



– Not shown Nauru Lands Committee failed to follow court judgment – Not shown that land determination affected land known as “Auyo” – appeal dismissed.

## JUDGMENT

1. This is an appeal against a decision made by the Nauru Lands Committee (“the Committee”) published in the Government Gazette No. 124 GN No. 503 of 2012 and Gazette No. 20 GN No. 115 of 2013, declaring the first respondents to be the owners of the land named “Animaeor” portion No. 402, having inherited their interest through Eidaganeno Adu and Atsiem.

2. The Committee is a statutory body empowered under *Nauru Lands Committee Act* 1956 to determine questions concerning land ownership:

*“6(1) The Committee has power to determine questions as to the ownership of, or rights in respect of, land, being questions which arise -*

*(a) between Nauruans or Pacific Islanders; or*

*(b) between Nauruans and Pacific Islanders.*

*(2) Subject to the next succeeding section, the decision of the Committee is final.*

*7(1) A person who is dissatisfied with a decision of the Committee may, within 21 days after the decision is given, appeal to the Supreme Court against the decision.*

*(2) The Supreme Court has jurisdiction to hear and determine an appeal under this section and may make such order on the hearing of the appeal (including, if it thinks fit, an order for the payment of costs by a party) as it thinks just.*

*(3) Notwithstanding anything contained in any other law, a judgment of the Supreme Court given on appeal under this section is final.*

3. Whilst it is commonly accepted that the decision of the Committee is final once it has been gazetted (subject to sec. 7 *Nauru Lands Committee Act* 1956), I am yet to establish the authority requiring a decision of the Committee be gazetted prior to October 2012.<sup>1</sup> Research shows that the *Native Administration Ordinance 1992* laid down the powers of the Administrator to make regulations:

*“3. The Administrator may make regulations affecting the affairs of natives with regard to –*

*...*

*(b) the succession to property in case of intestacy;*

---

<sup>1</sup>*Nauru Lands Committee (Amendment) Act* 2012, Section 6A **Publication of a decision** ‘A decision of the Committee must be published in the Gazette within 21 days after the decision is made.’

...  
(d) *the rights to real and personal property...*”

4. The Administration Order 3 of 1938 - Regulations Governing Intestate Estates 1938 (Regulations made under section 4 of the *Native Administration Ordinance 1922*) which deals with the property of a person who dies intestate and includes all real and personal property mentions determinations being published in the Gazette:

“...(4) *No distribution of land of a deceased estate, whether published in the Gazette or otherwise shall be final unless the ownership of the deceased has been determined previously by the Lands Committee or other authority authorised by the Administrator and published in the Gazette with the usual opportunity given for protest.*”

5. His Honour Chief Justice Thompson noted in *Grundler v Namaduk & Ors*<sup>2</sup>:

“*Before I make a formal order, however, I think it desirable to comment briefly on the Nauru Lands Committee's present practice of giving its decisions by notice in the Gazette... This has apparently been the practice since before the Second World War...*

...*The Nauru Lands Committee Ordinance 1956-1963 is silent as to the manner in which decisions of the Committee are to be given. Publication in the Gazette is a very suitable manner of giving them; notices in the Gazette are authoritative and readily ascertainable in later years...*”

6. Thompson, CJ considers the matter in detail in *Egadeiy Itsimaera v Eidawaidi Grundler & Ors*,<sup>3</sup> an appeal in relation to decisions of the Nauru Lands Committee:

“*The question before this Court is, therefore, at what point of time a decision of the Nauru Land Committee has been made, so that it is unalterable and is final and binding. Section 7 of the Ordinance refers to decisions of the Committee being “given” but does not specify how they are to be given. In practice – and the practice existed before the Committee was given Statutory existence by the Ordinance – its decisions are given by publication in the Gazette. In view of the provisions relating to appeals, it would clearly be objectionable for effect to be given to a decision of the Committee which had not been given by publication e.g. payment of phosphate royalties to persons in whose favour an unpublished decision has been made. But, the fact that a decision does not take effect until it has been given does not necessarily mean that it has not become final and unalterable at some time before it is given.*

*It is necessary, I think, to examine the nature of the Committee's functions and of its decisions. Under Section 6 of the Ordinance it “has power to determine questions as to the ownership of, or rights in respect of, land”. Its function is essentially a judicial function. That being so, it is reasonable to compare the nature of its decisions with that of decisions of the*

---

<sup>2</sup> *Grundler v Namaduk & Ors* [1974] NRSC 7; [1969-1982] NLR (B) 101 (4 February 1974)

<sup>3</sup> *Egadeiy Itsimaera v Eidawaidi Grundler & Ors*, Land Appeal 2 of 1974

*Courts, and to apply similar rules to alterations of its decisions as apply to alteration of the judgments of Courts.*

*...Until the judgment is actually given, in whatever manner the judgments of that Court are given, it can be altered as many times as members wish. In the same way, members of the Nauru Lands Committee may agree on a decision and a Minute may be made of it. But, if subsequently, before the decision is "given" i.e. published, any member considers that it should be altered and can persuade the other members accordingly, I can see no reason why the Committee should not alter it or abandon it and make a new decision.*

*In my view the time at which a decision of the Nauru Lands Committee becomes unalterable (except with the consent of the parties or by this Court on appeal) and is final and binding is when it is given, that is to say, when it is published in the Gazette."*

7. His Honour Chief Justice Eames in *Begg Adire v NLC & Ors*<sup>4</sup> adopted the reasoning of Thompson, CJ at 107:

*"Thus, were the Nauru Lands Committee to discover prior to publication...that it had made an error by omitting or by its manner of identification of an intended beneficiary, I see no reason why the Nauru Lands Committee, acting with procedural fairness to interested parties, could not modify its determination.*

...

