

IN THE SUPREME COURT OF NAURU

MISCELLANEOUS CAUSE NO. 10/98

IN THE MATTER OF an Application
Under Article 14(1) of the Constitution of
Nauru filed by MS. RUTH DAGIARO.

IN CHAMBERS BEFORE HIS HONOUR MR. JUSTICE JOHN DOUGLAS DILLON.

DATE: THURSDAY 2 JULY, 1998 AT 10:00 A.M.

For the Applicant: ~~Mr. David Aingimea~~
For the Respondent: ~~Mr. Derhgawen~~

MINUTE OF DILLON J.

This application is based on Article 14(1) of the Nauru Constitution which states: -

“14 (1.) A right or freedom conferred by this Part is enforceable by the Supreme Court at the suit of a person having an interest in the enforcement of that right or freedom.”

The right or freedom relied upon is contained in Article 11(1) of the Constitution which states: -

“11 (1) A person has the right to freedom of religion to manifest and propagate his religion or beliefs in worship, teaching and observance.”

The purpose of the application relying as it does on the fundamental freedom of religion is to enable the Applicant Ruth Dagiario, who is the adopted daughter of Mr. Aingimea, to

marry later this month in her own church; pursuant to her own religion; and as member of the “International Christian Church”. It is argued on her behalf that the provisions of the Births, Deaths and Marriages Ordinance 1957 do not permit or allow her to marry in her own Church and according to her own religion and that consequently she is deprived and prevented from enjoying her fundamental rights and freedom of religion as guaranteed by the Constitution of Nauru. That right, it is submitted by Mr. Aingimea, is enshrined in Article 11(1) when it states that the “practice and observance” of religious freedom is guaranteed. He says with some justification, that being married in one’s own Church, by one of its own Ministers, is fundamental to the practice of one’s religion, and that therefore the prevention of such a marriage ceremony is unconstitutional.

The problem has arisen in this way. The 1957 Ordinance Section 20(1) provides –

“20 (1) The Administrator may, by notice published in the Gazette –

(a) declare a religious denomination to be a recognized religious denomination;”

And as Mr. Aingimea confirms the “International Christian Church” ,of which he is a Minister, has not been so declared under Section 20(1) referred to above. This means that a member of that Church wishing to marry must attend before a Minister of another Church who has been so appointed and so be married by a Minister not of his or her or theirs faith. Mr. Aingimea submits that situation is a clear breach of the fundamental right of the freedom of religion as enshrined in this country’s Constitution.

In fact he goes further than that and claims his Church which has some 200 adherents has on previous occasions made application to be declared as a “recognized religious denomination” but, such applications have been rejected without reasons being given.

Mr. Derhgawen in his submissions referred to Article 11(4) which states –

“11 (4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of this Article to the extent that that law makes provision which is reasonably required –

- (a)
- (b) for protecting the rights and freedoms or other persons, including the right to observe and practise any religion without the unsolicited intervention of members of some other religion; or
- (c)”

He submitted that the Republic relied on those provisions to control the over proliferation of competing religions in a small island community. He went further and explained that the provisions of the Ordinance provided three categories of persons who could solemnize marriages viz:

- (i) The Registrar of Births, Deaths and Marriages;
- (ii) Ministers belonging to a recognized religious denomination;
- (iii) Magistrates of the Central Court appointed under the provision of Section 20(1)(b).

It was therefore, he said, not strictly correct to suggest that the Applicant can only get married if she agrees to a Minister of a recognized religious denomination who is not of her own religion. The Registrar and the Magistrates have no official religious recognition as such and are simply administratively appointed officials.

Finally, Mr. Derhgawen referred me to the case of Dogabe Jeremiah v Nauru Local Government Council - Misc. 2 of 1971 dated 5 March 1971. While not strictly on point it is nevertheless interesting. Mr. Jeremiah had applied to the Nauru Local Government Council for its consent for him to marry a non-Nauruan. The Council refused its consent and gave no reasons. The Court considered both the Constitution and the Constitutional Convention which framed it and dismissed the Petition.

There is no doubt that the Constitution of Nauru provides for the protection of the fundamental rights and freedoms of all its citizens. That is set out in the very Preamble to the Constitution itself. While every person in Nauru irrespective of his or her “..... race, place of origin, political opinions, colour, creed or sex “ are entitled to those fundamental rights and freedoms, they are nevertheless limited administratively and consequently “ designed to ensure that the enjoyment of those rights and freedoms by a person does not prejudice the rights and freedoms of other persons or the public interest”. The underlining is mine to emphasise the necessity for administrative intervention and control by the Republic to ensure that a persons’ individual rights and freedoms are respected subject to the rights and freedoms of all citizens generally. These limitations are clearly exemplified in Articles 4 to 13 of the Constitution. The necessary regulation of people empowered to solemnize marriages must be “in the interest of public order” as stipulated in Article 11(4)(a).

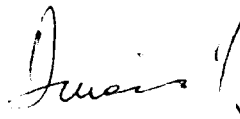
The challenge by the present application is really against the Ordinance and not the Constitution – against an administrative licensing regulation and not against an entitlement to the fundamental rights and freedoms of religion. As part of that legislative process it appears to the Court that provision has been made for the election by persons wishing to marry of having either a civil ceremony before the Registrar of Marriages or one of the appointed Magistrates; or in the alternative a religious ceremony before one of

the Ministers belonging to a recognized religious denomination. The Court understands that in some countries a civil marriage ceremony is the one that is only legally recognized but celebrants may, if they so wish, have a second religious ceremony. In Nauru according to the 1957 Ordinance there appears to be three choices available to couples wishing to marry viz:

- (i) By the Registrar of Marriages or appointed Magistrates in a civil ceremony;
- (ii) By Ministers belonging to a recognized religious denomination in a religious ceremony;
- (iii) By the Registrar of Marriages or appointed Magistrates in a private civil ceremony followed by a religious ceremony of the participants' particular religion which has not been recognized as a religious denomination under the Births, Deaths and Marriages Ordinance 1957 Section 20 (1)(a).

The application seeks an order that Section 20(1)(a) of the Births, Deaths and Marriages Ordinance 1957 “ contravenes the Constitutional rights of a person to freedom of religion”. And “..... seeks to enforce her constitutional right to observe and practice her religious beliefs in the taking of her wedding vows and wedding ceremony.” Those rights can be achieved as explained in (iii) above so that the sanctity of her religious beliefs will not be comprised by her having to be married by a recognized Minister but not of her own religion.

For the reasons stated, I do not accept that the 1957 Ordinance that is challenged, contravenes the applicant's constitutional rights as claimed. The application is dismissed. There will be no order for costs.



DILLON J.

2 July, 1998

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For The PLAINTIFF : Mr. David Aingimea

For The RESPONDENT : Mr. Derhgawen