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SUPREME COURT OF NAURU

LAND APPEAL NO. 16 OF 1970

DEO KARL AND OTHERS v. JACOB ARDI

JUDGMENT

This ap peal relates to land called "Oininibok", phosphate land, porti on No. 102 in Nibok District. The determination of the Nauru Lands Committee was published in Gazette No. 32 of 1970.

It is not disputed that the land belonged to Detagaiye. The appellants claim that it was given by Detagaiye to Dodimaoa and that they are entitled to it as the successors of Dodimaoa. The respondent, who is a man of considerable age, was the brother of Dodimaoa. He claims that the land was given not to Dodimaoa but to himself.

The appellants have based their case entirely on the evidence of one of their number, Eimoudang Karl, who is the widow of Dodimaoa's son and the mother of the other appellants. She gave evidence that Dodimaoa's granddaughter, Eibangatauw, who has since died, told her and her husband that Detagaiye had given the land to Dodimaoa. None of the appellants has any firsthand knowled of the matter.

The appellants called as a witness a member of the Nauru Lands Committee, Mr. Agoko Doguape, who produced a document from the Committee's records showing that the Committee discussed the land with the respondent and Eibangatauw on 25th January, 1951. On that occasion Eibangatauw appears to have been reluctant to recognise the respondent's right to the land but the widow of Detagaiye supported him and the Lands Committee determined the matter in his favour. The record shows that the Chairman told Eibangatauw and the respondent to go to the Surveys Department for the boundaries to be recorded. It is not disputed that a lease in respect of the land was made with the respondent named as owner.

The respondent has given evidence that the land was on of several portions which were the subject of a dispute between his mother and Detagaiye's mother in the time of the German administrat ion; that the land was awarded to Detagaiye's mother and, as a result, his brother, Dodimaoa was not on good terms with Detagaiye; and that Detagaiye, who was his cousin, liked him because he was polite and friendly to him, unlike other members of his family, and as a gesture of appreciation for this gave him that portion.

Mr. Derog, for the appellants, has submitted that land was never given to anyone except in return for services rendered to the donor. This may be the general rule, but it wo uld not be surprising if, after a dispute over family lands, the son of the member of the family who had won the lands gave one portion to the son of the member who lost the dispute as a token of their reconciliation. That is virtually what Detagaiye is alleged by the respondent to have done in this case. I cannot agree, therefore, that the respondent's account of how he allegedly was given the land must necessarily be untrue.

The proceedings before the Lands Committee in 1951 were a res inter alias acta and the appellants are not bound by the decision made then. However, the significance of those proceedings is that they took place when Detagaiye's widow, who might be expected to know better than his granddaughter about any gift he made, was alive and she supported the respondent's claim. The

respondent has given evidence that Eibangatauw herself changed her mind after hearing what her grandmother had to say but this was not recorded. This part of the Respondent's evidence is, therefore, uncorroborated. There is no doubt, however, that the Lands Committee decided the matter in his favour as the lease was issued shortly afterwards.

The appellants' case depends entirely on Eibangatauw both having adequate knowled ge of the matter and being truthful. In view of the record of the proceddings before the Lands Committee in 1951 it is clear that what she told Eimoudang was at complete variance with what her grandmother told the Committee. The Committee in 1951 obviously accepted what the grandmother said as correct; to do so seems to have been reasonable. The appellants have not suggested why she should not have known the facts or why she should have lied.

That is more favourable to the respondent's case than to the appellants' case. It supports the evidence given by the respondent who, under strong and skilful cross-examination, was an impressive witness. The appellants' case, as I have already observed, depends entirely on Eibangatauw having been correct and truthful in what she told Eimoudang and Karl. Having heard the evidence adduced in this Court and the submissions of Mr. Derog and Mr. K. Aroi, I have come to the same conclusion as the Nauru Lands Committee, that is that the respondent's claim is well-founded and that Detagaiye gave the land to him and not to Dodimaoa.

The appeal is, therefore, dismissed.

10th November, 1970. Chief Justice.