The Speaker

REPUBLIC OF NAURU

Government Gazette

Published by Authority

EXTRAORDINARY

No: 60 29th September 1992 Nauru.

G.N. No. 352 /1992

IN THE SUPREME COURT OF NAURU

(CIVIL JURISDICTION)

CIVIL CASE NO. 2/91
CIVIL CASE NO. 3/91
CIVIL CASE NO. 8/91

BETWEEN : LUCY IKA & KINZA CLODUMAR

PLAINTIFFS

AND : NAURU LANDS COMMITTEE

FIRST DEFENDANT

CURATOR OF INTESTATE ESTATES

SECOND DEFENDANT

DENAUWEA BUCKY IKA

THIRD DEFENDANT

HESELTINE DAGADOUBWE IKA

FOURTH DEFENDANT.

Date of Hearing : 18,19,20 December 1991
Date of Judgment : 21.8.92
MacSporran for Plaintiffs
D. Aingimea for First Defendant
Jayaraj for Second Defendant
Nash Q.C. with Miller for Third & Fourth Defendants.

JUDGMENT OF DONNE C.J.

This is a claim by the plaintiffs for (inter alia) declarations that the will of the late Idarabwe Ika of Nauru who died in Nauru on the 11th February 1991 is a valid will, that the first defendant, the Nauru Lands Committee acted unlawfully in a determination made by it fixing the lands of the deceased and the interests of beneficiaries therein thereby rendering the determination invalid and for an order requiring the said will to be administered according to its tenor.

At the conclusion of the hearing, it was agreed that written submissions be made and forwarded to me. These I have received and considered.

At the beginning of the hearing, the parties, by consent, agreed that certain Land Appeals Number 2 and 3 of 1991 were to be dealt with together with this action for the purpose of obtaining a decision on the testamentary disposition of the deceased. It was acknowledged that if any matters to be covered by these Appeals were not touched on in this decision, such appeals could proceed for the purpose of settling them.

On the evidence, it was established that the deceased died leaving him surviving his widow, the first name plaintiff, (herewith called "the widow") whom he married in the Solomon Islands on the 23rd September 1982 and two sons by his first marriage, the third and fourth defendants. The deceased left a will made on the28th November 1990. It is a Nauruan customary will made on a form obtained from the Nauru Lands Committee. After it was made it was deposited with the Committee for safekeeping according to custom.

The will was drawn up in State House, the official residence of the President. On his own volition the deceased had gone to see the President, the Honourable Mr. Dowiyogo at State House on the 27th November 1990 and requested that he draw his will for him. The President is a duly qualified Pleader. The President declined. While it was not stated in evidence, I infer one of the reasons for this was that the deceased's wife was his niece. However, he communicated by telephone with Mr. Reuben Kun, a Member of Parliament and also a Pleader, and arranged for him to see the deceased next day for the purpose of drawing the will. On the 28th November, Mr. Kun attended at State House where the deceased requested they should meet. On his way he collected a Will Form from the Nauru Lands Committee. When he arrived the deceased was there with the President. Mr. Kun interviewed immediately the deceased and took his instructions. The President was present. The will was drawn up by Mr. Kun in English. The deceased told him how he wished to dispose of his estate. He talked in Nauruan. On occasions Mr. Kun sought clarification as to what he meant, speaking to him in Nauruan. As he wrote down the deceased's wishes in English, he translated what he had written to him.

The deceased told Mr. Kun he did not want to leave his wife destitute during her life. When the writing of the will was completed, Mr. Kun read it over to the deceased in Nauruan. The President played no part in the drawing of the will apart from suggesting the provision as to the vesting of the estate on the widow's remarriage. He was a witness to its execution. The deceased was at the time suffering from terminal cancer. He had suffered a stroke which left him with a slight impediment in his speech. He could be readily understood by Mr. Kun. He was in full possession of his mental faculties.

By his will the deceased gave a life interest to the widow both in various lands in Nauru and the Solomon Islands and certain personal property comprising chattels, monies, Ronwan interest paid in respect of the Nauru land, phosphate royalties in respect thereof and livestock. However the interest was to cease on her remarriage.

The widow is 40 years of age. The deceased was 34 years her senior. The third and fourth defendants are aged 50 and 53 years respectively. The widow was born in Kiribati. She went to the Solomon Islands as a young child, met the deceased there and after two years friendship married him. After their marriage the couple returned to Nauru from time to time and at the time of the deceased's death, they were living at Anetan where he, assisted by her, built a house and commercial premises.

Upon the death of the deceased, as required by law, the Curator of Intestate Estates, the second defendant, had vested in him all the deceased's real and personal estate which he was to hold pending the ascertainment of the extent of the estate and its beneficiaries.

According to custom, the Nauru Lands Committee (herewith also referred to as "the Committee") took over the administration of the estate. It considered the will to be invalid and proceeded to deal with the estate as on an intestacy. It called a family meeting at which the widow and Mr. Kun attended. However the widow was considered by the Committee to be a Non Nauruan not part of the family and not entitled to succeed to any property of the deceased.

Following this meeting, the Committee ascertained the extent of the deceased's real and personal property and the interests of those whom it considered to be his beneficiaries. It published its determination thereof in the Nauru Gazette. There were two publications- one determining the lands of the deceased, the other the beneficiaries of the estate and their respective interests therein.

There is no dispute as to the correctness of the determination of the deceased's interest in the various lands specified therein. In its determination of the beneficiaries, however, the Committee, as it signified at the family meeting it would do, ignored completely the provisions of the will and settled the beneficiaries as on an intestacy. It omitted the widow completely. The family did not agree to her inclusion. Thus, if that determination were to stand, the widow would not succeed to the life interests willed to her by her husband and would receive nothing from his estate. The whole estate would go as decided by the family to the third and fourth defendants, the deceased's sons.

This would be in addition to the other property they received consequenty upon the deceased's death. This was land formerly owned by their late mother in which the deceased had a lifetime interest only (LTO). Of the 85 blocks of phosphate land in respect of which the deceased had an interest, only 28 were owned by him absolutely, the other 57 blocks became, on his death, the absolute property of his sons by virtue of their reversionary interest therein. Likewise of the 92 blocks of coconut land only 25 were owned absolutely while 67 passed to the sons.

In its defence the Committee pleads (inter alia) that the widow was a "Non Nauruan" and therefore not entitled to succeed to the estate; that the will was uncertain in its terms and not capable of being administered and that it was invalid in that it purported to give both Nauruan land to a Non Nauruan and certain monies to which by law she could not receive. The third and fourth defendants plead (inter alia) that the Committee possesses sole jurisdiction to determine the validity and interpretation of a customary will and that there is no right of appeal or review by this Court from the Committee's decision thereon. As in the case of the first defendant they also plead invalidity of the will adding a further ground for invalidity that it, by its terms disinherits them, the deceased's sons.

