

Republic of Nauru

In the Supreme Court

Land Appeal No. 1/2000

Between

Edowe Apin

Appellant

And

Nerina Apin and Ors.

Respondents

Matter heard on May 22, 2001

Decision reserved.

Written submissions to be filed in Court from Appellant and Respondents before June 7, 2001.

For Appellant: Robert Kaierua, Pleader

For Respondents: Paul Aingimea, Pleader

Date of Decision:

*Delivered 2/08/01*

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Decision of Connell C.J.

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This appeal surrounded the matter of distribution of the Gaeow Apin estate. Gaeow Apin died on 4 November 1999. He died intestate. It is accepted that the distribution of property will be made in accordance with the Regulations governing Intestate Estates contained within the Administration Order No. 3 of 1938.

The Appellant, Edowe Apin, is the daughter of Betar Apin, the brother of Gaeow Apin. Betar Apin died on 2 July 2000.

The Respondents were Nerina Apin, the wife of Gaeow Apin, Edagaiwea Emo Apin, a daughter of the marriage between Nerina and Gaeow Apin, and three other Respondents, Lomax, Paner and Febriano Apin, who were born Baguga.

The main issues raised by the Appellant were whether Nerina was married to Gaeow, which raised the question of the legitimacy of Emo. The further question was whether Gaeow Apin had adopted Lomax, Paner, and Febriano.

The Nauru Lands Committee, after meeting with Nerina Apin, made a determination of the beneficiaries of the estate in which Nerina was given a life time only interest, and all four of the children, Lomax, Paner, Febriano and Emo were to take in equal shares. The determination of beneficiaries was published in Gazette No. 17 of 2000 on 19 January 2000.

At a hearing in Chambers on 4 December 2000, the former Chief Justice stated that the estate of Gaeow could not be distributed until the Betar Apin estate was determined. He granted an injunction, which was issued under the hand of the Registrar of the Court, dated 13 December 2000 to prevent the Curator of Intestate Estates paying out monies that may come into his custody in connection with the estate of Gaeow Apin until the Supreme Court dealt with the said estate. The Respondents expressed some doubts whether such injunction was ever properly served but it was certainly issued.

At the hearing, the Appellant admitted the fact of marriage between Nerina and Gaeow Apin and the subsequent birth of the daughter Emo. The contested issue was simply whether the other respondents, Lomax, Paner and Febriano Apin, all born Baguga, had been adopted and therefore as adopted children were able to take under the intestacy.

The evidence of the adoption was provided by Nerina Apin that her husband had told her to register the three children born Baguga and to change the name to Apin. Nerina Apin indicated that this had been done at the President's office before Leo Keke where the surname was changed to Apin.

It appears from the cross-examination that the document was signed by Nerina Apin at the office of Leo Keke. The document produced in Court was in the following form –

I, Gaeow Appin of Anabar District, Republic of Nauru, a gentleman, desire to change the names of the following children to my surname:

Jodax Febriano BAGUGA  
Craig Lomax BAGGA  
Paner Lucky BAGUGA

Forthwith they are to be named as follows:

Jodax Febriano APPIN  
Craig Lomax APPIN  
Paner Lucky APPIN

Given at Nauru, this 13<sup>th</sup> day of January, 1995

**GAEOW APPIN**

**Sworn before me**

**Leo D. Keke**  
**Supreme Court of Nauru**  
**Commissioner for Oaths/Notary Public**

13/1/95

A number of points arise from this document. Nothing hinges on the spelling of the name, as Apin or Appin. Either appears acceptable though the Registrar of Births, Deaths, and Marriages records it as 'Appin'.

1. On the evidence, there was no other document that dealt with the adoption.
2. At best, it simply registered a change of name.
3. It was not signed by the proponent but by his wife, which was admitted in the wife's examination.
4. Gaeow Apin was not in attendance when the document was signed.
5. The procedure was not in accordance with requirements for an adoption as required under the Adoption of Children Ordinance 1965-67.

6. There follows from the above, that there was not an entry relating to such purported adoption in the Register of Adopted Children maintained by the Registrar under the Ordinance (section 22).

In any event, the Court was not prepared to consider the document or the statement by the wife of the deceased husband's desire as evidence of the customary adoption. Even though the document was signed four years before the death of Gaeow Apin, it was clearly flawed in the manner of its execution and would have been quite unsafe to place any credence upon it.

However, more importantly, for an adoption to be given credence, it must, if sought after 1965, comply with the procedure laid down in the Adoption of Children Ordinance 1965-67. This Ordinance applies to all children under the age of twenty-one years who had never been married and were to be the subject of an adoption.

