Land Appeal No. 4 of 1974

The Children of Eirenemi Samson (deceased) v. Eirowida Aubiat

3rd May, 1974.

Estate of deceased Nauruan - intestacy - para. 3(a) of Administration Order No. 3 of 1938 - construction.

Nauru Lands Committee Ordinance 1956-1963 - sections 6 and 7 - date of decision of Committee.

A., a Nauruan man, died in 1956 intestate and unmarried. He had inherited certain land from his father. In 1956 meetings of A.'s family were held to see whether agreement could be reached on the manner in which his estate should be distributed. No agreement was reached. The Nauru Lands Committee recorded in its minute book its decision that E. should receive two named portions of land comprising part of A.'s estate and that "everything belonging to A. should go to E." The latter part of that decision was not published. E. was the half-sister of A., born of the same mother but a different father. In 1973 certain land which formed part of A.'s estate was identified and surveyed. E. claimed to be entitled to receive it by reason of the Committee's 1956 decision. The Committee decided that the respondent was entitled to receive it as the only child of A.'s only brother. She was not of the same tribe as A.'s father.

Held: (1) The decision of the Nauru Lands Committee relating to the remainder of A.'s estate was not final and binding as it had not been published. Publication was essential to its finality.

(2) Paragraph (3)(a) of Administration Order No. 3 of 1938 requires that the land forming part of the estate of a Nauruan who has died intestate and unmarried must pass to a person or persons of the same tribe as the person from whom it passed to the deceased.

Appeal allowed to extend that decision of Committee set aside;

but appellants not entitled to share in the estate.

D. Deiye for appellants
B. Dowiyogo for respondent

Thompson C.J.:

This is an appeal against the decision of the Nauru Lands Committee, published in Gazette No. 9 of 1974, in respect of the half-share of the land Bogetsiw, phosphate land, portion no. 201 in Anibare District, which belonged to Awiong, the son of Awomang. The decision was that the whole of Awiong's half-share had passed to the Respondent, Eirowida Aubiat.

In Gazette No. 40 of 1973 a previous decision of the Nauru Lands Committee was published, awarding the whole of Awiong's half-share to the appellants in these proceedings. There were two appeals against that decision, one of them by the respondent in these proceedings. This Court heard those appeals together and in its judgment made a number of findings of fact. In this present appeal the parties are estopped from disputing any of those facts and have not sought to do so. In that former appeal this Court found that no meeting of the family had been held to try to reach agreement on the distribution of Awiong's estate and directed the Nauru Lands Committee to hold such a meeting; then, if that meeting did not reach agreement, the estate was to be distributed in accordance with the law. The meeting was held; there was no agreement; the Committee decided that the respondent was entitled to the whole of Awiong's half-share of the land. It is that decision which is the subject of the present appeal.

The facts established in the previous proceedings are:

(1) Awiong owned a half-share of the land;

(2) Awiong died intestate without issue;

(3) no meeting was held of the family to try to reach agreement on the distribution of his estate and no agreement was recorded; the Nauru Lands Committee decided that two other portions of land forming part of his estate should pass to Erenemi, the mother of the Appellants;

(4) the land originally belong to Awiong's grandmother, Eijubebe; it passed from her to her son Awomang, and from Awomang in two half-shares to Awomang's two sons, Awiong and Arangadoa;
(5) Erenemi was a half-sister of Awiong, born of the same mother but a different father;
(6) Eirowida is the daughter of Arangadoa.

Evidence has been adduced in these present proceedings which has established the following facts:-
(1) Awiong was not married.
(2) Meetings of the Nauru Lands Committee were held on 29th June, 1956, and 2nd August, 1956. At the first meeting one member said that "if the Committee came in touch with any land of Awiong, it would be given to Erenemi". Another member said after that, that the Committee should "inform them all so that they could deliberate as to the ownership". The respondent was present but apparently said nothing. At the second meeting the Committee decided first that two named portions of land, Atdomaneab and Aterebok, should pass to Erenemi and then "everything belonging to Awiong should go to Erenemi as his sister." All the members of the Committee agreed that she should be the sole beneficiary of Awiong's estate.
(3) The Nauru Lands Committee's decision with regard to the two named portions of land was published in the Gazette. Its decision that Erenemi should be the sole beneficiary of the whole of his estate was not published.
(4) Erenemi was of the same tribe as Awiong but not of the same tribe as Awomang.
(5) The respondent, Eirowida, is not of the same tribe as either Awiong or Awomang.

