IN THE COURT OF APPEAL OF NAURU
AT YAREN
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 4/2020
Supreme Court Misc. No. 3/2019

BETWEEN

NITA SEYMOUR

APPELLANT

AND

SPRENT DABWIDO [Estate of]

RESPONDENT

BEFORE: **Justice Dr. Bandaranayake, Acting President**
Justice R. Wimalasena
Justice C. Makail

DATE OF HEARING: **31/08/2022**

DATE OF JUDGMENT: **14/10/2022**

CITATION: **Seymour v Dabwido**

KEYWORDS: Grant of Probate, Nauruan Last Will, Process and Procedure for Probate, Jurisdiction of the Supreme Court, Role of the Nauru Lands Committee, Principle of *Generalia Specialibus Non Derogant*

LEGISLATION:	Supreme Court Act 2018, Succession, Probate and Administration Act 1976, Customs and Adopted Laws Act 1971, Nauru Lands Committee Act 2011, Civil Procedure Rules 1972
CASES CITED:	**Lucy Ika & Kinza Clodumar** v **Nauru Lands Committee and Others** (Civil Case Nos. 2/91, 3/91, 8/91 Nauru Supreme Court Judgment of 21/08/1992) **Aremwa** v **The Nauru Lands Committee** ((1970) N.L.R. (Pt B) 17), **Duburiya** v **Agoko** ((1973) N.L.R. (Part B) 74), **Eidiogin Rasch and Others** ([1969-1982] N.L.R. (B) 145) **Clara Agir** v **Nauru Lands Committee** (Land Appeal No.4 of 2011, decided on 06/05/2011), **Seward** v **Vera Cruz (Owners)** ((1884) 10 A.C 59 at pg.68), **Goodwin** v **Phillips** ((1908) 7 CLR 1 at pg. 15), (**Miller** v **Minister of Mines** [1961] NZLR 820, **Stewart** v **Grey County Council** [1978] 2 NZLR 577, **Police** v **Kanuta** [1987] 1 NZLR 679, **Marac Life Assurance Ltd** v **Commissioner of Inland Revenue** [1986] 1 NZLR 694), **Barker** v **Edgar** ((1898) A.C. 748 at pg.754), **Soma Raju** v **Bhajan Lal** ([1976] FJ Law Reports 28)
APPEARANCES:	
COUNSEL FOR APPELLANT:	**D. Aingimea with A. Lekenaua**
COUNSEL FOR RESPONDENT:	**E. Soriano**

JUDGMENT

1. This is an Appeal from the Ruling given by the Supreme Court on 21/08/2020 in the Miscellaneous cause No. 3 of 2019 (Probate Proceedings). By that

Ruling, the Supreme Court dismissed the application made by the Appellant to strike out the application directed to the Probate Division of the Supreme Court for the grant of the Probate of the Estate of Sprent Dabwido to a friend, Mathew Batsiua, as the named Executor and Trustee of his will.

2. Pursuant to that Ruling dated 21/08/2020, the Appellant had filed an Appeal on 08/09/2020 and summons for a stay of the Probate Proceedings on 17/11/2020 in the Supreme Court until the determination of the Appeal.

3. In response to the stay of Proceedings, the Respondent filed an affidavit to strike out that application on 23/12/2020.

4. A single Justice sitting in the Court of Appeal had taken both applications together with the concurrence of the learned Counsel and in the Ruling dated 27/01/2021, had made order that the Appeal is competent and the Miscellaneous Probate Proceedings be stayed pending the determination of the Appeal.

5. Thereafter both learned Counsel had filed their submissions before the Court of Appeal. Consequently, this Appeal was taken up for hearing before a Full Bench of the Court of Appeal on 31/08/2022.

6. According to the chronology of facts filed by the learned Counsel, the Appellant and the late Sprent Dabwido were married in 1997 and had one child from that marriage. In 2015 they got separated and were divorced in 2017. According to the learned Counsel for the Appellant, the Appellant holds the sole custody of the child.

