

IN THE SUPREME COURT OF NAURU

Civil Jurisdiction

Land Appeal No. 4 of 1977

MARAKEN DAGAGIO

Applicant

v.

PETER GADARAOA & OTHERS

Respondents

28th September, 1977 at 9.10 a.m.

In Court

Before Mr. Justice I.R. Thompson, Chief Justice

For the Applicant: Mr. D. Gioura

For the Respondents: -

MR. R. AKIRI: Not all the proper respondents have been served. I was not given any notice, although I was joined as a respondent in Land Appeal No. 1 of 1977. I am a co-owner of the land as the result of the decision of the N.L.C. published in Gazette No. 4 of 1962, G/N 19 of 1962.

COURT: Who else is a co-owner as the result of that decision?

AKIRI: Ketner.

COURT: Do you represent Ketner?

AKIRI: No. I learned of the appeal only this morning when Mr. Peter Gadaroa came to my office. He thought I knew about it.

COURT: I shall hear what Mr. Gioura's case is. If it appears that he has a substantial case, I shall then consider what action should be taken to join Ketner and have him served.

GIOURA: The applicant's grandmother, Eidagarin, was the half-sister of the respondent's ancestors, those shown in Gazette Notice No. 296 of 1961. She died in January, 1946, in Truk. From the records available now in the hands of the Nauru Lands Committee there was a gross irregularity when the land Atabio was determined by the Lands Committee in 1938. There were no proper minutes of the meetings. The Lands Committee determined the ownership of the land solely on the word of one member of the family, Eibayeri. The rest of the family were not present. The applicant's grandmother was alive then; she was not present. The decision was made on 23rd May, 1938, by the Lands Committee, in their capacity as Chiefs of the Districts. There were six Chiefs present, Deireregea, Eobob, Amwano, Doboru, Tsiminita and Jose. I submit that they made no proper determination, to ascertain the rightful owners of Atabio, portion no. 242. The Lands Committee failed to comply substantially with the requirements of Administration Order No. 3 of 1938. (Reads Administrative Order No. 3 of 1938.) That Order was made on 19th March, 1938. So there was a gross irregularity. I submit that the decision should be set aside.

Court asks Mr. J.A. Doguape, Vice-Chairman, N.L.C., to state facts apparent from records in possession of N.L.C.

DOGUAPE: The statement made by Mr. Gioura was correct. The Lands Committee at that time dealt with all property in the same way.

COURT: Was the decision in relation to the estate of a person recently dead or generally of ownership of land.

DOGUAPE: So far as I can see from the records, the Lands Committee was determining generally the ownership of the land and not dealing with a deceased estate.

COURT to Gioura: In the application it is stated that Eidagarin was entitled to inherit from Dinai and that Dinai died before 1938. When did he die?

GIOURA: I was unable to find out exactly when he died. I can find no record of his death.

COURT: On the facts as stated it is apparent that the Lands Committee was not concerned directly with the distribution of Dinai's estate, so that it was necessary for it to comply with Administration Order No. 3 of 1938. Rather it was determining the ownership generally of the land, i.e. against all the world and not merely as between the members of Dinai's family.

The practice followed, of the Lands Committee accepting the word of one member of a family as to ownership, would not be acceptable to-day. But it was the practice before the Second World War and is the basis on which the ownership of many portions of land was decided then. The decisions of the Lands Committee were published in the Gazette and, if anyone was dissatisfied, whether he or she was a member of the family which the Lands Committee ^{decided} / owned the land, or a stranger claiming that it did not belong to that family, he or she was given an opportunity to appeal to the District Court or the Administrator or both.

It was not an entirely satisfactory practice by modern standards but it was apparently acceptable to Nauruan society at the time and it is the basis of most of the titles to land in Nauru to-day. If this Court were to hold that, because it does not accord with modern practice, it should be regarded as unacceptable even for 1938, it would at a stroke destroy the stability of present ownership of much of the land in Nauru. If the Court considered the practice so thoroughly objectionable that such a consequence was the lesser of two evils, it would act accordingly. But it is clear that the practice was acceptable at the

time and it would be a far greater evil to destroy the stability of present title to so much land in Nauru.

Unless, therefore, there are any other grounds on which the applicant wishes to base his claim that there was such gross irregularity in 1938 that the Lands Committee's decision must be regarded as a nullity, the application will be dismissed. Are there any other grounds?

GIOURA: No. .

ORDER: Application dismissed.

I.R. THOMPSON
Chief Justice

28/9/77