IN THE SUPREME COURT OF NAURU
(CIVIL JURISDICTION)

BETWEEN

CIVIL SUIT NO. 13/91

JUANITA STEPHEN GERAKAS, SYDNEY J. STEPHEN, EDNA STEPHEN LAI HIPP, MAY STEPHEN NEWTON, HINDMARSH STEPHEN, ANN K. STEPHEN AND ALFRED STEPHEN

PLAINTIFFS

ALFRED DICK, JUANITA DICK, ANTHONY AUDOA, LAWRENCE STEPHEN, MAY COOK, EIBIREIROK TRYPHOSA TAMAKIN, ARABELLA SRA DETANAMO, LEEK ANE TAMARIN, APRIL EIYOGONEIY TAMAKIN, AIBROMA A. AKUBOR, ERNEST G. STEPHEN, CONNIE D. STEPHEN, LISE M.E. STEPHEN, LEO KEKE AS TRUSTEE FOR PATRICIA E. STEPHEN, ALICE D.M. STEPHEN, AND LANA D. STEPHEN AND LEO D. KEKE

FIRST DEFENDANTS

NAURU LANDS COMMITTEE

SECOND DEFENDANT

NAURU PHOSPHATE ROYALTIES TRUST

THIRD DEFENDANT

CURATOR OF INTESTATE ESTATES

FOURTH DEFENDANT

Dates of Hearing: 11:9:91; 4:12:92; 2:3:93;
Submissions (final) 2:94
Date of Decision : 21:09:94
MacSporran for Plaintiffs
Keke for estate of Lilva Keke
Mr. A. Dick in person
Chairman of Second Defendant in person

JUDGMENT OF DONNE, C.J.

This is an action in which the plaintiffs pray (inter alia) that the Court declare that they as heirs and successors of Alfred Milner Stephen deceased are the owners nf a one half share in the land "Atebae" in Nauru and that certain determinations made by the second defendant, the Nauru Lands Committee, relating to the land and its ownership are void and of no effect. They also seek orders that the first defendants pay to them all

monies by way of royalties in respect of phosphate mined for the said land which they as descendants of Edward Stephen deceased have received and that the third and fourth defendants, the Nauru Phosphate Royalties Trust and the Curator of Intestate Estates, respectively pay all future monies yielded and received in respect of operations on the said land to them.

On the 18 November 1991 there was made an order substituting as first defendants the following defendants:

For the late Pamela Akubor:

> Eibireirok Tryphosa Tamakin, Arabella Sra Detanamo, Alek Kane Tamakin, April Eiyogomeiy Tamakin and Aibroma A. Akubor; and

For the late Lilva Keke:

> Ernest G. Stephen, Connie D. Demauna, Lise M.E. Stephen, and Leo Keke in the representative capacity as Trustee for Alice D.M. Stephen, Patricia E. Stephen, Lana D. Stephen, and Leo D. Keke in his own right.

Mr. Leo Keke filed an Appearance for the estate of Lilva Keke deceased in accordance with the Civil Procedure Act 1972 and Mr. Alfred Dick has made submissions in opposition to the claim. The Nauru Lands Committee has appeared through its Chairman who at initial hearings undertook to provide the Court with all records of the Committee in respect of the land. It has advised it has no written submissions to make. The third and fourth defendants abide by the decision of the Court.

There is no dispute as to the facts adduced in evidence by the plaintiffs by way of deposition in affidavits sworn by one of them Mrs. Gerakas and Mr. R. Taafe, Surveyor employed by the Nauru Phosphate Corporation and filed as part of the proceedings.

The land "Atebae" the subject of this claim is in the district of Anabare. It was part owned by Mrs. Einunitsi Stephen who died in Nauru on the 14th April 1930 leaving an estate partly testate and partly intestate. She devised her interest in the said land by a customary will dated 18th March 1930 to two of her sons Sydney and Alfred. The plaintiffs are the heirs and successors of Alfred, whose full name was Alfred Milner Stephen, and who on the 2nd February 1959 died in Honolulu in the State of Hawaii the United States of America where he had lived for many years. He was born in Nauru on the 22 October 1898. He was a citizen of the United States of America. He was living in Honolulu at the time of his mother's death. The plaintiffs live and have lived, during the whole of the relevant period covered by these proceedings, overseas. The Statement of Claim, contrary to the requirements of the Rules, does not disclose their addresses and occupations.

