



IN THE SUPREME COURT OF NAURU
AT YAREN DISTRICT

LAND APPEAL NO. 7/2014

BETWEEN

Sylvanius Kam and Others

APPELLANT

AND

Nauru Lands Committee

FIRST RESPONDENT

AND

Beneficiaries of the Estate of Einganga Mary
Olsson (Pauline Grundler, Pansy Star, Carol
Olsson, Baron Olsson, Ricky Olsson, Rocky
Olsson, Ransom Olsson)

SECOND RESPONDENT

Before: Khan, ACJ
Date of Hearing: 1 August 2016
Final Submissions: 23 November 2016
Date of Judgement: 7 February 2017

Case may be cited as: Kam-v- Nauru Lands Committee & Others

CATCHWORDS:

Lease documents executed 1950 – no witnesses as to signature nor any expert witness - whether court can decide as who signed the lease documents by comparing signatures on documents subsequently executed by the parties - whether ownership can be decided based on previous determinations by Nauru Lands Committee.

APPEARANCES:

Counsel for the Appellant:	V Clodumar (Pleader)
Counsel for the First Respondent:	J Udit, Solicitor General
Counsel for the Second Respondent:	L Scotty (Pleader)

JUDGMENT

INTRODUCTION

1. On 8 January 2014, the Nauru Lands Committee (NLC) made a determination in respect of estate of Einganga Mary Olsson of Anibare District in respect of various land owned by her by G.N. No 229/2014 in particular in regards to the land Portions 93 and 94 being land known as Eatoango and named her husband Donbeiya Olsson as the beneficiary, as life time owner (LTO).
2. Donbeiya Olsson died some time in 2014 and his estate was determined by the NLC by G.N. No 35/2015 on 21 January 2015 and his children were named as beneficiaries as follows:
 - 1) Pauline Grundler (nee Olsson);
 - 2) Pansy Star (nee Olsson);
 - 3) Carol Olsson;
 - 4) Baron Olsson;
 - 5) Ricky Olsson;
 - 6) Rocky Olsson;
 - 7) Ransom Olsson
3. The appellants are appealing the decision of the NLC made in G.N. No 229/2014 in respect of Portions 93 and 94.
4. The appellants are the children and grandchildren of Einganga Baiwo Kam and this appeal is based on the fact that there was some confusion in the allocation of land by NLC to the 2 Eingangas, namely, Einganga Olsson and Einganga Baiwo Kam.

DELAY IN PROCEEDINGS

5. This proceeding has a long history. It commenced on 27 January 2014 and was subject to 2 challenges in respect of the form of the appeal; the first challenge was on the application of the NLC in December 2014 to remove it as a party to the proceedings. This application was dismissed by the Full Bench of the Nauru Supreme Court. The second challenge was in February 2015 when the appeal was filed by way of a Writ of Summons and a Statement of Claim instead of a Notice of Appeal in accordance with the requirements of Practice Direction No. 1 of 2015.
6. Another the reasons for the delay was that when the petition was filed following the ruling in February 2015 the appellants failed to name all the beneficiaries of the Estate of Einganga Olsson and only stated that the claim was against the Estate of Einganga Olsson. I have stated this repeatedly that when a claim is made against an estate, then naming of the personal representative or executor or executrix of the estate would suffice, but when NLC determines the beneficiaries of the estate, there is no need to produce Probate or Letters of Administration, and, therefore the need to name all the beneficiaries as determined by NLC.

THIS APPEAL

7. The appellants filed an appeal against the determination of NLC in respect of G N No 229/2014 which dealt with Portions 93 and 94. However, since filing the appeal and upon exchange of documents it transpired that Portion 98 was merged by the NLC into Portion 60 and the name of the land being Eatetakuane and that portion was also included in the appeal.

AGREED FACTS AND ISSUES FOR DETERMINATION

8. The parties filed agreed facts and issues for determination on 16 May 2014 which is as follows:

AREEED FACTS

- 1) The appellants are the children or grandchildren of Einganga Baiwo Kam
- 2) The late Donbeiya Olsson was the named beneficiary of the Estate of Einganga Mary Olsson as published in G.N. No 4 of 8 January 2014. GNN 229/2014 page 14-15. Exhibit SK/01.
- 3) Listed on Page 15 of the G.N. No 4 of 8 January 2014 are Land Portion 93 "Eatoango" and Portion 94 named as "Eatoango" the subject of the appeal. Exhibit SK/01.
- 4) A Memorandum of Agreement was made on 18 January 1950 between Einganga of Nauru (the lessor) and the British Phosphate Commissions of Melbourne and Nauru (the lessee) in respect of land portion 93 in Denigomodu known as "Eatogango" commencing on 1 July 1947 and expiring on 31 March 2000. Exhibit SK/02.
- 5) A Memorandum of Agreement was made on 18 January 1950 between Einganga (the lessor) and the British Phosphate Commissions (the lessee) in respect of land portion 94 Denigomodu commencing from 1 July 1947 and expiring on 31 March 2000. Exhibit SK/03.
- 6) Notice issued with Government Gazette No 24 of 14 June 1930 published under Paragraph 2 births registered at administration headquarters registered the birth of Einganga Deraidid Agnes. Exhibit SK/06.

