



IN THE SUPREME COURT OF NAURU

[APPELLATE JURISDICTION]
[LAND MATTER]

Case No 45 of 2014

Between Vernier Addi, Lois Aingimea (Nee Addi) & Stanley Addi
Appellants

And NAURU LANDS COMMITTEE 1st Respondent

And VERBINA SELINA DERAUDAG 2nd Respondent

Before: Crulci J

For the Appellant: V. Clodumar

For the First Respondent: J. Udit

For the Second Respondent: K. Tolenoa

Dates of Hearing: **16 August 2016**

5 October 2016

Date of Ruling: 06 February 2017

CATCHWORDS:

APPEAL – Nauruan land – Nauruan Lands Committee – intestate succession – Administration Order No. 3 of 1938 – family under regulation 2 of Administration Order No. 3 of 1938 - adopted child parity with natural children – Appeal allowed

JUDGMENT

BACKGROUND

1. This is an appeal against the decision of the Nauru Lands Committee (“NLC”) published in Government Gazette No. 23, dated 13th June 1973, GNN 113/1973, in relation to the distribution of the estate of Verbena Agnes Danogoneida Deraudag (“Verbena Agnes”).
2. The Full Court in *Addi v Nauru Lands Committee* [2014]¹ granted leave to the Appellants to file an appeal against the determination of the distribution of the estate of Verbena Agnes. The Court noted that:
 - “13. We accept the applicants only became aware of the decision of the Nauru Lands Committee some time after the matter had been gazetted. At this time there was no avenue of appeal open to them. Furthermore we accept that the applicants tried to resolve this matter within the family with the Second Respondent’s mother, but that this was unsuccessful. It was only after October 2012 that the Applicants were able to launch an appeal, and in the light of the proposed redistribution of trust fund monies in early 2014, the matter of Verbena Selina benefitting from a share in the estate of Verbena Agnes was brought to the fore.
 14. In this matter we are of the view that no blame can be attributed to the Applicants for the error in the government gazette. The first respondent invited only the Second Respondent’s mother to attend a hearing and as stated above the Applicants were not afforded an opportunity to address the Nauru Lands Committee.
 - ...
 16. In this matter the land has not changed ownership, nor is the title in dispute.”

AGREED FACTS

3. Eidinijong is the biological daughter of Eirumaina and Atte. In 1955 when Eidinijong gave birth to Verbena Agnes, her mother Eirumaina was then married to Addi. Verbena Agnes was adopted by Eirumaina (Verbena’s maternal grandmother) and Addi in 1955, according to Nauruan custom.

¹ *Addi v Nauru Lands Committee* [2014] NRSC 2 (1 October 2014)

4. Eirumaina passed away in 1962 and her estate was later determined by the NLC. The decision was published in Gazette No. 19, dated 26th May 1962, GNN 108/1962:

Estate of Late EIRUMAINA (Deceased)

(1) Phosphate Lands - EWA						
Name of Block	Portion	Ref. No.	Former Owner	Share	Proposed Owner	Share
Anaoa	54	Gaz.5/57	Eirumaina (est)	1/3	Eidinijong. D. Romeo A. Nylon A. Vernier A. Stanley Lupino A. Verbena Agnes Danogoneida A.	1/18 1/18 1/18 1/18 1/18 1/18
Aeape	59	Gaz. 5/57	Eirumaina (est)	1/2	Eidinijong. D. Romeo A. Nylon A. Vernier A. Stanley Lupino A. Verbena Agnes Danogoneida A.	1/12 1/12 1/12 1/12 1/12 1/12
(2) Coconut Land - ANABAR						
Name of Block	Portion	Ref. No.	Former Owner	Share	Proposed Owner	Share
Areb	81	Gaz. 4/61	Eirumaina (est)	1/4	Eidinijong. D. Romeo A. Nylon A. Vernier A. Stanley Lupino A. Verbena Agnes Danogoneida	1/24 1/24 1/24 1/24 1/24 1/24
(3) Phosphate Land - ANABAR						
Querong	25	Gaz. 51/61	Eirumaina (est)	1/4	Eidinijong. D. Romeo A. Nylon A. Vernier A. Stanley Lupino A. Verbena Agnes Danogoneida A.	1/24 1/24 1/24 1/24 1/24 1/24
(4) Phosphate Land - ANIBARE						
Irotin	215	Gaz. 49/61	Eirumaina (est)	1/6	Eidinijong. D. Romeo A. Nylon A. Vernier A.	1/36 1/36 1/36 1/36

