

IN THE SUPREME COURT OF NAURU

CIVIL ACTION NO. 2/99

BETWEEN : EIDINGAERO DAKE PLAINTIFF
AND : EIDERAIROK AKUA 1ST DEFENDANT
: CURATOR OF INTEST. EST. 2ND DEFENDANT
: NAURU LANDS COMMITTEE 3RD DEFENDANT

Date of Judgment : 9.12.99
D. Aingimea for the Plaintiff
Audoa and Mrs. Deo for the First Defendant
Flora for the Second & Third Defendant.

JUDGMENT OF DONNE, C.J.

This action seeks an order quashing the determination of the Nauru Lands Committee distributing the estate of the late Karem Gourab deceased who died intestate without issue.

In essence, the Plaintiff Eidingaero Dake who is a sister of the deceased claims that the mandatory requirement of the Administration Order

No. 3 of 1938 was not complied with in that she, as a member of the deceased's family, was not called by the Nauru Lands Committee to attend the family meeting assembled to consider the distribution of his estate.

The said Order provides (inter alia):

“On the death of a person who dies intestate, the division of the property of the deceased shall be decided in the following manner. Such division shall include all real and personal property.

- (1) The Chief of the District will make a list of all property of the deceased.
- (2) The distribution of the property shall be decided by the family of the deceased person, assembled for that purpose.”

This is no dispute that the Nauru Lands Committee was rightfully the person to call the family meeting, it having inherited the role of the Chief designated for that purpose by the Order. Likewise it is agreed that the Nauru Lands Committee called a meeting in accordance with the said Order

notifying only the brother and sister of the deceased being the issues of his father and his second wife. The Plaintiff, the child of his father and his first wife, was not called or notified.

Nor is there any dispute that there must be held this meeting of the deceased's family before his estate can be distributed. If the meeting called is not in accordance with the requirements of the Order there can be no lawful determination of the Committee and, ipso facto, no distribution.

The defence contends that the Plaintiff was not in the deceased's family as she was only a half sister of the deceased, having the same father, but, a different mother. It is argued that such a relationship does not allow the Plaintiff to claim a family relationship within the meaning of the said Order, entitling her to take part in a meeting called thereunder.

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The word "family" can have several meanings depending on various circumstances. Here the Order, in my view, intends that all those who are descended or claiming descent from a common ancestor are included in the term "family" as used therein. This is in accord with the dictum of Jessel MR in Pigg v Clarke (1876) 3 Ch D 672 at page 674:

"..... The question is, who are meant by the word "family"
..... The word family has various meanings. In one sense it means the whole household, including servants, and, perhaps, lodgers. In another sense it means everybody descended from a common stock, that is to say, all blood relations"

Again, in the Canadian case of Charlottetown v Charlottetown Association for Residential Services Services (1979) 100 DLR (3d) 614 at p. 622 it is stated:

"The word "family" has several meanings. Its primary meaning is the collective body of persons who live in one house under one head or management. Its secondary meaning is those who are of the same lineage or descend from one common progenitor."

See also Re Perowne, Perowne v Moss [1951] Ch 785, Harman J at 788.

Here the Plaintiff Eidingaero Dake and the deceased Karem Gourab have a common ancestor, they were blood related through their father Gourab Debido. The Plaintiff must, in law, be included in the family of the deceased. There is and can be no custom to the contrary.

I, therefore, hold the Plaintiff was entitled to attend and deliberate at the said meeting assembled for the purposes of a distribution of the estate of the late Karem Gourab. As she was not included therein, the meeting was not validly held and, for that reason, any distribution of the deceased's estate resulting therefrom is made contrary to law. It is invalid. See Lucy Ika & Anor v Nauru Lands Committee & Ors (S.C. decision 21.8.92).

A sequitur of this finding is that, the determination made from these proceedings as appearing in the Gazette is void and, in consequence, the argument of the Defendants that the action is out of time must fail.

A new meeting pursuant to Administration Order No. 3 of 1938, must be called. The result of that meeting will determine the manner of distribution of the estate of the late Karem Gourab.

This ruling means that prayer 1 and 2 of the claim is granted by the making of Orders as prayed.

1. An order quashing the previous decision of the Nauru Lands Committee in the estate of Karem Gourab, by virtue of the irregularity of the said determination as outlined above.

