

Land Appeals Nos 8, 9, 16 and 19 of 2010

Terangi Adam, Diana Atsime, Margareta Dabuae and others  
Sylvannia Angabate and Others

Appellants

V

Nauru Lands Committee  
Secretary for Justice  
Alexis Momoken Namaduk and Others

Respondents

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JUDGE: Eames, C.J.  
WHERE HELD: Nauru  
DATE OF HEARING: 13 July 2011  
DATE OF JUDGMENT: 14 July 2011  
CASE MAY BE CITED AS: Terangi Adam & others v Namaduk and others  
MEDIUM NEUTRAL  
CITATION: [2011] NRSC 12

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Land Appeal - *Nauru Lands Committee Act 1956* - Whether Nauru lands Committee denied procedural fairness to appellants - Two field days held - first held on wrong land - Committee advised those attending that they would be given notice of second field day - notice not given - determinations quashed.

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APPEARANCES:

For 1 <sup>st</sup> and 3 <sup>rd</sup> Appellants on Land Appeals Nos 8 and 16 of 2010	<u>Practitioners</u> Ms M Depaune
For the 2 <sup>nd</sup> Appellants on Land Appeals Nos 8 and 16 of 2010	Mr D Aingimea

For the Appellants on Land  
Appeals Nos 9 and 19 of  
2010

Mr R Kaierua

For the Nauru Lands  
Committee and Secretary for  
Justice

Mr D Lambourne

For the Respondents in Land  
Appeals nos 8, 9, 16 and 19  
of 2010

Mr Alexis Namaduk (In  
person)

CHIEF JUSTICE:

- 1 This series of appeals relates to determinations of the Nauru Lands Committee concerning the ownership and boundaries of previously undetermined land in Anabare district. The Committee identified the land as Iruwitepe.
- 2 The 1928 Land Register shows at least six portions of phosphate land to be named Iruwitepe. The Nauru Lands Committee determined the present day owners of that portion to be the respondents in Land Appeal 8 of 2010 concerning portion No 394. That determination was published on 26 May 2010 in GGN 264 of 2010. The appellants were family groups led respectively by Terangi Adam, Diana Atsime and Margareta Dabuae.
- 3 Those appellants also appealed against a determination concerning portion number 396, in Land Appeals 16/2010 and 19/2010, where Alexis Namaduk is the lead respondent.
- 4 The first and second appellants in Land Appeal 8 of 2010 claim that the determination affects their interest in adjoining land named Agubaron. The determination, they say, in effect has reduced the size of their land by encroaching their boundaries. The third appellants Margareta Dabuae and family claim an interest in Iruwitepe, and say that their interest has been denied by the Committee in favour of the respondents.
- 5 In Land Appeal No 9 of 2010 Sylvania Angabate and others claim that the land Iruwitepe was solely theirs, having been inherited from the estate of Eidawadi Grundler, and contending that their interest had been recognised by the Supreme Court in decisions in 1972 and 1973.
- 6 In each case, the appellants contend that the Committee made a determination adversely affecting their interest but without giving them an opportunity to be heard, thus denying them procedural fairness. If that contention were to succeed on the appeal on any file concerning the same determination the consequence would be

that the determination would be quashed and the matter would be remitted to the Committee for re-determination<sup>1</sup>.

7 The history of the determinations is somewhat unusual.

8 The Committee organised an on-site field day and advertised it widely. It was held on 23 January 2007 and a number of people attended. As it happened, the Committee assembled at the wrong site, it not being phosphate land, but before that was ascertained a representative of the respondents and another claimant had identified what they said were the boundaries of their land.

9 When the Committee discovered that it had visited the wrong land it resolved to conduct a second field day. On that occasion, which was held on 7 May 2007, the same person who had walked over the wrong land and identified boundaries on the first occasion again identified the boundaries, this time on the land visited on the second occasion.

