IN THE SUPREME COURT

Civil Action No. 20/2003

BETWEEN	MARGARET DEPAUNE	PLAINTIFF
AND	EIDEMOUDE BILL AND ORS	DEFENDANTS

For Plaintiff: Leo Keke
For Defendants: Derog Gioura

Hearing dates: 15,16 November 2005
Decision: 24 November 2005

DECISION

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1. The Plaintiff sought a declaration of trespass in that the defendants were unlawfully occupying a building on land known as Anibubu Portion 27 in Denigomodu. The Plaintiff sought an order that the defendants vacate and quit possession of the building and land permanently.

2. The Plaintiff claimed that as owner of the unleased land and dwelling in question and, thereby, being the person who had possession of the land, the defendants without her permission and without other authority unlawfully and intentionally entered upon the land and have remained there, even after requests to remove themselves, for the past two and a half years.

3. The defendants, on the other hand, dispute that the plaintiff exclusively owns the land and that the defendant Eidae Bill has an interest in the land. Additionally, the defendants assert that they are in possession of the house and land with the permission of the Nauru Lands Committee, and that there enures to the defendants a customary right to possession based on family relationships.

4. For the purposes of this case, the facts are, in fact, quite simple. The land, Anibubu 27 in Denigomodu, was owned by Ebenwonon and upon her demise on 7 August 1929 passed to her sons, Detagabwea (1/4), Davey (1/4), her daughter Margaret (1/4), and her husband Hiram (LTO) (1/4). Margaret D is the only one of the four still living. The distribution was confirmed again later in G.N. No.182 of 1961. There was no appeal against the Nauru Lands Committee determination in 1961. This present action must rely on the established position which is quite clear. This case is not designed to re-determine what has already been determined. I shall add some comments to this later in this judgment. I, therefore, find that Margaret D was an owner of the land through her mother Ebenwonon, and that the defendants were not owners of the land nor had, as a result, rights to inhabit the land.

5. The evidence of both the plaintiffs and defendants were at one in that for the past two and a half years, Jeffrey Bill the son of Eidae Bill with his wife and children have inhabited a dwelling MQ 31 on Anibubu 27, together with Eidae Bill, though she was there only from time to time. I then find that Jeffrey Bill and family have remained in occupation of the house for the past two and a half years.

6. Some two years ago or more, Margaret D went to the house MQ 31 and asked Jeffrey Bill to vacate the property with his family but in refusing to do so he said Margaret D should see his mother Eidae Bill. Margaret D did so and upon asking her and Jeffrey Bill to vacate, was told by Eidae that the land belongs to the grandfather of Eidae and not Ebenwonon. This evidence of occupation of MQ 31 was corroborated in the evidence of both Eidae Bill and Jeffrey Bill. I find that upon occupation there was a refusal by the defendants to vacate the premises.

7. The defendants wider defence was that the defendants were, at least, equal landholders with Margaret D on the basis that the land was really that of Atto, the grandfather of Eidae Bill, and that Ebenwonon was given nothing more than the use of the land by her brother Atto. The other defence was that, in any event, the present Nauru Lands Committee had given permission for the Bill family to enter into possession of MQ 31.

8. So far as the latter point is concerned the evidence of the Chairman of the Nauru Lands Committee who was called by the defendants is to be preferred to that of Eidae Bill. He stated that after hearing the parties in a family meeting, it was suggested that the children of Davey H and the children of Margaret D have a meeting to consider the request of Eidae Bill. After all, the Chairman was acting to placate the situation. He could do no more. The Nauru Lands Committee could not re-determine land and it had no jurisdictional powers to grant permission to inhabit a dwelling on land under the ownership of another party.

9. When, in the first instance, Eidae Bill was about to go into occupation of MQ 31 with her son, she sought out a daughter of Margaret D, who at the time was overseas. Upon being requested by Eidae Bill to grant permission to occupy and being informed that the daughter-in-law of Eidae was cleaning up the house, the daughter, Marissa Keke, advised her that the daughter-in-law should not do anything further and that she, Marissa, would speak with her mother. Marissa Keke also informed Jacob Bill, the father of Jeffrey, to tell his son that the land does not belong to them and not to be in the house, MQ 31. Of course, as earlier related, upon her return Margaret D had refused occupancy and asked the Bill family to vacate as they had already entered the dwelling. They are still there. I find that they have entered, occupied and continue to occupy MQ 31 without permission.

