



REPUBLIC OF NAURU

**IN THE SUPREME COURT
OF NAURU**

Civil Action No. 28/2001

Between	Darrel Gadabu	Plaintiff
And	Nauru Lands Committee	First Defendant
	And	
	Ruby Thoma and Ors.	Second Defendant

JUDGMENT

1. This matter first came to the Court as a Land Appeal in May 2000. After hearing the parties on 12 February 2002, the Plaintiff was given leave to re-plead the matter under civil action no. 28/2001, which had also been commenced in October 2001. As a Land Appeal it was clearly out of time, but the Court was prepared to hear evidence and argument on the question of the respective wills, if any, of Japhet and Lilac Dediya and their effect.

2. As so often in these matters, the Nauru Lands Committee ("the NLC") takes a passive role and it is left to the two contending parties to advance their cases in both pleadings and evidence before the Court. Now, as a matter of practice, the NLC is not a party to the Court whenever the matter is a mere appeal from a determination of that committee. The situation is somewhat different, however, when a question arises in a civil action where part of that action, if not the whole question, arises from an alleged misconstruction of a position by the NLC. In such circumstances, it is proper to have the NLC as a party, and the court would expect the NLC in such civil action to plead in the normal way. Whilst the NLC does not now participate as a party in land appeals, its participation is necessary in the rarer occasions when it is a party to a civil action. To assist it, provision should be made for it to be assisted by legal representation. Unfortunately, that was not the case here though the Chairman managed as best he could.

3. The action concerns the distribution of two estates, that of Japhet Dediya and Lilac Dediya. Japhet Dediya died on 16 June 1971 aged 60 years, and Lilac Dediya died on 21 November 1980 aged 59 years. The evidence established that both died intestate. Whatever Lilac stated in the family meeting on 24 August 1971, recorded in the NLC Minutes, following the death of Japhet it was not regarded as a customary will of her own by the NLC and would certainly not be so regarded by the Court. It was simply a statement at a family meeting as to an agreed distribution of the estate, which met with the concurrence of the other family members present. This was in conformity with Regulation 2 of Administration Order No. 3 of 1938, namely, 'The distribution of the property shall be decided by the family of the deceased person, assembled for that purpose.'

4. Lilac (Eirairok) said 'I would like to say this now before the Committee that all the properties belonging to Japhet I will inherit now, should I die, then all properties will pass to all my children now and their names are: Bibidog, Victory, James, Eidogarube, Darley, Eidemaiti, Andonis, Anzac, Nathan, Darrel Gadabu'.

She went on to say 'Should I in the future wish to have a partner in this life before I pass away then all the land belonging to Japhet, will revert back to the children whose names I have listed above.'


5. The Plaintiff suggested that this distribution was a gift absolute rather than one of lifetime only. This distribution, which was accepted by the family and given acceptance and authority of the NLC in GN 248/1971 dated 21 September 1971, was of a limited and conditional nature. The NLC was correct in the Gazette Notice to state that upon her death or re-marriage her shares, which were total, would revert to the named beneficiaries in equal shares. In other words, the estate of Japhet was granted on a life term only basis or until her re-marriage, at which time there was a reversion in equal shares to named beneficiaries. Where there is an LTO, then it is incumbent on the NLC to establish to whom the estate reverts upon death of the LTO beneficiary.
6. The mistake, however, that was made at the notice of determination by the NLC was to leave out Darrel Gadabu. This was corrected by the NLC in GN 189/1983 when Darrel Gadabu was added to the other beneficiaries.
7. Both parties entered into considerable argument whether Darrel Gadabu was an adopted child of Lilac and Japhet by legal or customary adoption. The evidence placed before the Court as to adoption fell far short of establishing that status. There was no doubt that both Japhet and Lilac had taken care of Lilac's sister's child not only at the time when the Gadabu family had some family stress but also later in Darrel's life. He was certainly given special consideration by Lilac. But, so far as the Court is concerned, he was never adopted as such.
8. Nevertheless, the fact that he was not adopted would not change the agreed distribution of the property arising from the family meeting in 1971 in relation to the estate of Japhet. A distribution under regulation (3) would only have occurred had the family been unable to agree. At that point, adoption or otherwise would have been a factor.
9. Darrel Gadabu is a reversionary beneficiary on the basis that the family agreed in 1971 to his participation in the estate of Japhet upon the death of Lilac. He was therefore correctly listed as a beneficiary to Madang in Ewa district Portion No. 182, and to the land Tararo in Anibare Portion 393. However, he was incorrectly omitted from Anurung, district of Anibare Portion No. 207, and Anuer, district of Anibare Portion No. 224.
10. So far as the estate of Lilac is concerned, it is clear from the family meeting before the NLC dated 20/11/81 that Darrel Gadabu was not to be included in Lilac's properties. This did not affect his interest as a reversionary beneficiary established in 1971 to the estate of Japhet. Any later determination following the death of Lilac establishing property in Japhet would flow to the reversionary beneficiaries who include Darrel Gadabu. Lilac, I repeat, held the Japhet properties on an LTO basis.
11. In a curious aspect to the case, the Plaintiff, on 20 November 1984, addressed a letter to the Chairman of the NLC in which he sought to transfer back to the other beneficiaries his share of the late Japhet Dediya estate. A letter from the Chairman of the NLC dated 30 October 1990, to the then Acting President set out the effect of such a transfer. On 5 November 1990, the Director of Lands and Survey on the instructions of the NLC