Einunitsi estate was considered by the Nauru Lands Committee and it and the Curator of Intestate Estates on the 15th June 1931 conveyed to the Australian Administrator of Nauru its decision which read:

> "That portion of estate not covered by the will to be divided equally between the children of Sydney and George. Distribution notice published in Gazette No. 47 17/10/31 (sic). No objections received."

The Gazette Notice of 17 October 1931 was unable to be produced as it was missing from the records. However "Atebae" its boundaries and ownerships were considered by the Nauru Lands Committee in 1934 in connection with an investigation of the estate of one Atsietor and held to be part owned to the extent of five sevenths by this estate. This determination was appealed against by a daughter of Einunitsi one May Mullins. The Appeal authority was the Administrator. The appeal was successful and the determination was gazetted in the Nauru Gazette on the 13th October 1934 (No. 42). It reads (inter alia) as follows:

> "The decision of the Administrator in respect of these lands are as follows:
>
> | NAME OF LAND | OWNER |
> |---|---|
> | Atebae | Sydney and Alfred Stephen" |

This decision finally settled the extent of the interest of Alfred in the land devised to him. On the 24th June 1936 the late Mr. Alfred Stephen wrote from Honolulu to the Administrator of Nauru apparently inquiring about the "Wills of the late Einunitsi". The Administrator replied 17th August. The letter stated (inter alia):

> "Attached for your information are:
>
> (1) Copies of the Wills of the late Mrs. Stephen.
>
> (2) Copy of the Statement of the Curator of Intestate Estates, setting out the distribution of the property as provided for in the Wills and the distribution of the property not provided for in the Wills, in accordance with the Laws of Nauru.
>
> (3) Extract from Government Gazette No. 42 of October 13th 1934, in respect to Land Appeals, in the case of the Blocks, Atebae, Oininibok and Ueiba.

From the above information you will note -

(1) That your interest under the Wills is confined to your share in the phosphate block 'ATEBAE'.

(2) That owing to a successful Land Appeal of Mrs. Mullins, Eininiti has been adjudged to have been the sole owner of 'ATEBAE' and not owner of one seventh only.

(3) That your interest is therefore a half share in 'ATEBAE' "

Then followed a history of "Atebae" as known to the Administrator indicating the past disputes over it. The letter continued:

"You should also note, however, that it is quite likely that attempts will be made by the Raitsi family for many years to come to re-open the question. It is important therefore that you should retain all documents in your possession and request your heirs to do the same

Attached is a plan showing the location of 'Atebae'. The area of the land is about 2 acres. There is of little or no value except as a Phosphate area.

Recently the British Phosphate Commissioners leased extensive areas for mining purposes, which should carry them on for at least ten years. I would not be surprised if 'Atebae' was not worked for 50 years, but this must not be accepted as more than a private opinion and circumstances might arise to upset completely such a calculation. When worked the probable value of 'Atebae' in regard to Royalties under present conditions might be about L1500."

The evidence discloses no visit to Nauru following this letter nor any other step by the late Mr. Alfred Milner Stephen in connection with "Atebae". However before he died his son Mr. Alfred Hindmarsh Stephen visited Nauru "in the early 1950's" and, as deposed by the deponent Mrs. Gerakas, he is said to have inquired about the mining of the land. This appears to be the only visit ever made to Nauru by any of Alfred Milner Stephen's family. Likewise it is the only occasion disclosed by the evidence of any inquiry about the ownership of "Atebae" made by the family until 1988.

As predicted by the Administrator in his letter there were claims in respect of "Atebae" made subsequent to the final decision in October 1931. However, as the records of the Nauru Lands Committee are sparse and poorly kept, it cannot be established who

initiated them. There were four determinations made by the Committee in Nauru which purported to change the ownership of the land.

In Gazette No. 23 of 28 May 1938 there is published its determination that the owners of "Atebae" were Edward Stephen and Sydney Stephen. No record of the reasons for this decision can be found. Alfred Stephen, living in Honolulu, was not notified of this decision and was never aware of it during his lifetime.