I turn now to the issues.

JURISDICTION.

This action, seeking as it does, a decree for or against the validity of the deceased's will, is a probate action within the meaning of the term stated in Order 49 Rule 1 of the Civil Procedure Rules 1972 which is identical with order 76 Rule 1 of the Rules of the Supreme Court 1965 (U.K.). The defendants, however, contend that this Court has no jurisdiction to adjudicate on the validity of the will in this case since it is a customary one and that only the Nauru Lands Committee acting within its "customary jurisdiction" is competent to determine the question.

Both the Supreme Court and the Nauru Lands Committee are creatures of statute. The Supreme Court was created by the Constitution as "a superior Court of Record" (Article 48). The Courts Act 1972, on the authority of the Constitution, conferred on the Court its jurisdiction. Section 17(2) thereof provides:

> "(2) The Supreme Court shall, subject to any limitation expressly imposed by any written law, have and exercise within Nauru all the jurisdiction, powers and authorities which were vested in, or capable of being exercised by, the High Court of Justice in England on the thirty-first day of January, 1968."

The High Court of Justice in England, at the relevant date specified in the said section 17(2) possessed probate jurisdiction conferred on it by section 20 of the Supreme Court of Judicature (Consolidation) Act 1925 (U.K.) including "testamentary causes and actions". An action to determine the validity of a will or its interpretation is a testamentary action. A testamentary cause is any cause relating to a will. As above stated the relevant rules governing probate actions in our Civil Procedure Rules have adopted the same procedural rules as those governing such actions in the English Courts. The Supreme Court clearly has statutory jurisdiction to deal with probate actions and causes.

The Committee was created by the Nauru Lands Committee Act 1936-61. This was an Act which became the law of the Republic as an "existing law" pursuant to Article 85 of the Constitution. The enactment confers on the Committee certain statutory powers contained in section 6 which reads:

> "6. - (1.) The Committee has power to determine questions as to the ownership of, or rights in respect of lands, 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."

From any such determination an appeal lies to the Supreme Court (S.7). Because of these powers of determination of specific disputes conferred on it by the Act, the Committee has properly been called a "quasi judicial" body. I am satisfied, however, that the full extent of its judicial powers is confined to the determination of the matters specifically provided for in the said section 6.

The Committee, I consider, is not competent in law nor empowered to adjudicate on the validity of any will or other testamentary dispute. Support for the contention that the jurisdiction was wider and allowed any of the customary powers of adjudication that may have been exercised formerly by the Council of Chiefs was sought from previous decision of this Court in which the Committee is described as the "statutory successor" of the Council. That expression, as I understand it, means no more than in creating a successor to the Council of Chiefs, the legislature created, by section 3 of the Ordinance (as it was then called), a Committee of no more than nine Nauruans to which it gave specific judicial powers. If, in fact, there were certain customary powers of adjudication hitherto exercised by the Committee's predecessor, they were not, by the Act, conferred on the Committee. In my opinion by implication they were abolished by the legislation. They are no longer recognised. See Custom and Adopted Laws Act 1971, Sec. 3.

In further argument the defendants submitted that a customary will was of such a kind that its validity and interpretation must be solely the concern of the Committee as experts of custom, to determine and that its adjudication thereon must be final giving no right of redress by any aggrieved beneficiary to this or any other Court. It was said that this view "apears clearly..... from the decided cases". The cases cited in support are Capelle v Dowaite (1972) N.L.R. (PtB) 51; Waidabu v Capelle (1972) N.L.R. (Pt B) 71; Demaure v Adumo (1973) N.L.R. (Pt B) 51. This contention is in my view untenable. From each of these cases "obiter" is quoted which does no more than underline the importance to be attached to the views of the Committee in the process of proving and dealing with custom. They do not support any contention that customary law is beyond the ambit of understanding or interpretation of the Courts of Nauru. Of course, Courts will give full weight to the evidence of custom and adopt and apply it within the limits set by the Custom and Adopted Laws Act 1971. Our Courts are equipped to deal with and evaluate all evidence and the law, including this relating to custom, and bearing in mind that experience has shown that on occasions evidence and contention of custom can vary with the teller, it is essential that this be so. For further support, the defendants referred me to Duburiya v Agoko (1973) N.L.R (Part B) 74 as authority for the contention of the exclusive Jurisdiction of the Committee in deciding questions of the validity of customary wills. They refer to pp. 75-6 in which Thompson C.J. said.

> "When there is a will, the Nauru Lands Committee has first to decide whether it is valid or not. If it is valid, there is no intestacy and, subject to any agreement by the beneficiaries to any variation of its terms, the estate must be distributed in accordance with it. If it is found to be invalid, only then does the question arise whether the family can agree on how the estate should be distributed. In order to decide whether or not a will is valid, the Nauru Lands Committee should hear all available evidence and in particular anything alleged by members of the family opposing its acceptance as a valid will."

Again this is "obiter dicta". With great respect to the learned Chief justice, if he intended to imply that the Committee, in deciding on the validity of a will preparatory to distributing the estate, is entitled to decide judicially thereon. then I emphatically disagree with him. The judicial powers of the Committe conferred by section 6 of the Nauru Lands Committee Act do not include the power to so adjudicate.

I consider, therefore, for the reasons stated that the Nauru Lands Committee and the Supreme Court being created by statute, are limited in jurisdiction to that conferred expressly on them by their respective enactments, the Committee has no jurisdiction to determined the validity of a will, whether it be formal, informal, nuncupative or customary. That jurisdiction is given exclusively to the Supreme Court and I so hold.

The Role of the Nauru Lands Committee

In the case of a customary will, which this will is, the role of the Nauru Lands Committee is well established. The evidence of both Mr. Deireragea and Mr. Kun advert to it.

