

IN THE SUPREME COURT OF NAURU

1/14

Civil Jurisdiction

LAND APPEAL No.10 of 1974

DOWEDIA DEMAMWE & OTHERS

APPELLANTS

vs

DOGITAOE & CHILDREN and  
HEINRICH & OTHERS

RESPONDENTS

20th November, 1974 at 9.00 a.m.

In Court

Before Mr. Justice I.R. Thompson, Chief Justice

For the Appellants: Mr. D. Deiye

For the Respondents: Mr. K. Adeang

JUDGMENT

These proceedings are in respect of an application to set aside the judgment of this Court in Land Appeal No.18 of 1969 and to declare invalid the determination of the Nauru Lands Committee in respect of three portions of land, as published in Gazette No.54 of 1966. The basis of the application is that the judgment in that appeal and those determinations are inconsistent with the judgment of the Central Court in Land Appeal No.7 of 1963/1964 and cannot be valid because of that inconsistency.

Land Appeal No.7 of 1963/1964 was concerned with four portions of land which originally belonged to Demamwe (who died in 1921) and had passed to his widow Bidagatouwe. In that appeal the Central Court held that Bidagatouwe had only a life interest in those portions and that on her death they should pass to Demamwe's relatives and not to Bidagatouwe's. In Land Appeal No.18 of 1969 and the determinations published in Gazette No.54 of 1966 this Court and the Nauru Lands Committee respectively were dealing with the question of succession to other lands of Demamwe which had passed to Bidagatouwe. This Court and the Nauru Lands Committee decided in effect that Bidagatouwe had absolute title to those lands and that they should pass, after her death, to her relatives and not to Demamwe's.

Undoubtedly, the Supreme Court and the Nauru Lands Committee came to a conclusion about the nature of Bidagatouwe's title to land which had passed to her from Demamwe entirely different from the conclusion reached by the Central Court in Land Appeal No.7 of 1963/1964. But the proceedings in that

appeal related only to four specified portions of land. When the Nauru Lands Committee came to consider the position in respect of the three portions which are the subject of this application, it had to hear all the interested parties afresh and decide the matter on the basis of the evidence adduced to it and the arguments presented to it. Likewise, the Supreme Court, in dealing in Land Appeal No.18 of 1969 with the appeal against the Nauru Lands Committee's determination had to decide the appeal on the evidence before it. The decision of the Central Court in Land Appeal No.7 of 1963/1964 was a matter for the Committee and this Court to consider but, as the proceedings related to land which was not the subject of the decision in Land Appeal No.7 of 1963/1964 neither the Committee nor this Court were bound to follow that decision. Neither the determination of the Committee nor the decision of this Court is invalid because of the failure to follow that earlier decision.

It is unfortunate that the practice existed for a long time of dealing with the distribution of intestate estates in a piecemeal fashion over a number of years as the time came to identify and demarcate the portions of land comprising it. Such a system was bound to result in differently constituted Committees and Courts reaching different decisions on questions of succession to different portions which logically should all have been decided in the same way. At the insistence of this Court that system has now been abandoned and the succession to the whole of an intestate estate is now decided at the same time. However, the inconsistencies resulting from the previous system will persist and there is nothing which this Court or the Nauru Lands Committee can do about them. The inconsistencies do not render the individual decisions invalid.

Mr. Deiye has sought to argue that the determinations of the Nauru Lands Committee with respect to the three portions of land in dispute were wrong because they did not comply with the provisions of Administration Order No.3 of 1938. That argument goes to the merits of the determinations. The appellants appealed against them and the appeal was heard as Land Appeal No.18 of 1969. They cannot now re-open that appeal.

The application is dismissed.

20th November, 1974

I.R. Thompson  
CHIEF JUSTICE