Ten months after Alfred's death, the Committee again considered the land and again there apparently was no notification of its intention so to do given to those of Mr. Stephen's family who were his successors. They in fact were unaware for about 30 years of these proceedings and of the determination by it of ownership of the land being first told of it by the Secretary of the Committee by his letter in 1989. This determination of the Committee was published on the 5 December 1959 in the Gazette No. 51 as follows:

> "The Nauru Lands Committee has investigated and determined ownership of at the Schedule Details certain blocks of land shown are:

Name	Former Owner	Share	Proposed Owner	Sharer
Atebae	Edward S.(dec'd)	½	Alfred S. (Estate)	½
	Sydney S	½	Sydney S (Mrs. Anderson)"	½

However that decision did not stand for in Gazette 54 of 19th December 1959, the Nauru Lands Committee notified that the notice in Gazette No. 51 was withdrawn and cancelled. No steps had been taken to implement the decision in Gazette No. 51. Neither decision of the Committee, nor notice of any hearing in connection therewith were given to the plaintiffs who, again, were unaware of it until the Secretary's letter (supra).

Finally in 1961 the Committee again considered ownership of "Atebae" and in Gazette No. 10 of 11 March 1961 its decision was published fixing the ownership in Sydney Stephen (half share) Dobobwe D. and 4 others (holding and jointly the half share of Edward Stephen who had died seven years earlier).

Since 1961 there have been deaths which resulted in determinations of the Nauru Lands Committee defining beneficiaries. The present position is that the first defendants are the heirs and successors of the late Edward Stephen and, as such, have been recognised by the third and fourth defendants as being lawfully entitled to share in the ownership of the said land devised to the late Alfred Milner Stephen by his mother Einunitsi and share in any royalty payments arising from mining operations.

As stated in the evidence no steps were taken by the plaintiffs for many years to check on their ownership of the land "Atebae". As stated, it was not until 1989 that the plaintiffs became aware that the late Alfred Milner Stephen had purportedly been divested by the Nauru Lands Committee of the half share in the land devised to him by his mother. One of them, Mrs. Gerakas, read in the July 1988 issue of the Pacific Island Monthly a short article on "Nauru's Millionaire Landowners" which prompted her to attempt to make contact" with her relatives in Nauru. Being unsuccessful, she wrote to the then President of Nauru in September 1988 which yielded no reply. She then wrote to the Nauru Lands Committee in December of that year which resulted in a prompt reply by the Secretary in February 1989 who gave her the information she requested including that of the determination of the Nauru Lands Committee which fixed the ownership of "Atebae" as above mentioned. Other correspondences followed. This is referred to later in this decision. Suffice it here to say, the Plaintiffs were unable to convince the Committee to reverse its decisions and, in consequence, the present proceedings were launched.

As to the mining operations on "Atebae", the total area of phosphate bearing land is 1.5053 hectares (3.71959 acres). It was leased to the British Phosphate Commissions on the 23rd October 1961 and was mined by the Nauru Phosphate Corporation in respect of .8063 hectares between April 1986 to March 1987. The remaining area is unmined due to the presence of high rough outcrop of pinnacles. The total amount of phosphate raised was 27,395 cubic yards which based on the standard calculations used by the Corporation equates to a weight of 29,742 wet tonnes of phosphate. In his letter to Mrs. Gerakas of the 28 February 1989, the Secretary of the Nauru Lands Committee answering her query as to the worth of "Atebae" stated that the estimated yield of phosphate therefrom was 889,850 tons which at a royalty of $3 per ton would yield ~2,669,550. This appears to be a grossly excessive estimate. Mr. Robert Taafe, the Nauru Phosphate Corporation Surveyor, who deposed as to the quantities of phosphate already mined, has, in a report of the 3 December 1992 stated that the total phosphate which it is estimated will be yielded from the land is 55,526 tonnes.

Certain oral submissions were received by the Court from all the parties. Written submissions have also been filed by the plaintiffs and the first defendants.

