IN THE SUPREME COURT OF NAURU
(LAND JURISDICTION)

LAND APPEAL 5 OF 1991

BETWEEN : **EIDIDU AKUBOR**

APPELLANT

AND : **NAURU LANDS COMMITTEE**

FIRST RESPONDENT

ROSALINDA JONES

SECOND RESPONDENT

Mr. A. D. Audoa for the Appellant
Mr. L. Adam for the First Respondent
Mr. Pres Nimes Ekwona for the Second Respondent.

Date of Judgement: 16 December, 1997

JUDGEMENT OF DILLON J.

BACKGROUND.

On 11 September, 1991 Mr. Audoa on behalf of the Appellant filed in this Court an appeal against the decision of the First Respondent that had

been published in the Government Gazette No. 67 of 28 August, 1991. That decision, so it was alleged, decreed that the estate of the late Raidenawa Akubor the only son of the Appellant was vested in her for a life time interest only. The grounds of the appeal at that time were stated to be as follows:

> "The appeal in this case is that decision of the Nauru Lands Committee is wrong and contrary to the provision of the Succession Probate and Administration Act 1976 specifically section 16(1) (f) and the Common Law as the underlining Law of our country. In short, my client should take the benefit of the estate on absolute rather on a Life Time Only basis."

The First Respondent on 8 July, 1993 reviewed its earlier decision dated 28 August, 1991 and reported to this Court as follows:

> "The Nauru Lands Committee today has confirm their previous determination which was published in Government Gazette No. 67 of 1991, that the Appellant shall have a life time only basis in the estate of the late Raidenawa Akubor which is the Appellant's only son from her late husband Awadag Akubor.

> This determination refer to the Administration Order No. 3 of 1938 sub-section (a) which reads: -
>
> "In the case of an unmarried person the property to be returned to the people from which it was received or if they are dead, to the nearest relatives in the same tribe."
>
> The Committee cannot find its way clear to review its decision as it is the Committee's policy to abide by the Administration Order No. 3 of 1938."

On 10 February, 1994 after further representations by Mr. Audoa this Court made the following order: -

> "Quash administrative order by N.L.C. and to hold another meeting with appellant."

That further meeting was held on 12 May, 1995 and reported to this Court as follows: -

> "The Committee has considered and agreed upon Eidoda Jone who came to the Domaneab on behalf of her brother and sister and stated that the mother of Raidenawa (Eididu) should be granted a Life Time Only inheritance and the Committee published its decision in Government Gazette No.67 of 1991. Also recorded in Minute Book 53 of 15th November, 1994, on page 131."

Up until this time all correspondences and directives from the Nauru Lands Committee to this Court had come under the signature of the then Chairman, Mr. Akeidu Kepae.

The next development was a review of this case undertaken by the new Chairman of the Nauru Lands Committee, Mr. Leslie Adam. By letter to this Court dated 12 June, 1996 Mr. Adam set out in some detail the following results of his review:

> "RE: LAND APPEAL NO. 5 OF 1991.
>
> EIDIEDU AKUBOR V NAURU LANDS COMMITTEE
>
> The Appellant, Eidiedu Akubor the mother of the deceased Raidenawa Akubor appealed against the decision of the Nauru Lands Committee published in the Government Gazette No. 67 of 28th August, 1991, in favour of the Respondent Eidoda Jones and Others in regard to Raidenawa Akubor's estate.
>
> The Appellant Eidiedu Akubor appealed the decision of the Nauru Lands Committee in awarding her L.T.O. as she did request that she should have her

son's property on absolute rather than Life Time Only basis.

My review on the decisions of the Nauru Lands Committee rests entirely on the interpretation of the Administration Order No. 3 of 1938. Regulations made under Section 4 of the Nauru Administration Ordinance No. 17 of 1922, (26).(3), (a) where it is written "In the case of an unmarried person, the property to be returned to the people from whom it was received or if they are dead, to the nearest relatives in the same tribe."

1. The late Raidenawa Akubor died single without issue.

2. He received his property from his father the late Auwedag Akubor.

3. Now that his father Auwedag Akubor was dead, the estate or property of Raidenawa Akubor should go to the nearest of kin or relatives and of the same tribe as him (deceased).

4. The Appellant Eidiedu Akubor is the mother of the deceased, Raidenawa Akubor and she is the nearest relative (or kin) besides his father Auwedag Akubor who has passed away. The Appellant is also of the same tribe as her son Raidenawa Akubor_because every Nauruan gets their tribe from their mother and not their father and that is Nauru Customary Law.

5. The Respondents Eidoda Jones and Others are the aunties and uncles of the deceased. They are not the nearest relatives and they are not of the same tribe as Raidenawa Akubor.

