

**IN THE SUPREME COURT OF NAURU**

LAND APPEAL NO. 4/96  
CIVIL ACTION NO. 12/96

BETWEEN : **MARIA DENUGA**

APPELLANT

AND : **NAURU LANDS COMMITTEE**

FIRST DEFENDANT

**CURATOR OF INTESTATE ESTATES**

SECOND DEFENDANT

**RONNIE DETOGIA**

THIRD DEFENDANT

Mr. P. N. Ekwona for Appellant  
Mr. Adam for First Defendant  
Mr. Dwivedi for Second Defendant  
Hon. Audoa for Third Defendant.

Date of Judgement : *19* December, 1997

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## INTERIM JUDGEMENTS

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The appeal against the decision of the Nauru Lands Committee and the Writ of Summons filed by the Appellant contemporaneously in this Court have as their common origin the interpretation of the will of Einami who died between 9 August, 1951 when she made her last will and 1 November, 1951 when the Land Committee under the Chairmanship of the Head Chief Detudamo and 8 other chiefs by a majority accepted and supported the will of the late Einami.

There are really two issues in dispute viz –

- (1) The meaning of the last paragraph of Einami's will which provided as follows: -

“Eadam cannot give anything away from her share, and after her death her share will go to Roney unless she has a child of her own.”

Eadum was the natural child of Einami. Eadum legally adopted Maria, the Appellant. Eadum is now deceased and in her will she left her estate to the Appellant. The question is whether Eadum in adopting the Appellant “..... has a child of her own.” in terms of her mother’s will referred to above.

- (2) If the answer to issue (1) above is Yes then Eadum would have taken the lands referred to in her mother’s will absolutely. If the answer to issue (1) above is No – then Eadum would have had a life interests only.

There have been a number of Gazette Notices published as a result of decisions made from time to time since 1951 by the Land Committee and subsequently by the Nauru Lands Committee. There are a large number of lands involved in the outcome of these proceedings. It is desirable, the Court believes, that the legal effect of the will of Einami be first

resolved. Depending on that decision it should be possible to more readily review the Nauru Lands Committee decisions which have been published in the Gazette Notices in 1955; 4 in 1957; 1959; 3 in 1961 and 1962, to name but a few.

What then is the meaning of “..... unless she has a child of her own”? Mr. Adam for the Nauru Lands Committee has made several suggestions –

- 1) “Eadum cannot give anything away from her share and after her death her share will go to Ronnie unless she has a child of her own (biologically).”
- 2) “Eadum Denuga was prevented in her mother’s will to give away any lands if she has no issue or child biologically and specifically stated that upon her death all her shares will go to Ronnie Detogia. “
- 3) “But why did her mother Einami Ria made her will with condition that she should have a child of her own biologically.”
- 4) “ ..... there is an existing will of Eadum’s mother Einami Ria who has restricted Eadum from giving

anything away unless she has a child out of her own womb.”

- 5) If Eadum had a child of her own then everything will go with her own mother’s wishes ..... “

Obviously the Nauru Lands Committee adopted that interpretation of Einami’s will. The Committee recognized and accepted that the 1951 will of Einami and the 1993 will of Eadum were both valid. The Committee also accepted that Eadum had legally adopted Maria, the Appellant. It is clear from the Committee’s reports that because Maria was not Eadum’s biological child therefore the limitation and restriction to a life interest in Einami’s will applied. As a result, the Committee believed the Third Defendant was therefore entitled, because “..... the condition of the will does not accept the legal adoption”.

I turn now to Mr. Audoa’s submissions and his interpretation of Einami’s will. He put it this way –

- 1) The correct translation of the last paragraph of the will is –  
“Eadum is not to give her share away for they are meant only for her per se, however this share will go to Roney, unless she can have a child of her own from her own stomach.”
- 2) “..... she (Eadum Denuga) will retain her share from her mother (Einami) only when she (Eadum Denuga) has her own child.”
- 3) “If she (Eadum Denuga) died without a child of her own then her (Eadum Denuga) share goes to Ronnie ..... “
- 4) “By the will of Einami it is clear that if Eadum Denuga failed to have a child of her own and she (Eadum Denuga) died without a child of her own, then her share that she took benefit from her mother when her mother died goes back to the family .....”
- 5) “..... because it was the wish of Einami that her estate only pass onto her family by blood/consanguinity. If her daughter cannot have a child of her own then her estate pass on to her nephew Ronnie.”
- 6) “..... Eadum Denuga’s interest in this estate will only go as far as she can have a child of her own.”