The plaintiffs contend that they, the lawful heirs and successors of the late Alfred Milner Stephen are entitled to be declared the owners of the half share in "Atebae" which was devised to him by his mother Einunitsi Stephen in her valid will upon her death on the 14th April 1930, the extent of such share being settled on the 13 October 1934 by a decision of the Administrator on appeal from a determination of the Nauru Lands Committee. The first defendants contend that the decisions of the Nauru Lands Committee determining the ownership of "Atebae" in Sydney Stephen and Edward Stephen their heirs and successors must stand and that in law and/or custom they are the owners of a half share in the land which the plaintiffs claim. The further tenor of their written and oral submissions is that they have received and accepted royalty payments in

good faith believing themselves lawfully entitled to them, and, if it is now found that the plaintiffs are the true owners of "Atebae" the first defendants urge that they should not be required to account to them for monies they have received, since the late Mr. Stephen and the plaintiffs had neglected and shown no interest in the land in Nauru asserting neither rights of ownership in it nor undertaking any obligations or concern in relation to it for over 50 years following Einunitsi's death. It was, they say, this indifference which allowed the Nauru Lands Committee to make the inconsistent decisions fixing the ownership of "Atebae" to go unquestioned.

I now turn to a consideration of these submissions.

The Will and the Devise of "Atebae".

Einunitsi's will was considered in June 1931 by the Nauru Lands Committee which had been created about three years earlier by the Australian Administrator of Nauru under the authority of the Native Administration Ordinance 1922. The stated powers of the Committee were to investigate "matters relating to boundaries and ownership of land". The empowering Ordinance was one of the earliest enactments of the Administrator who, by the Nauru Agreement of 1919 of the Mandatory Powers, was given powers to make laws for the peace and good order of Nauru subject to the limitation that the customary laws of the country be preserved.
The effect of this executive act creating the Committee was to give order and form to the exercise of one of the then existing functions of the Council of Chiefs of Nauru. Subsequently there followed the enactment in 1956 of the Nauru Lands Committee Ordinance under which the present Nauru Lands Committee functions.

Insofar as customary wills and the administration of testate estates are concerned the role of the Committee in 1931 was the same as that of the Nauru Lands Committee now. Custom prevails and all property, real and personal, must vest in the beneficiaries named in the testator's will. This was the purport of the case of **Lucy Ika and Anor v Nauru Lands Committee and Ors** a judgment of this Court delivered on the 21 August 1992 (Civil Actions 2, 3, and 8 of 1991) in which it was stated at pp. 12 and 13:

> "The Role of the Nauru Lands Committee.
>
> In the case of a customary will, which this will is, the role of the Nauru Lands Committee is well established. The evidence of both Mr. Deireragea and Mr. Kun advert to it.
>
> ..... The administration of the estate is, by custom, the job of the Committee in its customary role. .....It is a role for which it is eminently equipped and suited. In most cases, the lands are ill defined in wills and the only reliable records of them are held by the Committee. Boundaries often need to be defined and the interests of beneficiaries

> ascertained. The Committee has the exclusive task to inquire into and ascertain the extend of the deceased's estate and the interests therein of beneficiaries thereof.

and again at page 15:

> In the case of testate estate, the Committee must in law distribute the deceased person's estate in accordance with his dying wishes. Aremwa v the Nauru Lands Committee (1970) N.L.R. (Pt. B) 17; Duburiya's case (1973) N.L.R. (Pt. B) 74.
>
> The Committee, of course, must be satisfied as to the validity of the will before the distribution of the estate is effected. That does not mean that it sits in judgment on the will and adjudicates upon the question. It must, if it is in doubt on the wills validity or on any part thereof, take testamentary proceedings by way of a probate action to obtain a ruling in the Supreme Court which, as has already been held, has exclusive jurisdiction to entertain the Action
>
> I have been told, without being referred to specific cases, that the Committee in other cases, in considering the testamentary wishes of a deceased, may have proceeded on its own initiative to rule and adjudicate on whether his wishes have validly been expressed. In consequences they may have overridden those testamentary wishes and distributed the estate contrary to the provisions of the will. The fact that this has been done in the past cannot establish in law a customary right in the Committee to so act. I again emphasise the Committee, a statutory body, has never had this right conferred on it.

The Committee in dealing with Einunitsi's estate in 1931 clearly acted within the above bounds as is indicated from its decision of the 15 June 1931 (supra). This reads:

> "D E C I S I O N That portion of estate not covered by will to be divided equally between the children Sydney and George. Distribution notice published in Gazette No. 47 17/10/31. No objections received."

The decision correctly did not touch the devises and bequests. It dealt with the intestate estate only.

