Civil Action No.4 of 1975

NEI TARAWA TETAU - Plaintiff

v.

SECRETARY, NAURU LOCAL GOVERNMENT COUNCIL - Defendant

JUDGMENT:

The plaintiff is claiming a declaration that she is a member of the Nauruan Community. She claims to be a member by virtue of section 4(a) or section 4(b) of the Nauruan Community Ordinance 1956-1966. The relevant parts of section 4(a) and (b) are :-

> "4. For the purposes of the laws in force in Nauru, the following persons constitute the Nauruan Community :-
>
> (a) persons who, immediately before the commencement of this Ordinance, were, or were deemed to be, aboriginal natives of Nauru by virtue of the institutions, customs and usages of the aboriginal natives of Nauru; and
>
> (b) ...., Pacific Islanders married, before the 1st day of January, 1954, to persons who were, or were deemed to be, aboriginal natives of Nauru by virtue of the institutions, customs and usages of the aboriginal natives of Nauru."

The plaintiff was born in the Gilbert Islands and was Gilbertese by birth. In 1949 a man named Tetau, who was himself Gilbertese by birth but had been living in Nauru since 1943, went to the Gilbert Islands, married the plaintiff there and brought her back with him to Nauru that same year. Thereafter he and the plaintiff remained in Nauru. He died here in 1974. The plaintiff still resides here.

The plaintiff's case is that Tetau had become a Nauruan before he married her, so that she is a Nauruan by virtue of her marriage to him. She also claims that she was herself accepted as a Nauruan and that this was evidenced in

1951 and 1953 by her name being included on the electoral roll for the Nauru Local Government Council elections. Only Nauruans are entitled to have their names on that roll. It is not disputed that, if Tetau was a Nauruan in 1948, 1949, 1951 or 1953, he was never subsequently deprived of that status. Likewise it is not disputed that, if the plaintiff ever became a Nauruan, she has never been deprived of her status as such. The defendant's case, however, is that neither Tetau nor the plaintiff ever became a Nauruan.

The plaintiff's claim to be a member of the Nauruan Community by virtue of section 4(a) of the Ordinance can be disposed of briefly. The only evidence indicating that she was personally accepted into the community (as distinct from becoming a member by virtue of being Tetau's wife) is the evidence of enrolment on the electoral roll. Subsequently, however, her name was removed and apparently she did nothing to have it restored to the roll. There is conflicting evidence of how the rolls were compiled. It would, therefore, be quite unsafe to accept the evidence of her enrolment, unsupported as it is by any other evidence of her acceptance into the Nauruan Community, as proof of her having been personally accepted. It is clear that even now she has still not fully assimilated to the Nauruan customs and usages. Her claim, insofar as it is based on section 4(a) of the Ordinance, is dismissed.

It is necessary, therefore, to consider now whether in 1949 Tetau was a Nauruan. He came to Nauru in 1943, brought by the Japanese from Ocean Island. Evidence has been given by Mr. Jacob Dagabwinare, a retired radio operator and magistrate, now a businessman, who provided land on which Tetau lived until his death and on which the plaintiff still lives, that Tetau became a Nauruan in 1943. He said that Tetau went to the Council of Chiefs for approval of his adopting Mr. Dagabwinare's daughter and at the same time was made a Nauruan. Mr. Dagabwinare admitted, however, that he was not present and had only heard from Tetau that he was made a Nauruan then.

The principal evidence that Tetau became a Nauruan is a document written in October, 1948, and signed by the Head Chief, Timothy Detudamo. That document reads :-

"TO WHOM this may concern.

The bearer, TETAU, a naturalized citizen of Nauru is going to Nikunau Island on a short visit.

At end of the visit, he must be allowed to return to his home in Nauru."

It has been suggested by the defence that that document was intended only as a travel document and that the truth of the statement made in it cannot be relied upon. In view of the status of its signatory and the absence of any evidence to suggest that he had either any motive or any inclination to write mendacious documents of this nature, and as its authenticity (that is, that it was signed by the Head Chief) is not challenged, I have no hesitation in finding that the statement in it was what the Head Chief believed to be the truth; that is to say, I find it proved that Head Chief Detudamo regarded Tetau in October 1948 as "a naturalized citizen of Nauru".

The only other evidence supporting the plaintiff's claim that Tetau was a Nauruan is the inclusion of his name on the electoral roll in 1951 and 1953. The same considerations apply to that evidence in his case as apply to the similar evidence relating to the plaintiff, which has been considered above. His name was removed from the roll by 1959 and apparently he did nothing to have it restored. By then, however, he was over 70 years of age.

Like the plaintiff Tetau never fully assimilated with the Nauruans and never learned to speak their language. That, however, is immaterial to the question whether he was accepted as a Nauruan at some time between 1943 and 1948. It might possibly have been a ground for expelling him from the Nauruan Community at a later date but, as I have already observed, it is not disputed that no such action was ever taken.

For the defendant Mr. Berriman has submitted that the Council of Chiefs, a non-statutory body which, under the Australian administration, was responsible for the affairs of the Nauruans until the Nauru Local Government Council was established in its place in 1951, neither admitted non-Nauruans into the Nauruan Community nor had the power to do so, and the defendant has given evidence to support that submission. Mr. Berriman suggested that possibly

Head Chief Detudamo purported to grant the admission by himself, independently of the Council of Chiefs and without authority. In support of that submission Councillor Austin Bernicke, the present Secretary of the Nauru Local Government Council, gave evidence that he was himself a member of the Council of Chiefs from the early 1940s until 1951 and did not know of the Council admitting any non-Nauruans into the community. However, strong evidence that some non-Nauruans were admitted to Nauruan citizenship by the Council of Chiefs was adduced by the plaintiff.