						Stanley Lupino A. Verbena Agnes Danogoneida	1/36 1/36
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5. On the 20th February 1971, Verbena Agnes Danogoneida Deraudag passed away, aged 16 years. She was single and had no issue
6. Eidinijong subsequently gave birth to Verbina Selina Deraudag ("Verbina Selina") on 24th January 1972.
7. On the 30th June 1972 the NLC invited Eidinijong to attend a meeting in relation to the determination of the estate of Verbena Agnes. Neither Addi nor Eidinijong's other siblings were invited to attend. The NLC decided to distribute the estate of Verbena Agnes to Verbina Selina (Eidinijong's younger daughter, the Second Respondent). The Gazette names the present owner as Verbena Agnes Danogoneida Deraudag, this is accepted by all parties to be a typographical error as it was Verbena Agnes' estate that was being determined; the present owner is the Second Respondent, Verbina Selina.
8. The decision on the determination of who should inherit the shares of Verbena Agnes was published in Gazette Number 23, dated 15th June 1973, G.N. 113/1973. The extract below relates to the determinations in respect of Gazette No. 19, dated 26th May 1962, GNN 108/1962:

District	Port. No.	C.L. P.L.	Name of Land	Former Owner	Share	Gaz No.	Land. Vol.	Record Folio	NPC No	Admin No.	Present owners and Shares
Ewa	54	PL	Anaoa	Verbena Agnes Danogoneida (dec'd)	1/18	19/62	9	54	756 1146	1192 1585	Verbena Agnes Danogoneida Deraudag ² 1/18
Ewa	59	PL	Aeape	"	1/12	19/62	9	59	760	1196	Verbena Agnes Danogoneida Deraudag 1/12
Anabar	25	PL	Queira ng	"	1/24	19/62	2	26	-	-	Verbena Agnes Danogoneida Deraudag 1/24
Anabar	81	CL	Arep	"	1/24	19/62	2	83	-	-	As for portion 25 Anabar
Anibare	215	PL	Irotsin	"	1/36	19/62	4	217	-	-	Verbena Agnes Danogoneida Deraudag

² Accepted by all parties to have been a typographical error, should have read **Verbina Selina Deraudag**

9. The Appellant's in this matter are the children of Addi and Eirumaina.

THE APPEAL

10. No evidence was called by the Appellants or Respondents and the matter proceeded by way of affidavits, exhibits and oral and written submissions by counsel.
11. The Appellants submit to the Court that the NLC made a procedural error in not calling Addi and the other Appellants when the estate of Verbena Agnes Danogoneida was determined in 1973; and that the NLC made a jurisdictional error in applying Administration Order 3 of 1938 in respect of the estate of Verbena Agnes Danogoneida.
12. The Appellants wish this Court to determine the following questions:
- (1) Whether Verbena Agnes Danogoneida's estate ought to have reverted to her adopted brothers and sisters (the Appellants), excluding her half-sister³ Verbina Selina Deraudag, under Administration Order 3 of 1938?
 - (2) Whether Verbena Agnes Danogoneida's estate was correctly distributed to Verbina Selina Deraudag as the alleged next relative being a half-sister by way of a family meeting under Administration Order 3 of 1938?
 - (3) Whether the NLC was correct in only inviting the natural mother to the family meeting for the determination of the estate of Verbena Agnes Danogoneida on 30th June 1972?
13. Administration Order 3 of 1938:

Regulations made under section 4 of the *Native Administration Ordinance 1922*

Made on 19 March 1938

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.

