



**IN THE SUPREME COURT OF NAURU
AT YAREN
CIVIL JURISDICTION**

Land Appeal Case No.03 of 2020

BETWEEN: **MELLA TEMAKI of Meneng District**
Appellant

AND: **ESTATE OF SIMON AKU**
1st Respondent

NAURU LANDS COMMITTEE
2nd Respondent

BEFORE: Keteca J

DATE OF HEARING: 05th September 2024

DATE OF RULING: 2nd December 2024

CITATION: Temaki v Simon Aku & NLC

KEYWORDS: *Administration Order No. 3 of 1938 – determination of Nauru Lands Committee – Can an interest in land pass to a person not legally adopted? Status of customary adoption, family meetings. Does a person, not legally adopted, have a standing in the determination and distribution of an estate?*

APPEARANCES:

Counsel for the Appellant: Mr V. Clodumar

Counsel for the 1st Respondent: Mr R. Tagivakatini

Counsel for the 2nd Respondent: Ms S. Kamtaura

RULING

BACKGROUND

1. In Gazette No. 162 dated 18th August 2020, the Nauru Lands Committee (NLC) distributed, intestate, the estate of Simon Aku to Adam Aku. Adam Aku, through Nauru custom, is purportedly the adopted son of Simon Aku. The distribution to

Adam Aku, is being appealed under Section 7(1)(a) of the Nauru Lands Committee Act 1956.

2. The Appellant, her mother Karaina Demauga, filed affidavits and also testified in court. For the Respondents, Polly Aku and Zanita Tom filed affidavits as trustees for Adam Aku. Zanita Tom testified in court. Romina Amwano, Acting Chairman of NLC testified and produced the relevant records of the NLC relating to this case.
3. **AFFIDAVIT OF THE APPELLANT- Mella Temaki**
 - He is the surviving next of kin of the late Kamtsi Ketner, her grandfather.
 - In Gazette notice No 13 of 1999, Kamtsi Ketner transferred half of his shares in certain lands to her.
 - Kamtsi Ketner died on 16th September 1999. There was a family meeting with Kamtsi's wife Tererog Ketner. **Mella Temaki invited Simon Aku to attend this meeting.**
 - At that meeting, she requested that the remaining realty in the name of Kamtsi Ketner be distributed equally between his wife Tererog (LTO) and Simon Aku- the unregistered child of Kamtsi Ketner.
 - The distribution was published in the Gazette No. 75 dated 15th September 1999.
 - The NLC instead gave Simon Aku absolute share in the realty estate of Kamtsi Ketner. It should have been on Life -Time-Only basis.
 - Simon Aku died on 27 August 2018. She was not invited by the NLC to the family meeting as regards his estate.
 - She made representations to the Nauru Lands Committee that the estate of Simon Aku be reverted to her as the surviving next of kin of Kamtsi Ketner.
 - The chairman of the NLC, Mr Vinson Detenamo informed her that the NLC will not accede to her representation and that she had the right of appeal.
 - She is the next of kin of Kamtsi Ketner because:
 - i. She is the daughter of Maradag Ketner and Karaina Demauga (**I note that her birth certificate does not reflect this**);
 - ii. Maradag Ketner was the son of Mereibeiya;
 - iii. Mereibeiya is the sister of Kamtsi Ketner.
 - iv. Karaina, her mother, is the daughter of *Eidiogonit*. (Refer MT/03- her birth certificate- **I note that her claim she is the daughter of Maradag Ketner is not reflected in her birth certificate- she carries the surname of her mother- "Demaunga"**)
 - A Ketner had four children:
 - i. Merenbeiya Ketner
 - ii. Riatouw Ketner
 - iii. Bobouwa Ketner; and
 - iv. Kamtsi Ketner
 - Kamtsi was in a relationship with *Eidiogonit*, her grandmother. *Eidiogonit* is Karaina Demauga's mother. Karaina Demauga is her mother.
 - As an infant, Kamtsi and her biological grandmother, *Eidiogonit* took her in and raised her.
 - Adam Aku (representing the 1st Defendant as a beneficiary) is not legally adopted by Simon Aku under the Adoption of Children Act 1965

- Despite her objections, NLC distributed the estate of Simon Aku to Adam Aku as published in Gazette Notice No 162 of 18th August 2020, GNN 632/2020-Annexure MT02
- This appeal is against that NLC decision published in Gazette No. 162-Annexure MT/02
- She filed an amended Notice of Appeal seeking that this appeal act as stay in the distribution of monies from the estate of Simon Aku until this matter is disposed of by the court.
- **The court granted a stay on 10 December 2020 ordering– “The Nauru Lands Committee’s determination published on 18th August 2020 in Gazette Number 162/2020; G.N. No. 613/2020 is to be stayed until the determination of this appeal.”**

AFFIDAVIT OF THE APPELLANT’S MOTHER- Karaina Deireragea

4. She states as follows:

- i.* Her mother, Eidiogonit Demaunga, married Kamti Ketner. She was engaged to Maratake Ketner, the nephew of her step-father, Kamti Ketner.
- ii.* Maratake Ketner was the biological father of his first child, Mella Temaki (nee Demauga). **[I note that this is not reflected on the birth certificate of the Appellant, Mella Temaki. Her birth certificate has no entry on the details of her father. Mella’s mother, Karaina Demaunga was 18 years old when Mella was born on 28th May 1980. Further, as recent as 18th January 2019, when the birth certificate of the Appellant was issued, it still did not have any ‘Details of the Father of the Child.’]**
- iii.* Kamti Ketner is the grandfather of the Appellant, Mella Temaki **under Nauruan custom**. Kamti Ketner raised Mella as his own child. He transferred inter vivos half of his real estate to her.