It is customary for Nauruans, having made their written wills, to lodge them with the Committee for safekeeping. In customary wills, the creation of an executor, as in a formal will under the Wills Act 1832 (U.K.) has no meaning, and administration of estates, testate as well as intestate, is effected in accordance with both statute and custom. Under the Succession Probate and Administration Act 1976, section 37(1), the estates of all deceased Nauruans are vested in the Curator of Intestate Estates until they are ready for administration. The Curator is charged with the responsibility of receiving monies due to the deceased, accepting service of notices and proceedings and other administrative matters short of getting the estate in and distributing it. The administration of the estate is, by custom, the job of the Committee in its customary role. This is recognised by section 44(1)(1) of the Nauru Local Government Act 1951-85. It is a role for which it is eminently equipped and suited. In most cases, the lands are ill defined in wills and the only reliable records of them are held by the Committee. Boundaries often need to be defined and the interests of beneficiaries ascertained. The Committee has the exclusive task to inquire into and ascertain the extent of the deceased's estate and the interests therein of beneficiaries thereof. When it has determined this, the Committee publishes its determination in the Nauru Gazette, as it did in this case. Two determinations are published one defining the land and one the beneficiaries. Either determination constitutes a determination within the meaning of section 6 of the Nauru Lands Committee Act (supra) and may be disputed by any person aggrieved by it. The Supreme Court deals with the dispute. If the determination is alleged to be wrong in fact then the aggrieved person must appeal within 21 days of the publication of it in accordance with section 7 of the Act. If, of course, the determination is claimed to be wrong in law, then if that is established, it is void "ab initio" - it never was a lawful determination, and although appealable against under Section 7, it can also be reviewed at any time by the Supreme Court. Since however, section 37(1) of the Succession Probate and Administration Act (supra) allows an estate to be released from the custody of the Curator of Intestate Estates after ascertainment of the beneficiaries (section 37(3) proceedings by way of review would need to be commenced with that in mind.

After the Curator releases the estate, the lands are effectively distributed by the gazetting or other order made on appeal or review and personal bequests are transferred to the beneficiaries entitled thereto. This is done by the Curator in whose possession the personal property has been vested.

In the case of intestacy, the provisions of the Administration Order No. 17 of 1938 apply and in law the Committee must observe its requirements and distribute the estate in accordance with that Order.

In the case of a testate estate, the Committee must in law distribute the deceased person's estate in accordance with his dying wishes. Aremwa v The Nauru Lands Committee (1970) N.L.R. (Pt B) 17; Duburiya's case (supra).

The Committee, of course, must be satisfied as to the validity of the will before the distribution the estate is effected. That does not mean that it sits in judgment on the will and adjudicates upon the question. It must, if it is in doubt on the wills validity or on any part thereof, take testamentary proceedings by way of a probate action to obtain a ruling in the Supreme Court which, as had already been held, had exclusive jurisdiction to entertain the action.

I have been told, without being referred to specific cases, that the Committee in other cases, in considering the testamentary wishes of a deceased, may have proceeded on its own initiative to rule and adjudicate on whether his wishes have validly been expressed. In consequences they may have overridden those testamentary wishes and distributed the estate contrary to the provisions of the will. The fact that this has been done in the past cannot establish in law a customary right in the Committee to so act. I again emphasise the Committee, a statutory body, has never had this right conferred on it.

Having thus considered the submissions of the parties and arrived at the above conclusions thereon I consider that in the administration of estates, testate or intestate of Nauruans, save those covered by the provisions of the Succession Probate and Administration Act 1976 (other than in section 37 (3) thereof), the following practices and procedures apply:

1. The Curator of Intestate Estates pursuant to section 37(1) and (3) of the Succession Probate and Administration Act 1976 is vested with the estate and holds it until the extent of the deceased's property and the beneficiaries are ascertained at which stage the estate is released for distribution. The Curator must distribute the personal property of the deceased vested in him to those beneficiaries who have been ascertained as being entitled to it.

2. The Nauru Lands Committee by custom administers the estate by firstly ascertaining the lands of the deceased, their boundaries, the extent of his interest therein, his beneficiaries and the extent of their interests. Secondly when that is ascertained, the Committee distributes the estate other than the personal property which has been vested with the Curator of Intestate Estates and is distributed by him as aforesaid.

3. Upon completion of its determination of the land and interests of an estate as aforesaid, the Committee publishes the determination as to the lands the determination as to beneficiaries in the Nauru Gazette.

4. In the case of an intestate estate the Committee in so determining as aforesaid must have due regard to the provisions of the Native Administration Order No. 17 of 1938 and administers the estate in accordance with the Order and the law.

5. In the case of a testate estate, the Committee in determining as aforesaid must comply with the wishes of testator expressed in a valid will and administers the estate in accordance with the will and the law.

6. If in the course of administration of a testate estate questions as to the validity of a will or of the interpretation of any of its provisions arise, the Committee must seek a ruling from the Supreme Court thereon and until such ruling is made, the administration and distribution of the estate shall be stayed.

7. Questions as to the validity of a will or of Interpretation of its provisions arising in the course of administration of an estate referred to the Supreme Court for rulings thereon, are referred by way of a probate action commenced in accordance with the Rules of Civil Procedure 1972.

8. A determination of the Committee ascertaining the land of a deceased estate and its beneficiaries entitled thereto published in the Nauru Gazette as detailed in the above paragraph 2, is a determination of ownership and interests in Nauruan land within the meaning of Section 6 of the Nauru Lands Committee Act (supra) and can, accordingly, be appealed against as provided in section 7 of the Act. Insofar as however, as the determination may touch on any interest other than that in respect of land, such determination is not one to which section 6 applies and no right of appeal in respect thereof lies.

9. In dealing with any appeal under the said section 7 of the Act, the Supreme Court is competent to consider and rule on any cause arising therein as to the validity or interpretation of a will.

10. Where the administration of any estate is determined in accordance with the procedure in paragraph 3 by the publication of determination by the Committee in the Nauru Gazette, any person claiming an interest in the estate who wishes to dispute a determination on the grounds that it is wrong in fact or opposed to law must appeal to the Supreme Court under section 7 of the Nauru Lands Committee Act (Supra). Such determination insofar as it is a determination on fact is final unless the Supreme Court decides otherwise (Sections 6 and 7). In the case of a determination challenged on the ground that it is wrong in law, then, if so found by the Court, it is void "ab initio" and the person disputing it may do so either by way of appeal under section 7 or as stated in the next succeeding paragraph.

11. In all other cases, there is, to any person claiming an interest in an estate who is dissatisfied with the administration (including any determination) or distribution thereof by the Committee, who wishes to dispute the same, the right to proceed, in accordance with the rules of the Supreme Court, by way of a probate action in that Court to obtain redress. In particular, these cases can be categorised as:

(a) Any case where the determination of the Committee relating to the ownership of land in the estate and the interests therein of the deceased or the beneficiaries is claimed to be invalid on the ground that it is wrong and made contrary to law.

(b) Any case where the determination of the Committee determining the right to personl property is challenged.

(c) Any case touching on any other matters which can be properly the subject of such an action.

