In the Supreme Court of Nauru

Civil Action No. 9/2001

Between	Ronald Deduna	Plaintiff
And	Brendaz Eobob	Defendant

Matter heard before the Supreme Court on 14, 15, 18 May, 18 June and 31 July, 2001, with final written submissions by both parties submitted to the Court in accordance with order of the Court dated 31 July 2001.

Decision reserved.

For Plaintiff: Ruben Kun Pleader

For Defendant: Paul Aingimea Pleader

Date of Decision: 6.9.01

Decision of Connell C.J.

By a writ of summons, the plaintiff, a landowner, is challenging the right of the defendant to remain in possession of portion 24 Denigomodu district `to do with as he will'.

Following an attempt by the plaintiff on 18 June, 2001, to obtain an *ex parte* interlocutory injunction from the Registrar, the matter was listed and heard *inter partes* on May 15, 2001, following an order of the Registrar for maintenance of the status quo prior to the hearing.

On May 15, 2001, the matter was adjourned by consent prior to the final submissions in order to allow the parties time to consider a settlement. This failed to be achieved and the matter was brought on again before the Court on 31 July 2001. Upon the application of the pleader for the defendant and with the consent of the pleader for the plaintiff, the Court allowed written final submissions to be made. These submissions were received by the Court within the time-limits set.

The land, portion 24 in Denigomodu district, is owned by a group of landowners. Coconut land, situated in the Location area, it was previously leased to the Nauru Phosphate Corporation until the lease expired on 31 March 1999. It was not leased back.

The defendant, Brendaz Eobob, one of the landowners, approached the plaintiff and discussed with him the prospect of the defendant living on the land. It was explained to the plaintiff that he had nowhere else to live. This was about January 2000.

Later that year the defendant polled all the landowners of portion 24 `Denigomodu' whether they would be prepared to gift each of their shares of the land to the defendant granting him sole ownership of the property `to do with as he will'. He managed to obtain the support of each in writing and the document was dated 1 September 2000.

It was recognised by the defendant that the signed document was not sufficient in itself. He stated in evidence that he would need to take the document to the Nauru Lands Committee before the gifted transfer was presented to the President for his written consent in accordance with Section 3(3) of the Lands Act 1976. He also stated in evidence that the Nauru Lands Committee was `sitting' on the document.

Not very long after, a further document was prepared by the plaintiff and placed before the various owners of the land. It read in its uncorrected form as follows: -

> "We, the undersigned, after hearing the complain from the tennants in which they advised that you had unlawfully evicted them from their living quarters, on our land Denigomodu Portion 24 in Denigomodu District. We have then decided to revoke our consent which was signed on 1st September 2000.
>
> Part of the complain we received is that, you had charged the tennants fees for the quarters, which are situated on the above portion. This is not only criminal but you have therefore use the trust we have in allowing you to find a permanent residence there for you and your family.
>
> We have therefore decided to revoke such consent.
>
> Dated this day, 10th day of October, 2000."

Of the fourteen landowners, this document was signed by eleven, and was dated only forty days after the original document. It was aimed by the eleven landowners at a revocation of the earlier consent expressed in the document of September 1, 2000.

The plaintiff explained this apparent change of heart on the actions of the defendant, and the belief of the plaintiff as to the purpose of the original document. As the plaintiff

saw it, he had been originally approached to enable the defendant to set up a house in the portion for the defendant and his family. However, the Nauru Lands Committee alerted the plaintiff to the nature of the September 1 document he had signed. He stated that he and other members of the family had not intended an outright gift of the portion to the defendant. Indeed, the plaintiff regarded the September 1 document as a misrepresentation of the verbal discussions that had been earlier held between himself and the defendant.

On the other hand, the defendant maintained that it was not until the plaintiff and other members of the family witnessed the entrepreneurial endeavour of the plaintiff that they became interested in again asserting their interest in the land.

Certain accusations of violence have arisen over this matter from both sides which have caused a measure of family acrimony. This is to be much regretted. The Court, however, must stand aside from this and adjudge the matter on the clear facts that have occurred.

It finds that –

1. Discussions took place well before September 1, 2000, with regard to the use of Portion 24, Denigomodu.

2. It is not sufficiently clear from the evidence, which is conflicting, as to the defendant's purpose regarding Portion 24 prior to his document of September 1, 2000.

3. The document of September 1, 2000, which was then supported by the family landowners as a whole was expressed in terms which indicated sole ownership `to do with as he will'.

4. The document of 10 October 2000, signed by eleven of the fourteen landowners was expressed as a revocation of the consent earlier given by them on 1 September 2000. The evidence of the plaintiff, Lavender Dick and Lisa Hiram, was to the effect that the land should not be owned solely by the defendant.