10 Before the second field day, the Committee had resolved that it would give notice to all those who had expressed an interest in the land on the first occasion, and repeated that assurance to Margareta Dabuae personally. She had a direct interest in Iruwitepe, claiming to have inherited it through Agakar. The minutes record that the Committee secretary wrote to her advising her of the second field day, but she has sworn that, in fact, she did not receive that notice.

11 Furthermore, although the family of Terangi Adam had been represented at the first field day – and their representative, Eidnamwe Melekiola (Demauna), was recorded as having been present – their representative was not one of those the Committee resolved to notify of the second field day.

12 It seems likely that the family of Terangi Adam were omitted in the mistaken belief that the Committee was only concerned with ownership and boundaries of Iruwitepe, and not with Agubaron. That however, overlooked the fact that owners

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<sup>1</sup> See *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147.

of Agubaron had a definite interest in ensuring that the boundaries of Iruwitepe did not encroach into their land.

- 13 A further complaint of denial of natural justice is made on behalf of Terangi Adam. On 8 January 2010 he visited the Committee offices to try to convince them not to make a determination adverse to his interests. The determination was not in fact published until 14 July 2010, so the Committee could have changed its mind at this stage. The Committee had reached its decision to that point in part reliance on a map, which Terangi Adam then asked to see. He was told that the map had been lost. He asked that in those circumstances would the Committee permit him to demonstrate on-site the boundaries, and to have surveyors present. He pointed out that the person who successfully satisfied the Committee as to the boundaries on the phosphate land had also done so on the wrong land on the first field day.
- 14 The Committee vice chairman said, "I am of the view that you must wait for it to be gazetted, then you can contest it, because I for one find the decision incorrect". The suggestion that the Committee had no choice but to go ahead with a decision that one of its members thought incorrect - and leave it to the appeal court to resolve - does seem to me to have betrayed a misunderstanding of the Committee's powers.
- 15 I would not say that in all cases a denial of procedural fairness would occur if the Committee declined to act on new information which someone tried to raise after the Committee had concluded its processes. If every interested person had been given the opportunity to be heard then they might have no basis for complaint if they did not take the opportunity, or left it too late to raise additional information.
- 16 In this case, however, this was the last undetermined land to be assigned ownership, and the Committee had itself recognised that adjoining landowners had an interest in the outcome, that many people claimed an interest in Iruwitepe, that the first field day had been unsatisfactory and, as Margareta Dabuae claimed, that some people with an interest in Iruwitepe may well have withheld comment on the first field day, since the wrong land was being discussed.

- 17 On 18 April 2010 Margareta Dabuae met with the Committee and produced a copy of a 1937 gazette, which she claimed showed that ownership of phosphate land Iruwitepe was with descendents of Agakar. The Chairperson said that Gazette No 20 of 1975 overrode all other determinations concerning this land, and that showed a different basis for ownership.
- 18 It may well have been that by considering the Gazette which Mrs Dabuae produced, the Committee had met any obligation that it then had to give a hearing on that matter. A complaint about denial of procedural fairness is a complaint about the process, about denial of the chance to put your case, not about the correctness of the decision that is taken by the committee after having given that opportunity to an interested person.
- 19 I do not, however, need to decide whether this instance did represent a denial of procedural fairness. That is so because in my opinion, the Committee has been shown not to have given appropriate notice of the second field day to people whom it knew or ought to have known had an interest in being heard. That is enough to vitiate its determinations as to the land Iruwitepe, and the determinations should be quashed, with the result that all of the appeals now properly before the Court must succeed.
- 20 There is debate as to whether appeal No 8 of 2010 was filed within the required 21 days. It seems to me that it was not, and the proper order is that the appeal on that file should be dismissed. However, the determination appealed against on that file would fall anyway as a result of the conclusion I have reached on the other appeals.
- 21 I therefore quash the determination published in gazette Notice Number GNN 264/2010 on 26 May 2010 with respect to Portion Number 394, and also the determination number GNN 360 of 2010 published on 14 July 2010 with respect to portion number 396.

22 I direct the Nauru Lands Committee to reconsider the matters that were the subject of those determinations and publish its decisions.

Geoffrey M. Eames AM QC

Chief Justice