7. On 08/05/2019, Sprent Dabwido passed away in Sydney, Australia.

8. Thereafter on 26/09/2019, the Respondent's Counsel had applied for grant of Probate and a motion had been filed for an Order for publication of such grant of Probate. Accordingly on 30/09/2019, the Government Gazette had published the application for Grant of Probate by Matthew Batsiua, who was a friend of the late Sprent Dabwido.

9. Soon after, on 17/10/2019, learned Counsel for the Appellant had filed summons to Strike out the Application for a Grant of Probate along with a supporting affidavit.

10. On 21/08/2020, the then Chief Justice Jitoko had delivered the Ruling dismissing the application to Strike out the Application for the Grant of Probate in the Estate of Sprent Dabwido to Mathew Batsiua. In that, Jitoko CJ had specifically ruled that Part 8 of the Supreme Court Act, had superseded section 3 of the Succession, Probate and Administration Act, 1976.

11. The Appeal before this Court was based on three Grounds:

    a. That the Learned Judge erred in law and fact in the interpretation of Section 3 of the Succession, Probate and Administration Act, 1976 to be overridden by Part 8 of the Supreme Court Act, 2018 in spite of the legislation being the principal Act on the subject;

b. That the Learned Judge erred in law and facts in interpreting that Section 3 of the Succession, Probate and Administration Act, 1976 is superseded by Part 8 of the Supreme Court Act, without considering the overreaching legal impediments of the process legislated by Parliament by Nauruan Estates under the Customs and Adopted Laws Act, 1971 and the Nauru Lands Committee Act, 1956 as amended; and

c. That the Learned Judge erred in law and fact in failing to consider the legal Principle of ***Generalia Specialibus Non Derogant*** which supports the Appellant's position on the application of Section 3 of the Succession,Probate and Administration Act, 1976

12. When making submissions, learned Counsel for the Appellant had considered Grounds 1 and 2 together, thereby highlighting the considerations that has to be given to Section 3 of the Succession, Probate and Administration Act, 1976 (hereinafter referred to as the SPA Act) and the Part 8 of the Supreme Court Act,2018 as well as the Customs and Adopted Laws Act, 1971(hereinafter referred to as the CAL Act) and the Nauru Lands Committee Act, 1956 (hereinafter referred to as the NLC Act).Therefore Grounds 1 and 2 would be considered together on the basis of the provisions in the Acts mentioned earlier and Ground 3 would be examined separately.

13. When Grounds 1 and 2 are taken together what the Court has to consider and determine is that the effects of Part 8 of the Supreme Court Act, 2018 on section 3 of the SPA Act with specific reference to the process legislated by Parliament for Nauruan Estates under the CAL Act and the NLC Act, as amended.

14. The contention of the learned Counsel for the Appellant was that the SPA Act, governs the process of Probate in the Republic of Nauru. Additionally the Supreme Court Act,2018 and the Civil Procedure Rules, 1972 would provide for the process in Probate causes and matters. It was further contended by the learned Counsel for the Appellant, quite strenuously, that it is of paramount importance to ensure that the social fabric where the Nauruan families and communities are woven together, should not be disturbed or destroyed by trying to create a better or efficient system through different interpretations given to the current legislation. Learned Counsel submitted that the provisions contained in the NLC Act, and the SPA Act,have clearly laid down the applicable law through statutes,which had taken into consideration the customs and usages that had prevailed through the Republic of Nauru over the years.

15. It was also contended by the learned Counsel for the Appellant that by the introduction of section 8 of the Nauru Supreme Court Act, 2018 it was never intended to replace the SPA Act.

16. It is common ground that the Deceased Estate, which is the subject of the Appeal, is a Nauruan Deceased Estate and that the will is the last will of a Nauruan.

17. Learned Counsel for the Respondent contended that the Supreme Court was correct when it decided that the restrictions imposed by section 3(2) of the SPA Act had been superseded by the enactment of Part 8 of the Supreme Court Act. His submission was based on the fact that under the SPA Act, applications for Probate were qualified for Estates of non Nauruans and with the enactment of the Supreme Court Act in 2018 that restriction was

removed by making provisions to allow all to make applications to the Supreme Court for the grant of Probate.

