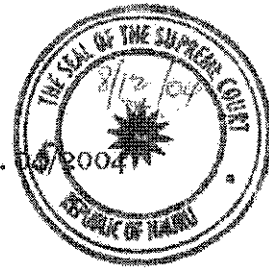


IN THE SUPREME COURT

MISC . CAUSE NO.



In the Matter of the Will of Eididu Akubor (deceased)

P. Nimes for Applicant Rommel Audoa
Reuben Kun for Respondent beneficiaries
Nauru Lands Committee represented by John Akubor Chairman

Hearing 8 December 2004

DECISION

Although this matter commenced as a Land Appeal No. 02/2004, it was clear that the matter involved simply the interpretation of a Nauruan will made by Eididu Akubor (deceased) of Yaren.

Eididu had a legitimate son born on 8 October 1948 named Rommel. At the time of her death she had seven other surviving children.

By the will, she had named the seven other surviving children but had not named her first born Rommel Audoa. However, he was not expressly excluded from the will.

The will had been drawn up by Robert Kaierua, a pleader. Eididu in giving instructions named the children to be included but had not discussed nor mentioned Rommel Audoa. Robert Kaierua did not give her any specific advice on excluding a legitimate child.

In Gloria Harris & anor v Lucas Hedmon & ors (Nauru Law Reports 1969-1982 Part B Land Appeals), Thompson C.J. therein stated that 'in Nauru, it is very rare for a person to disinherit his legitimate children', and he went on to say 'I think it unsafe to give effect to a Nauruan will which disinherits the testator's legitimate children unless either it does so expressly or there is evidence that the testator has had proper advise on the effect of the will. In other words, there is a rebuttable presumption that a Nauruan testator did not intend to disinherit his legitimate children'.

With respect, I support the statement by Thompson C.J. and would add that unless the will makes it expressly clear with words effecting disinheritance then a legitimate child, not named in the will, will not be disinherited. Those who draw wills should take note and ensure that testators are so advised.

In this case, I find that the will was valid but that Rommel Audoa, a legitimate child, should be added to the list of surviving children of Eididu in Part A. I shall draw up the appropriate orders and settle these with the legal representatives of the parties at 9.30 a.m. 8 December 2004 in Chambers.



BARRY CONNELL

CHIEF JUSTICE

8/12/04