



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

Misc Case No. 08/2017

BETWEEN : ELSA AKARURO of Yaren District
(a friend of Tarzan Akaruwo) First Plaintiff

AND : THE CURATOR OF INTESTATE ESTATES
(nominal plaintiff for the estate of Valerie Akaruwo) Second Plaintiff

AND : SAMUEL JULIUS AKARUWO First Defendant

AND : NAURU LANDS COMMITTEE Second Defendant

BEFORE: **Keteca J**

DATE OF HEARING: **17th October 2025**

DATE OF RULING: **30th January 2026**

CITATION : Elsa Akaruro v Samuel Akaruro & NLC

KEYWORDS: Determination of the validity of a Will by the NLC

APPEARANCES:

COUNSEL for the
Plaintiffs:

V. Clodumar

1st Defendant:

M. Degei

2nd Defendant:

S. Kamtaura

RULING

BACKGROUND

1. The original Writ and Statement of Claim was filed on 16th May 2017. An amended Writ was filed on 28 October 2020.

THE CLAIM

2. The Writ and Statement of Claim filed on 28th October 2020 claims:
 - i. That Will No. 309 used by the 2nd Defendant to distribute the estate of Sam Akaruwo is null and void;
 - ii. That the Nauru Lands Committee is ultra vires Section 6 of the Nauru Lands Committee Act 1956 and Section 58 of the Succession Probate and Administration Act 1976 in declaring that that the Will of the late Sam Akaruwo as valid after it was withdrawn by the testator.
 - iii. Therefore, the deceased Sam Akaruwo is deemed to have died intestate and his estate, both real and personal should be distributed in accordance with Administration Order 3 of 1938, subsection 3(b) if there was no family agreement.

RELIEF SOUGHT

3. The Plaintiffs seek:
 - i. A declaration that the Will accepted by the 2nd Defendant (NLC) as the basis for distributing the personal estate of the late Sam Akaruwo (Testator) is null and void as it was withdrawn by the Testator;
 - ii. A Declaration that the Nauru Lands Committee acted ultra vires Section 6 of the Nauru Lands Committee Act 1956 and Section 58 of the Succession, Probate and Administration Act 1956;
 - iii. A Declaration that the late Sam Akaruwo is deemed to have died intestate; and
 - iv. An order that the distribution of the estate of the deceased Sam Akaruwo as published in Government Gazette No. 20 of 17th February 2016, GNN 8/2016 relating to the personal estate of the deceased is quashed or set aside.

Strike Out Applications

4. The first defendant filed 3 strike out motions. He withdrew the 1st and 3rd Motions.
5. On 28th October 2022, Khan J dismissed the strike out application for strike out. At paragraph [19] Khan J said:

'[19] The NLC's powers are set out I Section 6 of the Nauru Lands Committee Act 1956 and Nauru Land Committee (Amendment) Act 2012 which is to determine the ownership of land between Nauruans and Pacific Islanders or between Nauruans and Pacific Islanders; and to determine the distribution of the personal estate of a deceased Nauruan. It does not have the power to make determinations on the validity of a will.'

6. Khan J relied on *Lucy Ika and Kinza Clodumar v Nauru Lands Committee* and Curator of Intestate Estate & Others, Civil Case No 2/91; 3/91 and 8/91 (21 August 1992-unreported). In that case, the defendants referred the Court to *Duburiya v Agoko* (1973) N.L.R. (Part B) 74 as the ‘authority for the contention of exclusive jurisdiction of the Committee in deciding questions of the validity of ‘customary will’ where Thompson CJ said:

‘When there is a will, the Nauru Lands Committee has first to decide whether it is valid or not. If it is valid, there is no intestacy and, subject to any agreement by the beneficiaries to any variation of its terms, the estate must be distributed in accordance with it. If it is found to be invalid, only then does the question arise whether the family can agree on how the estate should be distributed. In order to decide whether or not a will is valid, the Nauru Lands Committee should hear all available evidence and in particular anything alleged by members of the family opposing its acceptance as a valid will.’

On the above view of Thompson CJ, said:

‘Again, this is ‘obiter dicta.’ With great respect to the learned Chief Justice, if he intended to imply that the Committee, in deciding on the validity of a will preparatory to distributing the estate, is entitled to decide judicially thereon, then I emphatically disagree with him. The judicial powers of the Committee conferred by Section 6 of the Nauru Lands Act do not include the power to so adjudicate.’

Donne CJ concluded:

*‘I consider therefore, for the reasons stated that the Nauru Lands Committee and the Supreme Court being created by statute, are limited in jurisdictions to that conferred expressly on them by the respective enactments, **the Committee has no jurisdiction to determine the validity of a will, whether it be formal, informal, nuncupative or customary. The jurisdiction is given exclusively to the Supreme Court and I so hold.’***

7. A preliminary issue that is raised by the Plaintiff is ‘whether this Court can proceed to quash the decision of the Nauru Lands Committee (NLC) on the ground that there was no Will and hence, the NLC is required to follow the Administration Order 1938.’

What Will did the NLC use in its Determination?