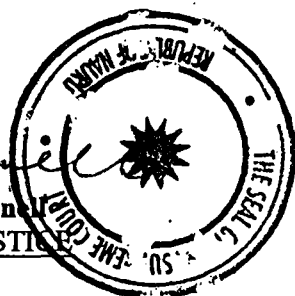
checked the transfer of the lands in question and wrote to the President that he found them in order, and if the President approved he would arrange that the Gazette notice be published. On 8 November 1990, the President appended a note to the letter of the Director that it was 'not approved'. As a sequel to this, Darrel Gadabu on 8 March 1991 wrote to the Chairman of the NLC that he wished 'to recall my decision made from letter dated 20 November 1984 that my proposal is withdrawn and requested to be cancelled'.

12. The effect of the above correspondence is quite simply that as the transfer was not approved by the President, there was no transfer. A transfer *inter vivos* of the freehold of any land must, by Section 3 of the Lands Act 1976, have the consent in writing of the President, otherwise it is absolutely void and of no effect. The letter of 8 March 1991 of Darrel Gadabu was redundant though one supposes it was written to prevent a further application being made to the President at a later date. It should be noted that the attempt to transfer was originally made in 1984, which was after the death of Lilac Japhet in 1980. He, therefore, on the basis of the 1971 agreement, held an absolute freehold in the land to the extent of his share.
13. In explanation of this curious episode, the Plaintiff felt, even if incorrectly, that as 'an adopted son' he did not want his other brothers and sisters making him an offer. He believed that he with them had entitlement to equal shares as of right. It was not, as he said, 'for Ruby or others to offer'. He said 'Ruby had not adopted me - I was adopted by Lilac and Japhet'. This so-called attitude irked him so much that he decided to dispense with his inheritance. However, the laws of Nauru with respect to land rather stood in his way and he was not able to achieve his object. Clearly, later, he had second thoughts in his letter dated 8 March 1991.
14. There is, in this case, a major time factor and it must play some part in sorting out and conditioning the ultimate order. The original estates in issue are those of 1971 and 1982, various other factors come into play in 1983 and 1987 but it is difficult to justify the absence of certainty with regard to both estates that were determined twenty or thirty years ago. Equity aids the vigilant and not the indolent is a well-recognised maxim, and the doctrine of laches comes into play when there is unreasonable delay or negligence in issuing proceedings. In fact, at law, land appeals, as such, have a strict twenty-one day time limit. The Defendants properly raised these issues.
15. However, since the death of Lilac Japhet this has been something of an ongoing saga, which was, at first, partly decided by the intervention of the President to a transfer of shares in inherited land of the late Japhet Dediya in 1983. Thereafter, the problems were created either by a misconstruing or failure to account by the NLC of the above 1983 gazette notice. Allied to this was the behaviour of the Plaintiff in attempting to dispense with his inheritance irked, in his thoughts, by the Dediya family. Therefore, any defence of laches failed because of the ongoing nature of the controversy which in its totality was broader than a mere NLC land determination. It is, however, the intention of the Court by its order equitably to ameliorate the position of the Dediya family with respect to any adjustments to past monetary payments.
16. In summary, I find that
 - i. the Plaintiff, through the 1971 family agreement, had a reversionary interest to the real property in the estate of Japhet Dediya based on equal shares with the Dediya family named in Gazette Notice No. 248/1971,
 - ii. the Plaintiff had not been adopted by Japhet and Lilac,

- iii. the Plaintiff had no entitlement to the real property of the estate of Lilac Dediya, apart from the interest in reversion in the estate of Japhet Dediya,

I propose to hear both parties as to the Order I make in conformity with the above decision.

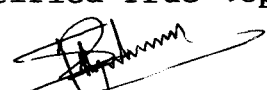

Barry Connel
CHIEF JUSTICE



The seal of the Supreme Court of Sri Lanka is circular, featuring a central emblem with a sunburst. The text around the perimeter includes 'REPUBLIC OF SRI LANKA' at the top, 'THE SEAL OF' on the right, and 'SRI LANKA SUPREME COURT' at the bottom.

26 November 2002

Verified True Copy:


SAMPATH B. ABAYAKOON
REGISTRAR, SUPREME COURT