6. The Life Time Only that the Appellant received from her late husband, Auwedag Akubor, upon her demise the L.T.O. will revert to her husband's family (Respondents). But the L.T.O. awarded to her from son as resolved by the Nauru Lands Committee according to the Supreme Court decision of 10th February, 1994, His Honour stated quite clearly that the Nauru Lands Committee's determination as published in the Government Gazette No. 67 of 28 August, 1991, be quashed and that the Nauru Lands Committee hold another meeting with the Appellant to decide whether the Appellant wants to take benefit of her son's estate on a Life Time Only basis or on a substantial basis.

I have met the Appellant Eidiedu Akubor on 18th April, 1996, and she asked to take benefit of her son's estate on a substantial basis not on a Life Time Only basis. So I am only recommending to the Honourable Court that the Appellant Eidiedu Akubor take benefit of her son Raidenawa Akubor's estate according to Administration Order of No. 3 1938, (26).(3)(a)."

As a result of that report and recommendation by Mr. Adam and because there were no objections to the application this Court on 27 August, 1996 allowed the Appellant's appeal and awarded to her absolutely the land interests of her son that she had claimed. Subsequently, it was necessary to grant a rehearing of the appeal because the Second Respondent had not been advised of the Court hearing and so had been deprived of the opportunity of making her submissions to the Court.

It is as a result of that rehearing and the filing of the detailed submissions by Counsel that this Court now proceeds to a determination of the issues in dispute.

NAURU LANDS COMMITTEE.

It will be convenient to consider first the position of this Committee. Its initial decision which was subsequently published in the Government Gazette on 28 August, 1991 awarded the Appellant a life interest only.

Subsequent reviews by the Committee and its Chairman maintained that decision as to the Appellant's entitlement.

However, when Mr. Adam took over the Chairmanship of the Committee and carried out a detailed review of the facts and the law, he recommended to Court "..... that the Appellant Eidiedu Akubor take benefit of her son Raidenawa Akubor's estate according to the Administration Order No. 3 of 1938 (26)(3)(a)".

SUBMISSIONS BY MR. AUDOA ON BEHALF OF THE APPELLANT.

The extensive submissions filed on behalf of the Appellant may be summarized as follows: -

1. The provisions of the Succession Probate and Administration Act 1976 and as well as the Administration Order No. 3 of 1938 both apply to the particular facts and circumstances of this case, and to that extent are complimentary in their applicability. He relies on Section 16(1)(f) of the former Act and Rule 3(a) of the latter Regulations.

2. Section 16(1)(f) of the Act provides that –

> "(f) if the intestate has left no issue surviving but one parent only surviving then,

> subject to the interests of a surviving wife or husband, the surviving father or mother shall take the residuary estate of the intestate – absolutely."

Because the deceased left no will; had no wife or children; and left his mother the Appellant only surviving him, therefore in accordance with Section 16(1)(f) the Appellant, it was submitted, was entitled to an absolute interest and should not be restricted to or limited by an award of a life interest only.

3. Rule 3(a) of the Regulations provides that –

> "(a) In the case of an unmarried person the property to be returned to the people from whom it was received or if they are dead, to the nearest relatives in the same tribe."

Once again the deceased having left no will, or wife or children, Mr. Audoa submitted that this Rule applied to give the Appellant an absolute entitlement and not just a life interest only as originally awarded by the Lands Committee. In this connection, Mr. Audoa

supported the opinion expressed by Mr. Adam when he reviewed the original decisions.

4. Mr. Audoa's interpretation of Rule 3(a) is as follows –

(i) "..... the property (is) to be returned to the people from whom it was received ....."

He claims that the deceased received the lands that are the subject of these proceedings from his father Awadag Akubor who in turn had received those same lands or interests from his father Juluis Akubor who was the grandfather of the deceased.

(ii) "..... or if they are dead ....."

There is no dispute that both Awadag Akubor and Juluis Akubor predeceased Raidenawa the deceased in these proceedings.

(iii) "..... to the nearest relatives in the same tribe."

As Mr. Audoa submitted there cannot be a closer relationship than that between a mother and a son i.e. between, in this case, the Appellant and the deceased.

He further submitted that the reference to "in the same tribe" emphasised the Appellant's entitlement and supported his submissions. He pointed out that in Nauru descent was traced

matrilineally through the female line and that children on birth took the tribe of their mother. In support of that contention he produced a certificate from the Registrar of Births, Deaths and Marriages which stated –

"1. Mrs. Eididinue Akubor's (nee Audoa) tribe is Deiboe.
2. Her husband the late Awadag Akubor's tribe is Eamwit.
3. Late Reiden Akubor son of the late Awadag Akubor's tribe is Dieboe".

It is upon those grounds and for those reasons that Mr. Audoa submits that the Appellant is entitled to succeed to her son's lands interests absolutely.