What is the nature of the September 1 document? It is not a contract as there is clearly no consideration. Does it represent a gift or grant? Even if the intention of all the landowners who signed was to gift the land, it could not represent other than the first stage of the process to perfect such a gift.

In terms of the Lands Act, there can be no transfer *inter vivos* of property on Nauru without the written consent of the President. Before obtaining that written consent, any proposed transfer is considered by the Nauru Lands Committee who, in the ordinary course of events, would hold a meeting of landowners. The obtaining of the signatures may be viewed as some documentation which could be viewed by the Nauru Lands Committee as the intent of the landowners.

At best, the September 1 document was merely a first stage in steps towards the perfection of a possible grant *inter vivos* of land to the defendant.

However, before the process got any further most of the landowners either believed that the purpose of the first document was misconstrued in that it was considered as giving the defendant simply an entitlement to live on part of the land or the landowners, after consideration, had second thoughts about parting indissolubly from this land in granting it to the defendant. Hence, the October 10 document was born when eleven of the landowners withdrew whatever consent they may or may not have given in the September 1 document.

Some argument was put by the defendant that such earlier consent, as there was, could not be revoked, alternatively, that the defendant by this document of September 1 had fulfilled all the customary requirements and that whatever further action that was to be taken was simply, as it were, a matter of administration.

The defendant was aware, through his own evidence, that, at this point of time, he was not able to perfect the transfer at least without the written consent of the President, and, in all likelihood, without the support beforehand of the Nauru Lands Committee. In relation to the customary gifting of land, the submissions by the plaintiff in reply to the defence submission make some telling points. The Court agrees with the plaintiff that the act of gifting land in Nauru is not final until it has gone through the whole process. The Court would agree with the plaintiff that the 1976 Lands Act did not really contradict custom and practice in relation to land transfers. What it did was to strengthen procedures. In this case, the so-called gift had not been perfected, and whatever process had been started was subsequently withdrawn by the majority of the landowners.

The need to go via the Nauru Lands Committee en route to the seeking of written consent of the President makes considerable sense. The gifting of land in Nauruan society is an important and major act, and it should be clear and unequivocal before it is perfected. The natural `cooling off' period occasioned by the need to obtain support through Nauru Lands Committee processes is a wise precaution.

The document of September 1 did not complete the transaction of transfer *inter vivos*. It is an equitable maxim that equity will not aid a volunteer in perfecting an imperfect gift. The September 1 document could not of itself effect an alienation of the property or any severance of the previous ownership. In the view of the Court, and in terms of the Lands Act 1976, it was quite open for the donors to recall or revoke their intended gift up until the written consent of the President to the transfer *inter vivos*. It is clear that any application to the President for such a transfer in carrying the support of the

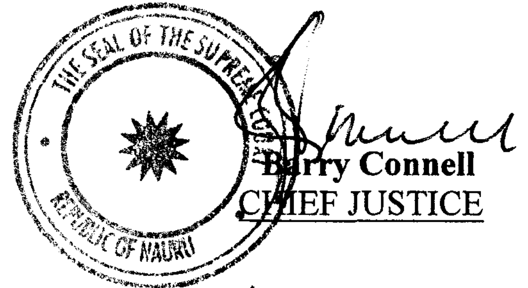
Nauru Lands Committee must needs clearly demonstrate at the time the donors intentions. If, at such a time, the intentions were not clear, had been revoked or were not obtained then there would not have been a perfected gift. It was also clear that the Nauru Lands Committee was not prepared itself to be satisfied with the September 1 document and, therefore, sought clarification which led to the October 10 revocation.

There is, therefore, no transfer by gift that is effective in either law or equity. And the Court is satisfied that as matters presently stand there is considerable opposition by the landowners to such a transfer by gift. The Court therefore must reach the inevitable conclusion that Portion 24 Denigomodu still remains within its present ownership of fourteen landowners.

In coming to such a conclusion it remains open, of course, for any of the landowners or all to negotiate if it is deemed the will of them a transfer or, simply, without transferring title to negotiate management contracts with a landowner or even a third party for the development of the Portion. However, at this moment, the land is jointly owned in varying proportions by some fourteen landowners and without any management arrangements. If, indeed, rents have been paid to the defendant by third parties then these will need to be accounted for in accordance with the present registry of landowners. In the course of the action, the Court remarked on the absence of managerial control of the Portion especially as it was situated in a commercially yielding area. With the current absence of landlord and tenant legislation, tenancies face difficulties where the tenancy exists within a multi-owned land portion which has not a convenient and stable management operation.

It is clear that there are a number of options open in Nauru for the proper management of commercial land holdings, and it may not be too late in the day contractually to work out such an agreement if such a course was sufficiently appealing to the landowners.

It is now up to the plaintiff to seek orders from the Court in conformity with this decision.



Barry Connell
CHIEF JUSTICE

Dated: 6.9.01