AFFIDAVITS FOR THE FIRST RESPONDENT.

Affidavits of Polly Aku and Zanita Tom- Trustees for Adam Aku)

5. Polly Aku states:

- i.* Adam Aku is 15 years old. He was born on 22nd July 2008. She is Adam’s aunt, being the older sister of Simon Aku.
- ii.* Simon Aku married Nei-Reiy Belita Aku (nee Tom). She was known as Belita and she was Adam’s aunt. They raised Adam with the intention of adopting him.
- iii.* Belita passed away on 05th July 2014. Adam was 6 years old. Simon Aku passed away on 27th August 2018, Adam was then 10 years old. Belita and Simon did not legally adopt Adam due to their untimely deaths. **Adam was customarily adopted by Simon and Belita.**
- iv.* She attended a family meeting with NLC on 07th March 2019 on Simon’s estate as she is his sister. She submitted this to the NLC at that meeting:
 - a.* Simon was married to Belita;

- b. Simon adopted a son but she was not sure whether it was a legal adoption;
 - c. Simon left no Will;
 - d. Simon owned a motor cycle;
 - e. Adam was staying with her when Simon was alive. When Simon passed away, Adam was looked after by Muro Ribauw;
 - f. Simon's property should be inherited by Adam with herself and Muro Ribauw as Trustees. The above is recorded in the NLC Meeting Minutes;
 - g. When NLC published the distribution of Simon's estate in Gazette Notice 162/2020, she and Muro Ribauw had been appointed as trustees for Adam;
 - h. Muro Ribauw's real name is *Zanita Tom*. **Muro is her nickname**. Zanita Tom is related to Belita. Polly is related to Simon. That's the reason they were appointed as trustees for Adam;
 - i. Although Adam is not legally adopted by Simon, she accepts and regards him as part of their family. That's why she submitted to NLC that Adam inherit Simon's estate.
 - j. **She believes that customary adoption is recognised in Nauru**. She further believes that Mella's action against Adam is motivated by greed.
 - k. She believes that NLC's decision is very reasonable considering the plight of a displaced orphan.
6. Zanita Tom sates:
- i. She is a joint- trustee for Adam Aku and she is the niece of Nei-Reiy Belita (nee Tom), the wife of Simon Aku.
 - ii. Her aunt Belita, passed away on 5th July 2014. Simon struggled to raise Adam. She and her partner arranged to have Adam reside with them in the weekdays and with Simon on the weekends. The arrangement continued until Simon Aku passed away in 2018.
 - iii. When Simon's estate was being discussed, she was not invited by the NLC. She was informed by Simon's older sister, Polly Aku that they were joint-trustees for Adam Aku. She accepted it as Adam was living with her.
 - iv. The Gazette that published the distribution of Simon's Estate had my name as 'Muro Ribauw'. 'Muro' is her nickname. 'Ribauw' is her partners name.
 - v. Adam's surname is 'Waibeya' as shown on his birth certificate.
 - vi. Although Adam is not legally adopted, she accepts him as part of her family.
She continues to look after Adam.
7. **AFFIDAVIT OF 2nd RESPONDENT**
8. The NLC acting- chairman, Romina Amwano annexed the English translation of the NLC records that were filed on 18th Nov 2020. The NLC records state:

i. Estate of Kamti Ketner- 14 Nov 99

- a. At 11.40 am- May Ketner- on the estate of her brother Kamti Ketner said:
 - NLC-Question- Does he have any Will or words?
 - Answer- He does not have a Will for his lands and money.
 - Question- Does he have a wife or children?
 - Answer- **He has one child**, and he is not registered. He was married to Eidiogonit and they have no offspring. He also has

another Ikiribati wife, and I don't know if their marriage is legal or not. Her name is Tsererog. **The name of the child is Simon Minaimar Aku** and I will be the trustee for another child **Mella Temaki for I want her to be in this estate.** All my brother's estate to be done like this.

b. **14 Nov 99-** Kamti K estate (cont'd)