³ The agreed facts refer to Verbina as the 'step-sister' of Verbena. As they have the same biological mother, Eidinijong, they are half-sisters.

(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.

The distribution of property agreed to by the family of the deceased shall be reviewed by the Government Surveyor to ensure that there is no apparent irregularity, who will refer any doubtful matter to the Administrator.

(3) If the family is unable to agree, the following procedure shall be followed:

(a) In the case of an unmarried person the property to be returned to the people from whom it was received, or if they are dead, to the nearest relatives in the same tribe;

(b) Married - No issue, - the property to be returned to the family or nearest relatives of the deceased. The widower or widow to have the use of the land during his or her lifetime if required by him or her;

(c) Married - with children - the land to be divided equally between the children, and the surviving parent to have the right to use the land during his or her lifetime. When an estate comprises only a small area of land the eldest daughter to receive the whole estate and other children to have the right to use the land during their lifetime.

(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) A parent or guardian of a minor who is beneficiary of a deceased estate, shall have the right to live on the property and to collect fruit therefrom but shall not be entitled to sign any document relating to the estate or receive any money accruing from the estate except with the written authority of the Administrator.

GIVEN under my hand at Administration Headquarters, Nauru,
Central Pacific, this 19th day of March, 1938
R.C. Garsia, Administrator.”
(emphasis mine).

14. The Appellant's argue that the wording of regulation 2 of the Administration Order No. 3 of 1938 is prescriptive and compels the NLC to consult with *the family of the deceased person*. The family being, the children of Eirumaina and Addi, Eirumaina's daughter from her first marriage to Atte (Verbena Agnes' biological mother) Eidinijong, and Verbena Agnes' adopted father Addi.
15. By only inviting Eidinijong (the deceased's biological mother) and not the rest of Eirumaina's immediate family, the Appellants' say that the NLC fell into error.
16. The Appellants argue that as Verbena Agnes died unmarried and without issue, if the family meeting was held in accordance with regulation 2 of the Administration Order No. 3 and no agreement was reached, then the proper procedure would have been to proceed under regulation 3(a).
17. The Appellant Vernier Addi states that after becoming aware of the NLC decision in relation to the distribution of Verbena Agnes estate in 1981, she approached the Chairman of the NLC and her half-sister Eidinijon. The attempts at resolving the appellants' issues were unsuccessful and out of respect for the elder sister they did not commence court proceedings; after Eidinijon passed in 2001 the appellants considered court action, however the state of the Nauruan economy at the time militated against this.
18. After October 2012 there was an avenue for an appeal to be commenced. This was done in early 2014 with a Supreme Court decision granting leave to appeal in October 2014⁴. This followed the announcement of forthcoming Ronwan payments.
19. The First Respondent's role is a neutral one before the Court and to assist by filing the records of hearings held by the NLC and their reasons and make submissions generally. A matter of 'personality estate' was canvassed by the respondents. This Court is minded to deal with the substantive issues of the appeal and turns to the NLC's reasons for its

⁴ *Addi v Nauru Lands Committee* [2014] NRSC 2 (1 October 2014)

decision to invite only Eidinijong, the biological mother (and 'sister') of Verbena Agnes to the meeting.

20. The NLC took the view that as Verbena Agnes was the daughter of Eidinijong, and therefore was her closest living relative, that this followed the practice of the NLC to invite direct descendants to a meeting.
21. As outlined in the submissions⁵, the reasons that the NLC only invited Eidinijong and not the Appellants is to be found in the (undated) statement of the Vice Chairman Abawo Diringa:

“Nauru Lands Committee determined the estate of Verbena Agnes Danogoneida in GN.23 Notice No. 113 of 1973 according to the wishes of the mother, Mrs Eidiniyong Deraudag (Minute Book 35 page 76).