2. That a fresh meeting be convened by the 3rd Defendant of the family of the late Karem Gourab, and such meeting to include every brother and sister of Karem Gourab, in accordance with Administration Order No. 3 of 1938 at section (2); and that, should there not be agreement on the distribution of the estate, that section (3) of the same Administration Order be then followed in the distribution of the same estate.

It follows from these Orders that a distribution of the said estate must then be made depending upon the decision of the assembled family as required by the said Administration Order No. 3.

I have been asked to make rulings on matters not the subject of the claim. I decline to do this. Compliance with the Orders here made should also ensure an intelligent compliance with the said Administration Order as to the distribution of the estate.

However, there does appear that the force and effect of section 55 of the Succession Probate and Administration Act, 1976 may not be fully understand by some of the parties here involved and I shall refer briefly to the section which reads:

“Where an executor or administrator has given such or the like notices as in the opinion of the Court in which the executor or administrator is sought to be charged would have been given by the Court in an administration suit for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, the executor or administrator may, at the expiration of the time named in those notices, or the last of them, for sending in such claims, distribute the assets of the testator or intestate, or any part thereof, amongst the persons entitled thereto, having regard to the claims of which he has then received notice; and he shall not be liable for the assets or any part thereof so distributed to any person of whose claim he has not had notice at the time of such distribution.”

This section of the said Act does not give power to the Curator of Intestate Estates to decide, unilaterally, on the distribution of any estate.

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Under section 37 thereof the Curator takes over the real and personal estate of the deceased which is vested in him until the time of distribution, at which time he is divested of the property, which he then distributes.

Section 55 fixes the extent of the Curator's liability in his duty to distribute. It provides for the giving by him of notice to creditors and others to send in to him their claims against the estate of the testator or intestate within a time defined in the notice. After the expiration of this specified time, the section allows the Curator to distribute the assets of the estate. In doing so, he need only take notice of persons who have given him notice of a claim against the estate. He must distribute the assets having regard to those who have given him notice; he is not liable to anyone else. As emphasised below, the notice does not apply to a claim by beneficiaries. Their position is not affected thereby. That is the meaning and extent of section 55.

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Mr. Aingimea has presented a very thorough and commendable argument on this aspect of the Curator's duty of distribution under the Act. The Curator does not determine the beneficiaries of the estate. That must be done by the Nauru Lands Committee and, as has been said, the determination depends on the result of the family meeting called pursuant to the said Administration Order No.3. Distribution of the assets of the estate cannot be effected by the Curator until the Nauru Lands Committee has made the required determination. That determination must be followed by him.

As to the Gazette Notice given by the Curator under section 55 (supra), that ensures that proper notice is given to creditors and claimants. It is not subject to any right of appeal. No beneficiary in an estate, as settled either by the Nauru Lands Committee or the Court on appeal therefrom, can be deprived of his or her share by the Curator. The Notice under section 55

(supra) does not apply to a beneficiary. As Mr. Aingimea has emphasised, the only power of administration given to the Curator is that contained in the said section 37 of the Succession Probate and Administration Act, 1976.

I accordingly adjudge:

1. The Orders 1 and 2 referred to above and sought in the Statement of Claim are granted.
2. There will be an award of costs to the Plaintiff in the sum of \$400 to be paid by the Curator of Intestate Estates and for that purpose the said sum shall be deemed an expense incurred by

him under section 37(2) of the Succession Probate and Administration Act, 1976 to be recovered from the said estate.

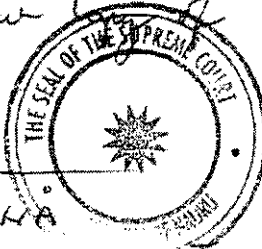
Donne Anne

CHIEF JUSTICE

Solicitors for Plaintiff : Aingimea & Associates, Nauru
Solicitors for 1st Defendant : Audoa & Associates, Nauru
Solicitors for 2nd & 3rd Defendants: Justice Department, Nauru

*A Certified True
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G. N. SAKSEMA
REGISTRAR, SUPREME COURT

The seal of the Supreme Court of Nauru is circular. It features a central sunburst emblem. The text "THE SEAL OF THE SUPREME COURT" is written around the top inner edge, and "NAURU" is written at the bottom inner edge.