- At 12:10 – enter Mella Temaki, Simon Aku and Teirerog Ketner- these three came for the estate of Kamti Ketner. Committee read out to them what May K said for this estate **and Mella stated that she is not to be included because it should only go to Simon and the wife.**
- (Signatories- Tsererog Ketner, Mella Temaki and Simon)

ii. **Estate of Simon Aku**

c. **Thursday 07th March 19**

- Enter Polly Aku for the estate of the late Simon Aku
- A/C- where does Simon live?
- Polly- at our place in Meneng
- A/C- Does he have a wife?
- Polly- Nei-Rei Belita Aku (nee Tom)
- A/C- Any children?
- Polly- They adopted
- A/C- Does he have a Will?
- Polly- No
- A/C- Any last word?
- Polly- No
- A/C- the child they have adopted is registered?
- Polly- I don't know if he's registered but his name in school is Adam Aku
- A/C- Where does Adam live? (8 years old) (Grade -year 5)
- Polly- When Simon was alive, he lived with him and now he has gone back to Muro Ribauw- she looks after him
- A/C- What do you say if there is any remaining money?
- Polly- To me it's right that it should go to his son
- A/C- his land at topside and along the coast, who should it go to?
- Polly- **Any shares that belong to the late Simon Aku, to the child Adam Aku.** I Polly and Muro Ribauw should be trustees.
- Personalities- Adam Aku (Polly Aku Trustee, Muro Ribauw Trustee)
- Realty- Adam Aku (Polly Aku Trustee, Muro Ribauw Trustee)
- Polly- this is also for later if they find that he is not registered under Simon Aku
- MB 96 Page 113 (Cont'd)- Polly- I will not change my words that this child Adam Aku should inherit the estate of the late Simon Aku

iii. **Estate of Kamti Ketner**

d. **Thursday 30th May 2019**

- 11:19am Mella Temaki
- A/ C- Tell this group what is your request.
- Mella- I want to ask about my late grandfather Kamti Ketner's estate. I want to correct it. ***I want to correct what I said before because what I said before is wrong and when Simon Aku died, the share went to his son.***
- Mella- The story why Simon Aku and the Kiribati (Kamti's wife) are included is **because I personally got Simon to be included.** Kamti didn't want to include him, but I put him in with the Kiribati so that they will benefit for a while and if I remember I said to be LTO.
- (There was long discussion, argument between Steve and Mella)
- A/C- How old were you when you went to Kamti estate?
- Mella-I think about 20 and I am now 38 years old.
- A/C- *why did you include Simon in the estate?*
- **Mella- My mother sitting outside said he should be included so that he could benefit from it for the time being.**
- A/C – *it is still not clear to me why your mother wanted Simon to be included. How is he related?*
- **Mella (Appellant in present case)- Because he is really Kamti's child, but he is not registered.**
- (After some discussion) A/ Chair- we cannot say anything now. For we have to discuss it properly first and we will write to them if it should be a family agreement.

9. **TESTIMONY OF APPELLANT- MELLA TEMAKI.** She gave sworn evidence as follows:

- Kamtsi Ketner is her grandfather- the uncle of his father. "I'm the granddaughter of Kamtsi Ketner.'Kamtsi's first defacto partner is my grandmother. She lived with them since she was 4 years old.
- Q- Before Kamtsi died, did he discuss anything about his land with you?
 - Ans- Only once. He told me about Simon Aku not to enter any of his properties. He doesn't want him to be included. I didn't know Simon Aku then.' *[I note that this answer is self-serving. Kamtsi died in 1999. In the Appellant's affidavit, she invited this Simon Aku to the family meeting on the distribution of Kamtsi Ketner's estate. On 14th May 1999 meeting, as recorded in the NLC Minutes. Appellant said- and Mella stated that she is not to be included because it should only go to Simon and the wife.]*
- On 30th May 2019, as reported in the NLC minutes- this is recorded:
- A/C – **it is still not clear to me why your mother wanted Simon to be included. How is he related?**
- **Mella- Because he is really Kamti's child, but he is not registered.** (Thus, Simon Aku is the son of Kamti Ketner)

- MT-01 shows GN No 3 – 13/01/93- shows Kamtsi Ketner giving her 50 % share – given to her when he was still alive.
 - She was about 16 or 17 years old in 1999.
 - G.N 613/2020- shows the distribution of Simon Aku’s estate where Adam Aku is the beneficiary to several portions of land.
 - The court should revert the ownership of those properties to her as she’s the surviving grand-daughter. *(I note that she’s not the biological granddaughter neither was she legally adopted by Kamtsi Ketner)*
10. **Cross- Examination of the Appellant**
11. On cross-examination, the Appellant says that she wants all of Kamtsi’s estate. She claims to be the only surviving next of kin of Kamtsi Ketner
12. **Re-Examination**
- She states that Adam Aku was not legal adopted by Simon.
13. **TESTIMONY OF APPELLANT’S MOTHER - *Karaina Deireragea***
- She repeats what she’s said in her affidavit.
 - Kamtsi Ketner is her stepfather.
 - She claims that Maradag Ketner is the father of the Appellant.
 - **Q- Who is Simon Aku?**
 - **Ans- I don’t know him.** [This is inconsistent with the Appellant’s testimony in court. She testified that it was her mother, *Karaina Deireragea* that told her to take Simon Aku along to the family meeting on Kamtsi Ketner’s estate.]
 - Mella, the Appellant was not legally adopted; **but by Nauruan custom.**
14. **TESTIMONY OF ZANITA TOM**
- Adam Aku is his first cousin. He is 16 years old. His biological father, is her mother’s brother. Her mother’s sister, Belita was married to Simon Aku.
 - She does not know whether Simon and Belita adopted Adam Aku.
 - She’s a trustee for Adam Aku.