The Appellants were excluded because Verbena Agnes was the daughter of Mrs Deraudag and therefore the nearest family according to the interpretation of the Nauru Lands Committee of the Admin. Order 3 of 1938 (a).

This practice was utilized with the previous Nauru Lands Committee where they only invited direct descendants of the deceased.

This is similar to Land Appeal 22/2010, Ivanhoe Daniel vs Tyran Capelle (estate of Enna Gadabu) for it was based on Customary Adoption.

Customary Adoption is where the child is taken either because (a) they had no other family (died during the war) or (b) to work for the elder in the adopted family, or (c) the adopted family had no issue thus adopting a child by custom.

These children were then included in all the properties for their good deeds. The gifted properties were solely owned by them whether married or single and upon their demise, the adopted family will not be invited but the direct decedents, (siblings) will be invited to determine the estate for Nauru Lands Committee considered these properties earned merit and no longer the properties of the adopted families.”

[(a) – (c) notations mine]

22. The First Respondent highlights to the Court that regulation 3(a) and (b) are only enlivened if the family is unable to agree the determination, and that the position of the NLC is that the 'family' in this matter is Mrs Eidinijong Deraudag who was clear that her daughter Verbina Selina

⁵ Submissions on behalf of the First Respondent (NLC), dated 20 October 2016, paragraph 17

should be the beneficiary of Verbena Agnes. The NLC position is that custom was followed and the 1973 decision should stand.

23. The Second Respondent submits to the Court that the deceased estates of Verbena Agnes are not common shares but are gifts from Eirumaina. As such they are owned absolutely by Verbena Agnes and passed on only to family.
24. The Second Respondent raises the question as to whether in fact Verbena Agnes was adopted in custom by Eirumaina and Addi.

CONSIDERATIONS

25. Dealing with the Second Respondent's arguments first: that this was a custom adoption arrangement was acceded to by all parties by signing in the **Agreed Facts**. The result of that adoption that has led to the decision by Eidinijong that the Second Respondent should inherit, the Court will proceed on the basis that Verbena Agnes was adopted according to Nauru custom by Eirumaina and Addi.
26. In relation to the first matter raised by the Second Respondent there is nothing put before this Court to indicate any agreement or transfer of the shares in Eirumaina's estate was a particular 'gift' to Verbena Agnes.
27. With respect to the First Respondent's outline of the NLC reasoning for only inviting Eidinijong, it is difficult to see how it applies to this case:
 - **(a) they had no other family:** Verbena Agnes was the biological daughter of Eidinijong and biological granddaughter of Eirumaina, her adoptive mother;
 - **(b) to work for the elder in the adopted family:** Verbena Agnes was adopted in custom at birth;
 - **(c) the adopted family had no issue thus adopting a child by custom:** Eirumaina already had one child (Eidinijong), by a previous marriage, and she and Addi had four children together.
28. The position in Nauru custom of an adopted child versus a biological child has been canvassed before the courts on numerous occasions. In two cases⁶ Thompson CJ found assistance in the 1936 *Report on Nauru Island* by Camilla H. Wedgwood⁷.

⁶ In re Dogirouwa [1969] NRSC 2 (7 May 1969); Grundler v Namaduk [1974] NRSC 3 (8 May 1973)

⁷ Report on Research Work in Nauru Island, Central Pacific, *Oceania*, Vol VI, June 1936, Number 4 and Vol VII, September 1936, Number 1, at page 23

29. The section in the above mentioned Report on "Inheritance of Property" is of assistance in this case regarding the position of an adopted child:

"Adopted children did not lose touch with their true parents; nevertheless they became fully recognized members of the families which had taken them, and they seem even to have held a privileged position therein. I was told that it was against Nauruan custom for real and adoptive siblings to show any jealousy of, or antagonism towards each other, and that on the death of the parents the adopted children inherited on the same footing as the true children. Furthermore, if a man or woman adopted the child of very poor or landless people it was the usual for the adopting parent to give it some land which it would then give to its real parents.⁸ On the other hand if an adopted child had inherited, or was likely to inherit, little from its adopting parents, its true parents would, if they were able, bequeath land to it."⁹

