

shows no facts to indicate why suspicion is directed at these particular individuals rather than others, and contains nothing other than the conclusory averment that the named individuals are suspect.

Because the Trust Territory has not met the search and seizure requirements of 1 T.T.C. 3 (the Fourth Amendment), as articulated in *Schmerber, Davis and Aguilar* by the Supreme Court, in that it has not established probable cause and shown why the demanded search would be reasonable, the motion to compel voice identification tests must be denied.

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**IN THE MATTER OF THE ESTATE OF ROSE**

Probate Case No. 9

Trial Division of the High Court

Marshall Islands District

May 8, 1972

Action to determine proper distribution of decedent's estate. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held distribution should follow that set out in the Master's report which had followed Marshallese custom.

**1. Appeal and Error—Generally**

Failure of the court to notify any interested party of what it proposed to do in contrast to Master's findings and proposal is adequate ground for vacating former action taken after such occurrence.

**2. Marshalls Custom—Succession**

Under Marshallese custom, each child is entitled to an equal share of their mother's estate.

**3. Marshalls Custom—Succession**

Under Marshallese custom a decedent's surviving spouse is entitled to her share and it is her responsibility to make such division as she may see fit to his adopted daughter.

TURNER, *Associate Justice*

This matter came on for hearing this date upon notice personally served upon the heirs of the decedent. Abija, brother of the decedent, appeared as representative of his brothers and sisters.

At a previous date for hearing, September 14, 1970, there were no appearances. Nevertheless, an Order for Distribution was prepared and signed but, fortunately, was not entered because after the hearing this date, it was evident the former Order was contrary to the Master's findings and recommendations but also was not in accord with the controlling facts. It also appeared the notice of the former hearing was entirely inadequate because it appeared personal service of the notice was obtained upon only one of nine interested parties. The notice specified: "If the parties do not appear . . . the Court will consider the Master's Report . . ."

[1] Had the Order conformed to the Master's findings and recommendations, no harm would have been done. It did not and proposed distribution entirely contrary to the Master's recommendations. Failure of the Court to notify any interested party of what it proposed to do in contrast to the Master's findings and proposal is adequate ground for vacating the former action.

Background information is essential to an understanding of this case. Public Law 88-485 (78 Stat. 598) enacted by the United States Congress and approved by the President August 22, 1964, appropriated the sum of \$950,000 for the following recited purpose:—

"That the Congress hereby assumes compassionate responsibility to compensate inhabitants in the Rongelap Atoll, in the Trust Territory of the Pacific Islands, for radiation exposures sustained by them as a result of a thermonuclear detonation at Bikini Atoll in the Marshall Islands on March 1, 1954."

December 7 and 8, 1965, meetings of the Rongelapese with government representatives were held for the purpose of determining the amount of individual shares. An application for Determination of Heirship, dated November 13, 1968, was filed in this Court by the then Attorney General, together with a check dated November 13, 1968, in the amount of \$1,166.02 payable to the Clerk of Courts. The application recited that the government had held the funds since February 24, 1966, as "the property of one Rose, a former male resident of Ailinglaplap, who has been deceased for an unknown number of years."

The Master's Report and the hearing evidence shows and we adopt as findings that:—

1. Rose left Rongelap Atoll during Japanese times and went to Ailinglaplap Atoll. He never returned to Rongelap and was not an "affected inhabitant of Rongelap" under the terms of the Congressional Act and therefore was not entitled to a distributive share under the Act.

2. Rose married Ene, under the custom, and adopted, Emni on Ailinglaplap. Because Rose was not eligible for an "affected inhabitants" share of the Congressional appropriation, his surviving spouse and adopted child were not eligible for his share under the "guidelines" agreed to at the Rongelap meetings of December 7 and 8, 1965.

3. Specific information was not submitted to the Court, but it appears from the evidence each of eight Rongelap residents of March 1, 1954, received an amount in excess of \$10,000. This amount was distributed to Jabkion, the mother of Rose and to seven other sons and daughters who were Rongelap residents.

4. Rose was not a resident of Rongelap so from his mother's share he was to receive \$1,166.02, the amount now held by the Court.

5. Rose died before he received the money. It did not belong to his estate because there was no payment to him

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either by check or by cash prior to his death. Instead, it belonged to his mother's estate, she having died since the 1965 distribution, as a gift that failed because of the death of the donee.

Rather than require the heirs of Jabkion, her children, to petition this Court for distribution of her estate at this late date and because it appears from the testimony whatever other estate Jabkion had at her death has long since been distributed (without benefit of court proceedings and orders), the sensible thing to do now is to distribute the money held by the Court in accordance with Marshallese custom without further court proceedings. That is what the Master proposed and we agree with him.

[2] Under Marshallese custom, each child is entitled to an equal share of their mother's estate. The representative of Jabkion's children and the Master agreed that in the present situation, the surviving spouses of the two deceased children—Rose and Lija—also should share in the distribution.

[3] This is in accordance with the Master's proposed distribution, except that he also suggested payment of a share to Rose's adopted daughter. Under the custom, Rose's surviving spouse, Ene, is entitled to his share and it is her responsibility to make such division as she may see fit with her daughter, Emni.

It is therefore,

Ordered, adjudged, and decreed:—

1. That the following are entitled to an equal share of the sum of \$1,166.02 in the amount of \$145.75:—

- (1) Abija, Rita, Majuro Atoll
- (2) Janeton, Rongelap Atoll
- (3) Josea, Rongelap Atoll
- (4) Albot, Majuro Atoll
- (5) Jabwe, Rongelap Atoll

(6) Muja, Rongelap Atoll

(7) Paul, surviving spouse of Lija, Rongelap Atoll

(8) Ene, surviving spouse of Rose, Ailinglaplap Atoll.

2. That the check, issued November 13, 1968, by the Trust Territory Government shall be returned for reissuance and distribution in conformity with this Order.

3. The Order of Distribution heretofore made and signed October 23, 1970, but not entered is vacated and set aside.

4. Time for appeal is extended to sixty (60) days from date of entry of this Order.