The Will

On the 28th November 1990 the deceased made his will. The form was obtained for him from the Committee by Mr. Reuben Kun, a Member of Parliament and a Pleader. He took it to State House where the deceased had arranged to be. After interviewing the deceased, Mr. Kun, at his request, wrote the will. It was recorded in his own words. The President, the Honourable Mr. Dowiyogo was present. The will, accepted by all parties to be a customary will, reads as follows:

This is the Last Will and Testament made this TWENTY EIGHTH day of NOVEMBER in the year of our Lord one thousand nine hundred and NINETY

1. Here insert full name, occupation and address.

of me [1] IDARABUE IKA OF ANETAN DISTRICT, NAURU

2. Here insert the name and address of person whom you wish to appoint.

I hereby appoint [2] HON BERNARD DOWIYOGO

3. If a male, the word "Executor," female "Executrix," company "Executor."

[3]Execut OR of this my will. I give devise and bequeath [4] TO MY WIFE, LUCY IKA (NEE AIANIKKIA) THE FOLLOWING.

4. Here insert full particulars of bequest.

1. RESIDENTIAL HOUSE, PETROL STATION, TRADING STORE, CINEMA BUILDING, RESTAURANT ALL LOCATED IN THE DISTRICT OF ANETAN, NAURU;

2. KUKUM CINEMA (INCLUDING BUILDINGS) IN HONIARA, SOLOMON ISLANDS;

3. ALL COCONUT LANDS AND ALL PHOSPHATE LANDS IN NAURU AND ALL THEREIN;

4. ALL PERSONAL CHATTELS, ALL MONIES (INCLUDING BANK ACCOUNTS, ROWAN ACCOUNT, PHOSPHATE ROYALTIES) AND ALL LIVESTOCKS;

DURING HER LIFETIME OR UNTIL SHE REMARRIES.

UPON LUCY'S REMARRIAGE ALL THE ABOVE SHALL REVERT TO BUCKY DENAUNEA IKA AND HESELTINE DAGADEUBUE IKA OR THEIR ISSUES.

TO KINZA CLODUMAR OF AIWO DISTRICT, NAURU, THE TWO RESIDENTIAL BUILDINGS LOCATED IN WHITE RIVER, HONIARA, SOLOMON ISLANDS.

I hereby revoke all former wills and codicils made by me.

In Witness whereof I have hereto set my hand the day and year firstly above written.

5. If a male "Testator," female "Testatrix."

6. "him" or "her."

7. "his" or "her."

Signed by the said [5]Testator and by [6]him declared to be [7]his last Will and Testament in the presence of us both present at the same time who in [7]his presence at [7]his request and in the presence of each other have hereunto subscribed our names as witnesses.

Signature [illegible]

1st Witness— *Name* HON BERNARD DOWIYOGO [illegible]

Address BAITI DISTRICT NAURU

Occupation MEMBER OF PARLIAMENT & CHANCELLOR FOR EXCHEQUER

2nd Witness— *Name* RUBEN J KUN [illegible]

Address BUADA DISTRICT NAURU

Occupation MEMBER OF PARLIAMENT - LEADER

Any person but a beneficiary (or the husband or wife of a beneficiary) can be a witness. An Executor can be a witness. The Testator and the two witnesses should remain in each other's presence until all three have signed.

Any alteration in the Will must be initialled by the maker and the two witnesses. It is always better to have no alterations, if possible, as the same causes extra expense and trouble in obtaining probate after death.

This will, the defendants challenge. They contend it is uncertain because:

(a) there is no provision for any gift over on the death of the widow;

(b) there is no such thing as a life interest in a Ronwan account separate from an interest in land;

(c) a lifetime interest in livestock or in a bank account under the control of the life tenant with no provision as to waste is in fact an absolute gift;

(d) it is unclear whether the widow is to deal freely with all assets which are given to her "for her lifetime";

(e) the absence of a gift over on death is inconsistent with a life interest, and this inconsistency is underlined by the specific provision for a gift over on remarriage.

In reply counsel for the plaintiffs says that the defendants while acknowledging the will as a customary will, challenge it because it does not comply with the common law. He argues that a life interest under Nauruan customary law is well established particularly in relation to livestock and trees and that insofar as there is no gift over in the will after the death of the widow that means that in relation to the reversionary interest there is a partial intestacy. He contends that an administrator could be in no doubt as to the meaning of the will and its consequences.

It is correct that the custom relating to "LTO's" in relation to livestock and trees is well established. It is not governed by the common law. Furthermore to attempt to apply common law principles to interpret a customary life interest cannot stand since it would be contrary to the Customary and Adopted Laws Act, section 3, (supra) to do so. Custom has full force and effect in the situation here. Only Parliament could by enactment vary it. It has not done so.

I consider the defendants' submission that there is uncertainty in the will to the extent that it is not able to be administered is not sustainable. Looking at the will, it is, in my view, clearly able to be administered. It records with clarity the testator's wishes in all respects save that it fails to dispose effectively of the reversionary interest which follows the life interest in the deceased's estate granted to the widow. In this respect the will must be read as a whole and the provisions "during her lifetime or until her marriage" and "upon Lucy's remarriage all the above shall revert to Bucky Denauwea Ika and Haseltine Dagadoubwe Ika or their issues" - read together create no uncertainty.

The deceased gives his property to the widow for life or until she remarries. If she remarries the realty goes to the sons named. If she does not marry, then on her death, as there is no provision for the disposal of the reversionary interest it follows that there is an intestacy as to this interest in the deceased's residuary estate expectant on the widow's death. In re Mckee, Public Trustee v Mckee (1931 2 Ch 146. This intestacy would be the subject of division, on the widow's death, in accordance with the Regulations governing Intestate Estates contained in the Native Administration Order No. 3 of 1938. As I see it, in the absence of family agreement, Regulation 3(c) would govern the division and the realty would "be divided equally among the children" i.e. the third and fourth defendants or their issue.

Insofar as the bequest of "all personal chattels, all monies (including Bank Accounts, Ronwan Account, Phosphate Royalties) and livestock" is concerned, this is clearly a bequeast of personalty to the plaintiff for life.

As to the nature of the life interest the widow, in my view, properly contends, and it is not disputed, that what is known as an "LTO" (Lifetime only) bequeast of personalty is well established and accepted in the customary law of Nauru.

As I see it, the deceased in his will provided with clarity what he wanted. Now, a testator is, in general, free to express himself in any way he chooses. In interpreting the will, it is the intention of the testator that is to be discovered. That is the sole guide and control. It must be emphasised that the intention to be sought relates to the disposition of the testator's property and not to the form of his will. In this will there is a clear expression of what is intended by the deceased. He expressed clearly his aim, as told to Mr. Kun. He did not want his wife to be destitute. he therefore made a will which gave to her a life interest only in the property in paragraphs 1 to 4 in the will but with the proviso that her interest therein would determine if she remarried. As to one property in the Solomon Islands he gave that abslutely to the second named plaintiff. There is no question but that all the properties devised and bequeathed are clearly defined. The will is a customary will and on consideration of it , I am satisfied that, subject to its validity (which I shall next consider) there is no difficulty in the testate estate being administered by the Nauru Lands Committee after it has made the customary investigation of the lands, interest of the deceased therein and the extent of the personal property bequeathed. As to the intestate estate relating to the reversionary estate, this will be dealt with in accordance with the mandatory requirements of the Native Administration Order No. 3 of 1938. I consequently hold there is no uncertainty in the will.