(emphasis mine)

30. The case mentioned in the report by the NLC in paragraph 19 above, refers to a decision by Eames CJ¹⁰ where he revisited Thompson CJ's considerations of the Administration Order No 3 of 1938,¹¹ in relation to the meaning of the word 'returned' in regulation (a) of Administration Order 3 of 1938:

'the word "returned" in (3)(a) connoted that the land must pass to someone who would have been entitled to it if it had not become the property of the deceased, and he attributed the same meaning to para (b), as to which he observed:

"Land cannot be returned to someone who has never owned any interest in it. It is obvious that the object of the provision is that the land should be returned to members of the tribe to which it originally belonged. Thus, it is to relatives of the same tribe as the person from whom the deceased person received the land that it must be "returned".'

31. The question of how to define 'family' has been aired previously before the Courts. Justice von Doussa considered the definition in *Scotty v Nauru Lands Committee [2013]*¹²:

"The Administration Order gives no guidance as to who should be called to a meeting for the purpose of clause 2. The notion of

⁸ Supra: footnote 41 in the original document: "There is no reason to suppose that this gift was in any sense compensation given to the parents in return for their child; it was a free optional gift."

⁹ Supra at page 23

¹⁰ *Daniel v Capelle [2011] NRSC 7 (6 May 2011)*

¹¹ *Children of Eirenemi Samson (deceased) v Aubiat [1974] NRSC 8 (3 May 1974)*

¹² *Scotty v Nauru Lands Committee [2013] NRSC 9 (18 June 2013)*

family is a broad one but for the purpose of this case it is not necessary to explore how widely in the extended family an invitation to attend a meeting need go to constitute a valid meeting.¹³ As clause 3 (c) is the provision that would operate in default of agreement, at the very least the surviving spouse of the deceased and her issue were people with a direct interest in the division of her property who should have been called to a meeting, and were entitled to be heard before the Committee made its decision." (emphasis mine).

32. Thompson CJ held that 'family' included the deceased spouse as well as blood relatives.¹⁴
33. The family meeting held by the NLC on the 9 May 1962¹⁵ to discuss the estate of Eirumaina was attended by her husband Addi with Denitage and Romeo. Eidinijong is noted as not attending but agreeing to whatever is said. In response as to whom the beneficiaries were to be the reply reads:
"Addi; Romeo; Nylon; Vernier; Stanley sharing one share and Eidiniyong to have the other 1 share. There were some money mentioned in the will of Eireretage D and if this is so, to amend and put under Lois Nylon Addi's name. I also want to speak on another matter. I do not want to be included in this estate based on LTO for I don't want to take any share. After his speech, Secretary read them the minute and they agreed that all is good."
34. This family agreement is reflected in the GNN 108/1962, where all six children (including Verbena Agnes) have equal shares in the land, and as per his request, Addi is not listed as having a 'Life Time Only' interest.
35. At the time of her (adopted) mother's passing, Verbena Agnes was seven years of age. There is nothing before the Court that prior to this 1962 meeting with the NLC, nothing said at the meeting, nor the subsequent division of land shares to indicate that Verbena Selina was anything other than a child of the family, accepted on an equal footing with the other children (including her 'sister' and biological mother, Eidinijong).
36. In this case, Verbena Agnes is of the same tribe and matrilineal line as her adopted mother and siblings, and but she was also regarded as their child having been adopted by Eirumaina and Addi according to Nauruan

¹³ In *Eiduguneida Gobure v Eigoriedu Denea* (1969-1982) NLR, (B) 55 at 57 Thompson CJ held that the Committee need not call family members whose degree of relationship is comparatively remote

¹⁴ *Ikirir v Duburiya* [1972] NRSC 1; [1969-1982] NLR (B) 39 (5 January 1972)

¹⁵ Translation from Minute Book 18, page 191-192

custom. I am satisfied that all the facts of this case point to the rights of an adopted child and a natural child under Nauruan custom being equal; there is nothing before the Court to suggest otherwise.