The Ika case (supra) emphasises the sanctity accorded by custom to valid testamentary dispositions by Nauruans and underlines the fact that neither the Nauru

Lands Committee nor the Administrator in 1931 could have changed in any way the express devise by Einunitsi in her will, of her interest in the land "Atebae" to Sydney and Alfred Stephen. The will, being a valid one, the devise, in law and custom, must be as provided therein.

The Determinations of the Nauru Lands Committee and Administrator.

There are, I consider, only two relevant determinations in respect of the matter.

(a) that published in the Nauru Gazette of the 29 September 1934 being a decision of the Nauru Lands Committee and

(b) that published on 13 October 1934 being a decision on appeal by the Administrator from the decision (a).

These two determinations necessarily fix the extent **of the** ownership of "Atebae" as devised in the will. They arose as a result of a claim by one Atsietor (on her estate) to ownership of the land. On appeal, it was decided that Atsietor had no interest in it and the ownership was finally determined as being in Sydney and Alfred Stephen as to one half share each

It should again be mentioned that the Gazette Notice of the 1931 decision of either the Committee or the Administrator is missing. However, the above determination of 13 October 1934 effectively settled once and for all the ownership and boundaries of "Atebae".

The other determinations of the Nauru Lands Committee of 28 May 1938, 5 December 1959, 19 December 1959 and 11 March 1961 cannot and do not affect, in any way, the determinations of 1931 and 1934. As to how and why these irrelevant proceedings of the various Committees were initiated defies speculation; there could, in fact, only be speculation since the records of the Nauru Lands Committee are so sparse that a coherent chronological history of the events leading to them cannot be compiled. What, of course, is manifestly clear is what I have said above and which I feel needs constantly to be emphasised, namely, that the will of Einunitsi is a valid testamentary document and the administration of her testamentary estate must be effected in accordance therewith. She devises her interest in the land "Atebae" to Sydney and Alfred. It consequently became the land of their beneficiaries or their lawful successors. There is no dispute that the successors of Alfred Stephen are the plaintiffs. That position could not in any way be altered by the above determination of the various Nauru Lands Committees. They had no jurisdiction to deal with Einunitsi's estate.

Conclusion.

The plaintiffs' claim to ownership in respect of a half share in the land "Atebae" must succeed for the reasons above stated.

Arising from this finding, several declarations and orders are sought and I now propose to consider them.

However, before doing so I would advert to the question of the delay in the pursuing of the claim by the plaintiffs.

The Dilatory Claim.

The question of the delay by the plaintiffs in making a claim and issuing these proceedings has been raised, and I consider properly so, by the defendants. In their submission they state:

> "17. As pointed earlier, contacts between Nauru people is an important aspect of Nauru life. Over the years there is very little personal contact between Alfred Stephen and his family and those relative living in Nauru. In the events leading to the case the Plaintiffs did not even visit Nauru to discuss with the Defendants the matter now before the Court. This is normal in customary parlance so that it is resolved in a manner which would ensure good feelings between them.
>
> 18. As noted in Mrs. Gerakas affidavit what prompted her to make enquiries was an article in the Pacific Islands Monthly which is appended to her affidavit as "JSG10". If the article had not appeared in P.I.M. would she had made her enquiries?"

The evidence adduced by the plaintiffs shows that from the time the estate of Einunitsi was considered in 1931 and the shares of Sydney and Alfred Stephen settled in 1934, there was little or no interest by Alfred in the land "Atebae" during his lifetime apart from an initial enquiry by the letter to the Administrator in 1934. Further, even on his death on February 1959 his ownership in the land appears neither to have been featured in his estate nor were any steps taken to advise the Nauru Lands Committee of his death so that the customary determination consequent thereon could be made by it. The deponent Mrs. Gerakas thinks her late brother Alfred visited Nauru "in the early 1950's" and inquired from the Nauru Lands Committee as to when his father's land would be mined; there is no record in Nauru of that visit. Apart from a casual conversation by Mrs. Gerakas with the late President DeRoburt in 1974 at a reception given by him at Honolulu when she inquired about when the land would be mined, none of the plaintiffs appear to have evinced any interest in "Atebae" until after an article in the publication, the Pacific Islands Monthly of June 1988 about "Nauru's Millionaire Landowners" was read by her. This prompted a letter from her in September 1988 to the President seeking his assistance in connection with the payment to the plaintiffs of royalties. Surprisingly, up to that time, no communication with the Nauru Lands Committee had been made. But, on receiving no reply from the President, Mrs. Gerakas, on the 20 December 1988,

wrote to its Secretary, advising the Committee of the death, almost 30 years earlier, of her father Mr. Alfred Stephen advising it that he had filed with it his will. She sought particulars of the land. As stated above, the Secretary of the Committee replied on the 28 February 1989 advising that the Committee had no record of the receipt of any will. He detailed a record of the Committee's determinations fixing the ownership in Sydney and Edward Stephen.

