

M.E. J. J. J. J.

SUPREME COURT OF NAURU

LAND APPEAL NO.10 OF 1972

ROY DEGOREGORE & ORS.

Appellants

vs.

1. DOGIREIY ADUN & ORS.

Respondents

2. HIDUBWA KUPAB & ORS.

Respondents

JUDGMENT

This appeal relates to a portion of phosphate land in Anetan District the name and owners of which were recently determined by the Nauru Lands Committee as 'Iyeida' and the first respondents, Dogireiy Adun and others, respectively. Its number is 21.

The reasons why the Committee decided that the land was 'Iyeida' were that a lady named Gania had registered two pieces of phosphate land of that name when the Land Registration Book was compiled in 1928; neither had been identified previously; and the adjacent land (belonging to people who are not parties to the appeal) bore the same name. The first respondents claim to be the child and grandchildren of Gania's adopted daughter Edogod.

The appellants claim that Gania did not own any land called 'Iyeida' and that the land in dispute belonged to the appellants' father and uncle. They say that it is called Botibab, although it is also known as Iyeida. They claim that Dekeka died without children and that his estate passed to them.

The second respondents claim to be the children of a woman who they say was another adopted child of Gania. They have appealed (in Land Appeal No.9 of 1972) against the determination that the land belongs to the first respondents.

This present appeal is concerned entirely with whether the land is Iyeida and belonged to Gania or is Botibab, with Iyeida as an alternative name, and belonged to the appellants' father, Arari, and their uncle, Dekeka.

Since deciding the question originally, the Nauru Lands Committee has ascertained that there was certain evidence relating to Gania's alleged ownership of two pieces of phosphate land called Iyeida of which it was not aware when it made the decision. Mr. Depaune, a member of the Committee, brought to Court two documents from the Committee's archives. One was part of the old Lands Committee's disputes book for the year 1929. The other was a record made by the District Chief in 1935 when Gania's estate was dealt with by him in accordance with Nauruan custom after her death.

The entry in the disputes book shows that there was a dispute in 1929 over the registration by Gania of a number of portions of land in the Land Registration Book in 1928. Eight pieces of land which she had registered were the subject of dispute; they included the two pieces of phosphate land named Iyeida.

It is not disputed that Gania was the widow of Noah and that Noah was the brother of Dekeka's mother. The respondents all claim, as apparently did Gania, that Noah had inherited those pieces of land from one of his parents and that Gania had inherited them from him when he died. The first appellant, Mr. Degoregore, has said in evidence that he understood that Noah had inherited the lands but, that when he died, his widow had been given only a life interest in them, so that, when she died, they passed to Dekeka and Arari's children, i.e. the appellants, as his nearest relatives.

That, however, is not what was stated in the disputes book as being Dekeka's case. He apparently said that Noah only had a life interest. Presumably Dekeka's case was that his mother

had inherited all the land and simply let Noah use some of it while he was alive. That is certainly more in keeping with the decision of the dispute by the Lands Committee that six pieces of land belonged to Dekeka and Arari and two belonged to Gania. There was no finding that she had a life interest in the six or that her interest in the other two was not a full proprietorial interest.

After a delay of two years the award of the six pieces of land to Dekeka and Arari was gazetted (Gazette No.43 of 1931). Gania appealed against the decision (Gazette No.44 of 1931). There is no record that the appeal was ever heard. After Gania died, the District Chief, following Nauruan custom, made an inventory of her estate in 1935 for the purposes of its administration. None of the six pieces awarded to Dekeka and Arari in 1929 which were the subject of the appeal in 1931 were recorded as belonging to Gania at the time of her death. No further steps were taken, apparently, to pursue the appeal after that. It must, therefore, be presumed that the appeal was abandoned.

There are two somewhat puzzling features about the decision of the dispute. First, the decision was gazetted only in respect of the pieces of land found to belong to Dekeka and Arari. Second, whereas Gania claimed to own two pieces of phesphate land called Iyeida and two pieces of coconut land called Anuwuroia, the Lands Committee found that Dekeka and Arari owned one piece of land called alternatively Botibab or Iyeida and one piece of land called Anuwuroia and that Gania owned two pieces of land called Anuwuroia.

Mr. Depaune has suggested as an explanation of the second matter that Gania had an inadequate knowledge of what lands were involved and the Lands Committee set matters right and made its decision in respect of the correct pieces of land. In view of the extensive knowledge which the Council of Chiefs and its successor, the Lands Committee, possessed of land ownership in the early years

of the Australian administration of Nauru, this explanation is very reasonable.

The first matter, the non-publication of the award of the two pieces of land to Gania, appears to be inexplicable except in terms either of an oversight or of an agreement by Dekeka and Arari in respect of those two pieces which removed the possibility of an appeal being lodged in respect of them. If the full decision in respect of all eight pieces of land had been published in the Gazette it would have had to be regarded as conclusive of the details of all those pieces. The part which was published must, in my view, be regarded as conclusive of the fact that one piece of land called alternatively Botibab or Iyeida belonged to Dekeka and Arari. But, as the part relating to the two pieces of land awarded to Gania was not published, the Land Committee's award cannot be regarded as conclusive as to the details of those two pieces of land.

However, even though the 1929 pieces of land cannot be accepted as conclusive, it is strong evidence that Gania did not own a piece of land called Iyeida. The only evidence that she did so is the entry to that effect made in the Land Registration Book in 1928. That entry was immediately disputed. The evidence of the Lands Committee's decision is given further weight by the evidence relating to the District Chief's inventory of her estate in 1935.

The respondents have drawn attention to the fact that the land now in dispute adjoins other land called Iyeida and does not adjoin land called Botibab. There is, however, other land called Botibab reasonably nearby. If the ownership of this land were being disputed by two people one of whom was known to own land called Botibab and the other of whom was known to own land called Iyeida, the fact that the adjoining land was called Iyeida would probably tip the balance of probabilities in favour of the latter's ownership of the land. But in this case it has been established that Gania owned land called Iyeida; the weight of evidence is

against her having done so. Furthermore, the Lands Committee in 1929 commented that the land called Botibab owned by Dekeka and Arari could be called Iyeida.

The whole weight of the evidence is, therefore, strongly in favour of the appellants. The appeal is allowed; the determination of the Nauru Lands Committee in respect of portion no.21 is set aside. I find as fact that the land is called alternatively Botibab or Iyeida and was owned by Dekeka and Arari. The persons now entitled to be registered as the owners of portion no.21 are the persons entitled to inherit the estates of Dekeka and Arari. If the distribution of those estates has been already decided - as it should have been many years ago - the details of the present owners can be registered forthwith. If not, the distribution will have to be decided as soon as possible and at this stage the owners will have to be recorded simply as "the persons entitled to the estates of Dekeka and Arari".

15th September, 1972

Chief Justice.