SUBMISSIONS BY COUNSELS

15. The submissions in summary of **Counsel for the Appellant** are:
- i. The decision of the NLC made in GN 76 of 1999 was not and is not contested here i.e. **The determination of Kamtsi Ketner’s estate is not being challenged.** That determination is consistent with Section 23 of the Regulation Governing Intestate Estates 1938.
 - ii. The decision of the NLC made in GN 162 of 2020 is contested under Section 7(1) (a) of the Nauru Lands Act. i.e. **the determination of Simon Aku’s estate.**
 - iii. The transfer of land from Kamtsi to Mela (Appellant) in 1993 under Section 3(3) of the Lands Act 1976 with the authority of the President of the Republic of Nauru between 30th Sept -04th November 1992 is recorded in GN 3 of 1993. The transfer was done *inter vivos*. Counsel submits that this is evidence of Kamtsi’s recognition of the Appellant as his own child.
 - iv. Mela was invited by NLC to attend the family meeting on Kamtsi’s estate. **She invited Simon to that meeting. Her mother directed that Simon be included in that meeting.** The Appellant intended that Simon, like Terrerog, Kamtsi’s second wife were to inherit the estate on Life Time only basis.

- v. The appeal is for NLC to return part of the estate taken by Simon to her.
- vi. He relies on *Gad Demaunga v NLC [2012] NRSC 17* (26th November 2012] **that under the Adoption of Children Act 1965- ‘parliament removed the right of an adopted child to claim an interest in an estate of adopting parents unless the adoption was made under the Act.’**
- vii. He looked at *Children of Eirenemi Samson v Aubiat [1969-1982] NLR (B) 115* (03rd May 1974)- on Clause 3(b) of the Administration Order 3 of 1938 and the interpretation of words ‘the people’, ‘to be returned to’, ‘family’, ‘nearest relative’,
- viii. *Ikirir v Duburiya & Others [1972] NSC 1, [1969-1982] NRL (B)39- 05th January 1972-* on ‘immediate family.’ Thompson CJ said- ‘*The word family is used without a definition and it is apparently distinguished in paragraph (3) from both ‘nearest relatives’ and ‘widow’. But, if it is to be distinguished from ‘nearest relative, what meaning can it be given? It might be argued that ‘nearest relatives’ means persons outside immediate family but the provisions of sub-paragraph (a) of paragraph (3) preclude this; those provisions have effect only if there is a ‘family’ which has not been able to reach agreement and it is inconceivable that persons outside the immediate family would take before members of the immediate family.*’
- ix. Considering the ‘*obiter of Thompson CJ on the word ‘returned’ in clause 3(b), he submits that the word ‘family’ refers to the family of Kamtsi, who were originally, his wife Eidiogonit, his stepdaughter Karaina and granddaughter Mela (the Appellant)*
- x. The Appellant was not invited by the NLC to participate in the determination of Simon Aku’s estate. However, she heard that the family had been invited in regards to Simon’s estate. She requested a meeting with the NLC to correct the misunderstanding by the NLC as to how Simon was to acquire the estate of Kamsti and the estate must be returned to Kamsti’s family as Simon had died. The meeting was recorded in Minute Book 97. She disputes the correctness of the record.

16. The submissions in summary of Counsel for the 1st Respondent are:

- i. *Kepae v NLC [2019] NRSC 34; Land Appeal 02 of 2017 (08th November 2019)- Jitoko CJ asked- “The role of the chief (in Administrative Order No.3 of 1938- ‘The Chief of the District will make a list of the property of deceased.’) of the District has now been succeeded by the Nauru Lands Committee. What is a ‘family’, who comprises ‘the family of the deceased person’ and how wide is the Nauru Lands Committee required to cast its net to meet the requirement of family of the deceased person under Clause 2?*
- ii. Counsel refers to *Scotty v NLC [2013] NRSC 9 – Doussa J said: ‘The Administration Order gives no guidance as to who should be called to a meeting for the purpose of Clause 2. The notion of a family is a broad one but for the purpose of this case it is not necessary to explore how widely in the extended family an invitation to attend a meeting need to go to constitute a valid meeting. As a clause 3(c) is the provision that would operate in default of agreement, at the very least the surviving spouse of the deceased and her issue were people with direct interest in the division of her property who*

should have been called to a meeting, and were entitled to be heard before the Committee made it's decision.'

