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SUPREME COURT OF NAURU

LAND APPEAL NO. 19 OF 1970

AMERIA ATUEN v. EIBAIRUKEN NOMADUK

JUDGEMENT.

This appeal relates to the determination of the Nauru Lands Committee in respect of three portions of land, namely -

1. Adaubwer P.L. Portion No. 10, Anabar District;
2. Bwedenon P.L. Portion No. 61, Anabar District;
3. Anurung P.L. Portion No. 245, Anabar District.

The decisions of the Committee were published in Gazette No. 39 of 1970.

A lady named Erom was one of the owners of each of the three portions; this is not disputed by either party. Nor is it disputed that Erom died without any surviving issue. It is further not disputed that Erom had a sister named Enene whose son Deingoa was the husband of the appellant and the father of Tiau, David and Motiere, her children; or that there are no other brothers or sisters, or their issue, surviving.

The appellant's case, therefore, is that, as Erom died intestate, her land should be inherited only by the issue of his sister Enene, as they are the closest relatives by degree.

It was suggested that this would accord with the provisions of Administration Order No. 3 of 1938. It is to be noted, however, that the appellant did not adduce any evidence whether Erom was ever married. The devolution of property on intestacy under the provisions of that Order varies depending on whether the deceased was married or not.

The respondent called a member of the Nauru Lands Committee to give evidence on her behalf. He explained the basis on which the Committee had reached its decision and stated the facts upon which it had relied. These were challenged by the appellant but I am satisfied, from the fact that the respondent was one of the co-owners of the land with Erom, that they are correct.

I find it proved, therefore, that the respondent is the daughter of Deneka, that Deneka was the brother of the mother of Erom and Enene; and that Deneka had one other brother, Eona. In 1928 the three portions of land to which this appeal relates were registered as belonging jointly to the respondent, Eona, Erom and Enene. Subsequently Eona died. Instead of the land being divided in such a way that the respondent received half of Eona's share, per stirpes, through her father, Deneka, ar Erom and Enene received only one half of such a share, per stirpes, through their mother, Eona's share was divided in three equal parts, the respondent, Erom and Enene each receiving the same, so that the share of each was then one third instead of on quarter. In other words, the division took place as though the respondent, Erom and Enene were all sisters of Eona, notwithstanding that one was the daughter of one sister and two were the daughters of another sister.

Mr. Agoko explained that the Committee took the view that this indicated that, so far as that land was concerned, the

three women were to be regarded as being entitled, and bound, to divide equally between themselves the share of any one of them who died, as this arrangement was implicit in what had taken place when Eona died.

In view of the fact that the appellant and her children have benefited at the respondent's expense, from the equal distribution of Eona's share, it would, in my view, be unfair now if there were any departure now from the method of division followed previously. They would unfairly benefit at the respondent's expense if Erom's share were not divided equally with her. In view of the history of the sharing of these lands I am satisfied that the decision of the Nauru Lands Committee was both just and in accordance with Nauruan custom and that it was not in contravention of Administration Order No. 3 of 1938.

The appeal is therefore dismissed and the determination of the Committee in respect of all three portions of land is confirmed.

10th November, 1970. Chief Justice.