

Application by the Public Trustee for the Northern Territory
[2000] NTSC 52

PARTIES: APPLICATION BY THE PUBLIC TRUSTEE FOR THE NORTHERN TERRITORY AS ADMINISTRATOR OF THE ESTATE OF SHORTY NAJALUNG PURSUANT TO SECTION 71E OF THE *ADMINISTRATION AND PROBATE ACT*

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION

FILE NO: 61 of 2000 (20008116)

DELIVERED: 30 June 2000

HEARING DATES: 18 May 2000

JUDGMENT OF: MARTIN CJ

CATCHWORDS:

Administration of estate of deceased Aboriginal – plan of distribution.

Administration and probate Act 1969 (NT) s 71E, s 71E(1), s 71B(2), s 66(5) and Div 4A

Public Trustee Act 1979 (NT), s 53

REPRESENTATION:

Counsel:

Applicant: D Gallo

Solicitors:

Applicant: Clayton Utz for the Public Trustee

Judgment category classification: B
Judgment ID Number: mar20016
Number of pages: 3

Mar20016

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Application by the Public Trustee for the Northern Territory
[2000] NTSC 52
No. 61 of 2000 (20008116)

BETWEEN:

**IN THE MATTER of an application by
the Public Trustee for the Northern
Territory as administrator of the estate
of SHORTY NAJALUNG pursuant to
section 71E of the *Administration and
Probate Act***

CORAM: MARTIN CJ

REASONS FOR JUDGMENT

(Delivered 30 June 2000)

- [1] Application by the Public Trustee pursuant to section 71E of the *Administration and Probate Act* 1969 (NT) for an order that the intestate estate of the above named be distributed in accordance with the plan of distribution put forward pursuant to s 71B(2). The Public Trustee has filed an election to administer the estate under s 53 of the *Public Trustee Act* 1979 (NT).
- [2] The Court is empowered to make an order by s 71E(1) of the Act, and in so doing is required to take into account the plan of distribution and is enjoined from making an order unless it is satisfied that to make it would in all circumstances be just. The procedure is provided for under Division 4A of

the Act relating to the intestate estate of an Aboriginal. The plan is to be prepared in accordance with the traditions of the community or group to which the intestate belonged. The relationship between Division 4A and Division 4 – Distribution on Intestacy – is unclear, but does not arise in this case given that the evidence shows that there are no next of kin of the intestate as defined in s 66(5).

- [3] The estate comprises cash only in the hands of the Public Trustee amounting to approximately \$28,700.
- [4] The affidavit evidence of each of three deponents, senior members of clan groups making out the Jawoyn people, asserts that she or he is qualified and authorised by Jawoyn tradition to say who is entitled to take an interest in the estate under the customs and traditions of the Jawoyn. That evidence is consistent in showing that the intestate was the last member of another clan, that he was “grown up” by the late Gerry Mumbin who has three living children, Kevin, Kathleen and Lisa. Those children, in classificatory terms, were the “wives” and “brother-in-law” of the intestate. As the deceased had no children, the Mumbin siblings were his close family. The evidence also shows that Kevin, Kathleen and Lisa Mumbin succeeded to the non Aboriginal estate of the intestate in accordance with the customs and traditions of the Jawoyn and are entitled in equal shares. A letter to the Public Trustee from the Executive Director of the Jawoyn Association confirms that evidence.

- [5] Notices were published in the Northern Territory News by the Public Trustee of his intention to apply to administer the intestate estate, and inviting any person having claims to submit them. No such claims have been made.
- [6] The plan of distribution proposes that the estate be divided into three parts (I assume equal parts) and that one of each part be distributed to Kevin, Kathleen and Lisa Mumbin.
- [7] I am satisfied that in all the circumstances it would be just to order that the estate be distributed in accordance with the plan and order accordingly.
