IN THE SUPREME COURT
REPUBLIC OF NAURU

Not Restricted

Land Appeal No.1 of 2013

Gaoawa Daoae and Others

Applicant

V

Nauru Lands Committee — 1st Respondent

Jim Brechterfeld and Others — 2nd Respondent

JUDGE:	Eames, C.J.
DATE OF HEARING:	19 March 2013
DATE OF JUDGMENT:	19 March 2013
CASE MAY BE CITED AS:	Gaeowa Daoae v NLC and Anor
MEDIUM NEUTRAL CITATION:	[2013] NRSC 14

CATCHWORDS:

Appeal – Application for leave to appeal out of time – Nauru Lands Committee Act 1956, s. 7 (1)(b) – Determination made 50 years before notice of appeal – Application refused.

APPEARANCES:

For the Plaintiff	Mr Pres Nimes Ekwona (Pleader)
For the 1st Defendant	Mr S Bliim
For the 2nd Defendant	Mr D. Aingimea (Pleader)

CHIEF JUSTICE:

1 This is an application for 'leave to appeal out of time' under section 7(1)(b) of the *Nauru Lands Committee Act* 1956. A document titled 'notice of appeal 'was filed by the pleader for the applicants on the 15th of January 2013. That document was deficient in a number of respects, most importantly because it did not specify what determination was under appeal. Furthermore, it provided no meaningful statement of the alleged errors on the part of the Nauru Lands Committee or its predecessor.

2 A new notice of appeal has been filed today which has many as of the same deficiencies, but provides some additional information. I now know, by searching the file, that the determination that is under challenge was that contained in Gazette Notice Number 7 of 1963, which was gazetted on the 7th of January 1963.

3 An accompanying affidavit of Ronay Dick, the daughter of the applicant, provides some additional information but fails to adequately address the considerations relevant to an application of this kind. In a judgement delivered subsequent to the notice of appeal in this case, I have summarized those principle[1].

4 The applicant claims an interest in land called 'Areouin'. There are many different spellings of that land throughout the documents in the case, but I note that in the Gazette itself, it spelt Areouin and I'll adopt that spelling. The applicant claims to hold an interest in that land, being phosphate land in 254 in Meneng, through his father Daoe and mother Einumano, both deceased.

5 There is now a new affidavit, sworn by the applicant and filed today, which provides some additional information. The applicant's father had 3 sisters Epetom, Eigareidu and Eiderauno. In 1928, the siblings first registered their interest in that land. It had been owned by the siblings' mother Edokir and her brother Audueni.

6 In her affidavit, Ronay Dick complains that in the 1932 determination of the Lands

[1] *Juliana Capelle v Nauru Lands Committee and Another* [2013] NRSC 4.

Committee as it then was, it named Eigareidu and Eiderauno as owners of one half shares and Audueni, who is Eddokir's brother, as owner of the other half share. That left out the two remaining siblings.

7 The applicant's father, Daoae, and his sister, Epetom, were both off island when the determination was published.

8 All siblings, it is said, should have shared equally in that determination in 1932. The estate of Audueni was not determined until 1963, although he had died before the war. Ronay Dick claims that her grandfather, Daoae, and Epetom were then too old to participate in a family meeting about the estate.

9 Mr Ekwona submitted that the applicant and his sister were wrongly excluded from holding an interest in Areouin. He submits that under the principles of the 1938 *Administrative Order No 3* all siblings should have gained equal shares, and the Commitee in 1963 should have corrected the error made in that regard in 1932. In addition, he submits, the Committee should have ensured that the applicant's father attended a family meeting convened by the Committee in 1963.

10 As is clear, the complaint here really relates to the 1932 determination. It is at that time when the Committee has said to have fallen into error. There's no evidence that that error was pointed out to the Committee in 1963, indeed we have no evidence of what transpired at the Committee's hearings in 1963. It would now be near impossible to obtain that information, and relevant people would be deceased. That demonstrates one of the problems when an application is brought so many years after the event.

11 Assuming, as I will, the Committee was wrong to exclude the two siblings in 1932 and assuming further, for the sake of this application, that the applicant had an unanswerable case about the decision being appealed in 1932, that determination was more than 80 years ago. No other consideration in favour of the applicant could possibly outweigh that factor. An attempt to set aside decisions finalized by publications so long ago would undermine the land ownership system. That indeed,

was recognized by Mr Ekwona in his submissions today, in saying that he would not attempt to challenge the decision made in 1932, for reasons similar to those I've just discussed.

12 As for the 1963 determination, which is challenged by the notice of appeal, the complaint made is that the Committee breached "its customary obligation as well as the common law principle of inviting those persons who have an interest in the estate to be present at the time of making the determination".

13 No evidence is provided to show that the Committee knew that in 1963 that the applicant's father and sister had any interest in the land. The applicant in this case, was then aged 24 years. There's no evidence as to whether the applicant or his father chose not to attend any meetings of the Committee. In his affidavit he merely says: "I know that my father was never asked to appear before the Committee".

14 The applicant says that his father did not appeal the decision in 1963, because he was then in his 80's. No explanation, however, is given for the failure of the applicant or his father over the following years to take any steps to challenge the determination.

15 Mr Aingimea submitted that were the 1963 decision to be overturned now, it would cause great hardship to his clients and de-stabilize a situation that have been applying for a very long time. Transactions have taken place on the assumption that title was not in dispute. For example, Mr Jim Bretchefeld, for whom he acts, had had the land transferred to him by his brother, Jeffery Bretchefeld in 2002 after Cabinet approval had been given.

16 Certainty in land title is a very important consideration. In my opinion, when one has regards to the various considerations that I address in the case of *Janelle Capelle v the NLC*, this is a very clear case where the application for leave to appeal must be refused, on the basis that a fifty year delay is simply too great.

17 Accordingly, I refuse the application for leave to appeal out of time, and the interim injunction granted on the 16th of January 2013 will be discharged.

Geoffrey M Eames AM QC

Chief Justice

19 March 2013