LAND APPEAL NO. 24

APPELLANT : DEIDIENEK DANIEL

JUDGEMENT

This appeal is against the determination made by the Nauru Lands Committee in respect of land named Aiue, portion No. 405, in Aiwo District; the determination was published in Government Gazette No. 16 of 1965.

The appellant stated that he wished to appeal against all previous determinations in respect of the estate of his late uncle, Dabe. The ~~Government~~ Court informed him that it could not permit him to extend this appeal beyond the determination published in Gazette No. 16 of 1965.

That determination related to portion no. 405. It was followed, however, by the following words "Any other blocks of land owned or shared by late Dabe (deceased) of Aiwo should now be distributed as shown hereunder"; details of the beneficiaries were then given. In the course of the hearing I stated that I doubted whether that amounted to a proper determination of the ownership of any specific portions of land. Having given the matter further consideration I am fully satisfied that it was not.

It appears that the Committee has inherited from the non-statutory Lands Committee, and before that the Chiefs, the duty of ascertaining whether a deceased Nauruan left a will which should be recognised as valid in accordance with Nauruan custom or whether he died intestate. Its decision on this matter is, however, not a determination made under the provisions of the Nauru Lands Committee Ordinance. It is only when it is applied to specific land that it becomes a determination.

If it decides that a person has died intestate, the Committee must then proceed, in accordance with the provisions of the Regulations governing Intestate Estates (Administration Order No. 3 of 1938), to hold a meeting of his family to see whether they can agree on the distribution of the estate. If they do so, then the ownership of the land comprising the estate must be determined in accordance with the agreement. If there is no agreement, the Committee has no discretion regarding the distribution. It must be made as provided for in the Regulations. The Committee will have to ascertain who ~~they~~ the beneficiaries are and may find it useful to record what it has ascertained, but that is not a determination made under the Nauru Lands

Committee Ordinance. Only when it is applied to specific portions of land comprising the estate does it become such a determination. The part of the Gazette Notice not relating specifically to the land Aiue is, therefore, not a determination made under the Ordinance and is not a final determination in respect of any portion of land.

The appellant based his claim on three alternative grounds. The first ground was that Dabe made a will leaving all his property to the appellant's mother. The second was that, even if he died intestate, Dabe's estate was not to be distributed to all his brothers and sisters and their issue but only to one sister, the appellant's mother, because they had owned this property jointly. The third was that the family had agreed in 1944 that she should have everything and that this was binding on the Committee.

In 1958 the Committee published in the Government Gazette (No. 13 of 1958) a notice that it had determined the ownership of certain blocks of land, including one named Aiue in Aiwo District; it showed the original owner as Dabe. No portion number was given. It is common to find a number of portions of land having the same name in the same district. Reference to the German Ground Book shows that there were several portions named Aiue in Aiwo District. It is therefore not possible to regard the 1958 determination as being a conclusive determination in respect of portion 405. Indeed, had that been the case, there would have been no need to make the determinations published in Government Gazettes Nos. 24 of 1962 and 31 of 1963, against which the appellant appealed to the Central Court (Appeal No. 6 of 1963/64). That appeal was successful and the matter was remitted to the Committee by the Court to be redetermined. I find, therefore, that there is no subsisting prior final determination in respect of Aiue, portion No. 405.

The appellant called his mother as a witness. She gave evidence of a written will made by Dabe when he was in Australia. She said that Dabe showed it to her and told her where to find it after his death; but that, when she looked for it in that place, she could not find it. There is no other evidence before the Court about the will. Verbal evidence of a lost will by the only beneficiary allegedly named in it must always be

treated with a great deal of reserve. Furthermore, the witness's own evidence that the will could not be found in the place where Dabe had told her it would be raises doubts whether it had not been destroyed by Dabe before his death. Having given the matter careful consideration, I find that the appellant has not proved that Dabe did not die intestate.

With regard to the appellant's second and third grounds, his mother has given evidence that her parents distributed their property to their children in four groups, three groups consisting of two children and the other of only one. She said that under this arrangement, if any child in a group of two died without issue, his property was to be inherited only by the other child in the same group and his issue and not by the brothers and sisters in the other groups and their issue. The appellant produced copies of a record of the proceedings before the Lands Committee in 1944 and 1946. They were attended by the one surviving brother, Dougouge, the two surviving sisters, Eimow and the appellant's mother, and two representatives of the estates of the brothers and sisters who had died. Dougouge is recorded as having said that it was "right for Margaretha to receive all lands and everything which she shared with Dabe" but that those which were Dabe's alone should be shared among them all. The appellant's mother, Margaretha, claimed to be entitled to receive all Dabe's property. Eimow admitted that the appellant's mother had shared her mother's property with Dabe but described it as "not a share in lands but a person to person binding" and said that this binding had been broken because Dabe and the appellant's mother had quarrelled. Dabe's personal constable gave evidence that Dabe and the appellant's mother shared everything with one another.

