estate of a deceased Nauruan**. In so far therefore as that Notice purports to make a determination in respect of that property, and in so far as reliance had been placed on that determination by the family members, in particular the Respondent, section 9 would have the effect of validating that determination. It is also important to keep in mind throughout that until this case was filed, no one in the family had ever taken issue with such decision or determination. To that effect we find no error of law was committed by the learned Acting Chief Justice.
78. However, even if that decision is not perceived as a determination by the Deputy Curator, it matters not for the determination by family agreement has never been usurped or disturbed and therefore is binding on all the parties.
79. We are satisfied those appeal grounds have no merit and should be dismissed.

Notice of Appeal Grounds 6, 7 and 8.

80. These grounds should be dismissed too as they relate to the assumption that there was no valid determination which conferred rights of ownership to the Respondent and therefore the will made by Ruby Thoma was valid and binding. It assumes as well that the House was co-owned by Ruby Thoma and the Appellant and accordingly, somehow Ruby Thoma had a better right of ownership over the House than the Respondent and by virtue of that was able to have the House transferred to the Appellant in her will. How she was able to acquire a better title or right however, has never been disclosed other than relying on the fact that she occupied the house shortly after the death of Anzac until her death.

Alternative Appeal Ground 9.

81. The alternative argument basically sums up the Appellant’s claim, that the matter should be reverted back to the NLC to make a determination of the House.

82. We find no error in the finding of the learned Acting Chief Justice when he dealt with the subject of Ruby Thoma's will at paragraphs 20 -- 22 of his judgment.

"20. Upon publication of the G.N. 67 by the Deputy Curator the plaintiff became the owner of the house and still continues to do so. On the evidence before me I am satisfied that he allowed Ruby Thoma to stay in the house until her death. This was a mere license for her to occupy the house and it did not confer any rights on her.

21. Ruby Thoma made a will on 13 December 2018 and bequeathed the house on Portion 10 to the defendant. She did not acquire the ownership of the house and thus she had no powers or authority to bequeath the house to the defendant. When NLC met to determine her estate, its own record would have revealed that the house belonged to the Plaintiff; and further the meeting was attended to by Laura Tom who informed NLC that Ruby Thoma was only a caretaker of the house. For these reasons NLC did not include the house in her estate when it made the determination of her personalty estate in G.N. 259 – G.N. No. 937/2019."

83. We note that the fact no determination was made by the NLC over the House when it published its decision in G.N. No. 937/2019 is supportive of the Respondent's case that the NLC was not satisfied that the House belonged to Ruby Thoma and had the right to include it in her will to bequeath to the Appellant.

84. The normal and proper course of action to take by the Appellant when Notice was given of its determination, is to appeal it to the Supreme Court, which has not been done.

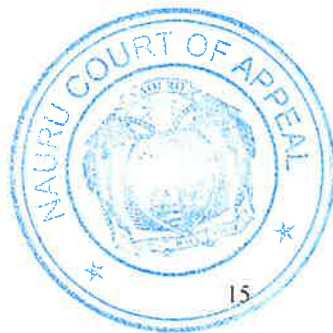
85. We are satisfied the alternative Appeal Ground 9 should also be dismissed herewith as having no merit in law or fact.

ORDERS OF THE COURT:

- 1. Dismiss Appeal.**
- 2. Uphold orders of the Court below.**
- 3. Award costs in this appeal to the Respondent to be taxed, if not agreed.**

Dated this 22 November 2024.

Justice Sir Albert Palmer



A handwritten signature in blue ink, appearing to read "Palmer", is written over the seal.

Justice of Appeal

Justice Rangajeeva Wimalasena

I agree



President

Justice Colin Makail

I agree



Justice of Appeal