The evidence was partly documentary and partly the evidence of a Nauruan who worked in the Nauruan Affairs Office during that period, Mr. David Hiram. He gave evidence that the Council of Chiefs adopted a policy of allowing restricted permanent settlement of persons from other Pacific Islands, who, he said, were known as "domesticated" Nauruans. That expression is not identical with the one used by the Head Chief in Exhibit 4 but it obviously refers to the same concept. Mr. Hiram also gave evidence of the introduction by the Council of Chiefs of a quota system for the acceptance of new permanent residents in Nauru. That evidence is supported by a document on an old Administration file of about 1947 which was tendered as Exhibit 5. It shows that a scheme was at least prepared for accepting a restricted number of other Pacific Islanders as permanent members of the community but with a right reserved to the Council of Chiefs to send away from Nauru any who were found to be undesirable. That effect was given to that scheme has not been established, but it is strong evidence of the attitude of the Council of Chiefs at the time. The provisions of the scheme have similarities with those of the Nauruan Community Ordinance, made in 1956.

Further documentary evidence relating to the power of the Council of Chiefs is contained in the Reports made by the Australian Government to the United Nations for the years from 1st July, 1950, to 30th June, 1951, from 1st July, 1951, to 30th June, 1952, and from 1st July, 1952, to 30th June, 1953. In the first of those Reports it is stated :-

> "Through the Council of Chiefs, the Nauruans retain their customary right to grant Nauruan citizenship to an immigrant who conforms to the obligations respecting land tenure and marriage, in accordance with local native practice."

In the second :-

> "However, the Nauru Local Government Council retains the right, previously held by the Council of Chiefs, to confer Nauruan citizenship on any native immigrant subject to such conditions as the Council may prescribe."

A statement similar to that contained in the second Report is made in the third. The accuracy of those statements is corroborated by the fact that, when the Nauruan Community Ordinance was made in 1956, it contained statutory provision for the Nauru Local Government Council to be able to grant membership of the Nauruan Community and to take it away.

Councillor Bernicke has given evidence that he knew of no admission of non-Nauruans to Nauruan citizenship, no scheme for accepting new permanent residents and no power vested in the Council of Chiefs to admit non-Nauruans to citizenship. However, he qualified his evidence in this regard by stating that the Council of Chiefs usually met twice a week, with a special meeting with the Administrator on one Wednesday in each month and that, as he occupied a responsible position at the hospital, he was not available to attend any meetings other than the monthly Wednesday meeting, i.e. about one meeting in ten. This is undoubtedly why Councillor Bernicke, who is most highly respected throughout Nauru and was obviously not trying to mislead the Court, was unaware of those matters.

The only other witness for the defence, again a highly respected Councillor of whose probity this Court has no doubt, was not sufficiently involved in the affairs of the community in the immediate post-war years to have any great knowledge of the activities of the Council of Chiefs. Indeed, he frankly admitted his lack of knowledge of them.

In view of the strong documentary evidence supporting it, I accept the evidence of Mr. Hiram as substantially accurate and I find as fact that the Council of Chiefs both had the power to admit persons from other Pacific Islands to the Nauruan Community (or, as it was expressed at the time, Nauruan citizenship) and in the period about 1947-1948 exercised those powers. Whether, in hindsight, it acted wisely in doing so is not a matter with which this Court can

concern itself; it is concerned only with ascertaining what was done and whether it was done validly. The Head Chief was the chairman of the Council of Chiefs and the leader of the Nauruan Community. He, better than anyone else, would have known to whom Nauruan citizenship had been granted. I am, therefore, satisfied that in Exhibit 4 he was stating a fact of which he had personal knowledge, that Tetau had been granted Nauruan citizenship, that is to say, had been accepted by the Council of Chiefs as a member of the Nauruan Community. I therefore find it proved that by October, 1948, Tetau had become a member of the Nauruan Community.

In view of the state of affairs before the Nauruan Community Ordinance was made in 1956, that is to say the powers of the Council of Chiefs to grant Nauruan citizenship to non-Nauruans, and the fact that it had, at least for a short period, exercised those powers, it is clear that the expression "persons who ... were deemed to be aboriginal natives of Nauru by virtue of the institutions, customs and usages of the aboriginal natives of Nauru" used in section 4(b) of the Ordinance means persons to whom Nauruan citizenship had been granted by the Council of Chiefs. Tetau was such a person. I have already recorded the fact that it is not contended by the defence that he was deprived of his Nauruan citizenship or expelled from the community before 31st December, 1962, the date on which the Ordinance came into force. The plaintiff is a Pacific Islander; she was married to Tetau before 1st January, 1954. When the Ordinance came into force, therefore, she became a Nauruan, a member of the Nauruan community, by virtue of the provisions of section 4(b) of the Ordinance.

The defence has adduced evidence that the plaintiff is not conforming to the institutions, customs and usages of the Nauruans. That is disputed by the plaintiff but, if it is so, the Nauru Local Government Council had power before Independence to order that she should cease to be a Nauruan. That power was provided by section 9 of the Ordinance, which also prescribed the procedure to be followed by the Council if it decided to take that course. Up to date, however, it has not exercised that power in respect of the plaintiff. She has, therefore, at all times since 31st December, 1962, been, and she still is, a member of the Nauruan Community, and for the purposes of the laws of Nauru a Nauruan.

Accordingly the plaintiff is entitled to the declaration which she is seeking and to her costs, to be taxed by the Registrar.

I.R. Thompson

I.R. Thompson
Chief Justice

3rd January, 1976

Order: Nei Tarawa Tetau is declared to be a member of the Nauruan Community by virtue of section 4(b) of the Nauruan Community Ordinance 1956-1966.

I.R. Thompson

I.R. Thompson
Chief Justice

3rd January, 1976.