Mr. Aingimea for the Respondents submitted that the expressed wishes of the husband only revealed by oral evidence of the wife, Nerina, to 'register' the boys in his name constituted, in itself, customary adoption. The Court has already ruled that the actions taken by Nerina Apin were flawed. It may well be the case that Gaeow Apin may have desired that the three boys, formerly Baguga, should have taken but the estate was an intestacy and such an estate is still determined by the 1938 Administration Order.

The Court clearly accepts that a child, the subject of an adoption, will be treated as a child for the purposes of regulation (3)(c) of the Regulations governing Intestate Estates under Administration Order No 3 of 1938. That an adopted child could be regarded as a 'child' for the purposes of regulation (3)(c) was canvassed in Land Appeals Nos. 14 of 1972 and 8 of 1973 Eidawaidi Grundler v Eibaruken Namaduk and Others where the learned Chief Justice came to the conclusion that "in Administration Order No. 3 of 1938 the expression 'child' must be taken to have included in 1939 a child who was recognised as adopted under Nauruan custom". The Court does not, of course, resile from that decision. But times have changed.

First, the only evidence of adoption was uncorroborated evidence of the wife that the husband, Gaeow Apin, had asked for the sons to be registered. The document that followed was flawed and did not constitute an adoption. It may, in other circumstances, have been some indication of custom but in the light of the present legislative provisions governing adoption, customary procedures previously accepted would not now be acceptable to the Court.

The Adoption of Children Ordinance 1965-67 is carefully drawn legislation to govern the adoption of children. It is now necessary to obtain from the Family Court an adoption order and to have such order registered before the Court will give credence in law to an adoption post-1965.

For the purposes of Administration Order No. 3 of 1938, a child must be either natural issue of both parents or adopted. The three children Jodax Febriano, Craig Lomax, and Paner Lucky are not entitled under the intestacy to any part of the estate. The widow Nerina Apin will, therefore, have a lifetime interest only, and the daughter Emo is the only other beneficiary. The interest of Emo to be held in trust, with her mother as trustee, until her sixteenth birthday.

The Court was informed by Pleader for the Respondent that the interim injunction was not served on the Respondents, and, perhaps, the Curator of Intestate Estates, and that payments of RONWAN interest were subsequently made to the three boys, Jodax Febriano, Craig Lomax and Paner Lucky. As these payments were made by mistake, they should be returned to the beneficiaries. It would appear that there may have been some laxity in serving the injunction. The party obtaining the injunction has prime responsibility in serving it on the parties with an interest and notice of service should be given to the Registrar and maintained on file. This is necessary for the Court to adjudicate in any situation where contempt may arise. It was not clear whether the injunction was served on the Curator who was third defendant at the time of the granting of the Interim Injunction on 13 December 2000, but he was not represented and did not appear in the substantive hearing on May 22, 2000.

On account of the decision reached by this Court in Appeal, there is no further need for the interim injunction and it is, therefore, forthwith discharged.


The Respondents have sought costs, and in doing so, Mr. Aingimea has drawn attention to the fact that the major part of the case, namely, the marriage and birth of the daughter, which had been challenged, could have been resolved with comparative ease by checking the requisite registers. It is worth recording that proper pleadings would have resolved these questions prior to trial. Although, the Appellant succeeded as far as the three boys were concerned and the issue was substantial, it was not an issue, which materially affected the outcome as far as the Appellant was concerned. In the event, the Court will grant costs to the Respondents Nerina Apin and Emo Apin to be determined on a taxation by the Registrar, and to be paid by the Appellant to the extent of three quarters of those taxed costs.

I, therefore, Order as follows:

1. That the determination of the beneficiaries by the Nauru Lands Committee contained in Gazette No. 17/2000 be varied so as to exclude Jodax Febriano Apin né Baguga, Craig


Lomax Apin né Baguga, and Paner Lucky Apin né Baguga. To achieve that purpose, this decision of the Court is to be served on the Nauru Lands Committee informing it to withdraw its earlier determination and to publish the variation of the determination in accordance with the decision of this Court. It is clear that in excluding certain beneficiaries, the shares to the remaining beneficiaries, Nerina and Emo Apin, will need to be recalculated.

2. That the interim injunction dated 13 December 2000 be discharged.
3. That monies paid out of the estate of Gaeow Apin by the Curator to Jodax Febriano Apin, Craig Lomax Apin and Paner Lucky Apin be paid back to the Curator for distribution to the lawful beneficiaries.
4. That the costs of the Respondents, Nerina Apin and Emo Apin, be taxed by the Registrar and paid by the Appellant to the extent of three quarters of those taxed costs.

  
Barry Connell  
CHIEF JUSTICE

22 June 2001

A Certified True  
of the Original.

  
2/8/2001  
SAMPATH B. ABAYAKOON  
REGISTRAR, SUPREME COURT