NLC invited Poly Aku, Simon Aku's sister to attend the family meeting on Simon Aku's estate. Mr Tagivakatini submits that **this meeting was done in conformity with the requirements of the Regulations Governing Estates.**

- iii. *Demaunga v NLC [2012] NRSC 17 (26th November 2012)- Eames CJ quoted the submission of Mr Clodumar at [19] thus- 'The Parliament intended to deny recognition to customary adoptions for the purpose of succession, he submitted, those rights being available only to those who followed the procedures for adoption set out in the Act. Upon an adoption order the rights of the adopted child were those set out in the Act, **not any rights by virtue of customary adoption.**'*

At [20] *'Mr Clodumar submitted that parliament intended, thereby, that the rights of succession of a person adopted after 1965 under customary law ceased altogether, unless they gained a formal adoption order under the Act. Only a person adopted after 1965 pursuant to the terms of the Act would have a right to succession, he submitted, and that right would be confined to the estates of the adopting parents.'*

At [21] *'The apparent harshness of that result would be ameliorated, Mr Clodumar submitted, by virtue of the fact that Administration Order No. 3 of 1938 allowed the Nauru Lands Committee to grant any interest in an estate to any person, including a person adopted under customary law, provided the families agreed.'*

- iv. Based on the Demaunaga case, Mr Tagivakatini submits that a person has to be legally adopted under the Adoption of Child Act 1965 'in order to claim an interest in the adopting parents' estate. He adds that **'this is only relevant if there is no family agreement in the family meeting'**
- v. Counsel further submits that in the Demaunga case, *'Mr Clodumar succinctly addressed the importance of the Regulations governing Intestate Estates in paragraph [21] of the judgment, whereby the NLC could still grant an interest to any person, provided the relevant families agreed.'*
- vi. At paragraph 29 of his submissions, Mr Tagivakatini observes that- *'It is ironic that the Appellant's mother, Karaina Deirerega, confirmed in cross examination that the Appellant herself is not Kamti Ketner's biological granddaughter nor was she legally adopted by Kamti Ketner. The Appellant is effectively claiming that it is right for her as a customarily adopted child to inherit property of Kamti Ketner but it is wrong for Adam Aku to inherit property from Simon Aku.'*

Ground of Appeal 2- The decision of the family published in GN 76 of 15th December 1999, GNN 326/1999- does not reflect the position of the Appellant that Simon Aku was to be a Life-time-only beneficiary with the wife of Kamtsi Ketner.

- i. Mr Tagivakatini submits that the reverting of an estate to the nearest relative only applies **if there is no agreement in the family meeting.**
- ii. The Appellant had agreed at that meeting that Simon Aku and Kamtsi's wife Tereirrog, to inherit Kamtsi's estate and now, 20 years later, changes her mind.

- iii. Section 13 of the Limitation Act 2017 applies here. The 20-year time limit to institute proceedings to recover land based on the NLC decision of 15th December 1999 on the determination of Kamtsi's estate, **expired on 15th December 2019.**
 - iv. Counsel also raises the inconsistencies and lies in the Appellant's when she was asked how she's related to Simon Aku:
 - a. Minute Book 97, Pages 77-78 (filed on 17/11/20)
'Mella (Appellant)- Simon is Kamti's son'
 - b. Amended Notice of Appeal- paragraph 13 (filed on 10/12/20):
'13. Ela (Appellant) was aware of the fact that Simon Aku was an unregistered son of Kamtsi. She invited Simon to attend the family meeting with the Committee.'
 - c. Agreed Facts and Issues- paragraph 3 (filed on 28/01/22):
'3. Simon Aku is the biological son of Kamti but was not registered under Kamti.'
 - d. Affidavit in evidence of Mela Temaki (Appellant)- paragraph 5 (filed on 19/10/23):
'At the meeting, I requested that the remaining realty in the name of Kamtsi be distributed equally between his wife Tererog (LTO) and Simon Aku'
 - v. Considering the inconsistencies above, *the Appellant is an untruthful witness.*
17. **Counsel for the 2nd Respondent** made brief submissions on Section 7 of the Nauru Lands Committee Act 1956, the rules of statutory interpretation and the difference between the 'plain meaning' and the modern legislative interpretation' approaches.
18. I prefer the 'plain meaning approach'.

GROUNDS OF APPEAL

19. The Grounds of Appeal are:
- i. That the estate of Simon Aku was derived from the late Kamtsi Ketner's estate decided at the family meeting between Mela (Appellant) Simon, Tererog and the Committee. Refer to MB 59 at page 20(undated);
 - ii. The decision of the family was published in Gazette No. 76 of 15 December 1999, GN 326/1999. However, it did not correctly reflect the position of the Appellant that Simon Aku was to be a Life-Time- only beneficiary along with the wife of Kamtsi Ketner; and
 - iii. The Committee made a gross error of distributing the estate of Simon Aku to Adam Aku on the basis he is an adopted son of the deceased Simon Aku. Adam Aku was not legally adopted by Simon Aku.

REMEDIES SOUGHT

20. The Appellant seeks the following remedies:
- a. A declaration that Adam Aku is not an adopted son of Simon Aku as he was not legally adopted in accordance to the Adoption of Children Act 1965.
 - b. A declaration that Simon Aku died married and without issue.
 - c. A declaration that the Committee had made a jurisdictional error by determining that Adam Aku was the rightful heir to Simon Aku's estate ignoring Regulation 3(a) of the Administration Order 3 of 1938.

