

IN THE SUPREME COURT OF NAURU

Civil Jurisdiction

Land Appeal No. 7 of 1976

DEBEB AGIGO & OTHERS - Appellants

v.

ATEGAN BOP & OTHERS - Respondents

JUDGMENT:

This appeal is against the decision of the Nauru Lands Committee published in Gazette No. 28 of 1976 that three portions of phosphate land named "Imagenae", respectively portions nos. 346, 347 and 378, belong to the respondents. That determination was made following the judgment of this Court in Land Appeal No. 9 of 1974. In that appeal the parties were the same; this Court set aside a decision of the Committee in respect of the same portions, which was based on an order made by the Administrator in 1938, and held that that order was invalid. It also held, however, that a "recommendation" of the Lands Committee in respect of that land, made in 1929 but apparently never confirmed by the Administrator and certainly never published in the Gazette, was not a final, binding decision of the Lands Committee. The Nauru Lands Committee had, therefore, to examine the issue of ownership of the three portions afresh and to make a new decision.

This time, according to the Gazette Notice by which the decision was published and also according to the evidence of the Vice-Chairman of the Committee, Mr. Doguape, the Committee based its decision on a judgment of the Central Court published in Gazette No. 32 of 1956. That was the judgment in an appeal against a decision of the Lands Committee published in Gazette No. 36 of 1955. The Lands Committee had decided the ownership of two demarcated portions of land, one named Kiwowo and the other named alternatively Kiwowo or Me'ub, and of an undemarcated area of land called Karawinororo. The Court varied the decision in respect of the land Karawinororo. It decided that within that land there were a number of portions bearing other names and it decided who the owners of those portions were. It also decided that the "remainder of Karawinororo" belonged to the appellants.

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Mr. Agoko has explained that the Nauru Lands Committee's decision which is the subject of this present appeal was based on the Committee's belief that the three portions named Imagenae were included in Karawinororo. He stated that there was documentary support for this. The Court has now examined German Sketch Book No. 19. There it is clearly stated which portions of land constituted the area of land known as Karawinororo. They included two portions called Imagenae. The Court has compared the sketch plans in that book with the survey plans of portions nos. 346, 347 and 378; it is clear that together they comprise one of the two portions called Imagenae which were referred to in the German Sketch Book, the one shown in plan no. 18.

The Nauru Lands Committee was, therefore, right in deciding that the three portions are within the land Karawinororo. However, the matter does not end there. As already stated, the Committee has based its decision on the judgment of the Central Court in

1956 that "the remainder of Karawinororo" belongs to the respondents. That judgment as published, on its face, appears to be conclusive as to the ownership of the land actually constituting the remainder of Karawinororo, that is to say as to the ownership of, inter alia, the two portions called Imagenae. However, Mr. Deiye, for the appellants, has tendered in evidence a transcript of the proceedings in that appeal. The transcript ends at page 78 with a note made on 17th October, 1955, that "the Court is now adjourned until the Administrator gives his decision with regard to Kiwowo". Kiwowo is shown in the German Sketch Book as being one of the pieces of land constituting Karawinororo. Whether there were further proceedings is not clear but the judgment was not published until 11th August, 1956, and a marginal note in Exhibit 1 appears to indicate hearings on 4th and 6th August, 1956.

At pages 73 and 74 of the transcript there is a record of the officer then in charge of the Survey Department of Nauru, Mr. Chester, giving the magistrate information as to the contents of German Sketch Book No. 19 and of the location of one portion of land stated/be included in Karawinororo, and expressing an opinion that, in spite of what was written in the Sketch Book, Karawinororo comprised only land having the names Kiwowo, Metup and Iba.

Having read a translation of the Sketch Book and having ascertained that portions nos. 346, 347 and 378 are situated adjacent to the land Kiwowo, I find it very difficult to understand how Mr. Chester came to express the opinion which he did. That opinion was accepted initially by the magistrate, who immediately stated that the Court had been wasting its time hearing evidence about land other than Kiwowo, Metub and Iba. However, in its judgment the Court "determined the ownership of land within Karawinororo as follows" and then detailed land called Ibwa, Anoror and Atamar, as well as Ibea and Metub. From this it is apparent that the Court eventually did not accept Mr. Chester's opinion. Moreover, while Anoror is listed in the German Sketch Book as included in Karawinororo, Ibwa and Atamar are not. As no reasoned judgment is contained in the transcript, it is not possible to know why the Court included them. A clue to the answer may be a notice published in Gazette No. 40 of 1955 in which, the appeal having been commenced by some appellants against the Lands Committee's decision as to the ownership of Karawinororo, the magistrate invited all persons claiming an interest in the land to join themselves as parties to the appeal. In order to ensure that all claimants to any part of Karawinororo were aware that the appeal concerned their land, he set out twelve names of land, as he expressed it, "said to be involved". Those names included Atamwarar (doubtless the same as Atamar) and Imagenae but not Ibwa. He also invited joinder by claimants to "any other lands which owners may claim to be within the boundaries of Karawinororo". Presumably Ibwa was claimed to be one of those other lands.

The hearing of the appeal was extremely lengthy and it appears that the magistrate, having heard evidence as to the disputed ownership of land of various names, eventually decided to deal with the issue of the ownership of all the land which the parties alleged to be within Karawinororo.

In the absence of a reasoned judgment certainty on this point is not possible; but it would explain why the Court included in its judgment land outside the area defined as Karawinororo in the German Sketch Book. Whatever the explanation may be, it is clear that, in spite of his remark on page 74 of the transcript, the magistrate did not limit the appeal only to land called Kiwowo, Metub and Iba.

One of the names listed in the notice published on 1st October, 1955, was Imagenae. This means that persons claiming to be entitled to land of that name were put on notice that the magistrate would consider whether it was included in Karawinororo and would determine its ownership if it was. At least one of the predecessors in title of the appellants, Odanga, was an appellant in that appeal. There is no doubt from the German Sketch Book that the land Imagenae is situated inside Karawinororo. That being so, I cannot see how the Central Court could properly have ~~to~~ come to any other conclusion. Nor is it credible that, after the publication of the list of names including Imagenae on the 1st October, Odanga would not have pursued a claim to it if he had thought fit to do so. As the Court made no finding in his favour in respect of that land, the only conclusion which this Court can reach is that, if he made such a claim, it was rejected and the land was adjudged to belong to the appellants as part of "the remainder of Karawinororo". There is no doubt that "the remainder of Karawinororo" in fact included Imagenae. The onus of proving that the Central Court intended "the remainder of Karawinororo" to exclude Imagenae is on the appellants. They have failed to discharge that burden; indeed it is far more likely that the Court intended it to include Imagenae. That being so, I find that the Nauru Lands Committee acted correctly in basing its recent decision on that of the Central Court.

Before concluding this judgment I would observe that it is a great pity that, after the magistrate in the Central Court proceedings had commented on page 74 of the transcript that lands should be gazetted by their individual names and not by collective names such as Karawinororo, in his judgment he referred simply to "the remainder of Karawinororo". If he had followed his own precept, Land Appeal No. 9 of 1974, these proceedings and two decisions by the Nauru Lands Committee, would not have been required.

For the reasons stated above the appeal is dismissed.

I. R. Rompdon

CHIEF JUSTICE

19th August, 1976.