IN THE SUPREME COURT OF THE
TERRITORY OF PAPUA AND NEW GUINEA

IN THE MATTER of the Testator's Family Maintenance Ordinance 1951 and 1959

and

IN THE MATTER of the Will and Estate of FLORENCE MABEL HUNDHAUSEN deceased.

The abovenamed deceased died a widow in 1956 and was survived by FERDINAND OTTO HUNDHAUSEN her only surviving son who was the Applicant and by two daughters EMELIA JESSIE FARRELL and JOHANNA BROAD the Executrices of the Testatrix who opposed the application. The substantial beneficiary under the Will is the infant daughter of Johanna Broad.

Mrs. Farrell and Mrs. Broad would have claims against the Estate probably no less valid than that of the Applicant and I think that I should approach the main question on the footing that there were four persons in the contemplation of the Testatrix at the time when she made her Will. Some of these four persons was in a position of need and the Testatrix chose her grand-daughter (the only member of the class specified in the Will) as the recipient of the substantial Estate.

The real question is whether the Testatrix, knowing all the circumstances, ought to have made some provision for the Applicant out of her Estate beyond the sum of £2,000 which she gave him at about the time when she made the Will.

The husband of the Testatrix was a German settler in New Britain and he settled down near Kokopo on some property granted to him by the German Government in about 1908. He appears to have had no financial resources but was able to develop over a period of years a series of plantations with some financial assistance from the German Government and by opening up a number of trading posts.

In about 1908 the Applicant's father married the Testatrix, who was of Pacific Islands origin, a circumstance which seems to have had a very noticeable effect upon the attitudes of the members of the family over the years after they had acquired substantial property. At all events, it appears to have been an unhappy family, and I fancy that the Testatrix suffered a good deal in consequence. For many years

the family suffered some disadvantages socially and educationally. Having regard to the financial situation of the family and the remoteness of their home, I do not think that it can fairly be said, however, that Carl Wilhelm Rundnagel exhibited any lack of consideration for the proper upbringing of his children.

The Applicant complains that his education was neglected and that he had a very hard time working long hours, in employment which was not congenial to him, to learn farming instead of being allowed to follow his somewhat vague inclination to take up an occupation that involved mechanics or engineering. He soon gave up farming and he returned to his father's plantation on which he claims to have done a great deal of work for a few shillings per week. There is nothing in the Applicant's account of his experiences that carries any real note of conviction either that he worked hard or that he had the slightest mechanical aptitude. I think it quite probable that he spent a good deal of time supervising native labour and I think that the family did benefit from the work which he did in helping to build up the plantation. However, I cannot take seriously the suggestion that a promising career was sacrificed for the benefit of the family nor would I think that the Applicant would be content to be an apprentice in a motor workshop if he had any real zeal to become either a mechanic or an engineer.

After the Second World War the Applicant returned to the various plantations in which his father was interested and helped to reinstate the properties. Between 1947 and 1949 a series of differences arose and the Testatrix and her husband lived on different plantations for a time and then in 1949 the Applicant's father transferred substantial plantation interests to the Testatrix. Shortly after this in 1950, by a Deed of Gift, the remainder of his properties were given to the Applicant and his two sisters in equal shares as tenants in common.

The properties which were to be shared by the Applicant and his sisters were valued at something like fifty or sixty thousand pounds, and although the Applicant took the view that he should have had at least a half share in any distribution, I think that the Applicant's father was wise and fair in giving the properties in equal shares. The Applicant, however, appears to have been quite dissatisfied, and although he managed the property on behalf of himself and his sisters, his management appears to have

been unsatisfactory in many respects and he appeared to want to run the place as if it were his own, and appeared to be unwilling to acknowledge his sisters' right to receive accounts and explanations or to make decisions on policy.

The Applicant commenced negotiations to sell the property and had an offer of $50,000 which would have been acceptable to all three had the offer not been made by a Chinese purchaser. As a result of an extraordinary sensitiveness this offer was refused and it was not immediately possible to find a purchaser for a like sum. The Applicant's sisters agreed to buy out the Applicant's interest in the property and again the Applicant appears to have wanted a half share in the property in effect, for a settlement was negotiated at a valuation considerably higher than the price which he was previously prepared to accept from a purchaser, and by adding accumulated profits, which, of course, would represent part of a retiring partner's capital interest, the Applicant in fact received approximately $25,000 for his interest. Although at this stage the relationship between the three parties was anything but friendly, I think that the Applicant was generously treated by his sisters on this settlement and over the period when he acted as Manager. He appears to feel that they have gained an advantage over him because they retained their interest in the plantations and the capital value of their shares has already increased quite substantially, whereas the Applicant took up residence in Sydney, invested his money and has lived on his investments ever since. Any relative accretion on the part of his sisters is something for which he can blame nobody but himself.