SUBMISSIONS BY MR. PRES NIMES EKWONA ON BEHALF OF THE SECOND RESPONDENT.

Mr. Nimes submissions may be summarized as follows: -

1. The Succession Probate and Administration Act 1976 has no application whatsoever to the present case;

2. The Administration Order No. 3 of 1938 only applies;

3. Succession to Nauruan lands is not determined by Common Law principles – rather by Nauruan customary law;

4. The initial procedure and the original decision by the Nauru Lands Committee in 1991 was correctly determined according to the Law of Nauru viz Administration Order No. 3 of 1938.

5. Mr. Nimes refers to and relies upon the following Judgements which he says support these submissions viz:

   (a) Dediya & Others v N.L.C. (Land Appeal No. 13 of 1972)

   (b) The Children of Eirenemi Samson (Deceased) v Eirowida Aubiat (Land Appeal No. 4 of 1974)

   (c) Rubenit Dekarube & Others v Agieroudi & Others (Land Appeal No. 20 of 1974).

In summary it is said that –

> "The Appellant has nothing to lose if the appeal should fail; she would still benefit under the estateof her husband and her son until her death. She had been well treated under the circumstances and therefore, the Court uphold the present status of the estate of the late Raidenawa Akubor."

CONCLUSION.

Mr. Audoa in carefully prepared and detailed submissions deals with the administration of intestate estates according to the law applying in Nauru. He refers to the Succession Probate and Administration Act 1976 upon which he relies, and in particular Section 16(1)(f), which reads as follows: -

> "16. (1) Subject to the provisions of Part II of this Act, where a person dies after the commencement of this Act intestate to the whole or any part of his estate, the administrator on intestacy or, in the case of partial intestacy, the executor or administrator with the will annexed shall hold the property as to which the deceased person has died intestate on trust to distribute it as follows - .....
>
> (f) if the intestate has left no issue surviving but one parent only surviving then, subject to the interests of a surviving wife or husband, the surviving father or mother shall take the residuary estate of the intestate absolutely;"

Of course the deceased did leave "no issue surviving but one parent only surviving" i.e. his mother, the Appellant.

While it may appear that Section 16(1)(f) has direct relationship to the circumstances and facts of this present case, as emphasised by Mr. Audoa, it is necessary to consider this Court'sjurisdiction and the application of the Act itself. This is referred to in Section 3(2) which reads as follows: -

> "3. (2) Except as expressly otherwise provided, this Act does not apply to will or estate of any person who at the time of his death is a Nauruan, unless he has, by a will which conforms with the requirements of the Wills Act 1837, the Wills Act Amendment Act 1852 and the Wills Act 1963, all being Acts of the Parliament of England, in their application to Nauru, directed that this Act is to apply to his will and estate, in which event it shall apply only to his real estate outside Nauru and to his personal estate wherever situated."

I have added the underlining for emphasis.

The Succession Probate and Administration Act 1976 is therefore very limited in its application. This Act does not apply to a Nauruan unless he makes a will and even then it has no application to lands on Nauru. The deceased in this case is a Nauruan and he did not make a will. The

Succession Probate and Administration Act 1976 has no application and that legislation is therefore irrelevant.

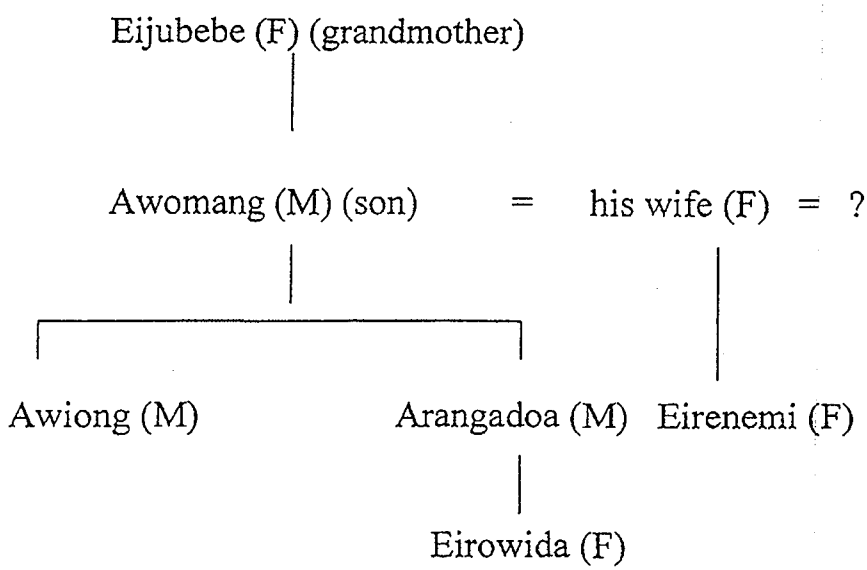
What does have application and relevance is the Administration Order No. 3 of 1938 and in particular paragraph 3(a) which provides as follows: -

> "3. If the family is unable to agree, the following procedure shall be followed:
>
> (a) In the case of unmarried person the property to be returned to the people from whom it was received, or if they are dead, to the nearest relatives in the same tribe."

