



IN THE SUPREME COURT OF NAURU
AT YAREN DISTRICT
CIVIL JURISDICTION

CIVIL CASE NO. 8 OF 2020

BETWEEN

DARAN ADEANG OF EWA DISTRICT

Plaintiff

AND

JANELLA TSIODE (NEE DEDIYA) OF EWA DISTRICT

Defendant

Before:	Khan, J
Date of Hearing:	16 and 19 October 2020
Date of submissions by the defendant:	27 October 2020
Date of Submissions in reply by the plaintiff:	2 November 2020
Date of Further submissions by the defendant:	9 November 2020
Date of judgment:	1 December 2020

Case to be known as: Adeang v Tsiode

CATCHWORDS: Nauru Lands Committee made determination that the house of deceased be given to the plaintiff – in 1999/2000 – the Deputy Curator of Intestate Estates following the decision of the Nauru Lands Committee allocated the house to the plaintiff pursuant to the provisions of section 63(7) of Succession Probate and Administration Act 1976 – whether the Deputy Curator usurped the functions of the Nauru Lands Committee or whether the distribution of the estate was in accordance with the decision of Nauru Lands Committee – section 9 of the Nauru Lands Committee (Amendment) Act 2012 validated all decisions of the Curator.

APPEARANCES:

Counsel for the Plaintiff: T Tanang
Counsel for the Defendant: A Amwano

JUDGEMENT

INTRODUCTION AND BACKGROUND

1. The plaintiff claims to be the owner of the house situated on Portion 10 (the house) of Ewa District, namely Ateimanenna, which belonged to Anzac Dediya (Anzac) – the plaintiff’s granduncle.
2. Anzac died on 26 April 1998 and following his death his family had a meeting and agreed on the distribution of the estate. The family members appointed Anzac’s sister Ruby Thoma (nee Dediya) to represent them at the Nauru Lands Committee (NLC) meeting which took place on 4 March 1999/2000 (NLC is not sure of the year that the meeting took place).
3. At the meeting NLC decided as to how the estate of Anzac was to be distributed and, in its minutes, it is stated inter alia as follows:

“Realty:

Half of Anzac’s shares goes to Liviatta nee Dediya and me as trustee, other half is divided into half between Deran which is 1/4 share, and the other ¼ share distributed between the following beneficiaries in 1/48 shares as LTOs:

- 1) Vivian Dediya
- 2) Ruby Thoma
- 3) Victory Dediya
- 4) James D
- 5) Adonis D
- 6) Laura Thom

After LTOs deceased, all their shares go to Deran with Ruby Thoma as trustee.

If Deran does not reach age of 18 years, all the beneficiaries that share in Anzac’s shares shall be called to a family meeting, along with Deran’s mother and father, to discuss the house owned by Anzac Dediya in Ewa, which James Dediya is the caretaker, up to the date Deran comes of age to receive his inheritance.”

4. The plaintiff was born on 25 January 1995 and at the date of the meeting of the Nauru Lands Committee he was 4 or 5 years old.
5. In the minutes of the Nauru Lands Committee it is stated that the ‘house’ was given to him subject to him attaining 18 years of age, and the plaintiff is now 25 years old.

6. After the determination of NLC Mr Lionel Aingimea, the Deputy Curator of Intestate Estate (Deputy Curator) made a publication in Gazette No. 67 dated 17 September 2003, G.N. No. 266/2003 (GN67) in respect of the estate of the late Anzac Dediya and stated:

“The house in Ewa owned by the deceased should be granted to Daran Adeang.”
7. Following the meeting of the NLC James Dediya took occupation of the house and later moved out and the house was occupied by Ruby Thoma and she continued in occupation until her death on 14 January 2019.
8. A few days later after her death the defendant moved into the house.

THE CLAIM

9. The plaintiff claims that the defendant is a trespasser in the house and seeks an order for vacant possession and damages for trespass.
10. The defendant in her defence states that NLC made a determination in favour of the plaintiff and published it in Gazette No. 67 without jurisdiction; she further pleads that she took occupation of the house after she learned that Ruby Thoma had bequeathed the house to her in her will.

SUBMISSIONS

11. In his submissions Mr Amwano submitted that ‘Deputy Curator of intestate estates acted without jurisdiction when he made the determination of the house in 2003’ and that:

“House should be granted to Daran Adeang”.

12. Mr Amwano further submits in his written submissions as follows:

“The parameters of the Deputy Curator’s powers, duties and functions has been set under section 7 of the Succession, Probate and Administration Act 1976, which statutorily restricts Deputy Curator into an administrative function. The power to determine in such matters though rested on the Nauru Lands Committee, a power which is derived from Nauru customs until the Committee was statutorily mandated in 2012 under section 6A of Nauru Lands Committee (Amendment) Act 2012 as a determining body for the distributions of personal estate. As such, the practice then was that the Committee would hear the parties first before making the determination. The Curator would only participate in the process at the end through its administrative role.