The Applicant's father had died in October, 1951 leaving only a small Estate against which the Applicant made no claim, so far as I am aware, and in which he had no interest. The two daughters were appointed Executors and Trustees by their father who left his Estate to them. I think that the Applicant's father had fully discharged any obligation that he had towards his son and that if the property transferred to his wife the Testatrix during his lifetime amounted to no more than a gift to her to provide for her needs, I would not feel that the Testatrix was under any further obligation to provide out of her share for her son, since her late husband had already made a suitable provision for him. However, the true position appears to have been that the Testatrix had some sort of a claim to an interest in her husband's property and that the transfer of the property to her represented not so much provision for her needs as an acknowledgment that she had a substantial interest in the property already.

Mr. Reynolds, Q.C., in his very subtle handling of the Applicant's claim argued that the Testatrix was in a position in which she had received a substantial part (amounting to about half) of the family fortune that had been created by a kind of joint enterprise over many years of considerable hardship and that at the time of her death she was under a substantial obligation to consider the position of her son who, although he had received substantial assets from his father, was entitled to special consideration partly because of his efforts towards the building up of the Testatrix's assets and partly because his very disinclination to work and lack of initiative were attributable to his upbringing.

I think that this argument has considerable force and further support for the Applicant's claim arises from the circumstance that the Testatrix herself when she made her last Will realised that he would be likely to make a claim and therefore inserted in the Will a declaration that she had already made adequate provision for her son. It is clear that she had not made any provision for him, in fact, apart from the sum of £2,000 which she gave to the Applicant at about the time when she executed her Will. This sum is believed to have been the amount of an interest which he was to receive under an earlier Will, the terms of which were apparently known to the family, and it is clear that the Testatrix hoped that by giving him this money in cash, her son would be dissuaded from making any further claim against the Estate.

The Testatrix died in 1956, and having reached the conclusion that she should have given special consideration to her son's claim, I must consider whether the sum of £2,000 at that time was a proper provision for him. The Applicant considers himself as a man of property who should not work to support himself and relies on the frustration of his earlier ambition to become an apprentice mechanic as justification for this attitude. He had an income from investments of about £1,200 per annum and he had preserved his capital and invested it well. He could easily supplement his income if he were prepared to find some sort of work suitable for him but he prefers not to work. At the same time he is prepared to take anything from the Estate which will help to keep him in greater comfort. This is not an Estate which is faced with competing claims by people enduring any degree of real hardship, and the substantial beneficiary will no doubt be a very wealthy young woman. Nevertheless, I am not impressed by any real force in the Applicant's claim. I think that the Applicant has been excluded to some extent from a full participation in the family fortune and although I think he is

largely to blame for this himself, the circumstance that he has been regarded as something of an outsider is itself a consideration which his mother might well have taken in his favour. I think that the sum of £2,000 for an acknowledged claim was very small, having regard to the size of the Estate, and I think that the Testatrix could and should have done a little more for the Applicant when she made her Will.

I do not, however, consider that the Testatrix was under any obligation to add to the Applicant's capital assets or to afford him the means of leaving to others property which the Testatrix wanted to leave to her grand-daughter. Therefore I think that I should make some further provision for the Aplicant of a limited character which will supplement his income during the next few years, which would represent his working life if he were willing to work. I think that it would be appropriate for him to receive out of the Estate an income of £250 per annum until he reaches the age of sixty-five years or until he dies in the meantime, whichever shall first happen. The income is to be paid in respect of a period commencing on 1st January, 1959. This provision is to be made by the Trustees out of the residue which at the present time is being held on behalf of Jillian Florence Brand. When the Applicant's interest in the income ceases the capital fund is to go to the grand-daughter.

I think that the Applicant should have his costs, and I would have been disposed to allow his costs even if his claim had been unsuccessful, since I think that the family recriminations have been such that neither the Applicant nor the Executors would really be in a position to view this claim dispassionately and that the only solution to the problem would be to have the matter tested in Court.

CHIEF JUSTICE.
27/11/59.
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