



THE SUPREME COURT OF NAURU

[CIVIL JURISDICTION]

Land Appeal No. 01/2017

Between: Romys Eobob & Chaldean Atto

PLAINTIFFS

And: Chris Amandus & Ors

AND: Nauru Lands Committee

DEFENDANTS

Before: Judge Rapi Vaai

APPEARANCES:

Appearing for the Plaintiff: V. Clodumar

Appearing for the 1<sup>st</sup> Respondent: K. Tolenoa

Appearing for the 2<sup>nd</sup> Respondent: M. Eoe

Date of Hearing: 10, 16, 23, 26 May & 16, 23 July

Date of Ruling: 3rd August, 2018

## **Introduction**

1. This an appeal against the determination of the Nauru Lands Committee, published in the Gazette No. 21 of 10 February 2017 in respect of the determination of the beneficiaries of the estate of the late EIKAURA GARABWAN of Boe District.
2. As the only surviving adopted sister of EIKAURA, the Appellant claim she should be the sole beneficiary of the estate. Appeal by Chaldean Atto was abandoned.
3. Evidence in this appeal was by way of affidavits and oral testimonies.

## **Background**

4. Garabwan and Eabweo late of Boe had two biological daughters Ekaura and Ekauwe. Upon the death of Garabwan his estate was distributed amongst the mother (with a life time interest) and the two daughters by the family agreement.
5. After the death of the mother, her estate was divided equally amongst the two sisters and the appellant by family agreement of the three of them. The father's estate was divided between Ekaura and Ekauwe.
6. On the death of Ekauwe, the appellant and Ekaura went before the Lands Committee and by their agreement, Ekaura took the land belonging to Garabwan as well as the personal belongings. The appellant shared Eabweo's land with Ekaura.
7. When Ekaura died, the Nauru Lands Committee excluded the appellant from the family meeting to discuss the distribution of the estate.
8. Although the Lands Committee did recognize the appellant as being adopted by custom, it was of the view that the appellant was by custom adopted by the mother Eabweo only but not by the husband Garabwan.  
As a consequence the Committee decided to exclude the appellant from inheriting part of Ekaura's estates which consisted of her father's estate.
9. The first Respondents who benefitted from the distribution of the Estate of Ekaura are relatives or family of Garabwan.  
They oppose the appeal.

## **Was the appellant adopted by Garabwan and Eabweo?**

10. A great deal of the courts time was consumed through testimonies of witnesses who testified to contest the issue of whether the appellant was adopted.  
But the answer was blatantly obvious. When Ekaura's estate was distributed, the appellant received part of the estate.

The Committee's determination which the first respondents did not challenge, recognized the appellant as the adopted child. The only issue the Committee had with the appellant was that, the Committee was of the view that being a customary adoption, the appellant (being a relative of the mother) was adopted by the mother only and the appellant could therefore only inherit the mother's estate but not the fathers.

11. There is also uncontested evidence that when the other sister, Ekauwe passed away, the appellant and Ekaura went before the Committee to request distribution of the estate by agreement of the family. The same procedure was adopted when the mother died.
12. An independent witness Claudia Edward who worked at the Nauru Phosphate Royalties Trust from 2000 to 2014 together with the appellant told the court, that she personally delivered envelopes of cash and messages on pay week from the appellant to her 2 adopted sisters for their upkeep. As a result Claudia came to know both Ekaura and Ekauwe very well.  
This testimony was not challenged under cross examination.
13. Annia Tofinga who lived in Victoria Australia testified she had known Ekaura for over twenty years. Ekaura travelled to Melbourne on several occasions to visit and stay with the appellant, the children and grandchildren.
14. There is also the evidence of Olina- Rose Harris the 11 year old granddaughter of the appellant who looked upon Ekaura, her grandaunt, as her grandmother who often travelled to Australia to look after her. Olina's first visit to Nauru was with Ekaura with whom she had a loving unforgotten bond. Her evidence was unshaken under cross examination.
15. The testimonies adduced by the first respondents were unreliable, speculative and mostly hearsay. Much of the evidence focused on how often the appellant was seen at the house in Boe, and the circumstances why she was there. Chris Amandus for instance who was born in 1971 told the court he did not see the appellant at Boe as a child.
16. When Chris was 3 or 4 years old, the appellant who was then 13 or 14 was attending school in New Zealand.  
At paragraphs (g) to (h) of his affidavit he deposed:

(g) That as far as I understand Romy and Chaldean are not customary adopted ---and neither are we blood related.

(h) That as far as I understand I was never told by my parents and other senior members of the families that Garabwan and his wife Eabweo had a third daughter.....

(i) That as far as I understand the plaintiff Rommy was only brought in to be tended by Garabwan wife while her mother is working.

(j) That I far as I understand .....

(k) That as far as I understand.....

17. The obvious logical conclusion is that the appellant was adopted by Garabwan and Eabweo.

#### **The Nauru Lands Committee decision.**

18. The Committee submitted two reasons why the appellant did not inherit the lands from the estate of her adoptive father Garabwan.

The first as submitted by counsel related to an entry in the Committee minute book on the 24<sup>th</sup> October 1984 concerning the distribution of the estate of Garabwan. It is noted that at the family meeting with the Committee the appellant's adoptive mother stated that,

“Romy Eobob is not to inherit any estate from Geoseph Garabwan (Father)”.

19. The appellant was accordingly left out of the estate distribution.

At the time the appellant was 23 years and could have challenged the decision but she chose not to.

20. The second ground was stated by Abawo Diringa on behalf of the committee in his testimony.

He told the court firstly that for customary adoption to be recognized, the adopted child must come from either the adoptive mother's family or the adoptive father's family.

Secondly he conceded that although the appellant was in fact adopted, she was in fact adopted by the mother and as a consequence her inheritance is restricted to her adoptive mother's estate.

21. I will deal with each ground of the Committee's refusal:

#### **Garabwan Estate:**

22. Garabwan died intestate. He did not exclude the appellant from inheriting his estate, it was the decision of the mother which the appellant respected and did not challenge.

### **House at Boe**

28. House in Boe was designated by the Committee to be owned by those beneficiaries declared owner of the portion of land upon which the house stands.
29. It is not disputed that the house was built under the Nauru Housing Scheme pursuant to the provisions of the Nauru Housing Ordinance 1957.
30. Counsel for the appellant correctly submitted that the ownership of the house is vested in the Republic and accordingly does not form part of the estate of Ekaura. The house therefore remains under the tenancy of the appellant's adoptive father.

### **Summary of Courts findings**

31. The appellant is the adopted daughter of Garabwan and Eabweo.
32. As the adopted daughter she has the same rights of inheritance as her other two sisters Ekauwe and Ekaura.
33. The appellant was not excluded by her adoptive father from inheriting his estate.
34. As the sole surviving sibling of Ekaura she should have been invited by the Committee to attend the family meeting to discuss the distribution of the estate of Ekaura.
35. The ownership of the house on portion 60 at Boe does not form part of the personal estate.

### **Results**

36. The appeal is allowed.
37. The decision of Nauru Lands Committee is set aside.
38. The matter is returned to the Nauru Land Committee to determine the estate of Ekaura in accordance with the Administration Order No. 3 of 1938 Regulation, and in accordance the findings of the court in paragraphs 31 to 35.
39. The first Respondents to pay the costs of the Appellants. Costs to be taxed by the Registrar.

Dated this 3<sup>rd</sup> day of August 2018



  
Judge Rapi Vaai.