18. Learned Counsel for the Respondent further submitted that the contention of the learned Counsel for the Appellant that there is a distinct Nauruan process through the Nauru Lands Committee to deal with the Wills and Probate is not correct. The contention of the learned Counsel for the Respondent is that the function of the Nauru Lands Committee is to determine the ownership of the lands in Nauru and that it has no competence to deal with matters connected to Probates and moreover under NLC Act, the Nauru Lands Committee has not been granted any such powers. Accordingly the learned Counsel for the Respondent contended that the decision of the Supreme Court which held that the restrictions imposed by section 3(2) of the SPA Act had been superseded by the enactment of Part 8 of the Supreme Court Act, is correct and therefore there is no necessity to interfere with the decision of the Supreme Court.

19. The SPA Act had come into being in 1976. In its Preamble it is specifically stated that it is an Act, 'to make provision for the succession to and the probate and administration of estates of certain deceased persons'. Section 3(2) of the Act specifies the application of the Act and states as follows:

> *"Except as expressly provided, this Act does not apply to the will or estate of any person who at the time of his death is a Nauruan, unless he has, by a will which conforms with the requirements of the Wills Act 1837, the Wills Act Amendment Act 1852 and the Wills Act 1963, all being Acts of the Parliament of England in their application to Nauru, directed into this Act is to apply to his will and estate in which event it shall apply only*

to his real estate outside Nauru and to his personal estate wherever situated".

20. The jurisdiction of the Court is specifically mentioned in Part II of the SPA Act. In section 4(1) it is stated thus:

> *"Subject to the provisions of this Act and to any rules made thereunder the Court shall have jurisdiction in contentious and non-contentious probate matters and proceedings and in the granting or revoking of probate or wills and administration of estates of persons dying leaving property in Nauru".*

21. The SPA Act deals with in detail the functions of the Curator of Intestate Estates, Distribution of Intestacy, Executors, Executors and Administrators in General, Grants of Representation, Administration of Estates by Executors and Administrators, Orders for Management Etc of Property of Persons Believed Dead, Resealing of Foreign Probates and Letters of Administration, Caveats and other Miscellaneous items.

22. It is of interest to note that, section 4 of the SPA Act, which is contained in Part 2, as referred to earlier, speaks of the Jurisdiction of the Court and in the interpretation it is stated thus:

> *"the Court means the Supreme Court or a Judge thereof or, to the extent of the Registrar's duties and powers under this Act, the Registrar".*

23. The Supreme Court, having considered the provisions of the SPA Act and the Supreme Court Act, had stated that the provisions of Part 8 of the Supreme Court Act stands on its own and not be subject to any limitations or restrictions imposed by any other enactments. In arriving at that conclusion, the Supreme Court had stated that,

> *"Part 8 is not made subject to the Succession, Probate and Administration Act provisions and specifically as to the qualifications under section 3(2) therein.* ***In the absence of the saving provisions, and there being no specific mention of the revocation of the 1976 Act, the presumption in law is that section 3(2), if not the Act itself, has been superseded by Part 8 of the Supreme Court Act 2018****" (emphasis added).*

24. In such circumstances, it would be necessary at this stage to examine the correctness of this ruling,before turning into considering the applicability of the NLC Act.

25. Learned Counsel for the Appellant relied on the decision by Donne,C.J. in **Lucy Ika & Kinza Clodumar** v **Nauru Lands Committee and Others** (Civil Case Nos. 2/91,3/91,8/91 Nauru Supreme Court Judgment of 21/08/1992). Interestingly it is a matter regarding a last will, in which a claim had been made before the Supreme Court complaining that the Nauru Lands Committee had acted unlawfully in a determination made by it. It is also pertinent to note that, in that matter submissions had been made to the effect that the Nauru Supreme Court had no jurisdiction to examine the validity of the Will in question, as it was a customary Will, for which only the Nauru Lands Committee was competent to determine the issue in question.