..... On this basis, it is submitted that this action of the Deputy Curator ought to be considered a usurpation of the powers and functions of the Committee, and in so doing had exceeded its own jurisdiction as permitted by legislation as Deputy Curator.”

13. Mr Tanang in response submits that the Nauru Lands Committee made the determination in respect of a house in 1999 or 2000 and that the Deputy Curator published the determination in 2003 in G.N. 67; and that the plaintiff has been the owner of the house since.

14. Mr Amwano further submits that Ruby Thoma in her will expressly mentioned that she bequeathed the house to the defendant and upon her death the Nauru Lands Committee, when it determined her estate in G.N. 259 – G.N. No. 937/2019 dated 20 December 2019 failed to correct the mistake committed by the Deputy Curator in G.N. 67.

CONSIDERATION

15. Mr Amwano is making very serious allegations against the Deputy Curator in that he acted without any legal authority, and usurped the powers and functions of NLC in making the determination of the estate of Anzac, and in particular the house.
16. The allegations against the Deputy Curator are grossly unfair and totally unfounded as the Nauru Lands Committee met on 4 March 1999/2000 and the Deputy Curator published his findings in G.N. 67 in 2003. The Deputy Curator acted in accordance with the provisions of section 63(7) of Succession, Probate and Administration Act 1976 where it is stated:

“(7) Notwithstanding the provisions of section 3, the provisions of this section shall apply to the Nauruans:

Provided that the Curator shall not distribute the assets except in accordance with a family agreement or decision of the Nauru Lands Committee as to the persons entitled thereto or, where any appeal is taken against such decision of the Nauru Lands Committee, with the decision of the Court on that appeal.”

17. Further section 9 of the Nauru Lands Committee (Amendment) Act 2012 validated the decisions of the Curator made before its enactment. Section 9 states:

“9. A decision of the Curator made before the commencement of the Nauru Lands Committee (Amendment) Act 2012 that purports to determine the distribution of the personal estate of a deceased Nauruan is taken to have been made by the Committee.”

18. In the second reading speech of the Nauru Lands Committee (Amendment) Bill 2012 His Excellency Sprent Dabwido MP, President and Minister for Home Affairs stated as follows:

“Finally, I come to the issue of the Curator. For several years, and from 1999 until 2010, there was a major understanding as to the role of the Curator of Intestate Estates in determining the manner in which the personality should be distributed. It is not clear how it came about, but there are numerous instances of decisions being made by the Curator on personality that should have been made by the Committee. The Curator’s role under the law is simply to hold the assets of the estate of a deceased Nauruan until such time as the Committee determines the manner in which it is to be distributed, and then to distribute the estate in accordance with the Committee’s directions.

There are many instances of Curators having overstepped their functions in this regard. Without formal validation by Parliament, these decisions remain vulnerable to challenge, even after several years. To leave the matter uncorrected could potentially lead to chaos, particularly as almost all of the decisions have been accepted in good faith by the people concerned. This Bill therefore seeks to validate the Curators' decisions retrospectively, so that they will have effect as if they were decisions of the Committee.”

19. Despite the enactment of section 9 Mr Amwano still continued to suggest that the Deputy Curator usurped the functions of Nauru Lands Committee which was not the case, and even if he had done so, then section 9 would have validated his distribution.

RUBY THOMA'S WILL

20. Upon publication of the G.N. 67 by the Deputy Curator the plaintiff became the owner of the house and still continues to do so. On the evidence before me I am satisfied that he allowed Ruby Thoma to stay in the house until her death. This was a mere license for her to occupy the house and it did not confer any rights on her.
21. Ruby Thoma made a will on 13 December 2018 and bequeathed the house on Portion 10 to the defendant. She did not acquire the ownership of the house and thus she had no powers or authority to bequeath the house to the defendant. When NLC met to determine her estate, its own record would have revealed that the house belonged to the Plaintiff; and further the meeting was attended to by Laura Tom who informed NLC that Ruby Thoma was only a caretaker of the house. For these reasons, NCL did not include the house in her estate when it made the determination of her personality estate in G.N. 259 – G.N. No. 937/2019.
22. I therefore find that the defendant has been in occupation of the house without any right and I order her to give vacant possession of the house to the plaintiff.
23. As no evidence was adduced for damages, I make no orders as to damages.
24. I order that the plaintiff is entitled to the costs of this action and I will hear further submissions on costs.

DATED this 1 day of December 2020.

Mohammed Shafiullah Khan
Acting Chief Justice