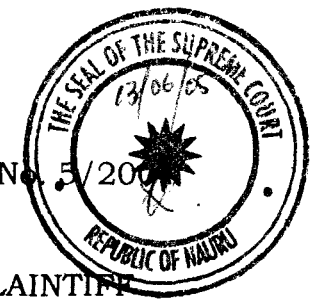
IN THE SUPREME COURT OF NAURU



Civil Action No. 5/2005

BETWEEN: ANDREW GADABU PLAINTIFF

AND: CLARISSA SCOTTY & ORS DEFENDANTS

Miniva Depaune for Plaintiff
Pres Nimes for Defendants

Date of hearing 10 June 2005

DECISION

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1. The issue was simply who was entitled to occupancy of a dwelling house, known as MQ. 40. The case fought between rival claimant landowners bore a lot of the characteristics of the recently decided case in the Supreme Court, Eigbaweatsi Dick v Kaura Ika (Unreported Judgment given 9 June 2005).

2. The dwelling house was in 'Anububu' portion No. 18 Aiwo. There are two houses on the portion, MQ 40 and MQ 42.

3. The Plaintiff has a one-sixth share of the land, whilst the present occupant of MQ 40, Clarissa Scotty, the second defendant, is the daughter of Darrel Gadabu who has a one-thirty third share. The other defendants are Darrel Gadabu and Ipia Gadabu. It is not clear why Darrel Gadabu was joined but Ipia Gadabu is the occupier of MQ 42, and is a son of Darrel Gadabu.

4. The landowners are divided into three families, the inheritors through Ipia Raymond Gadabu with a 1/3 share, the inheritors through Doris Bop with a 1/3 share, and the inheritors through Jockinal Gadabu also with a 1/3 share.

5. Following the termination of Nauru Phosphate Corporation leases in 2000, the houses, built originally by the British Phosphate Commissioners for the housing of the phosphate industry employees, became part of the landowners estate as fixtures. By a letter dated 25 July 2000, Mrs. Tyran Capelle the aunt of the second and third

defendants, made it clear to the Chairman of the Nauru Phosphate Corporation that she wished to occupy two premises, namely, MQ 42 in portion 18 and MQ 75 in portion 120. She then went on to state that, so far as MQ 40 was concerned, it was occupied by the Republic of China (Taiwan) and that they can maintain use of the premises until termination of its occupancy. In her evidence, though not in the letter, Mrs. Capelle made it very clear that it was her intention to occupy the house for herself and family. When the Taiwanese left, she was informed that the house was being vandalized so she told Clarissa Scotty, daughter of Darrel Gadabu, immediately to occupy MQ 40, which she did.

6. The submissions of the plaintiff were largely based on the fact that

1. he and his sister had in total a one-third share of the portion.
2. he and his wife have a family of five children living currently in his mother-in-laws premises in Nibok, along with his wife's brother and the mother-in-law wishes to regain control of the property.
3. he believed that there had been a promise by Tyran Capelle that he would be given occupancy of MQ 40 when it was vacated by the Taiwanese
4. he circulated a form to certain landowners who signed that they had no objection to Andrew Gadabu occupying one house situated in portion 18. Those landowners who signed represented 13/24 of the total shares. None of the Ipia Raymond Gadabu group was apparently asked other than Darrel Gadabu who refused to sign.

7. The submissions of the Defendants largely arose from the evidence given by Mrs. Tyran Capelle. As the Aunt, she was the chosen representative on estate matters for 'the Gadabu family'. In her evidence, she believed she also represented Andrew Gadabu, but there was no acceptance of that fact by the plaintiff and, in fact, in his evidence Darrel Gadabu completely disavowed that. He was anxious to declare that Andrew Gadabu, the plaintiff, was not a Gadabu and was certainly not to be included in the Gadabu family and similarly so with Andrew's sister, Syvaun, who also held with her brother a 1/6 share. Tyran Capelle was elected only to represent the Raymond Gadabu interests was the clear position of Darrel Gadabu in his evidence.

8. The salient points in the defendant's submissions were –

1. The present occupiers are in possession with the concurrence of the Ipia Raymond Gadabu group and should not be disturbed.
2. The Plaintiff had a house in Aiwo inherited through his father Jockinal which he neglected to upkeep and was made unliveable. It was, therefore, his own fault that he was forced to go to the house of his mother-in-law.

