SUPREME COURT OF NAURU

LAND APPEAL NO.9A OF 1972

BAUGIE DEDIYA AND ANOTHER — Appellants

vs.

HEINRICH RATAGAIY — Respondent

LAND APPEAL NO.13 OF 1972

BAUGIE DEDIYA AND ANOTHER — Appellants

vs.

THE NAURU LANDS COMMITTEE — Respondent

JUDGMENT

These two appeals were heard together because they relate to the same portion of land, phosphate land, portion No.99 named "Ormengang" in Ewa District, in particular the half-share in that land owned by the late Adedea.

In Land Appeal No.1 of 1972 this Court set aside a determination of the Nauru Lands Committee that that share of the land belonged to Heinrich Ratagaiy. The Committee had decided in his favour because it considered that after Adedea's death his share in that land had belonged to his adopted daughter, Sarah Enga, and that Heinrich was entitled to inherit her property as he was her real father. That determination was set aside, principally on the ground that apparently no meeting of the family had ever been held to try to agree on the distribution of Sarah Enga's estate and the possible right of the appellants to be heard at such a meeting had been ignored. The matter was referred back to the Nauru Lands Committee for further researches to be made to ascertain whether or not Sarah Enga's estate had ever been dealt with in the proper manner

by the Nauru Lands Committee or its predecessor the Land Committee; and, if it had not been properly dealt with, for the Nauru Lands Committee to hold a family meeting now and, in default of agreement, to ascertain who was entitled to receive her estate.

Subsequently the Committee held a meeting of the family at which it gave a hearing to Heinrich and to the appellants' representative. No agreement was reached. The Committee then caused a decision in favour of Heinrich to be published in the Gazette on 26th June, 1972. It was in respect of that decision that the appellants commenced the proceedings in Appeal No.9A. On the 14th July, 1972, the Nauru Lands Committee caused another notice to be published in the Gazette, purporting to revoke the previous notice and to record that Adedea's interest in the land never passed to Sarah Enga.

The purported revocation of the earlier notice by the Nauru Lands Committee is null and void. The powers of the Committee in respect of land disputes and the effect of its decisions therein are prescribed by the Nauru Lands Committee Ordinance 1956-1963. Section 6(2) provides that, subject to the powers of this Court on the hearing of an appeal, the decision of the Committee in respect of any dispute is final. Having given its decision, the Committee is functus officio; it cannot revoke or alter its decision. If the notice of the decision does not conform with the decision actually taken, the notice may be amended to make it so conform. Such cases should, however, be rare. But, if the Committee makes a mistake in reaching its decision, it cannot put that mistake right itself (at least not without the consent of all interested parties) once the decision has been made. Such a mistake can be corrected only by the Supreme Court and then only on appeal brought in the maner, and within the period, prescribed by the Ordinance. The second decision, published in Gazette Notice No.217 of 1972, must therefore be set aside as a nullity.

In these proceedings Mr. Depaune, a member of the Nauru Lands Committee, gave evidence of the reasons why the Committee considered that Adedea's estate had not passed to Sarah Enga. He produced the record of statements made by Adedea's widow, Eidagatouwe, and by another man in 1960 and 1961 to the effect that Adedea made a verbal will leaving two pieces of land to Sarah Enga. By implication their statement meant that the other lands comprising his estate did not pass to her. However, there is in existance an entry in the Lands Committee's estates book, made in 1939 soon after Adedea's death, that the person who was to own his property was Sarah Enga. That the family agreed at about that time on the distribution of his estate is established by a notice in Gazette No.16 of 1941 referring to such an agreement.

The new evidence of statements made 20 years later is not of sufficient weight to counter-balance the evidence of the entry made in 1939 and the Gazette Notice published in 1941. The finding of fact on which the order in Land Appeal No.1 of 1972 was based, namely that Adedea's half-share of the land "Ormangang" passed to Sarah Enga, must accordingly be reaffirmed.

In order to ascertain who is now entitled to that half-share, it is necessary first to decide who was entitled to inherit it from her after her death. At the time of her death her adoptive mother, Eidagatouwe, her real father, Heinrich, and the children of Adedea's sister were all alive. A family meeting has now been held, albeit after 30 years, and agreement has not been reached as to the distribution of Sarah Enga's estate. It is necessary, therefore, to apply the provisions of paragraph (3) of the Regulations Governing Intestate Estates published as Administration Order No.3 of 1938, made under Section 4 of the Native Administration Ordinance 1922-1967.

Poorly drafted as those Regulations are, the meaning of the sub-paragraph relating to the distribution of the estates of

unmarried persons, paragraph (3)(a), is tolerably clear. That sub-paragraph reads:

> "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".

I have little doubt that the tribe referred to is that of the person from whom the property was received, not the tribe of the deceased. Government records, of which this Court can take judicial notice, show that Eidagatouwe's tribe was Iruwa and that the tribe of Adedea was Deiboe.

Adedea's share in the land "Ormangang" which Sarah Enga had inherited should, in default of any family agreement to the contrary, have passed after her death to Adedea's nearest relatives in the Deiboe tribe. The nearest relatives then living were the children of his sister, Etoe, that is to say Seth, Japhet and Joseph. It would not have passed to Eidagatouwe, even though she was related to Adedea by blood as well as being his wife, because she belonged to a different tribe. It would not have passed to her real father Heinrich, as he was not a near relative of Adedea.

Evidence was given in Land Appeal No.1 of 1972 that Adedea received his half-share of "Ormangang" as a gift from Eidagatouwe. It was not established conclusively that that was so. Even if it was, and if there had been no agreement about the distribution of Adedea's estate, that share would still have passed to Sarah Enga as his adopted child. The result of the present appeal would in the end result have been the same.

Adedea's share of that land should have formed part of the estates of Seth, Japhet and Joseph, the sons of Dediya and Etoe. Seth's estate was shared equally between Japhet and Joseph.

Joseph's estate has been inherited by the first appellant, his son Baugie Dediya. I am not aware whether the estate of Japhet, who died only recently, has been dealt with yet. I shall simply record, therefore, that half of Adedea's half-share of "Ormangang", i.e. a quarter-share of the land, forms part of the estate of Japhet.

Both appeals are allowed. The determinations of the Nauru Lands Committee published in Gazette Notices 190 and 217 of 1972 are both set aside. The land "Ormangang", phosphate land, portion No.99 in Ewa District, is to be registered in respect of the half-share which belonged to Adedea as belonging to -

Baugie Dediya - ¼

Estate of Japhet Dediya - ¼

15th September, 1972. Chief Justice.