- d. An order quashing the decision of the Committee regarding the estate of Simon Aku published in Gazette No. 162 of 18th August 2020 per GNN 612/2020.
- e. An order remitting the matter back to the Nauru Lands Committee to redetermine the estate of Simon Aku in accordance with Regulation 3(a) of the Administration Order 3 of 1938.
- f. *Costs on an indemnity basis.*

DISCUSSION

The Standing of the Appellant

- 21. The Appellant is the daughter of *Karaina Deireragea*. She was born on 28th May 1980. Her birth certificate, issued on 18th January 2019 does not have **any ‘details of the father of the child.’** She claims to be the surviving next of kin of Kamtsi Ketner, as his granddaughter **under Nauru custom**. She is not the biological granddaughter of Kamtsi Ketner. **She was not legally adopted by Kamtsi Ketner.**
- 22. The *Demaunga v Nauru Lands Committee [2012] NRSC 17* case is the authority that the Adoption of Children Act 1965 is the ‘Code’ that governs the adoption of children in Nauru and provides for the rules as regards the succession to property rights.
- 23. As concluded by CJ Eames in paragraph [52] of his judgment in the *Demaunga* case- ‘*In my opinion, the Nauru Lands Committee has made the correct decision in the first instance, when it concluded that Christina Dongibar was not entitled to share in the estate of Cecelia Demaunga. The claim was made on the basis of a customary adoption. Even assuming the evidence supported her claim that the adoption had been completed and was not revoked, it occurred after 1965 and was not the subject of an adoption order under the Adoption of Children Act 1965. Parliament removed the right of an adopted child to claim an interest in the estate of adopting parents unless the adoption was made under the Act*’
- 24. It follows that the Appellant, not being legally adopted by the late Kamtsi Ketner, she has no claim on his estate neither does she have any *locus standi* to question the distribution of his estate. The fact that the late Kamtsi Ketner had transferred some of his property to the Appellant, *inter vivos*, this does not make her a legally adopted child, neither does it create or give the Appellant any legal right over Kamtsi Ketner’s or Simon Aku’s estate. Based on the *Demaunga* case, the reliance by the Appellant on Nauru custom to legitimise her claim that Kamtsi Ketner is her grandfather and flowing from which her right to Kamtsi Ketner’s estate, is mistaken, erroneous and contrary to law. As submitted by Mr Clodumar and accepted by the court in the *Demaunga* case- ‘*Only a person adopted after 1965 pursuant to the terms of the Act would have a right to succession, he submitted, and that right would be confined to the estates of the adopting parents.*’
On this note, I agree with Mr Tagivakatini that it is indeed ironic that the Appellant argues that Adam Aku is not legally adopted and thus is not entitled to Simon Aku’s estate and that she, also not legally adopted by Kamtsi Ketner, nor related to Simon Aku, should have the same estate revert to her.
- 25. I state here that I prefer the view of Mr Clodumar in the *Demaunga* case compared to his submissions, some 12 years later, in the present case.
- 26. There is another twist. At the family meeting recorded as:

“Estate of Kamti Ketner

MB 59, page 19

14/11/99

11.40am- re- enter May Ketner for the estate of her brother late Kamti K

Question: Does he have any Will or words?

Answer: He does not have a Will for his lands and money.

Question: Does he have a wife or children?

Answer. He has one child, and he is not registered. He was married to Eidigonit, and they have no offspring. He also has another iKiribati wife, and I don't know if their marriage is legal or not. Her name is Tsererog. The name of the child is Simon Minaimar Aku and I will be the trustee for another child Mella Temaki for I want her to be in his estate. All my brother's estate to be done like this.'

From this family meeting, it is clear that May Ketner, the sister of Kamtsi Ketner, confirmed that Simon Aku is Kamtsi Ketner's son. May Ketner also intended that **Mella Temaki (Appellant in this case)** be included in the distribution of Kamtsi Ketner's estate. **The Appellant did not take up this offer for her to have a share in the remaining estate of Kamtsi Ketner.** Instead, as she states in paragraph 5 of her affidavit dated 19th October 2023- **“At that meeting, I requested that the remaining realty in the name of Kamtsi be distributed equally between his wife Tererog (LTO) and Simon Aku, the unregistered child of Kamtsi Ketner.”**

I find that had the Appellant accepted the submission by May Ketner that she (the Appellant) be included in the distribution of Kamtsi Ketner's estate in 1999, she would have qualified as a beneficiary in that estate- as she would be categorised as – **‘to any person’** – referred to in paragraph [21] of CJ Eames judgment in the Demaunga case. Paragraph [21] states- **‘Administration Order 3 of 1938 allowed the Nauru Lands Committee to grant an interest ‘to any person’ including a person adopted under customary law, provided the relevant families agreed.’**

This submission by Mr Clodumar was accepted by the court in the Demaunga case.

27. The Appellant did not accept to be a beneficiary in the distribution of Kamtsi Ketner's estate in 1999. **Twenty years later, she wants to change her mind.** She is out of time. Section 13 of the Limitation Act 2017 prohibits this. Also, since she was not legally adopted under the Adoption of Children Act 1965, as I have held above, the Appellant has no standing to challenge the NLC's determination in Kamtsi Ketner's and Simon Aku's estate.