- Name: Deraidid
- Date of Birth: 6 June 1930
- Sex: Female
- Parents: Father – P.C. Johannes
Mother – Danaero
- District: Boe

• Tribe: Lamwit

- 7) The Certificate of Baptism issued by the Catholic Church of Nauru recorded Enana Agnes born at Naoc (now known as Boe) on 6 June 1930 to Johannes Halstead and Danaero. That Enana Agnes is the same person named Einganga Deraidid Agnes. Exhibit SK/06.
- 8) Administration Notice with Gazette No. 10 of 20 March 1936 in paragraph 3 under the births registered at administration headquarters registered the birth of Ereidanamo Margarita Maria. Exhibit SK/07.
 - Name: Ereidanamo
 - Date of Birth: 21 March 1936
 - Sex: Female
 - Parents: Father – Damijono
Mother – Eidobobwea
 - District: Baitsi
 - Tribe: Iruwa
- 9) The Certificate of Baptism issued by the Catholic Church recorded the names Ereidanamo Margarita Maria born at Baitsi on 21 March 1936 to Damaijono and Edobobwea. Exhibit SK/07.
- 10) The name Einganga (Enana) was not one of her recorded names.
- 11) Administration Notice issued with Government Gazette No. 35 of 20 August 1938 recorded the death of Damaijono (male, aged 33 years) of Baitsi District on 12 August 1938 in Baitsi District. Exhibit SK/13.
- 12) Gazette No. 33 of 3 August 1970 published the determination of the Estate of Damaijono namely Portions 93, 94 and 98 in Denigomodu (commonly known as Denig) District. The beneficiaries of the Estate of Damaijono were Einganga Olsson and Eidobobwea. Eidobobwea had life time interest only. Exhibit SK/09.
- 13) A Deed of Assignment was signed by the owner of Portion 60 in Denigomodu and Nauru Phosphate on 18 July 1972. The named owners were Einganga Olsson and Eidobobwea. This means that Eidobobwea was alive in 1950 when the lease for Portions 93 and 94 were executed. The signature of Einganga Olsson is shown on the Deed. Exhibit SK/08.
- 14) The signature of Einganga Baiwo is shown on Agreement dated 22 September 1970 that was signed by her and other land owners. Exhibit SK/10 for Portion 27 Yaren District.
- 15) Memorandum of Agreement was made on 18 January 1950 between Einganga of Nauru (the lessor) and the British Phosphate Commissions (the lessee) with a commencement on 1 July 1947 for Portion 98 in Denigomodu District and expiring on 31 March 2000. Exhibit SK/11.

- 16) Land card of Einganga Olsson where the Lands Committee struck out Portion 98 of Denigomodu District by Gazette No. 12/1973. This became part of Portion 60 in Denigomodu District which was the initially determination as explained in letter of L Scott of 6 September 1971. Exhibit SK/18
- 17) In Gazette No. 15 of 27 April 1973 under G.N. No. 70/1973 the Nauru Lands Committee published the determination of the Estate of Einganga Baiwo. The land "Anaoe" Portion 185/186/188/190 in Meneng District was recorded as owned by the deceased Einganga Baiwo. This conflicts with Einganga Olsson's land card mentioned in paragraph 16. There is no name "Anaoe" in Meneng District listed in her estate in Gazette No. 4 of 8 January 2014. Exhibit SK/12 and SK/14. These exhibits are produced to demonstrate that there could be a confusion as to which Einganga that is "Einganga Olsson" or "Einganga Baiwo".
- 18) Minute of Meeting between Kam Family and Einganga Olsson Family at the Nauru Lands Committee dated 10 October 2012 in regards to the estate of Damaijono. Exhibit SK/15. This was held to resolve the confusion as to the ownership by reference to "Einganga" whether it was "Einganga Olsson" or "Einganga Baiwo".
- 19) Portion 60 Denigomodu District was noted in Land Card as Gazette No. 1/1934. Portion 98 was determined and Gazetted in 1970 at Gazette No. 155/1970. Portion 98 was cancelled by Gazette No. 12/1973 and Gazette No. 56/1973.

