

IN THE SUPREME COURT

Coram: Mr. Justice Thompson, Acting Chief Justice.

Date: 25th April, 1969.

Appeals: No. 9:- land: Oijabab, portion 3, Anabar.

Appellant: Baugie Joseph Dediya, present, unrepresented.

Respondent: -

Registrar: The Respondent, Fritz Gaunibve, is dead. His wife, Emwiben Fritz, is present to represent estate.

Grounds of appeal: Determination contravenes Administration Order No. 3 of 1938, para. (4) and therefore is invalid.

Court: That is a matter of law. If you succeed on that point, this Court will have to set aside the determination and remit the matter to Nauru Lands Committee. Cannot properly make a finding itself on the facts, if original determination invalid.

Appellant: In Nauru Lands Committee Ordinance it provides for Nauru Lands Committee to have power to decide questions between Nauruans. This matter did not occur between Nauruans. I was not aware that they were distributing the estate. They in fact determined the ownership of the land without giving other claimants to that land a chance to be heard.

I refer also to Administration Order 3/38 para. (4). That seeks to prevent this situation arising and makes determination invalid.

Court: Neither you nor anyone representing you was there when the Committee dealt with the matter?

Appellant: That is so. The first I knew of it was when the notice appeared in the Gazette.

Court to Respondent: Do you agree no notice given, that it was a private family distribution and that Appellant was not there?

Respondent: It was advertised but after the determination was complete.

Order: Adjourned until 28th April, 1969 at 9:00 a.m. for judgement.

25th April, 1969

I.R. Thompson.

Judgement:

It is by no means certain that the Nauru Lands Committee is obliged to comply with paragraph (4) of Administration Order No. 3 of 1938. The Nauru Lands Committee Ordinance is a principal statute giving the Committee certain powers. The regulations made by Administration Order No. 3 are made under the provisions of a different Ordinance; they are subsidiary legislation. Doubtless it is desirable that a practice the same as, or similar to, that provided for by paragraph (4) should be adopted by the Committee; I hope that the legislature may consider inserting into the Nauru Lands Committee Ordinance provisions to enable rules or regulations to be made under the Ordinance for such purposes.

However, it is not necessary in this case to decide whether or not a determination of the Committee is invalid if the Committee has not complied with paragraph (4) of the Order. One of the fundamental principles of natural justice has not been observed; the Committee has determined the question of the ownership of the land without giving a reasonable opportunity to the Appellant to attend and be heard in support of his own claim to ownership.

There is, therefore, no alternative but to allow the appeal to the extent of quashing the Committee's determination and remitting the matter to it to be redetermined after proper notice has been given to enable all persons having an interest in

the land to attend and to be heard.

I should stress that this Court is not, by this judgement, deciding that the persons found by the Committee to be the owners of the land are not the owners. The Committee is free to determine that the ownership is the same as it found before or that it is different; but it must not make that determination until it has given a fair hearing to all claimants and taken their evidence properly into consideration. However it eventually decides the matter, any person aggrieved by its decision can appeal to this Court against that decision, within 21 days of its publication.

Accordingly I quash the Committee's determination in respect of the land Oijabab, portion 3, Anabar, as published in Government Gazette No. 51 of 1961. The question of ownership of the land must be redetermined by the Committee.

I.R. Thompson.

28th April, 1969.

Appellant absent.

Respondent's estate represented by Emwiben Fritz.

Judgement delivered.

28th April, 1969

I.R. Thompson.