

IN THE SUPREME COURT OF MAURU

Civil Jurisdiction

Land Appeal No.7 of 1974

DONEDIA DEMAMWE & ORS.

APPELLANTS

and

HEINRICH & ORS.

RESPONDENTS

19th July, 1974 at 9.00 a.m.

In Court

Before Mr. Justice I.R. Thompson, Chief Justice

For the Appellants: Mr. D. Deiye

For the Respondents: Mr. K. Adeang

Appellants:

Respondents:

Mr. DEIYE: Land Appeal No.6 of 1974 was distributed by the Court. I submit that Gazette 45/1963 shows result of appeal by applicant to Central Court, in respect of certain land. That appeal related only to Atebwae. So at that time the question of the whole estate of Demamwe was open. This Court can deal with it.

COURT: Your application relates to a judgment of this Court in Land Appeal No.18 of 1969. How do you say that this Court can deal again now with matters decided then?

Mr. DEIYE: I submit that that judgment should be set aside on the ground that the estate of Demamwe had not yet been decided. There had been no family agreement. Eidagatouwe was alive until 1968. There was no family agreement.

COURT: In Land Appeal 18/69 the applicant appealed against the decision of the N.L.C. and this Court heard and decided the matter on the basis that there was no family agreement and on the evidence. What do you say is wrong with that?

Mr. DEIYE: In Gazette No.64/68 the N.L.C. published determination of Eidagatouwe's estate. (Refers to lands owned by Eidagatouwe for lifetime only).

COURT: In Land Appeal No.18/69 this Court decided, as had the N.L.C., that the lands to which that appeal related were held by Eidagatouwe absolutely, not only for life.

Mr. DEIYE: The appellant was not represented by counsel. Case not put properly on appeal. He is represented now. I ask that case be re-opened and decided on its merits. I refer to preamble of Constitution, right of every person to enjoy his property.

COURT: The applicant litigated in Land Appeal No.18 of 1969 the very issue which he wishes to litigate again now. Mr. Deiye has submitted that he should be given the chance to do so because he was not represented by counsel or other person then but presented his case himself. I cannot accede to that submission. The applicant could have been represented at that time if he had wished. He cannot choose to present his case himself and then, on failing, be allowed to litigate the issue again with the assistance of counsel.

The reference to the preamble of the Constitution is irrelevant to these proceedings. The Māuru Lands Committee and this Court exist for the purpose of ascertaining the rights of persons to property. These two tribunals exist within the Constitution and they are the means by which the rights are to be ascertained and, if found to exist, enforced. This Court has ascertained that the applicant has no right to the property in dispute in Land Appeal No.18 of 1969.

ORDER: The application in this case to set aside the judgment in Land Appeal No.18 of 1969 is therefore dismissed.

I. R. Thompson
CHIEF JUSTICE

19th July, 1970