

IN THE SUPREME COURT OF NAURU

Civil Action No. 17/2002

BETWEEN: CHRISTINA DOWIYOGO PLAINTIFF
AND CURATOR OF INTESTATE ESTATE 1ST DEFENDANT
 HENRY KINGRAE 2ND DEFENDANT

Hearing 21st May 2003

R. Kaierua for Plaintiff
No appearance for First Defendant
Henry Kingrae in person.

DECISION

Christina Dowiyogo was trustee of the estate of Teresia Kingrae her sister and a handicapped person without capacity for taking care of her affairs.

Teresia Kingrae with her son Henry Kingrae met with the Nauru Lands Committee (NLC) on 24 September 2002 and upon her application, the three members present of the NLC purported to grant Henry Kingrae the trust and withdrew Christina Dowiyogo from the trusteeship. Christina D. was not present nor was she given notice of the meeting.

That decision of the NLC was published under the name of the Deputy Curator of Intestate Estates in GN213/2002.

Christina D. challenges that decision and asks the Court to restore her as trustee of the estate of Teresia K.

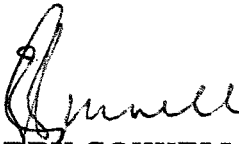
The Court heard the evidence of the Chairman of the NLC, Christina D. and Henry K.

At the NLC hearing, there was not a quorum present, namely five, to enable a binding decision of the NLC. No questions were asked of Teresia K. or her son, Henry K. regarding the change to the trust or its reasons. Mr. Bagadouwe, the present Chairman, and present at the meeting, admitted in evidence that he was

unaware of any powers that the NLC had either to grant or withdraw trustees. It was also unclear why the NLC asked the Curator of Intestate Estates to publish the decision, as he does not appear to have any role to play in the matter.

The act by the NLC was clearly ultra vires not simply on the point of absence of quorum but also lack of power. Its power is circumscribed by the Nauru Lands Committee Ordinance 1956-1963. Matters involving trusts are within the jurisdiction of the Supreme Court and may be commenced in its miscellaneous cause jurisdiction. If indeed consideration is to be given to this trusteeship then it must be considered by the Court upon application.

The decision of the NLC with respect to the trust of Teresia K. is of no legal effect and is quashed. The notice in the gazette is to be withdrawn and notice to that effect is to be published. Christina D. has not at law been removed from the trusteeship and continues to be the trustee of the estate of Teresia Kingrae.


BARRY CONNELL
CHIEF JUSTICE

