SABINE DEBEB Plaintiff

a n d

EIREIBOBWE AGABIRI AND OTHERS Defendants

D E C I S I O N

So far as the issues raised on the hearing of this action so far (i.e. on the unamended pleadings) are concerned, the facts are not in dispute. Auriria Appe was the son of Appe and the plaintiff; the first defendant, Eireibobwe, was their daughter. The plaintiff was not married to Appe. Appe had a wife; the second defendant Eingoa was the daughter of Appe and his wife, as was the mother of the third and fourth defendants, Eriog. When Appe died, he left no will. His family was Eingoa and Eriog. If they had not agreed to Auriria and Eireibobwe receiving a share of Appe's estate, Auriria and Eireibobwe, being illegitimate, would not have been entitled to receive a share. But Eingoa told the Nauru Lands Committee that it was Appe's wish that they should receive shares. By family agreement, therefore, Auriria received a one-fifth share of all Appe's estate which comprised an interest in several portions of land.

Late in 1979 Auriria died. He was unmarried, without issue and intestate. The Nauru Lands Committee called a meeting of his family. Although only Eireibobwe was his full sister, the family was regarded as including, in addition to her and the plaintiff (Auriria's mother), the second, third and fourth defendants. In view of the manner in which they had treated Auriria and Eireibobwe as members of the family when Appe died, it was fair that they should have been included. Although there was no actual estoppel, the situation might be regarded as one of quasi-estoppel. Auriria and Eireibobwe had accepted membership of the family by accepting shares of Appe's estate. In any event, neither Eireibobwe nor the plaintiff objected to the inclusion of Eingoa and Eriog's children as members of Auriria's family for the purpose of discussing his estate.

Meetings of the family were held on two days early this year by the Nauru Lands Committee, to see whether the family could agree about the distribution of Auriria's estate. No agreement was reached about the distribution of that part of the estate which comprised the one-fifth share of Appe's interest in the various portions of land and

operated on one of the portions of land. Agreement was, however, reached on the distribution of Auriria's personal chattels and moneys. In respect of the part of Auriria's estate comprising the interest in the land, the Nauru Lands Committee proceeded on the basis that there had been no family agreement. But in respect of the personal chattels and moneys of Auriria and in respect of the income since his death from the restaurant and the store, it proceeded on the basis that there had been agreement about them. Quite clearly it was incorrect in proceeding on that basis in respect of the income from the restaurant and store.

Administration Order No. 3 of 1938 provides for the manner in which the estate of a Nauruan who has died intestate is to be dealt with. If the family agrees how it is to be distributed, effect is to be given to that agreement. If there is not family agreement, the estate has to be distributed in accordance with paragraph (3) of the Order. The reference to the family agreeing is couched in absolute terms, i.e. agreement in respect of the whole estate. But it would not be inconsistent with the apparent intention of the legislator to construe the Order as requiring, where there is agreement about part of the estate, distribution of that part in accordance with the agreement and distribution of the rest in accordance with paragraph (3). Cases can readily be envisaged where one member of the family claims more of the estate than he would receive if it were distributed under paragraph (3) and the other members accept that he should have more than that but not as much as he claims. They may, for instance, agree that he should have certain property and leave the rest to be distributed in accordance with paragraph (3); is so, no useful purpose would be served by forcing upon all of them a distribution of the whole estate in accordance with paragraph (3).

I am satisfied, therefore, that effect should be given to the agreement in respect of Auriria's personal chattels and moneys, and that the rest of the estate should be distributed in accordance with paragraph (3). Gazette Notice No. 170 of 1980 is, therefore, correct insofar as it relates to the chattels and moneys to be received by the plaintiff; but it is incorrect insofar as it relates to moneys deposited with the Curator of Intestate Estates (being part of the income from the restaurant and store between Auriria's death and the Committee's decision) and to the income from the A.J.S. Restaurant. Whether in fact those items form part of the estate of Auriria is a matter to be raised by the amended Statement of Claim and decided later as a separate issue.

The part of Auriria's estate consisting of his one-fifth share

of Appe's interest in various portions of land was required to be distributed in accordance with paragraph (3) of Administration Order No. 3 of 1938. The Nauru Lands Committee decided that it should be distributed among the first, second, third and fourth defendants in equal shares. That distribution was, as it were, a continuation of the distribution of Appe's estate. One of the five equal beneficiaries had died without issue; so his share was redistributed equally among the remaining four. Having regard to the history of the matter, that was a very reasonable way in which to redistribute it, a way in which, I am sure, Nauruans generally would have expected it to be distributed.

But Mrs Billeam, representing the plaintiff, says that the redistribution was not in accordance with paragraph (3) of Administration Order No. 3 of 1938. She says that in consequence the Committee's decision was not simply wrong but ultra vires its powers. Sub-paragraph (a) of paragraph (3) is applicable in Auriria's case as he died unmarried and without issue. It requires that Auriria's property "be returned to the people from whom it was received, or if they are dead, to the nearest relatives in the same tribe". Mrs Billeam has pointed out that the defendants are not of the same tribe as Appe. If the property was received from him, she says, it should pass to more distant relatives (the identity of whom is unknown) of the same tribe as Appe. I think, however that in the circumstances of the present case, the first four defendants or at least the second, third and fourth defendants, may properly be regarded as the persons from whom Auriria received his share of Appe's estate. But for their agreeing to his doing so, they would have inherited it themselves as the children of Appe. I am satisfied that the Nauru Lands Committee did not act ultra vires in redistributing Auriria's one-fifth share of Appe's interest in land in the manner in which it did in Gazette Notice No. 140 of 1980.

The application for the decision of the Committee published in that Gazette Notice to be declared void is dismissed.

I.R. Thompson

CHIEF JUSTICE

14th November, 1980