This letter spurred Mrs. Gerakas into action. During 1989 and 1990 she sought the Nauru Lands Committee to reverse its decision as to ownership. When this course failed, she requested the past and present Presidents of Nauru, her Hawaiian Senator and the Secretary for Justice to intervene to rectify the wrong she believed had/occurred. When these efforts also failed, the plaintiffs in May 1991commenced these proceedings.

It is an undeniable fact that over the last 50 years there appears to be extraordinary indifference displayed firstly by the late Mr. Alfred Milner Stephen and latterly by his family towards "Atebae". Apart from Mrs. Gerakas' son, Alfred Hindmarsh who, she says, visited Nauru, none have seen the land. It is highly probable that had it not been for the information gained by Mrs. Gerakas in the Pacific Island Monthly in 1988, this disinterestedness in the Nauruan land would have continued.

The plaintiffs, by way of explanation for the lack of interest, refer to the letter written by the Administrator to Mr. Stephen in August 1934 (supra) in which he was advised of his share in "Atebae" consequent upon the devise from Einunitsi's estate and informed of the location and history of the land and the various claims which had previously been pressed in respect of it. This letter, the plaintiffs say, not only ensured to them that Alfred's interest was settled, but, also entitled them to believe there was no necessity for any subsequent inquiry into the land or their interest therein until the mining of it at the time predicted in the Administrator's letter - 50 years hence. But in that letter the Administrator also warned that "it is quite likely that attempts will be made .... for many years to come to reopen this question (of ownership)". Such a warning, I consider, could hardly allow the complacency demonstrated by the plaintiffs to the extent that they virtually showed no interest in "Atebae" and for over 50 years exercised in respect of it neither any rights nor undertook any obligations of ownership.

The plaintiffs further contend that they also received no notices of any of the meetings of the Nauru Lands Committee on the occasions after 1934 it considered the land. That is not disputed and there is no question that the Committee must notify all interested parties of its intention to inquire into and determine ownership of land. It should certainly have taken steps to notify Mr. Alfred Stephen or his representatives (if he were deceased of the hearing in 1938. That hearing which resulted in a determination excluding him from an interest in "Atebae" became the record of the Committee and meant he and his family from then on were, as far as the Committee was concerned, no longer "interested parties". If it were necessary for the Court to go into this question, the failure to notify the plaintiffs of the said proceedings would certainly be a factor to be considered in determining the validity of these decisions. However, they are of no effect.

They are irrelevant to the issue here. The fact that the plaintiffs were not notified of them cannot in any way assist them in providing a credible explanation of why they failed to be aware of what was happening to the land and their interest in it for all those years. In Nauru, life revolves around the land and it is inextricably part of every Nauruan. There is little concerning land in Nauru that Nauruans are unaware of irrespective of publication of determinations of the Lands Committee. The plaintiffs could have at any time inquired from the Committee as to matters relating to the land. They could have instituted proceedings for determination of land boundaries and ownership on the death of Mr. Stephen. I am sure they would have been cognisant of these procedures. Likewise, inquiry from family or others in Nauru would be a logical step to pursue, had they wished to take some interest in their heritage. It is certainly out of character for any Nauruan to be so indifferent about his land for such a lengthy period of time as has been shown in this case.

