

IN THE SUPREME COURT OF NAURU

MISC. CAUSE NO. 1/94

IN THE MATTER OF a Will  
made by Rt. Hon. Lawrence  
Baron Kadoorie.

and

IN THE MATTER OF an  
Application for Grant of  
Probate.

In Chambers

Date of Hearing : 23:2:95  
Date of Decision :

Mr. Deenabandhu in support on behalf of Solicitors applying

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**DECISION OF DONNE C.J.**

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On the 23rd February 1994 I granted probate of the will of the late Baron Kadoorie. It is a foreign will. The executors thereof are represented by Messieurs Johnson, Stokes and Master solicitors of Hongkong. At the hearing they "lodged" with me a somewhat unorthodox submission in the form of a letter written by them to the Nauru Agency Corporation objecting to the payment of a Court application

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fee as prescribed under the Court Fees Rules 1994. The document contained no address to the Court nor was it framed in the customary respectful form of presentation expected of officers of the Court in these matters. I have, however, accepted the document and must now decide on the objection it purports to raise.

When on its presentation I asked and was informed of its purpose, I expressed the view and again do so, that the application was premature. No Court fee has been fixed to which objection can be made. In practice a fee is not fixed until the sealing of the probate granted.

I am satisfied on consideration of the papers, that the Court Fees Rules 1994 do not apply here. Since Independence there have been only two fixations of Supreme Court Fees one in 1979, the other in 1994. The fixation in 1994 was the result of a review of Court fees contemplated in 1993. The Rules were drawn up and presented to me at the commencement of the June Sessions in 1994. I signed them and their promulgation was gazetted in the Nauru Gazette. I have now learnt that this application for grant was lodged with the Court on 17th April 1994. The application was first put before me on the 20th June 1994. The Court Fees Rules of 8

June 1994 are not retrospective and it clearly follows that they cannot apply to Court processes lodged prior to promulgation.

Turning to the 1979 Fees, I find that they appear to make no provision for applications made pursuant to the Succession Probate and Administration Act 1976 which Act, in relation to practice, requires firstly, that the practice of the Probate Division of the High Court of England shall govern the practice under the Act and secondly, that fees prescribed in respect of proceedings thereunder are to be fixed by the Chief Justice to take effect only on gazetting (sections 4 and 78). These requirements were not followed in 1979.

There is no record in the Court of any application for probate of a foreign will having been lodged prior to this present one and therefore the question of Court fees for such has not been considered hitherto.

As I understand the position, being advised at this hearing, the applicants contend that they should pay no Court fee. This is a surprising contention. They cite no law to support their contention which, in effect, is that because

Nauru provides their client with "offshore" facilities, they are able to use the facilities of the Nauru Courts and Judiciary without fee. I understand they have been paying nominal fees to the Nauru Agency Corporation for its services to the deceased. The applicants now expect the Court to provide without fee services in dealing with this probate application in respect of an estate valued at approximately \$400,000,000.

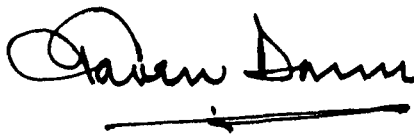
Now, for the reasons above stated, the Court Fees Rules of 1994 cannot be applied in this case. The 1979 Rules make no provision for fees in respect of application for probate of foreign wills. However, the Civil Procedure Act 1972, section 58 allows the Chief Justice to prescribe fees "upon the filing of documents". In my view, this course could be available here.

Turning to this submission of the applicants' solicitors, I am bound to say that in my 36 years of judicial office, I have never been more convinced that a fee for Court services is justified. The application for grant of probate which was presented to this Court in the first instance was not in compliance with the rules of Court and the law of

Nauru. It also contained inexcusable deficiencies. It was not rejected, but, the solicitors were given leave to put their papers in order. There appears to have been little understanding throughout of the requirements in law to prove a foreign will in this Court. The Registrar, with commendable competence and patience, assisted, by appropriate requisitions, the solicitors to rectify this omission. In the result the papers are now in order and I have granted the application. However there has now been presented what I have described as an "unorthodox" submission in the form of a letter written in a commercial vein threatening to withdraw business from Nauru unless its Court waives its fee for its services. I expect better than that from competent and responsible lawyers and I am advised by my Hongkong Brethren that the solicitors here are so regarded in that Territory. Inexplicably there appears to be no endeavour by them to use their professional expertise to ascertain the apposite position relating to the question in issue. This I have now done. This they could have done. This they should have done in compliance with their ethical duty to assist the Court. They had in their possession all the relevant information, the Fees Order, the date of its promulgation and the date of their Court application, to enable them to consider the question and to advise the Court

of the legal position and alert it in relation thereto. They have chosen instead to take a coercive, arrogant and, I consider a disrespectful stance.

After mature consideration of this matter, I decided that a decision on the main thrust of the applicants' submission should be a political rather than a judicial one. In consequence I have consulted the Honourable the Minister for Justice thereon. In the result, I have been advised that while it wishes in no way to interfere with the independence of Judiciary, the government advises that it feels in the circumstances, I could consider proceeding no further in the fixation of a Court fee. In deference to that wish, I make no order as to Court fees.

  
CHIEF JUSTICE

Solicitors for applicants: Johnson, Stokes & Master -  
Hongkong

*Mr. Registrar.*

- 1. Pursuant to S (BLS) Civil Procedure Act 1972 please deliver this decision by facsimile to solicitor for applicant in Hongkong.*
- 2. Please send copies to (a) The Namu Agency Corporation  
(b) H.E. the President  
(c) The Honourable the Minister for Justice.*
- 3. Please file copy in SPLR file*