Considering the matter before the Supreme Court, Donne, C.J. had gone on to state that,

> *"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".*

26. Learned Counsel for the Respondent relied on the Nauru Supreme Court Act, 2018 and section 39A of the Nauru Interpretation Act 2011 in support of his contention that the SPA Act has been superseded by the enactment of a separate Probate division in the Supreme Court.

27. In the Ruling of the Supreme Court, Jitoko,C.J., relied on both section 39A as well as section 49 of the Nauru Interpretation Act 2011.

28. The Nauru Supreme Court Act 2018 had undoubtedly created a Probate division, as section 4(4) of the Act specifically refers, inter alia, to Probate as one of the divisions in the Supreme Court. Part 8 of the Act refers to Probate Causes and Matters. Section 32, which falls under that Part, deals with the Application for grant or revocation of probate or administration and reads as follows:

> *"(1) Applications for grant of probate or letters of administration or for the revocation of such grants shall be made to the Probate division of the Supreme Court. (2) Any grant made by the Supreme Court shall be under the seal of the Supreme Court. (3) No grant shall be made by the Supreme Court where:*

(a) there is contention or until the contention is disposed of; and (b) a probate action or proceedings relating to the grant is determined by the Supreme Court".

29. Section 39A of the Nauru Interpretation Act, 2011 is in Part 6, which deals with 'References to Laws' and reads as follows:

> *"When a written law substituted for another - A later written law is substituted for an earlier written law if: (a) the earlier law is repealed or superseded; and (b) the later law deals with the same subject matter as the law that has been repealed or superseded (whether it deals with the matter in the same way or differently, and whether it deals only with that matter or with other matters also)".*

30. It is to be noted that except for the creation of a separate division for Probate matters and the provisions stating as to dealings with the application for grant or revocation of probate or administration, Part 8 of the Supreme Court Act, does not specifically mention anything regarding the SPA Act. For that matter the Supreme Court Act is silent in regard to the application of the SPA Act or any other enactment regarding the grant of Probate or administration. A careful reading of the provisions contained in section 39A (a) and (b) indicates that in order for a later written law to be substituted for an earlier written law it is not only necessary for the earlier law to be repealed or superseded, but also that the later law should deal with the same subject matter just as the way the law that has been repealed or superseded. A careful perusal of the provisions contained in the Supreme Court Act on the other hand only indicates that among the other subject areas, the Supreme Court also has a Probate Division. Section 4(4) of the Supreme Court Act clearly clarifies this position, wherein it is stated thus:

"There shall be the following divisions of the Supreme Court: (a) civil; (b) criminal; (c) commercial; (d) family; (e) probate; (f) appellate; (g) miscellaneous; and (h) such other divisions which the Chief Justice may deem appropriate".

This section clearly indicates that Probate is also one such division just as much as the other subject areas and if by the inclusion of the subject of Probate, it is to be presumed that section 3(2) of the SPA and for that matter **the whole Act itself** is revoked or superseded, then that position should be applicable to all the subject areas referred to in section 4(4) of the Supreme Court Act 2018. If that is the position all the enactments connected with those subject areas also would have to be taken as revoked or superseded by virtue of the enactment of Part 8 of the Supreme Court Act.

31. However, a careful examination and analysis of the provisions of the SPA Act as well as Part 8 of the Supreme Court Act, shows that it is not possible to revoke or supersede section 3(2) of the SPA Act, in the manner that has been suggested by Jitoko C.J. in his Ruling dated 21/08/2020.

32. This position is further strengthened by the contention of the learned Counsel for the Respondent, who drew attention to the jurisdiction of the Nauru Supreme Court. Part 5 of the Supreme Court Act 2018 clearly stipulates its jurisdiction and section 17(b) specifically states that,

*"the jurisdiction conferred on it by this Act [Supreme Court Act, 2018] or **any other written law**" (emphasis added).*

33. When a separate division was established under the Supreme Court Act to deal with Probate matters, its jurisdiction was expanded to encapsulate any other written law connected to the subject matter such as the SPA Act.

34. Moreover, what had taken place after the enactment of the Supreme Court Act shows clearly that it had not been the intention of the Legislature to replace the SPA Act, but apparently the intention had been to continue with that process.

