

IN THE SUPREME COURT OF NAURU

Civil Action 3/98

BETWEEN C. WOODLEY of Sydney,
Australia, Director

Plaintiff

AND KINZA CLODUMAR as
President of the Republic of
Nauru

First Defendant

AND NAURU COUNCIL

Second Defendant

AND REPUBLIC OF NAURU

Third Defendant

Mr A.D. Audoa for the Plaintiff
Mr B. Connell for the Three Defendants

Date of Judgment: *2nd day of April* 1999 (*by line*)

JUDGMENT OF DILLON J.

The Plaintiff's Claim

The Plaintiff states that in July 1993 he was appointed to the office of Managing Director of a company called Economic and Marketing Services Pty Ltd, which company has its registered office in Sydney, Australia. The Plaintiff's claim is in two parts:

- "(a) Back pay salaries, long service leave pay, outstanding expenses, holidays pay, and retrenchment pay for which he assesses a global sum of AUS\$104,000.00.
- (b) Stress for which he claims the sum of AUS\$100,000, making a total claim of AUS\$204,000."

The Defendants

There are three defendants to these proceedings that have been instituted by the Plaintiff, namely:

1. President Kinza Clodumar as President of the Republic of Nauru.
2. The Nauru Council.
3. The Republic of Nauru.

Attached to the submissions filed on behalf of these three defendants are two affidavits which it is relevant to refer to at this point. The first is an affidavit by Mr Clodumar which states as follows:

- “1. I am a member of Parliament of the Republic of Nauru who was at the date of the serving of the writ in this action President of the Republic of Nauru.
2. On 17 June 1998 I ceased to hold the office of the President of the Republic of Nauru.
3. My successor is President is Bernard Dowiyogo M.P. who remains President to the date of this my affidavit.
4. I am not nor ever have been Chairman of the Nauru Corporation.
5. I do not hold nor ever have held shares in an Australian registered company, Economic and Marketing Services Pty Ltd.”

The second affidavit is by Mr Nath, the Secretary for Justice and the Registrar of Corporations for Nauru who states as follows:

- “1. I am the Secretary for Justice and the Registrar of Corporations in the Republic of Nauru.
2. The Nauru Corporation was a registered corporation under the Corporation Act 1972 of the Republic of Nauru.
3. On 17 November 1995 the said Nauru Corporation failed to renew its registration as required.
4. From 17 November 1995 the Nauru Corporation is no longer a registered corporation in Nauru.”

The Plaintiff in his brief submissions in reply has not objected to those affidavits nor commented adversely on their contents. As a result it is necessary to consider the very nature and content of the Plaintiff's pleadings before any consideration can be directed towards the merits of his claim.

The First Defendant, Mr Clodumar, is named by the Plaintiff because, so he says :

"The First Defendant is the majority shareholding of the Economic and Marketing Services Pty Ltd."

But Mr Clodumar's affidavit confirms that he has never been Chairman of the Nauru Corporation, nor has he ever held shares in the company known as Economic and Marketing Services Pty Ltd. Clearly the Plaintiff's claim against Mr Clodumar is misconceived. Counsel for the Plaintiff has made no attempt to explain the obvious misrepresentation of Mr Clodumar's status and the position in these proceedings.

Similarly, the Second and Third Defendants, while named in the pleadings, have not been identified as how and in what way they are supposed to have incurred liability for the amounts now alleged to be owing by the Company to the Plaintiff.

The Defence

Mr Connell, as part of his detailed submissions, moved to dismiss or, in the alternative, to set aside the Plaintiff's pleadings on five grounds, namely:

- (a) Mis-description of the First Defendant who has been joined as a party as President of the Republic;
- (b) Failure to obtain leave under the Public Proceedings Act 1972.
- (c) Inappropriate forum, that is Nauru instead of Sydney.
- (d) The inadequacy of the ill-drawn pleadings.
- (e) Misconception of the action which should be directed against Economic and Marketing Services Pty Ltd.

It is not necessary to consider further the first two grounds relied upon by Mr Connell. The Plaintiff acknowledges that he is or was employed in Australia by Economic and Marketing

Services Pty Ltd. Clearly it is against that Company that he must seek relief. Further, he acknowledges that the Company is registered and operates in Australia. Again it is in that country therefore where his proceedings must be issued. Not only are the present proceedings misconceived, but they also fail to comply with the elementary rules of appropriate procedure, and as such constitute an abuse of process.

I have endeavoured to identify from Mr Audoa's submissions the basis for his reliance on claiming against the First Defendant to support the Plaintiff's claim, especially now that the First Defendant has deposed that he does not hold, nor ever has held, shares in Economic and Marketing Services Pty Ltd. Mr Audoa's reply to Mr Connell's submissions on the motion to set aside is as follows:

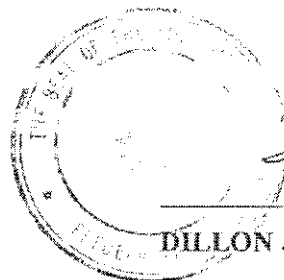
"Submission on Motion Set Aside

That there is no need for Defendants to make submissions under this head. The Counsel for Defendant for a moment forgot that this plea to be made in prayer of submissions. So the Plaintiff is not under obligation to answer these averments which are made disorderly and not in line with procedure.

The Second and Third Defendants

The averments made under this heading are itself is wrong. The Plaintiff reserves his right to explain the same at the time of arguments."

Those submissions are not directed to the elementary requirements of who is the appropriate defendant, and what is the proper forum. As a result they are of no assistance to the Plaintiff. The Court is satisfied that the Statement of Claim does not disclose that the Plaintiff has a cause of action against the three defendants named in the proceedings. The claim is therefore dismissed with costs and disbursements to each of the three defendants to be fixed by the Registrar. Any dispute as to quantum is to be referred back to the Court.


J. Dillon J.

DILLON J.