The Validity of the Will.

The Nauru Lands Committee considered the will invalid and refused to administer it. The reasons for that refusal were given in evidence by Mr. Deireragea, the Vice Chairman of the Committee. I quote his evidence of those reasons in the order given by him:

1. "The Committee considered the contents of the will were not clear in relation to the Ronwan monies"

2. "The Committee thinks that one has no right to bequeath money from lands"

3. "The Committee decided all monies should go to the sons."

4. "After we had all parties at the first meeting and considered the family disagreements, the committee considered the sons' remarks. They showed they were dissatisfied over their new mother and her conduct."

5. "The fact that she (the widow) is not a Nauruan."

6. "The manner of the will making. Making all entries without asking deceased for more specific information."

7. "We received complaints from other Nauruan of the conduct of Lucy (the widow). The complaints were taken into account by the Lands Committee."

8. "Some members had seen with their own eyes the widow going around the Island with some nice looking people of her own country. Two members made this comment at the meeting."

9. "As to disinheritance - Q. "Anything in the will the Committee considered and intention to disinherit?"

   A. "Not really, but Clause 6 as to her lifetime or remarriage was discussed."

10. "We discussed the matter of the will made in State House. The Committee considered the widow is related to the President."

11. "Q. Did the Committee have any misgivings about the way the will was executed?"

    A. Not in that sense, but, it was concerned about the place where it was taken down; about the way the missus took her husband up to State House. She could have got a Councillor to do it.

From this evidence it is clear the reasons which prompted the Committee to treat the will as invalid and to administer the deceased's estate presumably as an intestate one (excluding the widow) were based both on matters of fact and law. As to law, they were:

(a) The uncertainty of the effect of the provision in the will providing that "during her lifetime or until she remarries. Upon Lucy's remarriage all the above shall revert to (the second and third

defendants) or their issues". While the Committee did not consider that the effect of the provision disinherited the third and fourth defendants, those defendants raise the question.

(b) That the widow is not a Nauruan and cannot own or have an interest in Nauruan land either by devise under a will or on intestacy.

(c) That there could not be a bequest to the widow of Ronwan monies as provided in the will.

As to facts, these are in part tied up to what is contended by all the defendants to be customary law. They are:

(d) The conduct of the widow disentitling her to benefit under husband's estate.

(e) The making of the will at State House in the presence of the President to whom the widow is related.

(f) The taking of the testator to State House by the widow for the purpose of making his will.

(g) The manner in the making of the will - the writing down of the testator's wishes without adequate or specific information.

Before I consider these points, I should add that I am satisfied and hold that both the form of the will and its attestation comply with the requirements of custom in the making of it. See Eidiogin and Ors v Natali Akibwib and Anor (1980) N.L.R. (Pt B) 145.

Now, turning to the points raised by the defendants as enlarged in Mr. Deireregea's evidence, I shall consider firstly those pertaining to facts, i.e. (d), (e), (f) and (g).

(d) **The conduct of the widow**

While there was no evidence to support it, other than what could be implied from that of Mr. Deireragea's, the defendants argued that Nauruan custom allowed the widow to be deprived of her inheritance under her husband's will and also an intestacy, if her conduct were, during her marriage, of such a nature as to constitute misconduct. Put in another way, it is the defendants' case that notwithstanding a husband living with his wife and presumably knowing all her failings, considered that she was worthy to benefit from his estate and consequently providing for her in his, will, the Committee, according to custom could ignore the husband's wishes because

by its own standards the wife's conduct during marriage fell short of what the Committee members felt was satisfactory. This somewhat extraordinary custom certainly was not proven in this Court. Nor can I find, from any other source, a scintilla of evidence to show that it exists. However for the reasons I am about to state, it is unnecessary for me to express any concluded view on it.

I proceed to consider on what evidence and basis the Committee reached its conclusion that the widow's conduct amounted to misconduct sufficient to disinherit her. Mr. Deireregea, the Committee's Vice Chairman, deposes as to this. His evidence is stated above. Firstly, the Committee at a meeting of the family heard from the sons of the deceased that "they were dissatisfied over their new mother and her conduct". In what respect they were dissatisfied was not revealed. Secondly, the Committee "received complaints from other Nauruans of the conduct of the widow". What was the substance of the complaints, when and how they were received and from whom was not revealed in the evidence. Certainly these "other Nauruans" were not present at the family meeting, where they should have been, to present their complaints. Thirdly, two members of the Committee commented "they had seen with their own eyes the widow going around the Island with some good looking people of her own country". Whether this was before or after deceased's death is not certain.

Now that evidence was not traversed any further in examination in chief or cross examination. It seems to me that this was because in fact there was nothing further to be revealed. Counsel for the widow has strongly criticised it and I consider the criticism justified. In its totally the evidence on alleged miscounduct was trivial and falls far short of that which would justify a finding by inference or otherwise, of misconduct by the widow allowing disinheritance even if there were an operative custom to that effect (and I again emphasise that no such custom has been established in this case). I reject the submission as to the plaintiff's misconduct.

(e), (f) and (g) - **The making of the will.**

While not pleaded, there appears from the evidence and submissions of the defendants to be implied that in making his will, the testator was subject to undue influence. I shall examine this aspect.

The starting point is a consideration of the state of health of the testator. There is no doubt that he was suffering from terminal cancer. He died about three months after making the will. The will was made at State House in the presence of the

of the President and Mr. Reuben Kun a Member of Parliament and a pleader. It is significant that the day before the will was made, the deceased went to see the President for the purpose of getting it made. He wanted the President who is also a Pleader to make it but he refused. The widow is his niece. However the President arranged that Mr. Kun attend next day to draw the will. Both the President and Mr. Kun said the deceased was fully alert and knew what he wanted and fully understood what was being drafted for him by Mr. Kun. The widow said she knew her husband wanted to see the President. It was his decision. She thought he was going to see about a loan. I am satisfied she did not discuss with him his will or his intention to make one..

On examining the will, there can be seen the deceased's signature. It is written in a clear and firm hand. This is significant. It certainly does not indicate any infirmity. The Committee, according to Mr Deireragea, considered that the will should not have been made at State House in the presence of the President who is the widow's uncle. They considered the manner in which the will was made was irregular.