Mr. Deiye, representing the appellants, has submitted that the decision of the Nauru Lands Committee in 1956 that Erenemi should be the sole beneficiary is binding, notwithstanding that it was not published in the Gazette. He pointed out that the Committee used to make decisions as to estates and then apply them to the various portions of land comprising the estates as the boundaries of those lands became due to be surveyed. That assertion is correct but the result of that practice was that

the decision in respect of each individual portion of land was appealable when it was gazetted. This was most unsatisfactory; some portions of land might not become due for survey for 20 or 30 years after a person's death. Witnesses might have died and, on the basis of different evidence, different decisions might be, and in some cases were, reached on who should be the beneficiaries. Recently, on the advice of this Court, that practice has been stopped and the Nauru Lands Committee now decides at one time on the whole estate of a deceased person and publishes that decisi , whether the boundaries of any portion of land have been determined or not and irrespective of whether the deceased person's title to the land has been established. The decision is then binding in respect of such of the land as is found in due course to have belonged to the deceased person.

The reason why, when the Committee followed its old practice, an aggrieved person had a right of appeal in respect of each portion of land when the decision about it was gazetted was that, because the general decision as to the whole estate had never been gazetted, he had never had the opportunity to appeal against it. While sections 6 and 7 of the Nauru Lands Committee Ordinance 1956-1963 do not specify how a decision of the Committee is to be given, the right of appeal exists until twenty-one days after it has been given. It is clearly not enough for the Committee simply to record its decision in its own minute book. In order that interested parties may know of it, it must be given by publication. The manner of publication which the Committee has adopted, and which is well known to the public, is publication in the Gazette. The twenty-one days run from the date of such publication. Only after the expiration of that period does the decision of the Committee become final, in the sense that it is not appealable. In this case, in its decision published last August, the Committee in effect applied the 1956 decision to the land Bogetsiw, now in issue. When it published the decision, the respondent appealed. Mr. Deiye's submission that the 1956 decision in respect of the whole of Awiong's estate was final and that no decision running counter to it can be valid is, therefore, not sustainable.

In the absence of any family agreement, the person or persons to whom Awiong's half-share of the land Bogetsiw is to pass must be ascertained in accordance with Administration Order No. 3 of 1938. The Nauru Lands Committee has purported to give effect to the provisions of that Order in deciding that the land is to pass to the respondent as the nearest relative of Awomang. However, in doing so the Committee has overlooked the words "in the same tribe" in paragraph (3)(a) of the Order.

Paragraph (3)(a) is as follows:

"(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."

That contrasts with the provisions of paragraph (3)(b) which are:

"(b) Married - No issue - the property to be returned to the family or nearest relatives of the deceased..."

It has been necessary for this Court to comment before on the appalling drafting of that Order. It is not even written in proper sentences with correct punctuation. Expressions are used in different parts of it with apparently different meanings and the meaning of some of them is by no means clear. However, the Committee and this Court have to try to make sense of it and to apply it. 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 same tribe". Mr. Deiye has submitted that this means 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 Erenemi 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). No such person is a party to these proceedings and there is no evidence before the Court as to their identity. The matter will have to be returned once again to the Nauru Lands Committee.

I find that, in the absence of any family agreement, neither the appellants nor the respondents are entitled to Awiong's half-share of the land Bogetsiw. The decision of the Nauru Lands Committee that it has passed to the respondent is, therefore, set aside. The matter is returned to the Nauru Lands Committee to hold another meeting of Awiong's family to try

again to reach agreement. If no agreement is reached, the Committee is to ascertain who are the nearest relatives of Awomang in the same tribe as Awomang; those persons will then be entitled to receive Awiong's half-share of the land.