*The manner in which the Nauru Lands Committee operates is very different to the conduct of tribunals with which the Australian courts are familiar, and consideration of the Nauru legislation must be read against that background and legislative understanding. Section 8 of the Nauru Lands Committee Act 1956-1963 acknowledges that the Nauru Lands Committee is 'constituted in accordance with the customs and usages of the aboriginal natives of Nauru'. Those customs may be matters of dispute, and agreement as to their content may be slowly reached, and subject to continuing debate. Also, s.3 of the Custom and Adopted Laws Act 1971 provides that the institutions, customs and usages of Nauruans shall be accorded recognition by every court and have full effect in regulating matters, including "interests in land".*

...

*In my opinion, even after publication in the Gazette, the Nauru Lands Committee could publish such a correcting determination where all interested parties consented to it doing so."*

---

<sup>4</sup> *Begg Adire v NLC & Ors* [2011] NSC 2, at 107, 108 and 109.

8. I am satisfied that this procedure has been approved by this Court on previous occasions and proceed on the basis that the determination of the Committee is complete as a decision, once the matter is gazetted.
9. The decision of the land subject of this appeal was published in Government Gazette No. 124 of 2012, G.N. No. 503/2012 (Abbrev.):

DISTRICT	PORTION NO.	TYPE OF LAND	NAME OF LAND	REFERENCE	FORMER OWNER	PROPOSED OWNER
Bauda	402	c.l	Animaeor	LRB 1928 page 28	Atsiem Tabwijue	Eidagenano Moses & oth

Subsequent to this, Government Gazette No. 20 of 2013, G.N. No115/2013 recorded:

*"It is notified for general information that in Government Gazette No. 124/2012 G.N. No. ...503/2012..., the following maps are additional to the aforementioned notice....MAP OF BUADA: Portion No. 402, c.l., Animaeor.*

10. The land portion No. 402 in the Bauda District named "Animaeor", is referred to by the appellant as "Auyo".
11. Before considering the appellants' grounds in relation to the ownership of the land I will turn firstly to the appellants' contention that the Committee failed to consider the judgment of His Honour Chief Justice Thompson in Land Appeal No. 3 of 1976 *Detonga Deiye & Others v Nauru Lands Committee*, and has no powers to review any decision or judgment made by the Supreme Court of Nauru.
12. The first appellant in his evidence to this Court stated that he had instituted the appeal in No. 3 of 1976 because land by the name of "Auyo" was mentioned in Gazette No. 16 of 1976 GN 101/1976, this being the same name as the land his family owned, and he thought the land may be linked to him. The first appellant commenced proceedings as a precaution to safeguard his position to challenge the decision in the gazette.
13. The first appellant is correct in the submission that the Committee has no power to review a decision or judgment of the Supreme Court. However, upon examination of the papers before the Court and a perusal of the original 1976 file it is quite clear that what is being relied upon as a judgment is in fact notes taken by His Honour during the course of a hearing on 18 May 1976. There is no indication that the matter was finalised, there is no signed and sealed judgment on the file, nor is there a judgment recorded on PacLii or Ronlaw.

14. Having determined that there is no judgment before this Court in the Land Appeal No. 3 of 1976 *Detonga Deiye & Others v Nauru Lands Committee* there is no contempt committed on behalf the Committee in deciding the matter subject of appeal.
15. The first appellant Detonga Deiye is a 78 year old retired man, and claims the land "Auyo" through his father to the registered owners of land in 1928 and in German times. The appellant's evidence is that his father, who died in 1970, attended a Field Day in relation to the land subject of this appeal. When questions were put to him that the Field Day was held in 1979 and was attended by his brother Deraodis Deiye, the appellant stated that his brother cannot make decisions for the whole family. The first appellant's evidence is that the land gazetted portion No. 402 named "Animaeor" is the land known to him as "Auyo" and shown on a map given to him by his father before his death in 1970. The first appellant stated he went to the where the Committee was meeting in around 1990 and handed the chairman Leslie Adams a map, but did not attend the meeting itself. The first appellant has written a number of letters to the Committee over the years in relation to land "Auyo".
16. Alvina Aremwa gave evidence on behalf of the first appellant, she is his niece, the daughter of the first appellants' elder brother Deraodis (also known as Alex) Deiye. Aremwa heard about a Field Day being held in the 1990's and attended as the name "Auyo" was mentioned. Although she approached to speak about the land there was an altercation with an official and she left without further consultation. Aremwa states that her father did not take her to the land "Auyo" but had given her a copy of a map. She states that her father Deraodis was the head of the family after the death of his parents, her grandparents, and would be the one to make decisions for the family on land matters.
17. The appellants called the Director of Lands Peniasi Nakautoga, a qualified surveyor, who has been in post for two years. He gave evidence that it appears from the copy maps shown to him that the land in exhibit A7 (map published in Government Gazette No. 20 of 2013, G.N. No115/2013 Portion No. 402, c.l., Animaeor), looks the same as that of exhibit A5 (map of "Auyo") the land claimed by the first appellant. Nakautoga confirmed that he had not been to the land and conducted a survey, rather he was giving his opinion based on the maps before him. His evidence was that they do surveys after the Nauru Lands Committee has made a decision and that it is the responsibility of the Committee to determine who has the rightful claim. He was not able to say if A5 (the map of "Auyo"), was produced by the Lands Department.
18. The current Chairperson of the Nauru Lands Committee Tyran Capelle was called on behalf of the second respondent; she has been chairperson since 2010. She outlined the responsibilities of the Committee to make determinations in relation to land of deceased estates and detailed the process of determining ownership. Firstly the Land Register Book 1928 is examined to see if the land claimed is noted there, and then after that a Field Day is held. On a Field Day the claimants physically walk the land

