

RULING

1. This is an application for leave under section 6(1)(a) of the Nauru Lands Committee Act 1956 and section 7(1)(b) the Nauru Lands Committee (Amendment) Act 2012 (this Act came into force on 10 October 2012), to appeal against the decision of Nauru Lands Committee dated 15 June 1973 as to the personal estate of Verbena Agnes Danogoneida Deraudag (Verbena Agnes).
2. The Applicants' mother was Eirumaina and their father was Addi. Prior to Eirumaina's marriage to Addi she was married to Atti and out of this marriage they had a child by the name of Eidinijong. The Applicants Vernia Addi, Lois Aingimea (nee Addi) and Stanley Addi are the surviving children of Eirumaina and Addi. The applicants' brother Nylon Addi is deceased. Eidinijong was adopted by the Applicants' parents.
3. Eidinijong gave birth to Verbena Agnes in 1955, and Verbena Agnes was adopted by the Applicants' parents.
4. The Applicants' mother, Eirumaina, died in 1962. Nauru Lands Committee met on 26 May 1962 to make the determination of ownership and by GNN 108/1962 the following persons were determined the owners of the land belonging to the estate of Eirumaina:
 - (i) Eidinijong D.
 - (ii) Romeo A.
 - (iii) Nylon A.
 - (iv) Vernier A.
 - (v) Stanley Lupino A.
 - (vi) Verbena Agnes Danogoneida
5. Verbena Agnes died in 1971, aged 16 years. She at the time was single and did not have any children.
6. Eidinijong gave birth to Verbina Selina Deraudag (Verbina Selina) on the 24 January 1972. Verbina Selina was never adopted by the applicants' father.
7. Upon the death of Verbena Agnes the Nauru Lands Committee met in 1972 and her estate was allocated to Verbena Agnes Danogoneida Deraudag. According to the government gazette GN 113/1973 the present owner is shown as Verbena Agnes Danogoneida Deraudag. This is clearly in error as she was deceased.
8. The hearing of the Nauru Land Committee took place on the 30 June 1972 and it appears that none of the applicants were present but Eidinijong was invited by the

Nauru Lands Committee to attend the hearing. Eidinijong was asked by the Vice Chair as to who should take Verbena Agnes' share and she replied that the share should go to Verbina Selina, her youngest child. However in the GN 113/1973 the owner is recorded as Verbena Agnes D. Since that date Verbina Selina has been collecting the shares.

9. According to the submissions filed by the Applicants Pleader Mr. Clodumar, the Applicants found out about the 1973 Gazette in 1981, this information should have been contained in the applicants' affidavit.
10. This matter first came before the Court on the 26 June 2014 when Mr. Clodumar appeared on behalf on behalf of the Applicants and Mr Tom'tavala on behalf of the First Respondents, and Mr. Tolenoa appeared for the Second Respondent as *amicus curiae*. Mr. Tolenoa advised the court that he did not have any instructions and would need to seek the permission of the Secretary of Justice to appear in this matter. Mr. Tolenoa has not appeared in these proceedings since, nor has he filed any materials on behalf of the Second Respondent.
11. The Applicants and the first respondent have filed written submissions which are before the court. The applicants are seeking leave to file an appeal against the decision made in 1973, 41 years ago.
12. The law relating to the principle governing the issue of the granting of leave to file an appeal out of time was succinctly stated by Eames C.J. in the case of *Capelle v. Nauru Lands Committee and another* [2013] NRSC4, where he stated:

"An application for leave to appeal out of time should not be judged by any strict formula or rigid formula. The relevant principles are well described in Halsbury's Laws of Australia: The discretion is unfettered and should be exercised flexibly with regard to the facts of the particular case. The court will not decide the application according to a formula created by erecting what are merely relevant factors into the arbitrary principles so as to allow the automatic production of a solution. However, since the discretion to extend time is given for the purpose of enabling the court to avoid an injustice, the court must determine whether justice as between the parties is best served by granting or refusing the extension sought. A consideration relevant to the exercise of the discretion is that upon the expiry of the time allowed for the appeal the respondent has a vested right to retain the judgement unless the application is granted. Other relevant matters include the length of the delay in commencing the appeal, the reasons for the delay, the chances of the appeal succeeding if time is extended and the blamelessness of the applicant."

13. We accept the applicants only became aware of the decision of the Nauru Lands Committee some time after the matter had been gazetted. At this time there was no avenue of appeal open to them. Furthermore we accept that the applicants tried to resolve this matter within the family with the Second Respondent's mother, but that this was unsuccessful. It was only after October 2012 that the Applicants were able to launch an appeal, and in light of the proposed redistribution of trust fund monies in early 2014, the matter of Verbina Selina benefitting from a share in the estate of Verbena Agnes was brought to the fore.
14. In this matter we are of the view that no blame can be attributed to the Applicants for the error in the government gazette. The first respondent invited only the Second Respondent's mother to attend a hearing and as stated above the applicants were not also afforded the opportunity to address the Nauru Lands Committee.
15. In the matter of *Gaoawa Daoae v. NLC and Another*, 19 March 2013, leave was refused where the determination was made 50 years prior. In refusing to grant leave Eames C.J. stated that at paragraph 15:

"Mr Aingimea submitted that were the 1963 decision to be overturned now, it would cause great hardship to his clients and de-stabilize a situation that has been applying for a very long time. Transactions have taken place on the assumption that title was not in dispute."
16. In this matter the land has not changed ownership, nor is the title in dispute.
17. The Second Respondent is not a beneficiary of the estate of Verbena Agnes.
18. We grant leave to the Applicants to appeal the determination against the Nauru Lands Committee decision GN113/1973 concerning the estate of Verbena Agnes published on 15 June 1973.
19. We make the following orders:
 - (a) The Applicants file a notice to appeal concerning the estate of Verbena Agnes Danogoneida Deraudag within 7 days;
 - (b) The Notice of Appeal should set out the grounds of appeal and relief sought;
 - (c) The Notice of Appeal to be served on Verbina Selina Deraudag within 7 days.

DATED this 1st day of October 2014.

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Chief Justice Joni Madraiwiwi

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Justice Jane Hamilton-White

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Justice Mohammed S. Khan