

IN THE SUPREME COURT OF NAURU

Civil Jurisdiction

Land Appeal No. 6 of 1975

SIMPSON SCOTTY & CO.

Applicant

v

DETENEGO AKIKI BEDEDOUN

Respondent

10th October, 1975 at 9 a.m.

In Court

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

For the Applicants: Mr. D. Deiya

Respondent: Present unrepresented

Court: This Court has no power to grant leave to appeal out of time against decisions of the N.L.C. I shall treat this as an application for a declaration that the determination of the N.L.C. is a nullity. It will be necessary for the applicants to establish that there has been such a gross irregularity either in the proceedings before the N.L.C. or in its decision as to render the decision a nullity.

Deiya: The determination is irregular as details of the land are not shown. This Court has directed that the details of the land comprising any estate should be stated in the decision. (Land Appeal No. 14 of 1972 referred to). Every detail of the estate should be shown in the decision.

Gazette No. 18 of 1970 shows the names of land in respect of all estates dealt with therein. So also for Gazettes Nos. 19 and 20 of 1970. Gazette No. 1 does not conform with the practice followed in those Gazettes.

Second, the notices contained two determinations as to estates and one as to land ownership. There should have been a separate notice as to right of appeal in respect of each type of determination. Only one notice is included for all three determinations.

The Court is asked to send the matter back to the N.L.C. to be properly decided, so that the applicants can appeal.

The applicants do not wish to appeal against the whole estate but only some portions of land.

Court: It is undoubtedly desirable in respect of all deceased estates that the N.L.C. should ascertain and set out in its decision details of the land comprising the estate. It is vitally necessary that it should do so where there is an intestacy, and the beneficiary is not a child, grandchild, full brother or full sister of the deceased. In such a case the land received by the deceased from his father and his father's relatives has to be returned to his father's relatives, which the land received from his mother and his mother's relatives has to be returned to his mother's relatives. On the other hand, where there is a child, grandchild, full brother or full sister of the deceased, on intestacy that person, if a beneficiary, is entitled to receive the whole or a share of all the lands of the deceased, both those

received from the father's side and those received from the mother's side. In that case, it is not essential (even though it remains desirable) that the lands comprising the estate should be ascertained. The position is the same where land is devised to a child, grandchild, full brother or full sister of the deceased by his will.

Whether the decision in respect of Bededoun's estate, to which the present application relates, is so irregular as to amount to a nullity depends, therefore, on whether the respondent, the sole beneficiary as determined, is a son, grandson, full-brother or full-sister of the deceased.

I should add that in some cases a decision of the N.L.C. may be a nullity for reasons of irregularity of procedure; but none has been alleged in this application.

What relationship did the N.L.C. decide the respondent stood in in relation to the deceased?

Mr. V. Eoaco (for N.L.C.): The respondent is the son, the only child, of the deceased.

Court to Deiya: On what grounds do the applicants oppose the respondent inheriting any of the lands of his father?

Deiya: Some of the lands were owned in shares with other people, by Bededoun.

Eoaco: Several portions were gazetted with Bededoun as sole owner. One of the applicants disputed that he was the sole owner but the matter was already determined.

Deiya: The applicants claim to share some land with Bededoun.

Court: The position with regard to land to which the ownership has already been determined is that the ownership has been finally decided in proceedings before the N.L.C. quite distinct from the proceedings relating to inheritance of Bededoun's estate, which is all the notice in Gazette No. 1 of 1970 relates to. If there was any irregularity in respect of any of the proceedings in which that ownership was decided, then the applicants must apply to this Court to have the decisions in them declared to be invalid. The decision as to Bededoun's estate does not affect that question one way or the other. The respondent is obviously entitled to succeed to Bededoun's interest in the land, whatever that was; that is all that has been decided by the decision published in Gazette No. 1 of 1970.

So far as the estate comprised land not yet identified or in respect of which the extent of Bededoun's interest has not yet been decided by the N.L.C., again the decision published in Gazette No. 1 of 1970 does not affect the question. When the field day is held and the question of ownership is to be decided, the respondent will have to prove, like other claimants, what share Bededoun owned.

It is clear, therefore, that the application in these proceedings is misconceived. So far as the land already determined as belonging to Bededoun is concerned, that question is finally decided, subject to any challenge which the applicants may render as to the regularity of the proceedings which resulted in those decisions. So far as land not yet determined is concerned, the question of

the ownership of this has not yet been decided; all that has been decided is that any land which was owned by Bededoun is now owned by the respondent, to the extent only of Bededoun's interest in it.

The second ground of the application - relating to the notice regarding the right of appeal - is, on the facts, without merit.

Order: The application is dismissed.

10/10/75

I.R. THOMPSON
Chief Justice