



IN THE SUPREME COURT OF NAURU  
AT YAREN DISTRICT  
CIVIL JURISDICTION

Land Appeal No. 7 of 2020

BETWEEN

Laura Tom (nee Dediya) of Ewa District and Ors (in their  
representative capacity of the person named in Attachment 'A')

Appellants

AND

Nauru Lands Committee, Domaneab

First Respondent

AND

Janella Rulinda Tsiode (nee Japhet)  
(Beneficiary of the personal estate of Ruby Thoma (nee Dediya))

Second Respondent

Before: Khan, J  
Date of Hearing: 2 June 2020  
Date of Ruling: 9 June 2020

Case may be cited as: *Tom v NLC and Others*

**CATCHWORDS:** Where Nauru Lands Committee made certain determinations following the death of the deceased and published it in Gazette Notice and subsequently made certain amendments thereto – Where appeal was lodged after the amendment to the Gazette Notice – Whether the appeal relates to all the determinations or only to the determinations referred to in the amended Gazette Notice.

**APPEARANCES:**

Counsel for the Appellant: V Clodumar  
Counsel for the First Respondent: B Narayan & P Grundler  
Counsel for the Second Respondent: L Scotty

## RULING

### INTRODUCTION

1. This appeal relates to the estate of Ruby Eidogorube Thoma (nee Dediya) who died on 11 January 2019. She died testate having made her last will on 13 December 2018.
2. Following her death, the Nauru Lands Committee (NLC) convened a meeting with her family to make a determination on the distribution of her estate in accordance with her will.
3. NLC published its determination on 20 December 2019 by G.N. No 937/2019 (G.N. No. 259) which stated as follows:

Item 1:

Ref Will No.324 - All monies, Pending, Rentals, Royalties Ronwan and Bendigo Saving if any, Ref Will 324 –  
Beneficiary: Janella Rulinda Tsiode  
All shares

Item 2:

Ref Will No. 324 - (1) Bank Account name:  
Ruby E Thoma  
Savings: V501  
633-000/1613233795  
E-banking Access:  
31353220  
(Rep NBR WILL 324)  
Beneficiary: Janella Rulinda Tsiode  
All shares

Item 3:

Ref Will No. 324 - (2) Bank Account name:  
Ruby Thoma  
T.D.A. 2501  
633-000/61533237  
E-banking Access:  
3576945  
(Rep NBR WILL 324)  
Beneficiary: Janella Rulinda Tsiode  
All shares

Item 4:

Ref Will No. 324 - (3) Bank Account name:  
Ruby E. Thoma  
1401 Utimate  
633-161683057  
E-banking Access:

31353220  
(Will No. 324)  
Beneficiary: Janella Rulinda Tsiode  
All shares

Item 5:  
Ref Will No. 324 -

Bank account name:  
Jlina E Teboua  
1402 (student)  
6333-000/161683057  
Beneficiary: Jlina E Teboua  
All shares

Item 6:  
Ref Will No. 324 -

ULA  
Restaurant  
(Ewa District)  
(Will No. 324)  
Beneficiary: Jlina E Teboua 1/3  
Ula Tsiode 1/3  
Una Tsiode 1/3

Item 7:  
Ref Will No. 324-

Aluminium Crushing (Ewa District)  
Ref Will No. 324  
Beneficiary: Lavender Adeang 1/2  
Janella Rulinda Tsiode 1/2

Notes:-As per Will No. 324

“Those who disagree with the above determination shall appeal to the Supreme Court Registry within 21 days of this Government Gazettal.”

4. The appellant did not lodge an appeal against G.N. No. 259 within 21 days.

#### AMENDMENT TO G.N. NO. 259

5. On 20 February 2020 NLC by Gazette No. 103/2020 (G.N. No. 40) amended G.N.No. 259 and deleted items 2 and 4 and inserted new items 2 and 4 which is as follows:

#### AMENDMENT

The Nauru Lands Committee amended Gazette No. 259/19, G.N. No. 937 of 2019 to the estate of the Eidorgoube Thoma:

#### DELETE

Item 2: (Ref Will No# 324)

- 1 Bank Account name: Ruby E Thoma  
Savings: V501  
633-00/1613233395

E-banking access: 31353220  
Item 4: (Ref Will no. #324)  
- 1 Bank Account name: Ruby E Thoma  
1401 Utimate  
633-00/161683057  
E-banking Access: 31353220

INSERT

Item 2: (Ref Will no#324)  
- 1 Bank Account name: Ruby E Thoma  
Savings: V501  
633-00/161323795  
E-banking Access: 31353220

Item 4: (Ref Will no. #324)  
- 1 Bank Account name: Ruby E Thoma  
1401 Utimate  
633-00/152018859  
E-banking Access: 31353220

NOTE: 1) Those who dissatisfied with the decision of the Committee may appeal to the Supreme Court Registry within 21 days after the decision is published.

2) Please effect distribution immediately.