28. I will now discuss what the evidence shows as regards Simon Aku's estate.

SIMON AKU'S ESTATE

29. The Appellant testified that at the determination of Kamtsi Ketner's estate, it was her, at the insistence of her mother, *Karaina Deireragea* that submitted to NLC that the estate should go to Kamtsi's wife and Simon Aku. She further testified that both the

beneficiaries, Simon and Tererog were to enjoy those properties for their life-Time - Only.

30. According to both the Appellant and May Ketner (Kamtsi Ketner's sister), Simon Aku is the son of Kamtsi Ketner. This is reflected in annexure marked 'RA-1' in the affidavit of Romina Amwano, Acting Chairman of NLC, dated 21st August 2024-MB 97, Page 79, Thursday 30th May, 2019- **Appellant, Mella Temaki said:**

'A/C: it is still not clear to me why your mother wanted Simon to be included? Mella (Appellant in this case)- Because he is really Kamti's child, but he is not registered.'

Also, in the Appellant's affidavit dated 19th October 2023, at paragraph 5, she states- 'At the meeting, I requested that the remaining realty in the name of Kamtsi be distributed equally between wife Tererog (LTO) **and Simon Aku, the unregistered child of Kamtsi Ketner.'**

31. In the same annexure marked RA-1, it records:

'Estate of Kamti Ketner

MB 59, page 19

14/11/99

11.40am- re- enter May Ketner for the estate of her brother late Kamti K

Question: Does he have any Will or words?

Answer: He does not have a Will for his lands and money.

Question: Does he have a wife or children?

*Answer. He has one child, and he is not registered. He was married to Eidigonit, and they have no offspring. He also has another iKiribati wife, and I don't know if their marriage is legal or not. Her name is Tsererog. **The name of the child is Simon Minaimar Aku and I will be the trustee for another child Mella Temaki for I want her to be in his estate. All my brother's estate to be done like this.'***

32. It is clear from the above that Simon Aku is Kamtsi Ketner's son. He was entitled to be a beneficiary of the estate of his father Kamtsi Ketner. I find that, unlike **widows and widowers** in Reg 3(b) of the Regulations Governing Intestate Estates 1938 or Administration Order No.3 of 1938 who have use of the **property 'during his or her lifetime only**, Simon Aku's property, which he received from his father Kamtsi Ketner, may be distributed to **'any person'** as long as his family agreed.
33. Mr Clodumar submits that since Simon Aku died without any issue, his estate should be distributed under Reg 3(b) of the Regulations Governing Intestate Estates 1938 or Administration Order No.3 of 1938. This Order provides:
- '1. The Chief of the District shall make a list of all property of the deceased.*
 - 2. The distribution of the property shall be decided **by the family of the deceased person, assembled for that purpose. The distribution of property agreed to by the family of the deceased shall be reviewed by the Government Surveyor to ensure that there is no apparent irregularity, who will refer any doubtful matter to the Administrator.***
 - 3. If the family is unable to agree, the following procedure shall be followed:*

(a) in the case of an unmarried person the property to be returned to the people from whom it was received, or if they are dead, to the nearest relatives **in the same tribe**;
(b) married-no issue, - the property to be returned to the family or nearest relatives of the deceased. The **widower or widow** to have the use of the land **during his or her lifetime** if required by him or her.

(c) married -with children- the land to be divided equally between the children, and the surviving parent to have the right to use the land during his or her lifetime. When an estate comprises only a small area of land the eldest daughter to receive the whole estate and other children to have the right to use the land during their lifetime.

4. No distribution of land of a deceased estate, whether published in the Gazette or otherwise shall be final unless the ownership of the deceased has been determined previously by the Nauru Lands Committee or other authority authorised by the Administrator and published in the Gazette with the usual opportunity to protest.

5. A parent or guardian of a minor who is a beneficiary of a deceased estate shall have the right to live on the property and to collect fruit therefrom but shall not be entitled to sign any document relating to the estate or receive any money accruing from the estate except with the written authority of the Administrator.'

34. In this regard, Mr Clodumar argues that Simon Aku's estate is to 'be returned to the family or nearest relatives of the deceased'- in this case, the Appellant.

35. This argument falls on two fronts. Firstly, Regulation 3(b) will only apply if at the family meeting- '**the family is unable to agree...**'

In the determination of Simon Aku's estate, his older sister Polly Aku was invited by the Nauru Lands Committee. According to her affidavit, other relatives of Simon were invited but they did not attend. At that meeting, as annexed as 'RA-1' to the affidavit of Romina Amwano, Acting Chairperson of NLC, filed on 21/08/24, recorded in MB 96, page 112, Thursday 07th March 2019- Polly Aku submitted to the NLC that any monies and land belonging to her deceased brother should go to Adam Aku. This Adam Aku was looked after by Simon Aku and his wife. He is 15 years old now. *He was not legally adopted.*

36. Secondly, the appellant contends that she should have been invited to this meeting of Thursday 07th March 2019. **Is the Appellant part of Simon Aku's family?** It is clear from the evidence that she was not legally adopted by Kamtsi Ketner, Simon Aku's father. The relationship of the Appellant to Simon Aku's father, Kamtsi Ketner, is described in the affidavit of the Appellant as-

'Kamtsi was in a relationship with Eidiogonit, her grandmother. Eidiogonit is Karaina Demaunga's mother. Karaina Demaunga is her mother.