35. The Supreme Court Act had been certified on 10/05/2018. If the intention of the Legislature was to replace the SPA Act, then there could not have been any steps taken under that Act, after the enactment of the Supreme Court Act in May 2018. However, as submitted by the learned Counsel for the Appellant, the Succession, Probate and Administration (Fees of the Curator) Regulations 2018 came into being on 05/11/2018. That is a clear indication that the Legislature had not intended to replace the SPA Act by virtue of the Supreme Court Act introduced in May 2018.

36. Admittedly, in the enactment of the Supreme Court Act, 2018, there was no specific provision to repeal the SPA Act. In the same sense there was no "sunset clause" in the SPA Act.

37. In those circumstances, it would not be correct for the Supreme Court to have arrived at the conclusion, which was specifically based on a presumption that

> *"in the absence of the saving provisions and there being no specific mention of the revocation of the 1976 Act, the*

presumption in law is that section 3(2), ***if not for the Act itself****, has been superseded by Part 8 of the Supreme Court Act 2018"(emphasis added).*

38. Learned Counsel for the Appellant strenuously contended that the SPA Act was enacted specifically to cater for the process of Probate for Nauruan and non-Nauruan deceased Estates with specific provisions that recognises and protects the Nauruan process. His contention was that the establishment of the office of the Curator and the Deputy Curator, amongst others and their functions in matters of Probate and administration of the Estates of the deceased persons is for the purpose of proper management of the property of deceased Nauruan and non-Nauruans. He further contended that except for the SPA ACT, there are no other Statutes that had created the aforementioned office bearers to be in charge of the administration with the relevant powers, functions and duties.

39. Learned Counsel for the Appellant further contended that there is an estoppel in terms of the Order 49 of the Civil Procedure Rules 1972 as those provisions govern the process for Probate causes and matters in the Supreme Court. Whilst Order 49 Rule 1(2) defines a Probate suit as one for the grant of the Probate of the will or Letters of Administration of the Estate Order 49 Rule 1(4) provides for a protection for Nauruan deceased Estates.

40. The contention of the Appellant therefore was that the Jurisdiction conferred on the Supreme Court was not just by way of the Principal Act, but also based on any other related written law such as the SPA Act.

41. Considering the position aforementioned it is apparent that by the introduction of the Supreme Court Act in 2018, the SPA Act had not been repealed or replaced and that in effect it had enhanced that jurisdiction.

42. The next question that arises is the submission that was made by the learned Counsel for the Appellant regarding the applicability of the customary and legislative powers of the Nauru Lands Committee regarding the grant by it of a Probate.

43. It has to be admitted that there is a grave scarcity of case law in this regard. A decision that had dealt with such a Probate matter is **Lucy Ika and Kinza Clodumar** v **Nauru Lands Committee and Curator of Intestate Estates and Others** (Supra), referred to earlier. In that matter the claim before the Nauru Supreme Court was with regard to a declaration that the will of the late Idarabwe Ika of Nauru, who had passed away in Nauru, was a valid will and that the Nauru Lands Committee had acted unlawfully in a determination made by it regarding the said will. According to the facts of that decision, upon the death of the deceased, the Curator of Intestate Estates, had vested in him all the deceased's real and personal Estate pending the ascertainment of the extent of Estate and its beneficiaries. Also according to the custom, the Nauru Lands Committee took over the administration of the Estate. In considering the role of the Nauru Lands Committee, Donne, C.J. had rejected the statement made by the defendants that only the Nauru Lands Committee had the jurisdiction to determine the validity of a will. In doing so, Donne,C.J. held that,

> *"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 Customs and Adopted Laws Act 1971, Sec.3".

44. However, it is important to note that, notwithstanding the above findings, Donne, C.J. had gone on to state that,

> *"In the case of a customary will . . . the role of the Nauru Lands Committee is well established".*

45. He had further stated thus:

> *"It is customary for Nauruans, having made their written wills, to lodge them with the Committee for safekeeping. . . . Under the Succession, Probate and Administration 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 recognized 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. . . . 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*** *v* ***Agoko*** *((1973) N.L.R. (Part B) 74)".*

46. It is therefore abundantly clear that Donne, C.J. in **Lucy Ika** (supra) had examined and analysed the role of the Nauru Lands Committee and had defined the functions of the Nauru Lands Committee as judicial or quasi judicial, notwithstanding his remarks of the Committee having customary powers of adjudication.