6. The beneficiaries remained the same in G.N. No. 40 except that there were some minor changes to the account details. This Gazette also stated that if anyone was dissatisfied with the decision of the Committee may lodge an appeal against the decision within 21 days.

THIS APPEAL

7. The appellant filed an appeal against G.N. No. 40 on 11 March 2020 which was within 21 days. The Notice of Appeal is against both G.N. No.259 as well as G.N. No.40.

PRELIMINARY ISSUE AS TO THE APPEAL BEING COMPETENT

8. The respondents have raised a preliminary issue which is stated as follows:

“The preliminary issue before the Court is whether the appellant is correct in appealing against Gazette No. 40 dated 20 February 2020 instead of NLC’s original decision in Gazette No. 259 dated 20 December 2019. If this Honourable Court finds that the appellants have appealed against the 2019 decision, it would then follow that this appeal is misconceived and ought to be dismissed since the appellant is out of time for lodging an appeal.”

9. In the submissions filed by Miss Narayan and Miss Grundler they submit that the appellants by lodging an appeal against G.N. No. 40 are seeking the Court to quash G.N. No.259 when the appellants should have obtained leave to file an appeal against the decision made in G.N. No. 259. They further submitted that G.N. No. 259 was the original decision whereas G.N. No.40 was a subsequent decision and their contention is that

G.N.No. 40 cannot be used as a means to attack the determinations in G.N. No. 259, which according to them is the original decision. In support of their submissions they rely on the case of *Beneficiaries of the Estate of Maria Smith v NLC*<sup>1</sup> where it was stated as follows:

“After the amendment of the Act in 2012 this Court was given the powers and discretion to enlarge the appeal period ‘against the decision’ and I reiterate nothing more; and the jurisdiction of the Supreme Court will only come into play if it were to hear the appeal ‘against the decision’ which in my respectful opinion means the original decision.”

10. Section 7 of the Nauru Lands Committee Act 1956 (the Act) provides that:
  - 1) A person who is dissatisfied with the decision of the Committee may appeal to the Supreme Court against the decision:
    - a) Within 21 days after the decision is published.
  - 2) The Supreme Court has jurisdiction to hear and determine an appeal under this section and make such order on hearing the appeal (including, if any, it thinks fit, an order for the payment of costs of a party) as it thinks fit.
11. The Act was amended in 2012 (Nauru Lands Committee (Amendment) Act 2012) which makes provisions for an appeal to be filed after the expiry of the 21 days appeal period. The amendment makes provisions for an extension of time to be granted to enable an appeal to be filed, but the fact remains that the appeal is still “against the decision” ( see s.7 above)(the original decision).
12. Mr Scotty supports the submissions made on behalf of the Nauru Lands Committee.
13. Mr Clodumar submits that the case of *Beneficiaries of the Estate of Maria Smith v NLC* has no relevance to the present case. He submits that in that case applicants were seeking leave to appeal against a decision made in 1992 which had the effect of challenging a decision made in 1954. The catchwords in the case of *Estate of Maria Smith* reads:

“Application for leave to appeal out of time under section 7(1) and (2) of the Nauru Lands Committee (Amendment) Act 2012 – whether the application should be granted if there have been multiple subsequent decisions by the Committee which has been gazetted since the original decision.

Held: Application dismissed as this Court will not have powers to hear the appeal against the original decision of the Committee as all subsequent decisions will be valid and binding until appealed against.”
14. Mr Clodumar further submitted that once Nauru Lands Committee published its decision in G.N. No.259 it had no powers to amend it by G.N. No. 40, however, once it did so it allowed all aggrieved parties, including the appellants, to lodge an appeal and challenge the determinations in both publications.

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<sup>1</sup> [2018] NRSC 29, Khan J



WHAT ARE THE CONSEQUENCES OF THE AMENDMENT OF G.N. No.259?

15. If G.N.No. 259 had not been amended then the appellants appeal against the decision would have been out of time as it was not filed within 21 days and the appellants could have only lodged an appeal after leave was granted to file appeal out of time.
16. G.N. No. 40 has the heading 'amendment' and just below that it is stated:  
  
The Nauru Lands Committee amended Gazette No. 259/19, G.N. No. 937 of 2019 to the estate of the Eidorgoube Thoma.  
  
Two items were deleted and two new items were inserted and, a notice, as required by the Act was mentioned in the gazette that anyone dissatisfied with the decision has 21 days to file an appeal.
17. If the respondents are correct in their assertions that the appeal shall only be confined to the 2 items mentioned in G.N. No. 40 and not the various items contained in G.N. No.259 then of course this appeal is incompetent.
18. What has to be borne in mind is that G.N.No. 40 was not a subsequent gazette following an event, that is, a death etc. It was published to amend certain errors to which I have referred to above and the whole exercise was to correct those minor errors, however, by publishing the amendment the entire decision in G.N.No. 259 became the subject of an appeal and not only the items mentioned in G.N. No.40 – thus, this appeal is within time and is therefore competent.

DATED this 9 day of June 2020



Mohammed Shafiullah Khan  
Judge