ISSUES

- a) What happened to the land portion 98 after the cancellation in Gazette No. 12/1973?
- b) Whether Portion 98 is part of Portion 60 or a separate piece of land?
- c) If Portion 98 became part of Portion 60 after cancellation in 1973, how is Einganga Olsson still receiving rental on Portion 98 and Portion 60 separately in 1991?
- d) Who, "*Einganga Olsson*" or "*Einganga Baiwo*" signed the agreements in 1950 referred to above as the agreement only shows "Einganga". There is an omission of the surnames "*Olsson*" and "*Baiwo*". Parties will call oral evidence to establish their contentions.
- e) Whether Portions 93, 94 and part of (formerly described as Portion 98) in Denigomodu district belongs to the descendants of Einganga Baiwo, the appellants.
- f) Whether Portions 93 and 94 and Portion 60 (including Portion formerly known as Portion 98) belong to the descendants of Einganga Olsson.

BUNDLE OF EXHIBITS

9. In addition to filing the agreed facts and issues for determination, the parties also tendered a bundle of agreed documents.
10. Following the filing of the agreed facts the matter was set down for hearing on 1 August 2016. Since the appeal was under the Act the hearing was heard de novo and the parties were allowed to adduce fresh evidence. The appellant called 2 witnesses who were cross examined by the pleader for the second respondent and were not cross examined by the counsel for the first respondent. No evidence was adduced by the first and second respondents.

WRITTEN SUBMISSIONS

11. Upon completion of the hearing parties were allowed time to file written submissions. Counsels have filed very well researched and extensive written submissions which have been of great assistance to me in the determination of this complex case.

BIRTH AND DEATH OF PARTIES

12. Einganga Kam was born 6 June 1930. Her surname according to her Certificate of Birth registration is Johannes and her given name in Einganga. Her father's name was Johannes and her mother's name was Degearo.
13. Einganga Olsson was born 21 March 1936. According to certificate of registration her surname was Damaiyongo and her given name was Einganga Eireidenamo. Her father's name was Damaiyongo and her mother's name was Eidobobwea. She was their only child.
14. Einganga Olsson's father Damaiyongo died on 12 August 1938 aged 33 (see Government Gazette Notice 35 of 20 August 1938).

DETERMINATION OF ESTATE OF DAMAIYONGO

15. NLC determined the estate of Damaiyongo by G.N. No. 15/1970 on 3 August 1970 and allocated Portions 93, 94 and 98 (name of land Eatoango) to Einganga Olsson (1/2 share), and Eidobobwea (1/2 LTO).

LEASE TO BRITISH PHOSPHATE

16. Three lease documents were entered between the owners of Portions 93, 94 and 98 of land known as Eatoango for a period of 50 years with effect from 18 January 1950 and with the lease to expire in 2000. The lessors were described as Einganga in all 3 leases.

DEED OF ASSIGNMENT

17. On 18 July 1972 Einganga Olsson and Eidobobwea R entered a Deed of Assignment with Nauru Phosphate Corporation in respect of Portion 60 known as Eataquane in the District of Denigomodu. This document was signed by both Einganga Olsson and her mother Eidobobwea.
18. Einganga Baiwo signed a lease document in respect of Portion 27 together with other land owners and the Republic of Nauru (portion 27 lease) on 22 September 1970.

ISSUES (d) and (e)

19. It is Mr Clodumar's contention that:
 - a) When Einganga Olsson allegedly signed the lease when she was a juvenile;
 - b) Further, the fact that the easement in 1972 was co-signed by her by her mother suggests that her mother was alive in 1950 but did not sign the lease document;
 - c) Further she was not baptised as Einganga;
 - d) That probably it was Einganga Baiwo Kam who signed the lease documents and therefore she was the owner of Portions 93, 94 and 98.
20. There is no direct evidence as to who signed the 3 lease documents. It has been impressed upon me that I should compare the signatures of Einganga Olsson on the easement document signed in 1972 by Einganga Olsson and Einganga Baiwo Kam signature as it appears on Portion 27 lease in 1970. I must confess that I hold no expertise in comparing handwriting or signatures but I will say that the signatures on the lease documents appears to be very different to signature on the 2 other documents. I might just add that Einganga Baiwo Kam's signature bears no resemble to the signature on the lease documents.
21. The signature in itself is not conclusive of the fact that it was signed by one or the other. In the circumstances I will peruse the records of the NLC to determine as who may have signed the lease documents. NLC's record clearly states that Damajono and Eidobobwea had only one daughter by the name of Einganga, and it further stated that Damajono was the owner of all the lands described in Portion 93, 94 and 98. On this basis I would say that it was their daughter Einganga Olsson who signed the 3 lease documents.
22. The ownership of Einganga Olsson's father's estate was not determined by the NLC until 1970 and this explains as to why she signed the lease documents alone. And when it was determined, both her mother and she signed the easement document in 1972.