and matters such as overlapping boundaries are examined. . Following on from the Field Day, after researching and going back to the Register Book, consideration is given to the correct claim and a determination made. The claimants are spoken to and if the decision is not agreed upon, they are given an opportunity to sort out differences between themselves. Once the Committee has made its determination, an official map is obtained from the Lands and Survey Department; the names and map are then submitted for gazettal. After a decision is gazetted unhappy claimants can appeal to the Court.

19. Deiyee (the appellant's claim) is referenced in the Land Register Book 1928 at page 40. Land of the appellant family is recorded in the copies of the German Record 1888 at page 301, Nos 18 and 19, listed as 'Animaear 1 and Animaear 2' registered in the name of "Deiye". This has been determined as portion 336, coconut land, Gazette No. 12 of 1984, G.N. No. 70/1984. There is no evidence before the Court of "Auyo" land registered to the appellants' family in the German Record.
20. There was a Field Day held in on 23 October 1979 for the Committee to determine lands in Bauda, one of which was "Animaeor" belonging to Atsiem (through Eidagenineno, first respondents). At the time of the Field Day there was no land "Auyo" linked to the land "Animaeor".
21. The Field Day was attended by Deraodis, the elder brother of the first appellant (Minute 42 page 89, Exhibit A12 )who walked the land:  
*"Deraodis boundary will be seen from Eidagenineno's land because it is adjacent to it. This explain that Deraodi agreed to his boundary."*  
There was agreement that descendants of Eidagenineno be given the land "Animaeor" as claimed. The Eidageineno claim (first respondents) is listed in the Land Register Book 1928 at page 38.
22. The Committee records show that the ownership of the land subject of the appeal was considered in 1979, 1980, 2002, 2003, 2004, 2005 and 2008. In 1980 the first appellant was offered a meeting with the Committee and did not attend; whilst the reason he gave to the Court was that he was out of the country, it was open to him on his return to request a later meeting. Over this time the Committees have made differing determinations in relation to the ownership of the land.
23. At the 2008 meeting a map prepared by the Survey Department was considered, found to accord with the map from the Field Day in 1979, and there was agreement that the land be awarded to the first respondents. Records show that in 2012 the delay in gazettal was due to the Survey Department.
24. The Court accepts that it is common for land in different areas to have the same name, and that there are a number of land holdings by the name of "Auyo", mostly on the

other side of the lagoon from portion No. 402. The Court also accepts that it is unusual for one parcel of land of a different name to be found in the middle of similarly named lands.

25. As time passes there are fewer people who have direct historical knowledge of the location and boundaries of the land held by their predecessors. I am satisfied that at the Field Day in 1979 Deraodis Deije was able to correctly delineate the boundaries of the family land.
26. Whilst the first appellant's father had land called "Auyo" which appears in the 1928 Registration Book in the Bauda District, I am of the view that it is not the land previously fielded and determined to be portion 402 named "Animaeor". The appellant's land "Auyo" has yet to be determined.
27. It is regrettable that the process of determination has been ongoing for over thirty years and the Committee did not gazette its decision more timeously. Under the circumstances the Committee is urged to identify, determine and gazette the appellant's lands referred to as "Auyo" as soon as practicable.
28. It is for the appellant to establish that there are grounds for setting aside the decision of the Nauru Lands Committee. I am satisfied that the Nauru lands Committee did not err in law or fact at arriving at its determination or in gazetting its decision and I find no reasons for interfering with the decisions published in Government Gazette No. 124 of 2012, G.N. No. 503/2012 and Government Gazette No. 20 of 2013, G.N. No115/2013. The appeal is dismissed.
29. The appellants to pay the costs of the first respondents, costs to be taxed before the Registrar.

Dated this 19<sup>th</sup> day of June 2015

---

Justice J.E. Crulci