The manner and custom relating to the making of customary will was explained by Mr. Deireragea as follows:

> "we (the Committee) have the will forms. They have been used for customary wills. I have drawn a couple or so. If a person is very old and frail I sometimes tell him what to do. But if he knows what he wants I write what he wants".

In the case of the deceased, the will was drawn up by Mr. Kun. He was occupied about one hour. He described in his evidence what took place:

"I went to the Lands Committee to pick up (will form). When I arrived at State House, the President and Ika were there. The President explained that Ika wanted to make his will. I did so. I asked Ika what he wanted to do - what he wanted written in the will. When anything was unclear I asked him to clarify it. We were talking in Nauruan and I wrote in English. I interpreted to him what I wrote into Nauruan. When I finished I read the whole thing back to him. The President sat there. Ika agreed with what I read. Ika signed the will. The President and I witnessed it. I never wrote anything down before he told me. He understood everything. His speech was a little bit affected. He explained that the main thing was he wanted his wife Lucy to live on his property. He did not want her to live in any stateof distitution. He did not say anything about how his sons were to take. To the best of my understanding he knew well what he was doing. The President asked one or two questions but I did all the questioning and wrote what he (Ika) told me. I am in practice as a Pleader and have made a couple of wills. Nauru Lands Committee supply the forms. The deceased was quiet specific that two building in Honiara go to Kinza Clodumar. I did not ask why. He was quite adamant."

Mr. Kun was cross-examined as to why the will was written in the English language. He explained it was his choice because he was able better to write in English. I am satisfied he interpreted to the deceased correctly what was written.

The circumstances of the making of the will were corraborated by the Honourable Mr. Dowiyogo, the President. Having considered his evidence and that of Mr. Kun, I am satisfied that apart from the suggestion as to what should occur if the widow remarried and that of being an executor, the President played no part in the making of the will other than by being a witness to it. The will makes no provision benefiting the President. I am satisfied he made no effort to influence the deceased who voluntarily went to him for the purpose of making his will, and as above mentioned, although he was a Local Government Councillor and a Pleader, the President obtained the services of Mr. Kun who drew up the will in almost precisely the same way as Mr. Deireragea said was in accordance with custom as he understood it.

The other reservation of the Committee about the making of the will was that they believed the widow took her husband to the President for the purpose of making a will. This, of course, was quite wrong and with proper and competent investigation the Committee could have ascertained that this was so. It was apparently prepared to accept rumour, as factor which reduces the confidence which one can have in the fairness of its overall assessment of the situation which allowed it to conclude as it did.

I have no hesitation in finding that the deceased testator was competent to make his will and understandwhat was written for him. He agreed with it. I also find he made his will freely and without any undue influence being exerted upon him in his execution of it.

I now will consider the questions of Law - those designed (a), (b) and (c) above.

(a) **The issue of Disinheritance**

The third and fourth defendants claim they have been disinherited by their father. In support of this contention, they argue that in deciding whether the will disinherits them, the court must consider the question "in the light of reality" not just on the basis of some "technicality". The widow, they say, is more than 10 years younger than they and in the normal course of events will outlive them. Further it is contended it must be accepted as likely and the deceased would have known it to be highly likely, that his widow would not remarry when the effect would be to terminate her interest under the will. For these reasons, they say by the giving of a life interest in his property for life, the deceased has in fact disinherited them.

That it is contrary to custom for a Nauruan to disinherit his legitimate children is well established. In Harris v hedmon (1982) N.L.R. (Pt B) 151 Thompson C.J. said at pp. 152-3:

> "In Nauru it is very rare for a person to disinherit his legitimate children. The vice chairman of the Nauru Lands Committee, Mr. Doguape, gave evidence that in the past 20 years there has been only one such case; and in that case, the testator by the terms of his will expressly excluded that child from taking any benefit from the estate.

> In the vast majority of cases Nauruans do not make wills; they know that in the absence of a will all their legitimate children will share their estates equally, and that is what is usual in Nauru..... I think it unsafe to give effect to a Nauruan will (other than one to which by its terms the provisions of the Succession Probate and Administration Act 1976 apply) which disinherits the testator's legitimate children unless either it does so expressly or there is evidence that the testator has had proper advice 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"

See also Idarabwe Ika v Nauru Lands committee - Lands Appeal No. 6 of 1986 where the Court pointed out if a testator wishes to disinherit it was customary for such wish to be expressly referred to in the relevant document.

The deceased in his will does not expressly disinherit his sons, the third and fourth defendants. The will provides for the life tenancy to cease and his estate to go to them if the widow remarries. She is however given a life interest with no express provisions for the devise of the reversionary interest upon her death. In my view, in law it cannot be held that this will disinherits the deceased's sons. There is no express intention to disinherits them. Rather to the contrary since it provides specifically for them or their issue to take on the widow's remarriage upon which event her interest in the property ceases. The fact that there is no provision for the devise of the reversionary interest in the estate upon the widow's death in my view, does not mean the sons are disinherited. In law, on the consequent intestacy, the provisions of the Native Administration Order No. 17 of 1938 apply and under Regulation 3 thereof it is clear that subject to family agreement the sons or their issue succeed to the estates. Again, if I accept the submission of the third and fourth defendants that the correct approach is to consider this question of disinheritance not "on some technicality" (presumably by strict application of the law), but, rather "in the light of reality", an approach which I do not accept as the proper one, I find I arrive at the same conclusion. The will makes provision for the widow to enjoy a lifetime interest but only if she does not remarry. It is obvious the deceased would know the extent of his estate. He would knew that when he died his sons would benefit substantially irrespective of anything they may receive from the estate which he owned absolutely in his own right. On the cessation of his life interest therein 57 blocks of phosphate land and 67 blocks of coconut land would be inherited by them. Now, as a responsible husband he would be expected to provide for his widow. He consequently provided for her not by giving her his estate absolutely, but, restricting her benefit in it to her lifetime or until remarriage. That indicates his clear intention to preserve his estate for final disposition to others. He must be presumed to know law. He would know the operation of the Native Administration Order No. 17 under which the great majority of estates in Nauru are administered. He would know under it, the family can agree on the disposal of a deceased's estate in the absence of testamentary wishes as to its disposal expressed by the deceased. He would know the family who would be required to agree would consist of his sons and/or their issue and that they would themselves decide the extent to which each would inherit. In such circumstances, his estate would go to his family in the way they desired it.

This he would know. He could have disposed of his reversionary estate expressly in his will to persons other than the sons. He did not do this. Instead by making no provision therefore he left its distribution to the process of law. Far from disinheriting his sons, his scheme of disposal of his estate ensured their inheritance. In the light of reality, therefore, there is no intention shown by the deceased's actions to disinherit; he in fact, did not do so. The allegation of disinheritance is not sustained.

