

SUPREME COURT OF NAURU

Land Appeal No.1 of 1972

BAUGIE DEDIYA vs. HEINRICH RATAGAIY & ORS.

JUDGMENT

This appeal relates to land called 'Ormangang' in Bwa District, phosphate land, portion No.99.

Before the death of Adedea in about 1939, the land belonged to him and his wife, Eidagatuwe, in equal shares. Eidagatuwe died in 1961 or 1962. Her half of the land was shared between all the respondents. The appellant does not assert any claim to that half. He is appealing against the determination that Adedea's half has passed to the first respondent, Heinrich Ratagaiy.

The history of the ownership of this portion of land is somewhat complicated and some of the details are uncertain. It is not disputed, however, that Eidagatuwe and Adedea were not only husband and wife but also cousins, or the children of cousins, that Eidagatuwe had a daughter Bapwir by a previous husband before she married Adedea, that Heinrich is the widower of Bapwir, that Heinrich and Bapwir had a daughter called Sarah Enga and that Adedea was the brother of Etoe, the grandmother of the appellant.

It has been established that Sarah Enga was taken by her grandmother, Eidagatuwe, to live with her and her second husband, Adedea, and that when Adedea died a family meeting was held at which it was decided that Sarah Enga should inherit his estate. Who attended that family meeting is not known; the appellant says that none of his grandmother's children did so. However, there is some evidence that Sarah Enga had been adopted by Adedea and Eidagatuwe. That is asserted by the respondents and, although not admitted by the appellant, was not disproved by him. On a balance of probabilities I find that she was adopted. It was not necessary, therefore, for any persons other than Eidagatuwe and Sarah to attend the family meeting as no other relative would have had any claim to Adedea's estate as against Sarah Enga. Accordingly

the appellant has failed to show that there was any irregularity in the proceedings which resulted in Adedea's share in the land called 'Ormangang' passing to Sarah Enga.

There is some uncertainty whether Adedea received his share of that land as a gift from Bidagatouwe or by inheritance. However, there is no evidence that his ownership of his half share was for his lifetime only; so it is immaterial how he came by it.

It appears from the evidence of Mr. Depaune, a member of the Nauru Lands Committee, that probably no formal agreement or determination was ever recorded as to who should inherit Sarah Enga's property. He said "I cannot say for certain who should inherit from the child. The present Nauru Lands Committee has done simply as the previous members did in the past in respect of Sarah Enga. We have taken it as settled that Heinrich inherited from Sarah".

Administration Order No.3 of 1938 provides as follows:

- "(2) The distribution of the property of a Nauruan who dies intestate shall be decided by the family of the deceased person, assembled for that purpose.
- (3) If the family is unable to agree, the following procedure shall be followed -
 - (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".

If there was no will, no family agreement and no determination of the Lands Committee or the Nauru Lands Committee as to the distribution of Sarah Enga's estate, the determination to which the present appeal relates is invalid. However, I am not satisfied that a full search of the Nauru Lands Committee's records has been made yet. I shall, therefore, refer back to the Nauru Lands Committee the question whether -

- (a) a will of Sarah Enga has ever been proved before it;

- (b) a family meeting has ever been held to discuss the distribution of her estate; and
- (c) any determination of the general distribution of her estate has ever been made by the Committee.

If the answer to this question shows that no properly binding agreement or determination has ever been made as to the distribution of her estate, the Nauru Lands Committee must hold a family meeting now to ascertain whether or not she died intestate and, if she did, whether agreement can be reached about the distribution of her estate. If a family meeting has to be held and the Committee finds that any person who would have been entitled to attend if it had been held at the proper time, ^{is now dead} the nearest surviving relative of that person should be invited to attend in his place. The persons entitled to attend the family meeting are to be determined on the basis that Sarah Enga was the adopted child of Adedea and Bidagatuwe.

If it is necessary to hold a family meeting, the result of any agreement reached or, if no agreement is reached, of any determination made by the Committee is to be published in the Gazette. If the Committee ascertains, however, that a will has already been proved, a family agreement reached or a determination of Sarah Enga's estate made in the past, the details are to be sent to this Court and to the parties to this appeal by not later than 19th May, 1972.

17th April, 1972.

Chief Justice.

Order: Order in terms set out in the judgment. Case to be called on on 22nd May, 1972, in order to ascertain result of reference to the Nauru Lands Committee.

17th April, 1972.

Chief Justice.