23. Mr Clodumar in his agreed bundle of documents produced the minutes of meeting (exhibits 15) between NLC and the Kam family. Unfortunately, these minutes are in the Nauruan language and I am not conversant with it. The Minutes provided to the court are from pages 81-84 of the Minute Book of the NLC. On 27 April 2015, the Nauru Lands Committee Council submitted a translated version of the Minutes in relation to pages 81-84. The translation bears the seal of the Nauru Lands Committee and this meeting was attended to by Einganga Olsson and Einganga Baiwo Kam and others. In the Minute, it is stated as follows:

“Chair: These people want to verify the signature on this document.

Einganga: Documents given to me were all signed by me.”

Then it is further stated:

“Chair: From the Committee’s viewpoint she is the owner because she is Damaiyongo’s daughter.

Chair: I close this meeting, If she says the Committee determined the lands in her name, then it is her land. It is obvious Derog Gioura signed the lease as the Acting President then but the lease was prepared by the Lands and Survey and that provided the land owners of the concerned land according to the records.”

24. Considering the above document, it is abundantly clear that Portions 93, 94 and 98 belonged to Einganga Olsson.

ISSUES (a), (b) and (c)

Issue (a) What happened to the land in Portion 98 after cancellation in Gazette No 12/1973?

Issue (b) Whether Portion 98 is part of Portion 60 or a separate piece of land?

25. In the letter of the Director of Lands and Survey dated 6 September 1971 it was ascertained that Portion 98 was part of Portion 60. The letter states as follows:

“The portions concerned are 60, 60 Extend and 98 in Denigomodu. The earliest reference we have to Portion 60 is a plan (Denig 12) signed by the government surveyor Langford in 1934 which also shows several other portions in the vicinity.

A plan signed in 1949 by E. Chapman, Acting Government Surveyor, shows that the boundaries of the present N.P.C. Hospital lease and includes

an area which has been designated (part of) Portion 98. This area is in fact entirely encroaching on the original Portion 60.

A later survey, by R. Tamakin, in 1957, partly re-established the boundaries of Portion 60 but makes no reference to Portion 98."

My interpretation of the above is that when Mr Chapman surveyed the boundaries of the proposed (Chinese) hospital he was unaware of the existence of an earlier plan by Mr Langford and assumed that the land, which was actually Portion 60 was undetermined. He was apparently aware of the owner of that land and in order to avoid delays in finalising the leases he gave it a portion number, 98.

26. In G.N. No. 155/1970 Portion 98 the land was known as "Eatomaneab" and the owners were Einganga Olsson and Eidobobwea (LTO).
27. As a result of the said letter from the Director of Lands the NLC by way of a corrigendum in G.N. No. 12/1973 dated 2 April 1973 cancelled the entry in G.N. No. 155/1970 in respect of Portion 98 land known as "Eatomaneab". NLC further stated that Portion 98 is part of a previously determined (viz: "Eatetakuane" Portion 60 Denigomodu).
28. In G.N. No. 29/2014 it was stated that NLC had ascertained the estate of the late Einganga Mary Olsson had been determined by its decisions and that of its predecessor to be the owner of Portion 60 land known as "Eatetakuane" amongst other land.
29. So, to answer issues (a) and (b) together, Portion 98 became part of Portion 60 in 1973.

ISSUE (c)

30. Mr Udit answers this issue very aptly in [50] of his submissions where he states:

"Einganga Olsson continued to receive the rental for both portions until 1991. The answer to this is simple. She became the owner of Portion 60. As the owner of Portion 60 she was entitled to receive the rent for the whole portion. This included Portion 98. Since 1973 when Portion 98 was cancelled she was in law entitled to receive the rent for the whole Portion 60 anyway."

31. I accept Mr Udit's submission and that effectively answers the question raised in issue (c).

CONCLUSION

32. Based on the matters discussed above, I find that the appeal has no merit and is dismissed.
33. I make no orders as to costs.

DATED this 7 day of February 2017


Mohammed Shafiullah Khan
Acting Chief Justice

