



IN THE SUPREME COURT OF NAURU  
AT YAREN  
CIVIL JURISDICTION

Land Appeal 18 of 2013

BETWEEN

Doneke Kepae and others

Appellants

And:

Nauru Lands Committee

First Respondent

And:

Beneficiaries of Estate of Eiduguneida Gobure

Second Respondent

And:

Beneficiaries of Estate of Eideranago Kun

Third Respondent

And:

Beneficiaries of Estate of Josepiha Eona

Fourth Respondent

Before: Khan, J  
Date of Last Submission: 30 April 2019  
Date of Ruling: 16 September 2019

Case may be cited as: *Kepae v Nauru Lands Committee and others*

CATCHWORDS:

Whether the Supreme Court in determining an appeal from the decision of Nauru Lands Committee can review, vary or reverse an earlier decision made prior to the coming into effect of the Nauru Lands Committee Ordinance 1956 – Whether the Supreme Court has jurisdiction to do so in light of the provisions of s.8 of the Nauru Lands Committee Ordinance 1956.

HELD – that the Supreme Court does not have jurisdiction to review an earlier decision.

APPEARANCES:

Counsel for the Appellants:  
Counsel for the First Respondent:

V Clodumar  
J Udit (Solicitor General)

Counsel for the Second Respondent: M Depaune  
Counsel for the Third and Fourth Respondents: L Scotty

## RULING

### INTRODUCTION

1. The parties have agreed for the following preliminary issues to be determined which are:
  - 1) Whether the Supreme Court on an appeal from Nauru Lands Committee from a decision in a later Gazette Notice can review, vary or reverse an earlier decision gazetted pursuant to Nauru Lands Committee Act 1956 irrespective of whether the appellants appeal the earlier decision or not?
  - 2) Whether the Supreme Court in considering an appeal from a decision of Nauru Lands Committee review, vary or reverse the decision of NLC pertaining to determined land irrespective of when it was made provided it is inconsistent with the 1929 Record Book?

### THIS APPEAL

2. The appellants filed an appeal against the decision of the Nauru Lands Committee published in Gazette No. 64 of 2013.

### ISSUES FOR DETERMINATION

3. The issues for determination were described by the counsel for the appellants, Mr Clodumar, in a document filed in Court on 8 September 2017 as:
  - 1) The issues on appeal are:
    - a) The number of land known as 'Iruwitepe' owned by the second respondent from the former owners Denea and Agokor. The Land Register Book of 1928 shows only two Iruwitepe registered to Denea and Agokor whereas the Gazette of 1937 showed three. The issue here is that the size of each parcel of land known as Iruwitepe will be reduced for each party if the total number is six instead of five distributed as follows:  
  
Two to Denea and Agokor;  
One to Othelia;  
One to Eipogio;  
One to Eibarekin;
    - b) The third and fourth respondents should not inherit land owned by Eipogio as they were not adopted by Eipogio as was the parents of the appellants.

## BACKGROUND TO THE APPELLANTS APPEAL

4. The background to this appeal is set out in the appellants written submissions dated 28 November 2018 at [2] (a) to (g) which is as follows:
- [2] The questions posed above relates to the appeal against the Estate of Eidugunieda and Gobure in respect of the land 'Iruwitepe' Portions 399, 400 and 401 in Anibare formerly owned by Denea and Agakar. The background of the appeal by the appellants is follows:
- a) The NLC published in Gazette No. 62 of 26 May 2010, GN 264/2010 that the owner of Portion 396 Iruwitepe was Eibwairuken Namaduk.
  - b) The NLC published in GN 95 of 2010, GNN 360/ 2010 that portion 396 Iruwitepe was Eidwairuken Namaduk and descendants of Eona, Einene, Joseph and Eiom.
  - c) The decisions of NLC were appealed against in Land Appeals 8, 9, 16 and 19 of 2010. The appeals were heard together and the decision of the Court was to quash both decisions and return the matter to the NLC to re-examine. The case is cited as Ternagi Adam and Others v Namaduk and Others [2011 NRSC 12.
  - d) The re-examination was published in GN 64 of 1 May 2013, GNN 33/2010, Portion 399 Anibare, 'Iruwitepe', owner Eiugunieda Gobure; GN 334 Portion 400 Anibare, 'Iruwitepe', owner Eiduguneida Gobure, GNN 335/2013 Portion 401 Anibare, 'Iruwitepe', owner Eidugeneida Gobure. Original owners were Denea and Agakar. Reference was 1928 LRB at page 215. The following GN was also referred to, GN 72/1977 and GN 51/1970. Both references did not 'Iruwitepe' listed therein.
  - e) The other determination under the GN are:
    - i) GN 336/2013 Portion 402 Anibare 'Iruwitepe', owner Eidawaidi Degan, Reference LRB 1928 page 205; GNN 337/2013 Portion 403 Anibare 'Iruwitepe', owner Eidwairuken Namaduk, Reference LRB 1928 page 208; GN 338/2013 Portion 404 Anibare 'Iruwitepe', owner Namaduk (one-third), Othellia (one-third) and Eiranga (one-third). Reference LRB 1928 page 251; GNN 340/2013 Portion 405 Anibare 'Iruwitepe', original owner Eipogio, present owners Addi Adip (one-quarter), Eidranago Kun (one-quarter) Josepha Eona (one-quarter) and Eidogonieda Hubert (one-quarter). Reference LRB 1928 page 233.
  - f) There are now seven portions of land 'Iruwitepe' in Anibare District following the re-determination by NLC. Three belong to the Estate of Eiduguneida Gobure (first respondent); one for the Estate of Eidawaidi Degan; one for Eiwairuken which was originally Portion 396 published in Gazette No. 95/2010; one for Namaduk which was originally Portion 394 published in Gazette No. 62 of 2010; and one for Eipogio (the appellants).