I turn now to consider the submissions that were presented on behalf of the Appellant. Mr. Ekwona while not addressing directly the meaning of

“ ..... a child of her own” preferred instead to rely on the law as applying to adopted children. He put it this way –

“The introduction of the Adoption of Children Ordinance in 1965 confirmed the decision of the Lands Committee and the Nauru Lands Committee. The Ordinance no doubt incorporated elements of the Common Law and Nauruan Customary Law. Adoption is a recognised Nauruan custom and this custom was reinforced in the Ordinance. Any condition which stands to prevent an adopted child from inheriting from the adoptive parents would be considered unlawful. Conversely, any Nauruan person who adopted a Nauruan child is entitled in law to pass her or his property to the adopted child. Thus a condition in a Will which seemingly penalise or prevent an adopted child would be unlawful. For purposes of diverting properties, an adopted child has the place as a biological child in Nauruan law since 1965. The condition imposed by Einami in 1951 could be considered uncustomary, but after 1965 it must be considered as unlawful insofar as to prevent the deceased Eadum from exercising a legal right.”

Mr. Ekwona also challenged the 1951 will of Einami and said that “It is doubtful also that the Chiefs had any right in 1951 to judge the validity of

a will”. The other parties on the other hand accepted the validity of both the 1951 and the 1993 wills.

I am satisfied from the evidence available and the submissions presented that the 1951 and the 1993 wills are valid wills and have been acted upon as such as already stated. The Gazette Notices that have resulted from various determinations made from time to time by the Nauru Lands Committee do not come within the scope of this review. I am concerned only with the meaning of that last clause of the 1951 will.

Mr. Ekwona challenges the validity of the 1951 will of Einami and says that the clause I am required to interpret is unlawful. The Land Committee recognized the 1951 will of Einami. In recognizing it that Committee was not required to determine the meaning of “..... unless she has a child of her own”. The Land Committee were correct in recognizing Einami’s will as a valid will without interpreting what this particular clause meant. The Nauru Lands Committee which replaced the Land Committee have published Gazette Notices that show Eadum as having an absolute



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interest and not a life interest as that Committee now suggests. Of course that Committee could have been in a quandary since during this period of publishing Gazette Notices that is between 1955 and 1962 Eadum may still have been of child bearing age. The effect of those Gazette Notices will be the subject of further enquiry and are not relevant to the interpretation that is now being undertaken.

I revert again to the interpretation of Einami's will the original of which was written in the Nauruan language. It has been interpreted into English by Mr. J. Aroi and certified as correct by Mr. Demando and Mr. Abouke. Neither Mr. Adam nor Mr. Ekwona challenged that translation. However, Mr. Audoa challenged the translation rather forcefully and said the correct translation was in the following terms –

“Eadum is not to give her share away for they are meant only for her per se, however this share will go

to Roney, unless she can have a child of her own from her own stomach.”

That interpretation is referred to once only in a comprehensive and detailed 8 pages set of submissions plus exhibits. Throughout the rest of his submissions Mr. Audoa refers to “her own child”; and “a child of her own”; (this latter interpretation is repeated on 4 separate occasions throughout his submissions). Mr. Audoa suggested that the Court obtain a complete translation from the Nauru Language Bureau. However I believe it is of significance that attached to Mr. Audoa’s submissions as Exhibit “B” is a copy of the will translated by Mr. Aroi which he relies upon but now also questions?

It is that translation which the Court will now address. Eadum’s will dated 22 November, 1993 left everything to her adopted daughter, the Appellant. Eadum held land in her own right so the Appellant was entitled to take those lands under her mother’s will and as such they are quite independent of lands which Eadum derived from her mother under the 1951

will. To that extent, the Land Committee were entitled to declare Einami's 1951 will a valid will and likewise the Nauru Lands Committee were entitled to declare Eadum's 1993 will a valid will.

The Court in this instance can draw or refer to three sources for assistance in what appears to be a serious conflict of interpretation. Certainly, the results are serious in that on the one hand Eadum has an absolute right to lands under her mother's will or alternatively she has a life interest only over those lands and, of course, it follows that the Appellant taking from Eadum her mother could be similarly limited. The three sources the Court can refer to are as follows: -

- 1) Custom
- 2) Precedent
- 3) Legislation.

1) **Custom.**

There can be no doubt that Nauruan custom recognized Nauru

adoptions well before any legislation was introduced to this country. Customary adoptions were recognized throughout the seven countries in the Pacific that I have the honour to serve. In fact some Island territories go even further and so elevate adopted children and as well as illegitimate children that they are elected to be tribal heads and leaders. Such a custom if correctly acknowledged could therefore recognize Maria, the Appellant, as Eadum's own child. To give force to that interpretation one may pose the following set of circumstances. If Eadum had two children - one illegitimate and one adopted. Could it be suggested that Nauruan custom would recognize the illegitimate child possibly from outside the blood but refuse to recognize the adopted child from inside the blood. The answer I believe is that such an interpretation does not follow Nauruan custom, which does recognize Nauruan adoptions.

2) **Precedent.**

In Land Appeal Nos. 14 of 1972 and 8 of 1973 the Court held

that the Administration Order No. 3 of 1938 included children adopted in accordance with Nauruan custom, even though the adoption in 1912 was never Gazetted. Mr. Dowiyogo who represented the Appellant tendered an account of Nauruan custom relating to adoption written by an anthropologist, Miss C. Wedgewood, in 1936. It is recorded that “Miss Wedgewood wrote that adopted children became full members of their adoptive families with the same rights of succession as the natural children of that family and indeed were often given preferential treatment”.