(b) **The Status of the Widow.**

Mr. Deireragea, as I understood his evidence, deposed that according to Nauruan custom , no Nauruan can give by his will, nor can there be given on intestacy, to any Non Nauruan any Nauruan land. On that evidence and after considering the submissions thereon, I find that there is an established Nauru Custom which does not allow a testamentary gift or devise of an absolute freehold interest in Nauruan land to any Non Nauruan person. The Lands Act 1976, section 3, gives statutory recognition to that custom in relation to transfers "inter vivos" of Nauruan freehold.

However, I am not satisfied that there is here established a custom which prohibits a Non Nauruan,widow receiving a life interest (LTO) in Nauruan land. A life interest, as the term implies, does not confer on the donee of it an absolute or unrestricted interest in the freehold. It enures for the life of the devisee, or life tenant, only and upon his death goes to the remaindermen absolutely. The remaindermen are the ones who receive the absolute ownership of the land. Their absolute ownership is subject to the life interest.

Undoubtedly, there have been given, on previous occasions, by determination of the Committee, to Non Nauruan widows life interests in Nauruan land of their husbands upon the latter's death. These devises have already been recognised by the Committee. A list of these devises were shown to Mr. Deireragea who admitted they were correct. He endeavoured to explain them as exceptional. It follows, however, bearing in mind the closely knit and small Nauruan community, that there would not have been many Non Nauruan widows concerned in the estates of Nauruans. While it was not established that the list covered them all, it is highly probable that list comprised most, if not all, of the cases of succession by Non Nauruan widows.

Mr. Deireragea justified these cases on the basis that the non Nauruan were, in some way, descended from a Nauruan. They were nevertheless clearly "Non Nauruan" and not members of the Nauruan Community yet their right to a life interest was recognised. By no measure could a Non Nauruan so inherit if by the law, customary or enacted, a life interest in Nauru land was prohibited and it certainly is not now, nor was it previously at the time of any inheritance, open to the Committee arbitrarily to ignore the law and vary the requirements of custom by allowing it. In the Circumstances I find Mr. Deireragea's explanation unconvincing.

Two arguments were presented to me which I should consider. In support of their case as to this custom, counsel for the defendants referred to John Aremwa and Ors v The Nauru Lands Committee (1970) N.L.R (Pt B) 17. This case is concerned with a Non-Nauruan devisee who was devised by will the absolute ownership of Nauruan land. As counsel for the plaintiffs point out, this case is authority only for the existance of the custom that Non Nauruans cannot own absolutely Nauruan land.

It is not authority to support the propositionput by defendants that an interest less than absolute freehold cannot be devised.

The second arguments, put by counsel for the plaintiffs, was that the Native Administration Order No. 17 of 1938 does not recognise the purported custom. He points to the requirements that, in the absence of a family agreement in the case of a deceased who is married with or without children, the widow ("or the surviving parent") shall have the use of his land during her lifetime - an LTO interest. The Order does not restrict the devise of this interest to Nauruans only. That proposition would appear correct.

On considering the evidence and the submissions, I am unable to find the custom relied on by the defendants does exist and cannot uphold the allegation that the widow is prohibited by reason thereof from holding a life interest in Nauru land.

However, I am also of the view the widow's status is governed by the Constitution and that by Article 74 of Part V111 thereof she must be regarded as a Nauruan citizen.

The conception of Citizenship and its application to Articles 71-76 (inclusive) of the Constitution was fully examined and debated at the Constitutional Convention charged with the responsibility of drawing, adopting and enacting the Constitution of Nauru which came into force on the 31st January 1968.

The Convention debated this concept over two days - see Records of Proceedings of the constitutional Convention (19th and 20th January 1968). It is unquestionable that the concept was considered to be synomous with that of Nationality and that status as enjoyed in other countries was from time to time examined to assist in the Convention in understanding the rights and obligations attaching to the Nauruan Citizenship to be embodied in the Constitution. It was recognised that the status of Nationality was the highest a country can confer on its people and that was clearly the basis upon which the status of Nauruan Citizenship was enshrined in Part V111 of our Constitution, our Supremelaw. The rights of a Nauruan Citizen therefore are supreme "vouchsafed through the legal concept of the State representing the individual". In my opinion, its superior status confers all the rights and privileges enjoyed by those who, prior to the Constitution, would be regarded as being "in the Nauruan Community" and Nauruans" within the meaning of the Nauru Community Ordinance 1956-66. After independence Day on the adoption of the Constitution, the status of membership "of the Nauruan Community" ceased and that of "Nauruan Citizenship" replaced it.

This is, I consider the intention shown in the Constitution. Considering Part V111 as a whole, the scheme of "Citizenship" is clear. Those who were "Nauruans" under the Nauru Community Ordinance (supra) as constituting the Nauruan Community on Independence Day became Nauruan Citizens (Article 71). After Independence Day those who are to aquire that status are categorised in Article 72, 73 and 74. Article 75 allows Parliament to legislate for the acquisition of the status by persons notcovered by the previous Articles. This shows that the status of Citizenship was intended by Nauru's Founding Fathers to apply to all persons who were considered by the Constitution and Parliament to be suitable as being part of Nauru.

There would, in accordance with this scheme, be no greater status. It was therefore to be controlled only by Parliament and the Constitution.

As I have said, I consider, that since Independence Day the status of "Nauruan" under the Nauru Community Ordinance ceased to apply in the future. Article 71 reads:

> "71. A person who on the thirtieth day of January One thousand nine hundred and sixty eight was included in one of the classes of persons who constituted the Nauruan Community within the meaning of the Nauruan Community Ordinance 1956-1966 of Nauru is a Nauruan citizen."
>
> (the underlining is mine)

This Article was introduced and explained to the Convention in the way.

> "Professor Davidson: Mr. Chairman, the answer to that is that those persons who were members of the Nauruan Community under the Nauruan Community Ordinance immediately before Independence Day become Nauruan citizens the moment Independence comes into being. It is the the transition from one to another." (p.41)

The Convention adopted Article 71 on that basis (p. 43 of the Record) and drafted it to emphasise the "transition" from "membership" of the Nauruan Community by using the past tense in specifying a person who "was" included in the Nauruan Community now is a Nauruan citizen.

The widow undoubtedly possess the qualification of a Nauruan Citizen by virtue of Article 74 which reads:

> "74. A woman, not being a Nauruan citizen, who is married to a Nauruan citizen or has been married to a man who was, throughout the subsistence of the marriage, a Nauruan citizen, is entitled, upon making application in such manner as is prescribed by or under law, to become a Nauruan Citizen."