47. The analysis of Donne, C.J in **Lucy Ika** (supra) clearly indicates that there is a statutory and a customary process and a procedure that is followed by the Nauru Lands Committee in dealing with testamentary matters.

48. There are a few matters that have to be noted in regard to the aforementioned position. In the Supreme Court decision of **Eidiogin Rasch and Others** ([1969-1982] N.L.R. (B) 145) it had been held that the Wills Act, 1837 of England does not apply to the wills of Nauruans. As pointed out earlier, the decision in **Lucy Ika** (supra) clearly indicates that the final decision of the validity of a will has to be decided by the Courts. As correctly pointed out by the learned Counsel for the Appellant, section 3 of the

Customs and Adopted Laws Act, 1972 statutorily supports the premise of the application of customs and usages in Nauruan wills.

49. However, it is to be borne in mind that having discussed the role of the Nauru Lands Committee, Donne, C.J.'s conclusion included the position that 'in so far as the determination of the Committee "may touch on any interest other than that in respect of land", there was no right of appeal against the determination'. Discussing this position, Eames, C.J. in **Clara Agir** v **Nauru Lands Committee** (Land Appeal No. 4 of 2011 decided on 06/05/2011) had stated thus:

> *"With respect to His Honour, I have difficulty accepting that a party could challenge decisions of the Committee by way of a "probate action", given that not only are the provisions of the Succession, Probate and Administration Act 1976 almost entirely excluded, by s.3, from application to the estates of Nauruans, that Act also does not empower or provide a supervisory function with respect to the Nauru Lands Committee. It is unnecessary for me to resolve this question, however".*

50. In this backdrop, the question arises as to whether there could be an appeal by a person, who is aggrieved by a decision given by the Nauru Lands Committee.

51. As stated earlier, section 3(2) of the SPA Act would only apply to wills or Estates of a Nauruan, subject to the requirements stipulated in that section. However, it is to be noted that sections 37 and 63 of the said Act, had made provisions to include the Estates of the Nauruans. Accordingly, section 37(3) of the SPA Act reads thus:

*"Notwithstanding the provisions of Section 3, the provisions of this Section shall apply to the estates of Nauruans : Provided that, for the purposes of applying the provisions of this Section to the estates of Nauruans, the expression "**pending the grant of probate of a will or of administration of the estate of a deceased person**" shall be taken as meaning the period from such person's death until the time when the persons entitled to receive the estate as beneficiaries have been finally ascertained, whether by a family agreement, a decision of the Nauru Lands Committee or, where any appeal is taken against such decision of the Nauru Lands Committee, the decision on the Court of that appeal".*

Section 63(7) of the SPA Act, states that,

"Notwithstanding the provisions of Section 3, the provisions of this Section shall apply to Nauruans: Provided that the Curator shall not distribute the assets except in accordance with a family agreement or the 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".

52. Sections 37(3) and 63(7) of the SPA Act refer to 'where any appeal is taken against a decision of the Nauru Lands Committee' action would be taken on the basis 'with the decision of the Court on that appeal'. As stated earlier, Section 2(1) of the SPA Act, which refers to the Interpretation has defined 'the Court' as follows:

"the Court means the Supreme Court or a Judge thereof or, to the extent of the Registrar's duties and powers under this Act, the Registrar".

53. When these three(3) sections, viz., section 3(2), 37(3) and 63(7) of the SPA Act are taken together, it is abundantly clear that if a deceased Nauruan has directed in his will that the SPA Act is to apply to his or her will and Estate, the determination of that will or Estate has to be made by the Nauru Lands Committee in keeping with the provisions laid down by section 37(3) of the SPA Act. Furthermore as examined above, a party aggrieved by the decision of the Nauru Lands Committee, could appeal to the Nauru Supreme Court and thereafter to the Nauru Court of Appeal in terms of section 19 (c) of the Nauru Court of Appeal Act 2018.