•As an infant, Kamtsi and her biological grandmother, Eidiogonit took her in and raised her.

The Appellant and her mother, Karaina Deireragea, claim that the Appellant is the daughter of Maratake Ketner, the nephew of Kamtsi Ketner. The claims by the Appellant and her mother are not supported by the Appellant's birth certificate. As recent as 2019, when her birth certificate was issued, there was no record of who her father was. The Appellant's mother Karaina Deireragea, whilst under oath, denied knowing Simon Aku. This is inconsistent with the Appellant's sworn testimony. I find that the Appellant's mother,

Karaina Deireragea is an untruthful witness and her claim as to the biological father of the Appellant, on a balance of probabilities is doubtful. I find that the Appellant is not related to Simon Aku. *She has no standing to be invited by the NLC on the determination of Simon Aku's estate.*

I find that the family meeting attended by Polly Aku, on Thursday 07th March 2019 for the determination of Simon Aku's estate was properly convened in accordance with Regulation 2 of the Regulations Governing Intestate Estates 1938 or Administration Order No.3 of 1938.

Was the NLC correct in distributing Simon Aku's estate to Adam Aku, who is not legally adopted under the *Adoption of Children Act 1965*?

37. In the *Demaunga case*, Christina Dongibar, was claiming on the basis of customary adoption. It was held that she was not entitled to share in the estate of Cecelia Demaunga as she was not legally adopted under the *Adoption of Children Act 1965*.

In his judgment, CJ Eames agreed with Mr Clodumar's submission at paragraph [53]-
"Furthermore, as Mr Clodumar acknowledged, the family of Cecilia Demaunga could agree at a family meeting to provide a share of Cecelia's estate to Christina, notwithstanding that she would not otherwise be eligible. In the event of agreement, the Nauru Lands Committee would then be entitled to make a determination acknowledging her interest in the estate."

38. Therefore, although Christina Dongibar was not entitled to share in the estate as she was not legally adopted under the *Adoption of Children Act 1965*, the court recognised and accepted that the family of Cecilia Demaunga could agree to provide a share of Cecelia's estate to Christina- **notwithstanding that she would not otherwise be eligible.**

It follows that although Adam Aku was not legally adopted by Simon Aku under the *Adoption of Children Act 1965*, it is clear that Simon Aku's family, through his older sister Polly Aku, submitted correctly and the Nauru Lands Committee correctly agreed that Simon Aku's estate go to Adam Aku. I find that Adam Aku, though not legally adopted, falls into the category of- **'to any person' including a person adopted under customary law, provided the relevant families agreed.'** - *as submitted by Mr Clodumar and accepted by CJ Eames in the Demaunga case.*

39. Considering all of the above, my findings are as follows;

i. The Appellant, not being legally adopted by Kamtsi Ketner, has no standing to question the determination and distribution of Kamtsi Ketner's estate.

ii. Had the Appellant accepted that she be a beneficiary of Kamtsi Ketner's estate, as submitted by May Ketner at the family meeting recorded in MB59, page 19, dated 14/11/99, she would have acquired legal interest in that estate.

- a. Instead, the Appellant requested that such property be shared equally by Tererog, Kamtsi Ketner's wife and Simon Aku, Kamtsi Ketner's son.
- b. The Appellant cannot, 20 years later change her mind. She is out of time.
- c. Simon Aku is the son of Kamtsi Ketner. The NLC was correct in having him as a beneficiary in Kamtsi Ketner's estate.

- d. Adam Aku was not legally adopted by Simon Aku. The NLC was correct in having Adam Aku as a beneficiary of Simon Aku's estate as this was agreed at the family meeting attended by Polly Aku.
- e. Only in cases where '*the family is unable to agree*' then Reg 3(b) of the Regulations Governing Intestate Estates 1938 or Administration Order No.3 of 1938 will apply.

40. Before I make my final orders, I record one observation:

- i. The Nauru Lands Committee should be sure of the identities and *bona fides* of persons that appear before them. This will prevent the inclusion of '**nicknames**' in their official records.

ORDERS

41. I make the following orders:

- i. The appeal is dismissed.
- ii. The decision of the Nauru Lands Committee regarding the estate of Simon Aku published in Gazette No. 162 of 18th August 2020 in Gazette Number 162/2020; per GNN 612/2020 is correct in law and it stands.
- iii. The stay order granted by this court, dated 10th December 2020 on the Nauru Lands Committee's determination published on 18th August 2020 in Gazette Number 162/2020; per GNN 612/2020, is set aside.
- iv. Costs to be agreed between the parties.

DATED this 02nd day of December 2024.


Kiniviliame T. Keteca
Acting Chief Justice