### BASIS OF DETERMINATION IN 64/2013

5. The 1937 Gazette showing three pieces of land 'Iruwitepe' was reflected in Gazette No. 64/2013. The appellants complaint is that how did the Land Register Book of 1929 showing two 'Iruwitepe' become three in the 1937 Gazette.
6. In appealing the decision in Gazette No. 64/2013, the appellants are in effect challenging the 1937 Gazette.
7. It is common ground that the 1937 Gazette when published was not appealed against.

### NAURU LANDS COMMITTEE ORDINANCE 1956 – PRELIMINARY ISSUES

8. I am faced with the issue as to whether this Court has jurisdiction to entertain appeals from the decision of the Nauru Lands Committee made prior to the coming into effect of the Nauru Lands Committee Ordinance 1956(Ordinance) and after coming into effect of the Ordinance when the actual effect is to alter decisions made before the 1956 Ordinance.

### WRITTEN SUBMISSIONS

9. The parties filed very helpful written submissions.

### APPELLANTS SUBMISSIONS

10. Mr Clodumar submits that this Court when dealing with an appeal from the decision of the Nauru Lands Committee is heard by way of trial de novo or re-hearing, and thus exercises the original jurisdiction. He relies on the case of *Cook v Fritz*<sup>1</sup>.
11. Mr Clodumar submits that the Land Record Book (LRB) has been accepted by the Courts as reference point of ownership of land in Nauru and the Nauru Lands Committee when making determination of ownership of land is duty bound to refer to the LRB.
12. Mr Clodumar submits that in hearing this appeal published in Gazette No. 64 2013 this Court has the jurisdiction to correct the errors made by the Nauru Lands Committee and correct the decisions made in 1937 decision by restoring the 1928 position as to the ownership of land 'Iruwitepe'.

### SECOND RESPONDENTS SUBMISSIONS

13. Miss Depaune submits that the effect of appealing against the decision published in Gazette No. 64 of 2013 is to appeal against the 1937 Gazette and since there was no appeal against that decision, that decision stands despite the Nauru Lands Committee admitting that the 1937 was in error.

---

<sup>1</sup> [2013] NRSC 2 (15 March 2013)

### THIRD AND FOURTH RESPONDENTS SUBMISSIONS

14. Mr Scotty in a short submission submitted that the third and fourth respondents dispute that they are to be removed as beneficiaries of the Estate of Eipogio. He further submits that the appellants attempt to have them removed as beneficiaries has no basis.

### NAURU LANDS COMMITTEE SUBMISSIONS

15. Mr Udit in a very well researched and helpful submission addressed the effect of the Nauru Lands Committee Ordinance, the Nauru Lands Committee (Amendment) Act 2012. He submitted that this Court does not have jurisdiction to correct the 1937 decision and restore the ownership as stated in Land Reference Book 1929.
16. Mr Udit submitted that s.8 of the 1956 Ordinance is the decisive section in relation to the validation of the decisions made by the Lands Committee.

### CONSIDERATION

17. To address the issues, I shall discuss the provisions of the 1956 Ordinance and the Nauru Lands Committee (Amendment) Act 2012 (Amendment Act 2012) together.
18. Under s.6 of the 1956 Ordinance, the Committee had power to deal with the question of ownership or rights in respect of land between Nauruans and Pacific Islanders. In this case all the parties are Nauruans.
19. S.6(2) provides that the decision of the Committee is final subject to the provisions of s.7(1) which provides that any person dissatisfied with the decision of the Committee was required to lodge an appeal within 21 days.
20. S.6(A) which came into being in the Amendment Act 2012 provides:

“A decision of the Committee must be published in the Gazette within 21 days after the decision is made.” However, prior to this amendment the position was that upon publication of the decision it became final unless it was appealed against.
21. Mr Udit in his submissions on this issue states at paragraph 8 of his written submissions<sup>2</sup> as follows:

[8] The requirement of the publication is crucial in that the publication makes the decision final. This was discussed in the case of *Itsimaera v Grundler and others* [1974] NRSC 9; [1969 – 1982] NLR (B) 107 (3 May 1974). He died intestate in 1938. A family agreement about the distribution of her estate was possibly reached in 1939. However, the details of what was agreed was not ascertainable. In 1961 the Nauru Lands Committee met to decide a dispute between persons claiming to be entitled to succeed to E’s estate. The Committee reached a decision in 1961 but did not publish it. Later in 1962 it re-opened an enquiry into the matter. The Committee reached a different decision to that of 1961, which it published in 1971. One of the claimants sought to test the effect given to the decision reached in 1971. The Court held