54. Having considered Grounds 1 and 2, let me now turn to examine Ground 3 in which the learned Counsel for the Appellant had raised the issue that the Supreme Court had erred in failing to consider the legal principle of ***Generalia Specialibus Non Derogant*** which supports the Appellant's position on the application of section 3 of the SPA Act 1976.

55. This principle, in simple terms, refers to the concept that general provisions do not derogate from specific ones, and was clearly defined by Lord Selborne in **Seward** v **Vera Cruz (Owners)** ((1884) 10 A.C 59 at pg.68), where it was stated thus:

"Where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to

hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words without any indication of a particular intention to do so".

56. This position was further elaborated in **Goodwin** v **Phillips** ((1908) 7 CLR 1 at pg. 15) by O' Conner, J., where it was specifically stated that, when there are two statutes that deal with the same matter, the earlier special statute continues to have exclusive application to its own subject matter, and the later general Act, would not have any application to it. In the words of O'Conner,J., in **Goodwin** v **Phillips** (supra),

"Where there is a general provision which, if applied in its entirety, would neutralise a special provision dealing with the same subject matter, the special provision must be read as a proviso to the general provision, and the general provision, in so far as it is inconsistent with the special provision, must be deemed not to apply".

57. This principle that enumerates that the general provisions do not derogate from specific ones, has been referred to in several cases in different jurisdictions throughout the Commonwealth countries. For instance, the New Zealand Courts had often applied the maxim in considering the applicability of conflicting statutes (**Miller** v **Minister of Mines** [1961] NZLR 820, **Stewart** v **Grey County Council** [1978] 2 NZLR 577, **Police** v **Kanuta** [1987] 1 NZLR 679, **Marac Life Assurance Ltd** v **Commissioner of Inland Revenue** [1986] 1 NZLR 694).

58. It is apparent that the principle ***Generalia Specialibus Non Derogant*** has been accepted and applied in other jurisdictions in the Pacific Region.

Learned Counsel for the Appellant had submitted that the decisions of **Seward** v **Vera Cruz (Owners)** (supra) as well as **Barker** v **Edgar** ((1898) A.C. 748 at pg.754) had been referred to in the decision in **Soma Raju** v **Bhajan Lal** ([1976] FJ Law Reports 28) of the Court of Appeal in Fiji.

59. In such circumstances, it is apparent that the maxim could be considered in settling the issues that had arisen in this matter.

60. Accordingly it is abundantly clear that the provisions contained in the SPA Act, which provides for the special procedures in settling matters with regard to succession, probate and administration should be applicable along with the general laws that are contained in the Supreme Court Act of 2018.

61. Considering the aforementioned, the three(3) Grounds of Appeal raised by the learned Counsel for the Appellant, are answered in the affirmative.

62. The Ruling of the Supreme Court dated 21/08/2020 is set aside and the Appeal is allowed. Accordingly the following Declarations are made by the Court of Appeal:

a. Section 3 of the Succession, Probate and Administration Act 1976 is a specific and special clause that protects the process already legislated of determination of Nauruan Estate where a Nauruan will exists;

b. Considering the principle enumerated under ***Generalia Specialibus Non Derogant***, it is apparent that the Legislature had no intention to replace section 3 of the Succession, Probate and Administration Act of

1976 in its application to Nauruan wills, by the introduction of Part 8 of the Supreme Court Act of 2018; and

c. the application made by the Respondent for Probate is struck out and the Respondent is directed to follow the process legislated for Nauruan Estates under the Nauru Lands Committee Act of 2011.

63. We wish to place our appreciation for both the learned Counsel for the Appellant and the Respondent for their assistance rendered to this Court.

Dated this 14th day of October 2022

Justice Dr. Shirani A. Bandaranayake,
Acting President of the Court of Appeal

Justice Rangajeeva Wimalasena

I agree

NAURU COURT OF APPEAL

Justice of the Court of Appeal

Justice Colin Makail

I agree

Justice of the Court of Appeal