She, of course, has not applied for citizenship for the obvious reason that the Legislature has not yet enacted to prescribe the manner in which an application can be made. What is important, however, is that the scope of the legislative power given under Article 71 is to prescibe the manner of application. It does not empower it to alter the rules. The widow's right to citizenship under the Article is inviolate. There is a right for Parliament to legislate to deprive a person who has obtained citizenship under Article 73 and 74 (Article 75(3), but, not to prevent any person who is entitled to citizenship under those Articles, from obtaining it. Consequently, it seems to me that although the widow is unable to claim Citizenship because there is no process available to her to apply for it as she is entitled to it, she must be deemed to be a Nauruan Citizen.

For the above reasons I am satisfied and hold that on the test of status, there is no impediment to the widow being given and holding a life interest in the lands of the deceased as devised to her in his will.

(c) **The bequest of the Ronwan monies.**

The widow, I have held, is entitled to take the lifetime interest in the deceased's lands as provided in his will. She therefore in my view by Section 3 of the Nauru Phosphate Royalties Trust Act (Amendment) Act 1990 is entitled in her own right while living to receive the Ronwan Interest in respect of the land to the exclusion of the beneficial owners. The relevant section is section 3(6) of the Act which reads:

> "(6) (a) Subject to paragraph (b) hereof a beneficiary of the Fund is a person who, on and after the first day of July 1967, is entitled to the beneficial interest in land in respect of which royalties for phosphate which has been or is mined on the land are held in the Fund;
>
> (b) A person who is entitled to a life time interest only in any land as aforesaid is, while living, a beneficiary of the Fund, in respect of the Ronwan Interest, to the exclusion of the person who has the beneficial interest in that land."

However, I feel I should consider the argument of the defendants that if the widow were as Non Nauruan unable to obtain ownership of land she will not receive a bequest of Ronwan interest. The widow argues that an interest in Nauruan land is not necessary for such a bequest to be valid since Ronwan interest is personalty able to be willed to any person. In my opinion that contention is correct and is supported by section 3(9) of the Nauru Phosphate Royalties Trust Act (Amendment) Act (supra) which reads:

> "(9) For the purpose of any written law and any custom of the Nauruan people, the interest of beneficiary in the Fund is real property and the interest of a life tenant and of a beneficiary in the Ronwan Interest of the Fund is personal property."

Entitlement to Ronwan interest is not dependent on either absolute ownership of or a life interest in the land in respect of which it accrues. As personalty such interest may be charged (Sec. 3(7) of the Amendment Act). But in the case of life tenant, the entitlement to the interest ceases forthwith on the tenant's death. (Sec. 3(10(b).

For these reasons, therefore, I hold that the widow is entitled to receive the Ronwan interest bequeathed to her during her lifetime or until her remarriage as provided in the said will.

The Non Nauruan Land

As the parties state, the question of the validity of these devises of those lands in the Solomon Islands is not a matter for this Court to determine. It is a matter to be determined in accordance with the law of the Solomon Islands by the appropriate Court in that country.

CONCLUSION.

I am constrained to hold that the Nauru Lands Committee has acted contrary to law in administering the estate of the late Idarabwe Ika other than in accordance with the terms of his will of the 28th day of November 1990 which said will I hold to be a valid customary will capable of being administered according to its tenor.

I would also point out that when dealing with Nauruan land, consideration should be given to section 3(2)(a) of the Custom and Adopted Laws Act 1971 which states:

> "(2) Any custom or usage by which - (a) Any person is, or may be entitled or empowered to take or deal with the property of any other person without that person's consent (b).....
> is hereby abolished"

In administering a will, the Committee must be considered "a person" dealing with the property of another person, the deceased testator. It would, in my view, be prudent for the Committee in its application of custom in the administration of a testate estate to consider the implications of the custom. While the point was not raised in this case, and I do not decide it, it is arguable that if the custom relied on would allow the dealing with the deceased's property other than in accordance with his express testamentary wishes, that the custom would be covered by this section 3(2)(a). Obviously, there could be no question of the deceased's consent.

In its statement of Defence, the Nauru Lands Committee plead that some of the property devised and bequeathed by the deceased was not owned by him absolutely. No evidence was adduced to support this. I accepted the position as put to me on the opening of the plaintiff's case that the claim is not made in respect of lands in which the deceased was life tenant only, and by consent an Order was made releasing for distribution to the beneficiaries named in the Committee's determination of all lands in respect of which the deceased held a lifetime interest only

The Gazette Notice in question was not put before me. However this was not necessary since clearly there is no dispute that the plaintiff under the proposed administration of the deceased's estate was to receive nothing. She now claims she should receive her entitlements under the deceased's will. I have found that claim a valid one and have held that the said estate should be administered and distributed in accordance with the terms of the said will.

I also note the second defendant has indicated that he abides by the decision of the Court.

Orders.

The relief requested by the palintiff is as follows:

> "(a) An order restraining the second defendant from distributing the personal estate of the deceased in accordance with the determination of the first named defendant;

(b) A declaration that the determination of the first defendant is void as ultra vires its powers;

(c) A declaration that the Will of the deceased is valid and should be given effect according to its terms;

(d) An order for damages if, upon examination it is found that the second defendant has distributed any of the personal estate of the deceased in accordance with the terms of the determination of the first named defendant;

(e) Specific performance of the Will; and

(f) Costs."

I consider the defendant's contention that the claim for specific performance is not available to the plaintiff in these proceedings is correct. I also note that the claim for damages was not pursued.

According on the findings in this case the following order should be made:

1. The court DECLARES:

(a) The will of the late Idarabwe Ika who died on the 11th February 1991 which will is dated the 28th November 1990 is a valid will and must be administered and distributed in accordance with its tenor.

(b) Any determination of the first defendant the Nauru Lands Committee which effects a distribution of the estate of the late Idarabwe Ika other than in accordance with the terms of his said will is made contrary to law and is invalid and of no effect.

ORDERS.

(a) The second defendant distributes forthwith the personal property of the deceased bequeathed to the plaintiff in his said will.

(b) That the plaintiffs are awarded costs against the first, third and fourth defendants. The amount of costs and the proportion in which they should be paid is to be fixed either by agreement of the parties, or, failing agreement, by the Court on application.

CHIEF JUSTICE

Solicitor for the Plaintiffs	:	D. Gioura, Pleader Nauru.
Solicitor for the First Defendant	:	D. Aingimea, Pleader Nauru.
Solicitor for the Second Defendant	:	Office of the Secretary for Justice, Nauru.
Solicitor for Third and Fourth Defendants	:	D. Aingimea, Pleader Nauru.