It is clear that there was no agreement by the members of the family how the estate was to be distributed. In 1946 the members of the Committee were divided in their opinions. If Dabe and the appellant's mother did own some, or all, of the land jointly, then on Dabe's death half that land must have formed part of Dabe's estate, and the other half belonged to the appellant's mother, unless the whole of it became her property as a joint tenant by survivorship. If it formed part of Dabe's estate, it had to be distributed in accordance with paragraph (3) of the Regulations governing Intestate Estates. If it vested in the appellant's

mother by survivorship, it could not have been inherited even by Dabe's son, had he survived Dabe. The appellant's mother has given evidence that the effect of the grouping was that no member outside the group would inherit; only those within it would do so. She did not claim that she would have been entitled to the land to the exclusion of Dabe's issue, if any had survived. I come, therefore, to the conclusion that, in respect of those portions of land which Dabe and the appellant's mother shared, half of each portion formed part of Dabe's estate on his death; it would have passed to his son rather than his sister, if the son had survived him.

Paragraph (3) of the Regulations provides that, if a person dies without issue and the person from whom he received any property is dead, that property is to go to his nearest relatives, subject to the life interest in it enjoyed by his wife, if any. I have considered whether the effect of the division of the family into groups for the purpose of holding property jointly is to make those relatives who are in the deceased's group nearer relatives to the deceased than those outside it; but this is an entirely novel concept which I am unable to adopt. Dabe's ~~share~~ must, in my view, be shared by all those within the same degree of consanguinity, i.e. all Dabe's brothers and sisters and their issue.

The appellant argued that, as the Lands Committee awarded all Dabe's personalty to his mother, they had determined how the estate should be distributed. As there was no agreement between the members of the family, the estate had to be distributed to the nearest relatives. Possibly the Lands Committee decided that the personalty was owned jointly or there may have been agreement among the members of the family about it, as it was of very little value. There is nothing on the record of the proceedings in 1944 and 1946 to indicate the reason for its decision; indeed there is nothing on that record to show that the Lands Committee did make the decision. As, however, his evidence of this was unchallenged, I accept that it did so. However, the fact that the family agreed about the personalty does not mean that it agreed about the realty. Nor if the personalty was owned jointly, does it necessarily follow that all the realty was owned in a similar manner. Dougouge admitted that Dabe and the appellant's mother had shared some property but asserted that he owned other land separately. Eimow referred only to the land given by their mother as

having been shared. In support of Dougouge's contention are the entries in the Lands Registration Book of 1928 which show Dabe as owning some land on his own and other land jointly with the appellant's mother. There is also a ~~motion~~ notice in Government Gazette No. 16 of 1938 relating to a determination of the ownership of certain land by the Lands Committee. Dabe was found to be the owner; the appellant's mother was not joined with him. There was an appeal but not by or on behalf of Margaretha and the Central Court upheld the Committee's determination.

Having considered carefully all the evidence I am satisfied that Dabe held some land on his own and some jointly with the appellant's mother. All that remains to be decided in this appeal, therefore, is whether the land Aiue, portion 405, belonged to Dabe alone or to him jointly with the appellant's mother.

The appellant entered as Exhibit 1 details compiled by the Committee showing the land held by Dabe and Margaretha in 1928 as recorded in the Land Registration Book. Dabe is shown as the owner of some land on his own; he and Margaretha are shown as jointly owning three portions; and Margaretha is shown as owning five portions; only one of which has the same name as a portion owned by Dabe. The land Aiue is shown as being owned by Dabe alone. Margaretha is not shown as owning any land of that name.

Apart from the notice in the Government Gazette in 1958 to which I have already referred and the determinations leading up to the present appeal, there is no record after 1928 relating to the ownership of that land. Having considered carefully all the evidence before the Court I have come to the conclusion that the appellant has not proved that Aiue is one of the portions of land which his mother and Dabe owned jointly.

Accordingly his appeal is dismissed and the Committee's determination confirmed.

May, 1969

Acting Chief Justice