SUPREME COURT OF NAURU

Land Appeal No. 18 of 1971

MUSHIELLY DEINGOA & ORS. **Appellants**

vs.

EIGORIEDU & ORS. **Respondents.**

RULING

In 1965, Denea died leaving estate comprising, inter alia, a number of portions of land. In 1966 the Nauru Lands Committee determined the persons to whom those portions of land should pass. The determination was published in Gazette No. 26 of 1966. In it a number of the portions were specified by name and number. Others were referred to only as either portions received by Denea from his first wife or portions owned by him otherwise, apparently inherited from his blood relatives. Portions in the second category were to be inherited by Denea's brother, Agakar, subject to Denea's widow taking a life interest in half of every such portion.

In October this year the Nauru Lands Committee published in the Gazette determinations in respect of four portions of Denea's land not specifired in 1966 by name and number. These portions had been received by Denea from blood relatives and belonged, therefore, to the second category of portions not specified by name or number in the 1966 determination. Agakar had died in 1970, however, and by his will had left his estate to the respondent Eiduguneida. The Nauru Lands Committee, therefore, decided that the present owner of the four portions is Eiduguneida with Denea's widow still retaining her life interest.

A number of persons other than the respondents, however, had attended before the Committee to claim that the portions belonged to them; they included the applicants in the present proceedings. The Committee took the view that it

had decided in 1966 who should inherit all Denea's land, including these portions; no doubt that view was correct. From the account of its reasons for its decision which it has supplied to this Court and which was amplified in Court by one of its members, it is apparent that the Committee tried to encourage the various claimants to agree to a distribution of the portions between themselves but, when no agreement was reached, felt obliged to decide that the respondent, Eiduguneida was entitled to them as the beneficiary named in Agakar's will.

The applicants had wished to put their claim on another basis, namely that, although Agakar had inherited the land, he was not free to leave it to Eiduguneida, who was not a member of his family. The Committee convened a meeting to hear what they had to say but there was not a quorum of members present. Mr. Agir, one of the members, accordingly told the applicants that they could not be heard on that day but would be called before the Committee on a later date to adduce evidence and argue their claim. Unfortunately they were never called upon to do so. The Committee apparently did not realise that they had a substantial question of custom to raise which it would have to decide before it could give its decision on the ownership of the land. It made its determination and published it on 4th October. The applicatns were still waiting to be called before the Committee and consequently not looking for the Gazette notice of the determination; they missed it and failed to appeal within 21 days of publication, the time limit set by the Nauru Lands Committee Ordinance.

They are now seeking leave to appeal out of time; possibly it would be more correct to regard the application as being for a declaration that the determination is a nullity. Mr. Dowiyogo, representing the respondents, has arged that, whatever irregularities of procedure there may have been in the proceedings before the Nauru Lands Committee, there has been no substantial miscarriage of justice since the land passed to Agakar in 1966 and it has now passed to the person named as beneficiary under his will. That submission, however, does not take account of the failure of the Committee to let the applicants present to it their arguments about the validity of the devise and its failure apparently to turn its mind to this question.

These failures resulted, in fact, in the Committee making its determination prematurely before the conclusions of the presentation by all the claimants of their respective cases. It deprived the applicants of their right to have

their arguments fully heard and properly adjudicated upon. For these reasons I hold that the irregularity of procedure was such as to vitiate the determination and to render it totally void, that is to say a nullity. I shall order that it be set aside and that the whole matter be re-heard and re-determined by the Committee. This does not preclude the Committee from reaching the same conclusion as it did before if, after it has heard all the evidence tendered to it and all the arguments put forward, it decides that Eiduguneida is entitled to the land as the beneficiary under Agakar's will. The Committee cannot, however, reopeh any matter in respect of Denea's estate finally decided by it in 1966.

Chief Justice

ORDER

The determination by the Nauru Lands Committee of the ownership of the following four portions published in Gazette No. 39 of 1971, namely -

(1) Portion No. 18 'Anini' in Ijuw District,

(2) portion No. 28 'Botibab' in Anetan District

(3) portion No.276 'Debidouwe' in Anibare District

(4) portion No. 82 'Anibara' in Nibok District,

is set aside and the question of the ownership of these portions is referred back to the Nauru Lands Committee to be determined afresh after all interested parties have had a full opportunity to tender relevant evidence and to present arguments in support of their respective claims.

30th December, 1971 Chief Justice.