10. Before I deal with the question of a trespass, I wish to add some words on the question of the land ownership which took a not insignificant time of the Court hearing but was without merit. The documentation revealed clearly from 1929 to the present that the Anibubu land comprising portions 23, 27 and 28 were owned by Ebenwonon, the mother of Margaret D. Further, before the determinations made in G.N. No. 182 of 1961, family meetings were held, determinations were made by the Nauru Lands Committee clearly establishing the ownership of the children of Ebenwonon as stated in the Gazette No. 48 of 1931 following Ebenwonon's death, and in conformity with the BPC leases. There was no appeal on the 1961 determination and the land has remained in the hands of the children of Ebenwonon since 1929 and all rents have been paid to them. Mention was made of two leases signed by Hiram on behalf of his wife Ebenwonon in 1929. This signature was specifically witnessed by the Administator thereby giving his authority for the signature at the time of acute frailty of Ebenwonon. The leases were made in conformity with the 1921 Lands Ordinance and were valid.

It should be noted that a similar lease had been signed by Ebenwonon herself some 15 months earlier for Anububu 23. Whilst Eidae Bill's evidence is to the contrary in that she asserts that Ebenwonon was only granted a use of Anububu and not ownership, there was no strength to this and it is overwhelmingly shown to be not the case by the existing documentation extending over seventy five years. Whilst the present case was not a land appeal but a case brought in trespass by the plaintiff, it was fought by the defendants as if it was to test the validity of land ownership. One can only say that the defendants failed utterly in this endeavor.

11. Trespass occurs where there is an intentional invasion of the land whether it results in harm or not and a mistaken belief by the defendants that the land was theirs affords no excuse. (Fleming on Torts pp 36, 37 Seventh Edit, 1987). In the present case there was a voluntary and affirmative act by the defendants to take up residence on Anibubu 27 MQ 31. This voluntary and affirmative act of taking up residence was without permission as described in paragraphs 8 and 9, and the trespass, even after requests to vacate, has been continuous to the present time.

12. To complete the picture, the Plaintiff throughout the period and long before had the possessory rights. Once the lease expired in March 2000, the plaintiff had the reversionary rights under the previous lease with the BPC/NPC and at that point came into the possession of the land and all buildings upon it. I find on the evidence that there has been a trespass by the defendants on the land Anibubu 27 and in the occupation of the residence MQ 31 upon that land, and that the trespass is continuing.

13. In the pleaded defence, and in the final submissions of Mr. Gioura for the defendants, the matter of custom was raised. Mr. Gioura put the point in this way. First, he intimated that whilst legal title may belong to persons registered, it has long been customary that those ordinarily entitled to land by family agreement may take the fruits of that land. He then extended that thought by saying that there was a customary obligation that, under family arrangements, those of the family seeking shelter may use the land for such purpose. Mr. Gioura produced no evidence of such a custom. It has long been established that, in certain limited instances, there has been an established right to fruits upon the land but a communal right of a family to shelter on the land of another is hardly an extension of a right to fruits where it was particularly established. There are customs that may have the face of a 'trust', but most often customary obligations of a personal obligatory nature were not enforceable at law but through social pressure. An interesting and valuable discussion of the problem may be found in the judgment of Thompson C.J. in Susannah Capelle and Others v Mwareow Dowaiti (Nauru Law Reports 1969 - 1982 Part B pp 61 - 64). However, I find no applicable custom in this case which has any claim to be enforceable at law.

14. The plaintiff seeks relief by way of a declaration. I declare that the defendants are trespassers and unlawfully occupying the land known as Anibubu Portion 27 in Denigomodu and the building, known as MQ 31, upon that land. I am prepared to made orders accordingly and note that the plaintiff asks merely that parties bear their own costs. I shall hear the parties on the appropriate order.

Barry Connell
CHIEF JUSTICE

Date: 24/11/05

THE SEAL OF THE SUPREME COURT
24/11/05
REPUBLIC OF NAURU