SUPREME COURT OF NAURU

Land Appeal No. 9 of 1975

SIMPSON SCOTTY & OTHERS - Applicants

v.

BERTHA AGOKO - Respondent

JUDGMENT:

This is an application to set aside the Nauru Lands Committee's decisions about four portions of land in Anabar District. They are portion no. 78, coconut land, named Domayenue; portion no. 99, coconut land, named Eidoromen; portion no. 46, phosphate land, named Eatiti; and portion no. 105, coconut land, named Domayenue. The decisions were published in Gazettes Nos. 48, 50 and 51 of 1961 and No. 7 of 1962, respectively. The ground of the application is that the Nauru Lands Committee should have given the applicants an opportunity to be heard before making its decisions, and that the failure was such a gross irregularity as to render the decisions null and void.

It is necessary to consider first the nature of the decisions which the Nauru Lands Committee was required to make in respect of each portion of land. The ownership of the three portions of coconut land had not been determined previously by the Nauru Lands Committee or its predecessor, the Lands Committee. So the first task of the Nauru Lands Committee was to ascertain from records made by the Germans and in 1928 who the original owner or owners was or were, that is to say who owned the land in the time of the Germans and in 1928. Those records indicated that in 1910 Demauw was the sole owner but that by 1928 she had shared the land with her sister Eidoroking, and her cousins Bededoun, Akua and Bertha. As Demauw died in 1937 the Nauru Lands Committee, if it accepted the documentary evidence of the ownership in 1928, had also to decide who should inherit Demauw's one-fifth share of each of the three portions.

In respect of the portion of phosphate land, the Lands Committee made a decision in 1936 that Demauw was the sole owner. This decision was published in Gazette No. 42 of 1936. So all that the Nauru Lands Committee had to decide in 1961 was who should inherit it from Demauw.

There are, therefore, two issues before this Court. First, did the Nauru Lands Committee have an obligation to invite the applicants to be heard before it decided who was the original owner of the three portions of coconut land and, if so, was the failure to invite them so gross an irregularity as to render its decision of that question null and void? Second, was there an obligation to invite them to be heard on the question of inheritance from Demauw and, if so, was the failure to invite them so gross an irregularity as to render its decision of that question null and void?

2/...

When the ownership of any land of which the ownership has not previously been determined has to be ascertained, the Nauru Lands Committee ought to publish a general notice to the public at large stating that it is about to investigate and decide the ownership of that land. It may also be desirable for it to notify personally persons who it knows are likely to be claimants. The failure to give public notice was in irregularity but in view of the documentary evidence of original ownership which was available to the Committee, it was not a gross irregularity and did not result in any injustice.

The applicants have not sought to suggest that any of the portions of coconut land originally belonged to anyone other than Demauw. Their case, if the issue had to be decided afresh, would be that Demauw gave a one-fifth share of each of the portions to Bertha as the representative of her brothers and sister, i.e. the applicants, in addition to herself. The applicants had no right to require Demauw to share her property with them. Of the four persons named in the Land Registration Book of 1928 as sharing the three portions of coconut land with Demauw, Eidoroking was a full sister of Demauw. Demauw was under no obligation to give a share of her property during her lifetime.

The Land Registration Book indicates that Demauw chose to share her land with her sister Eidoroking and with three of her cousins, one of whom was Bertha. She did not give a share to any other relative and nooother relative had any right to require her to do so. There was, therefore, no basis for the applicants to enter any claim to a share. Thus the failure of the Nauru Lands Committee to invite them either personally or generally as members of the public at large did not prejudice their interests or caused any injustice to them. This irregularity was of a minor nature and not such as to render null and void the Committee's decision as to the original owners of the three portions of coconut land.

The first issue must, therefore, be answered in favour of the respondent.

With regard to the second issue, it is not disputed that Demauw died intestate and was survived by her full sister Eidoroking and by numerous cousins, including the applicants, the respondent Bertha and the other two persons named in the Land Registration Book of 1928 as co-owners of the three portions of coconut land. The applicants claim that they should have been invited by the Nauru Lands Committee to attend a meeting of Demauw's family to discuss her estate in accordance with paragraph (2) of Administration Order No. 3 of 1938. The expression "family" is not defined in that Order. It is a somewhat vague form. However, in considering its meaning in that Order it is relevant that, in the absence of agreement of of the family as to distribution of the estate of an intestate deceased, the whole estate is shared only by the nearest relatives. So, in effect, however many relatives attend a family meeting to discuss the distribution of an estate, the decision is effectively in the hands of the nearest relatives. By not agreeing with the other relatives they become entitled to have the whole of the estate for themselves. If subsequently they decide among themselves toghave it unequally ow to give

a share to a more distant relative, they can do so. Thus the interests of more distant relatives cannot be held to have been adversely affected by their not having been invited to attend the family meeting. Indeed, there are strong grounds for considering that the expression 'family' in this context should be given the meaning of 'nearest relatives'.

In the case of Demaw the nearest relative was Kidoroking, her full sister. The applicants, as cousins, were more distant relatives. They, therefore, were not adversely affected by not attending the family meeting to discuss Demaw's estate and the failure of the Nauru Lands Committee to invite them to do so did not constitute an irregularity.

It appears that there may have been an irregularity in the Committee's procedure; the evidence is not entirely clear on the matter and it seems that Kidoroking was not consulted by the Committee before it made its decision regarding the distribution of Demaw's estate. Possibly Bededoun was consulted as her representative. In any case, the applicants have no grounds for complaining of the irregularity, if it occured, as they did not suffer adversely as a result of it.

The second issue must, therefore, also be decided in favour of the respondent.

Accordingly the application to have the four decisions of the Nauru Lands Committee set aside as null and void is dismissed.

17th February, 1976. CHIEF JUSTICE.