8. In an affidavit filed on **01 June 2018**, Mr(s?) Iturinmar Diringa, member of the NLC deposes:
- i. First Will (1st) made by Sam Akaruwo which was cancelled on Friday 11th October 2013 – annexed as NLC-2
 - ii. Second Will (2nd) made by Sam Akaruwo made on Friday 11th October 2013- annexed as NLC-3.
 - iii. Mr Akaruwo SNR had two Wills locked away in the safe at the Nauru Lands Committee’s office in Nibok District.

- iv. The first (1st) Will was cancelled by Sam Akaruwo himself on Friday 11th October 2013 at 10:55 in the morning. Sam Demewew Akaruwo and Samuel Julius Akaruwo appeared before the Nauru Lands Committee members at Domaneab to discuss the late Christive Akaruwo's estate. The meeting was recorded in minute book n. 85A page 94 & 95 dated Friday 11th October 2013.
 - v. The reason for Mr S. Akaruwo (**I take this to be referring to Sam Akaruwo and not Samuel Akaruwo**) cancelling his first 1st Will is because its beneficiary Christeve Akaruwo had died.
 - vi. The **second (2nd) Will no. 309** was made on the 11th October 2013, the same date when the first (1st) Will was cancelled.
 - vii. The second (2nd) Will bears Sam Akaruwo's signature and was witnessed by the Nauru Lands Committee members Tyran Capelle (Chairperson) and Iturinmwar Diringa (vice Chairman)
9. From the above affidavit, I find that the 2nd Will being referred to by Iturinmwar Diringa (vice Chairman) here is Will 309.
10. In an affidavit filed on 10th September 2018, the Plaintiff deposes as follows:
- a. The second Will was executed on 11th October 2013 before Mrs Tyran Capelle, Chairperson of the Nauru Lands Committee and Iturinmwar Diringa, Vice Chairman of NLC. It superseded any previous Will or codicil made by the deceased Sam Akaruwo. It was Will No. 309. Refer to NLC-2 in the Affidavit of Diringa. (**This confirms paragraph 7(ii) above**).
 - b. Will No. 309 (dated 11th October 2013) was withdrawn by Sam Akaruwo on the same day it was made. He never resubmitted the Will up to the time of his death.
 - c. It is clear from the record that the Will that was withdrawn by the deceased Sam Akaruwo from the Nauru Lands Committee was never brought back by him. A copy of the Will that had been declared by the Committee as cancelled was given to the chairperson by Mavis Depaune. Mavis is not directly related to the deceased Sam Akaruwo. The cancelled Will was declared valid by the Chairperson and the estate was distributed in accordance to the cancelled Will.
 - d. I am informed by Pleader Vinci Clodumar that the Will that the Committee used as means to distribute the estate of Sam Akaruwo does not exist as it was withdrawn by the Testator. No one can revive a Will.
11. The Plaintiff further deposed that as a result, Sam Akaruwo is to be taken to have died intestate.

CONSIDERATION

12. I note that Counsel for the 1st Defendant, though given time, opted not to file any submissions in this matter.
13. It is apparent from the affidavit evidence before me that Sam Akaruwo cancelled his first Will No. 196 on 11th October 2013. On the same date, he drew Will No. 309. This was witnessed by Mrs Tyran Capelle, Chairperson of the Nauru Lands Committee and Iturinmwar Diringa, Vice Chairman of NLC.

14. Counsel for the Plaintiff argues that Sam Akaruwo later withdrew this Will No. 309 from the NLC. As a consequence, Counsel argues that this withdrawal amounts to that Will 309 being cancelled. In Succession law, this is termed- 'revocation.'
15. The evidence shows that at the demise of Sam Akaruwo, this Will 309 was again presented to the NLC by a Mavis Depaune. How this Will 309 or a copy of it came into the possession of this Mavis Depaune is not clear from the evidence.
16. It is not clear from the evidence how the NLC concluded that Will 309 that was presented to them by Mavis Depaune and based on which they determined and distributed the estate of Sam Akaruwo was authentic and therefore valid.
17. I remind myself of the remarks by Donne CJ in *Lucy Ika and Kinza Clodumar v Nauru Lands Committee* and *Curator of Intestate Estate & Others*, (supra):
- 'I consider therefore, for the reasons stated that the Nauru Lands Committee and the Supreme Court being created by statute, are limited in jurisdictions to that conferred expressly on them by the respective enactments, the Committee has no jurisdiction to determine the validity of a will, whether it be formal, informal, nuncupative or customary. The jurisdiction is given exclusively to the Supreme Court and I so hold.'*
18. As the validity of Will 309 is in dispute, I hold that this is the main issue that will determine the outcome of this matter. There isn't enough evidence before me to conclusively consider the validity of Will 309.
19. As such, parties are to file the relevant affidavits as to the validity of Will 309. How Will 309 or its copy came into the possession of Mavis Depaune will need to be traversed. The question of codicils to Will 309 also arise.
20. Once I have considered the validity of Will 309, I can then look at the Plaintiff's claim in totality.

ORDERS

- i. The Plaintiff is to file and serve their affidavit by 02nd March 2026.
- ii. The Respondents are to file and serve their affidavit in reply by 02nd April 2026.
- iii. The Plaintiff is at liberty to file and serve any affidavit in response.
- iv. This matter is to be listed for mention on 24th April 2026.

Dated this 30th day of January 2026


Kiniviliame T. Keteca

Judge