3. The signatures of a form, distributed at the time of the 25 July 2000 letter, earlier referred to, show that there was support for Tyran Capelle's objectives, and that both the Plaintiff and Bop group signed it
4. In determining who should occupy houses on portion 18 Aiwo, the Bop group were not to be considered. As landowners they had a right to part of the rentals but not the occupation of the premises in Aiwo. Their mother, Doris Bop had informed the brothers and sisters, and had also told Enna G, matriarch of the Ipia Raymond Gadabu group, that the rentals were to be paid in accordance with each one's share but so far as house occupancy was concerned her husband, Ategan, would look after the children upon properties not in Aiwo.
5. Repairs and power costs for MQ 40 have been borne by the present occupier since possession.

9. Both sides contested the meaning to be placed upon the consent polls conducted by each. Andrew Gadabu and Tyran Capelle's accounts of their discussions relating to MQ 40 were at some variance. The views expressed on the Bop position were apparently hotly disputed between Porthos Bop and Tyran Capelle, as evidenced by letters passing between them.

10. As the Court sees it, the present situation is that the Raymond Gadabu group are in full house occupancy of portion 18 Aiwo, and if left in possession will very likely remain in occupancy hereafter. It is clear then that 2/3 of the landholders thereafter would have little say and no advantage from the landholding if the matter is left undisturbed. That may or may not be the proper course but what concerns the Court is that the present position has been reached without proper consideration by all the landholders. As to the consent poll forms, both are in any event ambiguous and certainly not decisive.

11. In Eigabweatsi Dick v Kaura Ika, I remarked there that a practice of sending a sheet of paper around for signatures based on somewhat ambiguous statements was wholly unsatisfactory. Land is a valuable commodity in Nauru and landowners rights should properly be considered when someone is attempting to obtain virtual permanent occupancy. This present portion 18,like the situation in the previous case mentioned above, concerns land that has been on long and valuable lease, and improved immeasurably as a capital asset by a third party. The budding occupant is seeking the benefit of this often to the detriment of all other landowners who thereafter will be denied any commercial or other return.

12. At the very least, this should require mature consideration of all landowners. The Court should not to have to step in and decide this. It is a proper procedure that there should be a meeting of all landowners to discuss all aspects of the matter, come to a decision, and have that decision properly minuted and implemented.

13. The Court, in assisting resolution of such cases as this, would state that where there is a contentious issue regarding new house occupancy of previously commercially leased premises, a meeting of all landholders should be held to determine the future of the land in question and that any acceptable decision by a majority of the shares in the land reached after full discussion of all current issues should be minuted and implemented. That indeed would reduce the need for the Courts intervention in such matters and limit it to resolving any disputes that may arise from the implementation of the decision. Such a ruling as the above would, of course, be subject to any legislation passed subsequently that aimed to control the situation. There is none at the moment.

14. So far as this case is concerned, I have reached the conclusion based on the available evidence before the Court that a landholders meeting should be limited to the future of MQ 40.

15. I was not unimpressed by the evidence Tyran Capelle who acknowledged that she acted in the matter on behalf of the Gadabu family, and I think that should read Ipia Raymond Gadabu group. She handled in a businesslike way with the Nauru Phosphate Corporation both portions 120 and 18, and was prompt to maintain the integrity of the house MQ 40.

16. The case never centred on MQ 42 and given the circumstances of what I have said about her dealings, regarding the land, the Court would not disturb the present occupancy of MQ 42.

17. I do not reach any conclusion of the discussions between Tyran Capelle and Andrew Gadabu regarding MQ 40, nor do I make any observation on the apparent disagreement between her and Porthos Bop regarding alleged arrangements of the Bop group. I note that Porthos Bop has not pursued this as he suggested he would in his letter but no doubt any landowners meeting would allow him such opportunity to pursue it if he wished.

18. In limiting the meeting agenda to MQ 40, I have, so I believe, limited the area of any decision and lightened the load on the meeting itself. The meeting, of course, may be quite prepared to accept the status quo but, if so, it will have been done through a proper means. I have

taken pains in this case to point up the practice for future cases of similar ilk, so that landowners might immediately look to a form of shareholders meeting in settling answers.

19. I shall make orders in accordance with this decision

BARRY CONNELL
CHIEF JUSTICE
13TH JUNE 2005