

Dibebe Beiyoun v. Adeang Deireregea and Others

20th November, 1970.

Appeal against decision of Nauru Lands Committee - appeal out of time - no jurisdiction to grant leave to appeal - section 7 of the Nauru Lands Committee Ordinance 1956 - 1963 - application may be made for decision which is a nullity to be declared void.

Application for leave to appeal out of time against decisions of the Nauru Lands Committee. The Committee made a number of decisions in 1957, 1961, 1967 and 1968 about certain portions of land. The applicant claimed that the proceedings of the Nauru Lands Committee were irregular and the decisions a nullity because she was not aware of her interest in the land at the time and so did not know that she should attend before the Committee to present her claim to the land. At all material times she had the means available to her of ascertaining her interest in the land.

Held: (1) The Supreme Court has no jurisdiction to grant leave to appeal out of time against a decision of the Nauru Lands Committee. The Court's jurisdiction to entertain appeals against the Committee's decisions is derived entirely from section 7 of the Nauru Lands Committee Ordinance 1956 - 1963. That section sets a limit of 21 days for appeals to be commenced; it does not give the Court any discretion to extend that period.

(2) Where proceedings of the Nauru Lands Committee are so irregular that they ought to be regarded as a nullity, the Supreme Court may, upon application made to it, declare void the decision made in those proceedings.

(3) In the present case, the proceedings of the Committee were not irregular. The failure by the applicant to take part in the proceedings was due to her own fault, not to any refusal by the Committee to give her an opportunity to do so.

R. Akiri for the applicant

K.R. Adeang for the respondents

Thompson C.J.:

This is an application for leave to appeal out of time against determinations of the Lands Committee and the Nauru Lands Committee published in Gazettes Nos. 15 and 36 of 1957, 43 and 53 of 1958, 15 of 1961, 27 and 54 of 1967 and 36 of 1968 in respect of the following portions of land:  
Anmere, P.L., Portions Nos. 53 and 53A in Baiti District;  
Ungon, P.L., Portion No. 108 in Nibok District;  
Iareidubu, C.L., Portion No. 114 in Baiti District;  
Aturubu, C.L., Portion No. 154 in Baiti District;  
Anud, C.L., Portion No. 144 in Uaboe District;  
Arep, C.L., Portion No. 84 in Anabar District;  
Betio, P.L., Portion No. 181 in Baiti District;  
Eatetedi, P.L., Portion No. 202 in Baiti District.

The applicant is the only surviving daughter of the sister of a woman named Meta who died in 1917. She claims that the portions of land in respect of which she wishes to appeal belonged to Meta; that on Meta's death they passed to her husband, Deireragea; and that on Deireragea's death in about 1942 they should have reverted to Meta's family, of which she is now the sole survivor. Instead, the portions have been determined by the Lands Committee and the Nauru Lands Committee as forming part of the estate of Deireragea, so that his sons and their issue are the present owners.

The time for appealing to the Supreme Court against the determination by the Nauru Lands Committee of questions of ownership of land is limited by section 7 of the Nauru Lands Committee Ordinance 1956-1963 to 21 days. No provision is made in that Ordinance or any other law for the Supreme Court to have power to extend that time. It is only, therefore, in cases where there was such irregularity in the proceedings before the Nauru Lands Committee that its determination can be regarded as a nullity, which the Supreme Court should declare void, that an extension of time can properly be granted in order to enable that declaration to be made.

In this present case the applicant alleges that the proceedings before the Lands Committee and the Nauru Lands

Committee were irregular because she was not given any opportunity to attend and present her case to it. She says that she did not know which portions belonged to Meta and that the Nauru Lands Committee would not tell her. Her mother died at about the same time as Deireragea but a son of her mother's brother, who would have had an equal interest in Meta's land, was alive and died only last year. She had, therefore, a close relative from whom she might have ascertained the information. In respect of three of the portions of land the Gazette Notice showed Meta as the previous owner.

If this Court were to regard the proceedings of the Nauru Lands Committee as irregular whenever some one or more persons who subsequently alleged that he had an interest in the subject matter of the proceedings was not aware of that interest at the time of the proceedings, the door would be open to many people to challenge old decisions of the Committee on which the people concerned have based their affairs for years. The stability and certainty which the Nauru Lands Committee Ordinance is intended to provide in land matters would be shaken, if not destroyed.

In this present case I am not satisfied that there was any such irregularity in the proceedings of the Lands Committee or the Nauru Lands Committee on any occasion as to render its determinations in respect of the portions in question void. Furthermore, the determinations of the Committee were not bad on their face as, in spite of the applicant's assertion that Deireregea had only a life interest in the land, it is by no means certain that the concept of life interests was not introduced into Nauruan custom after 1920.

This is not a case, therefore, in which this Court should extend the time for appealing. Accordingly, the application is dismissed in respect of all the determinations.