37. In order to comply with the requirements of regulation 2 of the Administration Order 3 of 1938 (*'The distribution of the property shall be decided by the family of the deceased person, assembled for that purpose'*) the NLC should have afforded the opportunity for Verbena Agnes' family to attend the meeting convened to determine the beneficiaries of Eirumaina's estate. Verbena Agnes' family at that time comprised her adopted father Addi and her siblings ('siblings' includes her biological mother and 'sister' Eidinijong).
38. As was noted by Eames CJ in *Agir v Aeomage* [2012]¹⁶:
"Publication of a determination in the absence of a family meeting as required by the 1938 Order has been held to constitute "not a determination at all".¹⁷ Likewise, failure to call a meeting in this case was a jurisdictional error, and the determination should be quashed."
39. Verbina Selina was born after the passing of Eirumaina, and as such is not possible for her to have been adopted in custom by Eirumaina and Addi, as Verbena Agnes had been. As a granddaughter of Eirumaina, Verbina Selina can have a beneficial share in lands once held by Eirumaina, not through her half-sister Verbena Agnes, but through her mother Eidinijong.

DETERMINATION

40. The Court answers the questions in paragraph 12 as follows:
- Whether Verbena Agnes Danogoneida's estate ought to have reverted to her adopted brothers and sisters (the Appellants), excluding her half-sister¹⁸ Verbina Selina Deraudag, under Administration Order 3 of 1938?
Verbena Agnes' estate should have been determined at a family meeting comprising of her father Addi and her siblings. Failure to call a correctly constituted meeting was a jurisdictional error.
 - Whether Verbena Agnes Danogoneida's estate was correctly distributed to Verbina Selina Deraudag as the alleged next relative

¹⁶ *Agir v Aeomage* [2012] NRSC 14 (31 July 2012)

¹⁷ *Eimut Edward v Deliah Deduna, Tagamoun Family, and Nauru Lands Committee*, Land Appeal No 4/2000, 20 February 2002, per Connell C.J

¹⁸ The agreed facts refer to Verbina as the 'step-sister' of Verbena. As they have the same biological mother, Eidinijong, they are half-sisters.

being a half-sister by a family meeting under Administration Order 3 of 1938?

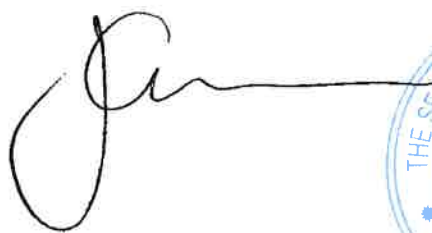
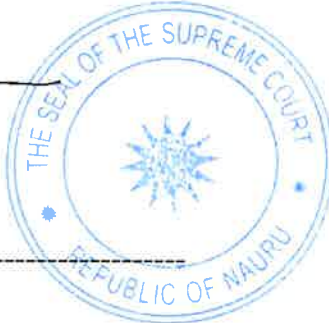
The 1973 determination of Eirumaina's estate was made in the absence of a properly constituted family meeting; the determination should be quashed.

- Whether the NLC was correct in only inviting the natural mother to the family meeting for the determination of the estate of Verbena Agnes Danogoneida on 30th June 1972?

The NLC should have invited the family of Verbena Agnes, not only the natural mother.

ORDER

41. The appeal is allowed.
42. The decisions of the NLC in GNN 113/1973 in respect of portions of land specified in Gazette No. 19, dated 26th May 1962, GNN 108/1962, distributing the estate of Verbena Agnes to Verbina Selina are set aside.
43. The NLC to determine the estate of Verbena Agnes in accordance with the Administration Order No. 3 of 1938 regulation (2) or 3(a) as appropriate.

Judge Jane E. Crulci

06 February 2017