---

<sup>2</sup> Dated 12 April 2019

“A decision of the Nauru Lands Committee does not come become final until it is ‘given’, by a Notice of it being published in the Gazette. **Before then the Committee can alter or abandon it as it thinks fit.**” (emphasis added)

Thompson CJ stated as follows:

“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.**” (emphasis added)

#### VALIDATION OF DECISIONS OF CENTRAL COURT AND ADMINISTRATOR

22. S.8 of the 1956 Ordinance provides:

- 1) The former Central Court is taken to have had, at all relevant times, jurisdiction to determine appeals from the Lands Committee constituted, before the date of commencement of Ordinance No. 3 of 1956, in accordance with customs and usage of Nauruan people.
- 2) The following decisions made before the date of commencement of Ordinance No. 3 of 1956 are taken to have been validly made:
  - a) decisions of the former Central Court made on appeal from the Lands Committee;
  - b) decisions of pre-independence administrator made on further appeal from the former Central Court.

23. S.8 was discussed in the case of *re Mwareow*<sup>3</sup> by Thompson CJ who stated at page 3 as follows:

“Possibly it is unfortunate that the matter was re-opened in 1929, so many years after the decision was given by the German Authorities, but it must be accepted that it was re-opened, the dispute was decided afresh and opportunity given to appeal. It would, in my view, be quite wrong at this stage, after 40 years to reverse the decision. This Court, I consider, accept as final the Lands Committee’s decision 1929 that the block called ‘Atebae’ belongs to the appellant. Furthermore, whatever decisions were given by the Central Court or the Administrator on appeal against the Lands Committee’s determinations, have been validated by s.8 of the Nauru Lands Committee Ordinance 1956-1963 and are final.”

24. On the issue of finality of the decision, Mr Udit submitted at [16], [17] and [18] as follows:

- [16] The rationale for legislative assurance and certainty of title or right to land is aptly summarized by Eames CJ in where he defined the jurisdiction of the court to deal with an ‘aggrievance’ and not to undertake ‘an investigation’. His Honour stated in *Cook v Fritz* [2013] NRSC 2 (15 March 2013) that:

---

<sup>3</sup> [1969] NRSC 4 (1969-1982), NLR (B) (8 May 1969)



[21] An appeal under s.7(1) is granted to a person who is ‘dissatisfied with a decision of the Committee.’ **It is not a process requiring the Court to conduct an original investigation** into rights to land: it constitutes **a review of a particular decision made by the Committee**” (emphasis added)

[17] His Honour, the Chief Justice, in an articulate fashion addressed and described the Court’s jurisdiction as restrictive to the ‘review of a particular decision’ as opposed to requiring the Court to **‘conduct an original investigation’**.

[18] The issue of finality requires consideration to s.7(1)(b). S.7 provides for the right of appeal within 21 days of the decision being published or where the time has lapsed with the leave of the Court. S.10 was added in the Amendment which provides ‘*An application of s.7(1)(b): s7(1)(b) applies to any decision made or taken to have been made by the Committee, whether before or after the commencement of Nauru Lands Committee (Amendment) Act 2012*’. This provision is specific to before or after the amendment of the Act 2012. It does not state that the jurisdiction of power is extended to or before the coming into effect of the principal Act in 1956. The plain reading of s.10 makes it clear that leave application may only relate to any decision made before or after the coming into effect of the amendment only at best dating back to 1956. Respectfully, it does not extend to any decision beyond 1956 which the Act has itself forbidden. That being the case, it is respectfully submitted that s.7(b) even does not give any relief to an aggrieved person nor does it vest jurisdiction to or power to the Court to consider any application for leave to extend time to review the decision made before the coming into effect of the NLC in 1956.”

25. S.10 of the Amendment Act 2012 was added as an insert ‘after s.8 of Nauru Lands Committee Ordinance 1956 and s.8(2) states:

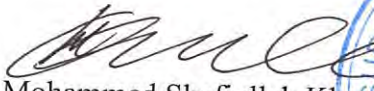
“The following decisions made before the date of commencement of Ordinance No. 3 of 1956 are taken to have been validly made.”

26. The transition provision in the original Act (1956 Ordinance) had a cut-off date before 1956 and the transition provision under s.10 of the Amendment Act 2012 has the amendment date 2012. I agree with Mr Udit that s.10 only provides a window between 1956 to 2012 and continuing and not beyond 1956.

### CONCLUSION

27. For the reasons stated above, this Court has no jurisdiction to deal with this appeal. This appeal cannot be used as a means to attack or challenge the 1937 decision and I therefore hold that this appeal is incompetent.

DATED this 1~~6~~ day of September 2019

  
Mohammed Shafiullah Khan  
Judge