The Judgement concludes that –

“Having regard to the account of Nauruan custom given by Miss Wedgewood, I am satisfied that in Administration Order No. 3 of 1938 the expression “child” must be taken to have included in 1939 a child who was recognized as adopted under Nauruan custom. The appellant is, therefore, entitled to succeed to Eigugina’s estate in priority to the respondents. The persons to whom the appellant may have owed a moral obligation in

1939 because of their kindness to Eigugina are now themselves dead without issue. There is no good reason, therefore, moral or legal, why the appellant should not take the whole of the balance of Eigugina's estate not previously determined."

In Land Appeal No. 13 of 1973 the Court considered the termination of an adoption by the surviving spouse of the adoption order some five years after the death of the deceased of the other spouse. Even though the adoption had been terminated the Court arrived at the following decisions –

"Held: (1) The time at which the relationship of J. to S. was relevant was the time of S.'s death. Her estate should have been distributed immediately thereafter; if that had been done, there would have been no dispute about J. being her adopted son. He must not be prejudiced by the delay of 31 years in dealing with part of her estate.

(2) The rights of adopted children to succeed to the estates of their adoptive parents on intestacy are the same whether they were adopted from within the family or outside it."

From those Judgements the importance of adoptions and the status of the person adopted within the family is clearly identified. The Appellant says that she is her mother's own child within the provisions of her mother's will and to import the term "biological" is contrary to Nauruan custom and the Judgements of the Court just referred to.

3) **Legislation.**

The progression and development of Nauru, as with other South Pacific nations, has been the application and implementation of customs and their derivatives viz customary laws, through the powers of the Chiefs and their control over the tribe or tribes for which they are responsible. With colonization, those customs were preserved and included in the ordinances and regulations of the early administrators. Now, with independence, Nauru enacts its own Statute law while at

the same time recognizing and retaining early custom and customary laws.

An example of that progression can be found in the Adoption of Children Ordinance 1965. The effect of an adoption order under that Ordinance is set out in Section 17 as follows: -

- “(1) Upon the making of an adoption order, the rights, duties, obligations and liabilities ..... are enforceable against the adoptive parent of the child as though the child was born to the adoptive parent in lawful wedlock.
- (2) Where the child has under this Ordinance been adopted ..... the child (shall) be deemed by the Court exercising jurisdiction in the matter to have been born to the husband and wife in lawful wedlock.



- (3) ..... the adopted child is entitled to succeed (whether upon an intestacy, under a disposition or in accordance with Nauruan custom) to the real and personal property of the adoptive parent to the same extent as if the child was born to the adoptive parent in lawful wedlock.”

It will be seen that sub-sections (1) and (3) above apply if there is only one adoptive parent and the presumption applies that the adopted child was born “in lawful wedlock”.

**CONCLUSION.**

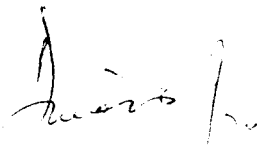
The Nauru Lands Committee have decided that when Einami in her will referred to her daughter Eadum having “a child of her own” that meant “having a child of her own biologically”. There is no justification for that limited restriction to be applied. Indeed prior to Eadum’s death and more

than 40 years after her mother, the Committee treated Eadum as Einami's daughter and entitled to succeed without restriction to her mother's land interests. The Gazette Notices clearly confirmed that the Committee from 1955 through to 1962 recognized Eadum's right to her mother's land interests and confirmed that decision by issuing the Gazette Notices showing her as an absolute owner. It is only since Eadum's death that the Committee has shifted ground and now suggests that only a biological child is entitled to succeed. There is, in my opinion, no justification for such an interpretation. It is contrary to the terms of Einami's will; contrary to the correct interpretation adopted by the Committee from 1955 up to Eadum's death; and it is contrary to Nauruan custom, precedent and statutory interpretation.

Mr. Audoa goes even further with an embellished interpretation that "a child of her own" in his opinion means "a child of her own from her own stomach". Mr. Audoa had the opportunity to call evidence as to the proper translation if he intended to challenge it. This he did not do so. It is not appropriate for him in effect to give evidence by way of his submissions as to what he believes is a correct translation. I reject that translation since the

other three parties accept the translation “a child of her own” as accurate. And indeed so does Mr. Audoa when he relies upon and attaches to his own submissions the translation certified true and correct by Mr. Aroi.

For all those reasons, I am satisfied that Eadum did have Maria, the Appellant, as “a child of her own”; that Eadum was therefore entitled to succeed absolutely to the interests devised to her by her mother Einami; that Eadum’s will in favour of the Appellant will include the interests Eadum received by will from her mother. The appeal is therefore allowed. As noted initially this is an interim judgement dealing with the interpretation of Einami’s will. This appeal is now referred back to the Nauru Lands Committee for determination of the land entitlement in accordance with the two wills involved. Leave is reserved to any parties to seek the Court’s directions on issues that may in the future arise and which have not been addressed in this Judgement.



**DILLON J.**