It is accepted by all parties that the deceased left no will; was not married; and had no children. Further, that the deceased had received the land from his father Awadag Akubor who in turn received the land from his father Juluis Akubor the grandfather of the deceased. Both the father and grandfather of the deceased predeceased him. Critical to the interpretation of this Regulation therefore is the meaning of "to the nearest relatives in the same tribe". The Appellant's interpretation is that she as the mother must be

the nearest relative to the deceased, her son. Further the Registrar of Births, Deaths and Marriages has certified that both mother and son are of the same Deiboe tribe, based on the Nauruan custom that a son takes the tribe of his or her mother. The Court at a previous hearing of these proceedings suggested that Counsel should produce a person who was a recognized authority on Nauru custom to assist the Court. However no one attended the Court and that suggestion, one can only assume, was rejected by the parties.

Circumstances very similar to those in the present proceedings were considered by this Court in the case of The Children of Eirenemi Samson (deceased) v Eirowida Aubiat – Land Appeal No. 4 of 1974. In that case the deceased died intestate without issue. The land originally belonged to the grandmother of the deceased; it passed from her to her son; and from her son to her two grandsons equally. The following brief genealogy will help to better identify the parties to those proceedings –



The key to the above genealogy set out in the Judgement is as follows: -

(a) Awomang married, and his wife already had a daughter Eirenemi – she was therefore a half-sister of Awiong being born of the same mother but different father;

(b) Eirenemi was of the same tribe as Awiong but not of the same tribe as Awomang;

(c) Eirowida was the daughter of Arangadoa;

(d) Eirowida was not of the same tribe as Awiong or Awomang.

The Judgement contained the following interpretation of Regulation 3(a) –

> "Although it is not clear why the collective noun "the people" is used in paragraph (3)(a) instead of the more appropriate noun "the person", it is apparent that, if the person from whom a deceased person received any property is alive, the property is to be returned to that person. Thus, if Awomang had been alive, the land would have had to be returned to him. Where that person is dead, however, the property has to be "returned" to the "nearest relatives in the tribe". Mr. Deiye has submitted that this means that the nearest relatives of the deceased who belong to the same tribe as the deceased are to take the land. But that submission ignores the use of the word "returned". Land cannot be returned to someone who has never owned or had any interest in it. It is obvious that the object of the provision is that the land should be returned to members of the tribe to which it originally belonged. Thus, it is to relatives of the same tribe as the person from whom the deceased person received the land that it must be "returned". It is not apparent why, if the deceased was married, the land should be returned to "the family or nearest relatives of the deceased" not necessarily of the same tribe as either himself or the person from whom he received the land. But again, the use of the word "returned" connotes that the land must pass to someone who would have been entitled to it if it had not become the property of the deceased.
>
> In view of the use of the word "returned" in both paragraph (3)(a) and paragraph (3)(b), I am satisfied that, as Eirenemi was not the child of Awomang,

> from whom the land was received by Awiong, she should not have received Awiong's estate upon his intestacy, except by the agreement of his family. But for the inclusion of the words "of the same tribe" I should have come to the conclusion that Awiong's share in the land should pass to the respondent, Eirowida, as the direct lineal descendant of Awomang and therefore his nearest relative. But Eirowida is not of the same tribe as Awomang and so is not entitled to Awiong's half-share of it.
>
> If there is no family agreement, the land will have to pass to Awomang's nearest relatives of his tribe, i.e. to the children of Eijubebe, if they are alive, or, if they are not, to the children of Eijubebe's daughters (as the children of her sons would necessarily be of a different tribe)."

Applying those principles to the present case the land should be returned to the children of Juluis Akubor's daughters in the same way. Such a procedure would have the following effect –

(a) it would give meaning to the significant word "returned";

(b) the Appellant has never owned or had possession of the land. For that reason how can she now claim that it be "returned" to her;

(c) because the Appellant had never owned the land how can she now lay claim to it as one of "the people from whom it was received".

For those reasons, I adopt the opinion expressed in Land Appeal No. 4 of 1974 and apply those principles to the present proceedings.

Similar circumstances were considered by this Court in Land Appeal No. 13 of 1972 Baugie Dediya & Anor v Nauru Lands Committee when it was determined that "I have little doubt that the tribe referred to is that of the person from whom the property was received not the tribe of the deceased".

The underlining is mine for emphasis.

For all the reasons set out above, this appeal is dismissed and the decision of the First Respondent published in the Government Gazette No. 67 of 28 August, 1991 is confirmed.

DILLON J.