In the result, for 55 years "Atebae" has been considered and dealt with on the basis that the ownership thereof is as determined by the Nauru Lands Committee in 1938 namely. one half share each to Sydney and Edward Stephen. The records show that between April 1986 and February 1987 about three fifths of the land was mined. Two-fifths remain. Royalties in respect of the mining have been paid to the first defendants on the basis of the 1938 determination. What is clear is that the defendants who have been paid those monies or part of them, have received them in good faith believing themselves to be lawfully entitled to them. They can, with Justification, contend they are blameless and that had in the 52 years preceding the royalties becoming payable, the plaintiffs taken steps to assert their rights of ownership, the predicament in which they now find themselves would not have arisen. It is on this basis that the first defendants submit they should not be required to account to the plaintiffs for the royalties received

I have no hesitation in holding that there has been inordinate delay by the plaintiffs in pursuing their claim. It is my view that the late Mr. Alfred Stephen and his family should have been much more assiduous in the control and exercise of ownership of the land. Their absence from Nauru does not excuse their indifference. The excuse offered for this indifference and the manifest disinterest in "Atebae" is untenable. Reasonable prudence, particularly in the light of the Administrator's warning (supra) should have prompted constant inquiries about its use and even prompted regular visits to Nauru for that purpose. Such prudent action would have ascertained very early in the period in question the wrongful vesting of Alfred's share in Edward. It is my view that the first defendants are justified in submitting the plaintiffs cared little about the land and its use until they became aware of its potential value after reading the magazine in 1988. In consequence, I am satisfied the plaintiffs were guilty of gross delay in taking action on the matter.

In such circumstances, the Court may depart from the normal award of compensation and relief. This principle is recognised by the English Court of Appeal in Jefford and Anor v Gee (1970) 2 Q.B.. 131 at p.151.

I propose now to consider, on this basis, the relief sought by the plaintiffs and the appropriate orders thereon.

Relief Granted.

The plaintiffs are entitled to and the Court makes the following declaration arising out of the above findings that:

(a) the ownership of the land known as "Atebae" is vested according to the devise thereof by the will of the late Einunitsi Stephen who died on the 14th day of April 1930.

(b) the owners of the said land and the extent of their interest therein are as declared by the Administrator of Nauru in a decision gazetted in the Nauru Government Gazette of the 13th. October 1934 (No. 42) that is to say - Sydney Stephen and Alfred Milner Stephen a to one half share each.

(c) the interest of Alfred Milner Stephen (now deceased) has devolved upon the plaintiffs.

(d) all determinations of the Nauru Lands Committee made subsequent to the 13th. October 1934 relating to or affecting the ownership of the land "Atebae" are void and of no effect having been made without jurisdiction.

To give effect to the above declarations consequential orders are made:

(e) An injunction shall issue ordering the Nauru Lands Committee to make such record or amendments or alterations to its records to record the above declarations

(f) The third defendant shall forthwith render to the Court an account of all monies paid to date by way of royalties in respect of phosphate mined from the land "Atebae" itemising the dates of payment, the amounts thereof, the quantities upon which royalties have been assessed and the person or persons to whom the said royalties have been paid.

(g) The fourth defendant shall forthwith render to the Court an account of monies received by him in respect of the land "Atebae" by way of royalties or otherwise, from where such monies were received and particulars of all payments thereof of the same stating to whom they were paid and on what authority they were paid.

A consideration of all further orders sought by the plaintiffs will be deferred until the receipt by the Court of the particulars (f) and (g) ordered by it. Final orders thereon shall then be made.

Costs.

I am quite satisfied that the wrongful actions of the various Nauru Lands Committees were inexcusable. There could have been no complexity about dealing with any of the matters that came before each concerning the land "Atebae". The determinations of 1930 and 1934 are clear. The Gazette Notices were there to see. Despite this, there was extraordinary negligence and ineptitude in the various Committees handling a matter which was settled once and for all in 1934. For that reason I have decided and accordingly rule that all costs of these proceedings are to be borne by the second defendant. These costs shall be assessed as follows:

1. In respect of the plaintiffs - costs on the basis of solicitor and client costs as opposed to party and party costs. These will be fixed by the Registrar upon a Bill of Costs being submitted to him for taxation.

2. As to the first defendants, costs will be fixed based upon an assessment by them of actual cost to them of defending this action, including costs of and incidental to briefing counsel for the estate of Lilva Keke deceased.

3. As to the third and fourth defendants, the costs awarded will be fixed on the cost to each in the preparation of the accounts ordered in this action by the Court.

An order fixing the costs in accordance with the above ruling will be made with the other final orders of the Court hereon. This action is adjourned for that purpose.

CHIEF JUSTICE

Solicitor for Plaintiffs - Vassal Gadoengin, Nauru
Solicitor for estate of Lilva Keke - Leo Keke, Nauru
Solicitor for third and) - Office of the Secretary for
fourth defendants) Justice, Nauru.