## IN THE SUPREME COURT OF NAURU

CIVIL ACTION NO.: 03/2007

BETWEEN:

**DOUGLAS AUDOA** 

AND MASON DICK

**PLAINTIFFS** 

AND:

**PAUL FINCH** 

**DEFENDANT** 

Mr. Reuben Kun for the Plaintiffs

Mr. Pres Nimes Ekwona for the Defendant

## **DECISION**

This is an unhappy dispute between two branches of the same family. Members of both branches have undivided shares, it may be in varying proportions, in coconut land Ianepe, Portion 107, Aiwo District. The plaintiff, Douglas Audoa, explained that Portion 107 has never been divided except by agreement of the owners. It has been agreed that it should be divided equally between the two families the descendants of Edward Stephen the original owner of the whole. Douglas Audoa's family owns a half share in the land and that half is divided equally between four of them of whom he and the other plaintiff Mason Dick are two. That gives each a 1/8 share. It seemed that the defendants while conceding that Douglas Audoa is a part owner claim that Douglas' share is less than 1/8. The proportions don't matter. To determine the point at issue all that matters is that each of Douglas Audoa and Mason Dick have some share, some interest in Portion 107.

The point of issue is whether before demolishing a building which Mason Dick had been using, he said for twenty years, Mrs. E. E. Dick, another of the owners, but from the other family, should have at least consulted the other owners. It is conceded that she (and her family) did not. Her son-in-law, the defendant Paul Finch, at her request demolished the building despite vigorous protests by the plaintiffs. And I may add an order made earlier in these proceedings by the Resident Magistrate.

The size and state of the building and its contents when the defendant and his workmen pulled it down are in dispute. Mason Dick said he was using:-

"the house as a laboratory for my tissue culture plants...had my equipment in it. Building secure."

The building consisted of -

"toilet, two rooms, lounge and kitchen."

He didn't know what happened to his equipment etc.

To the contrary Paul Finch and his wife, Mrs. Krystalmaine Finch, said the building was derelict. Paul Finch said a willing purchaser might pay between \$1000 and \$1500 for the materials: that was all.

I cannot in the state of the evidence come to a conclusion on value of the building and contents, if any, lost. If necessary I shall assess damages later.

In fact the building is only the focus of the plaintiffs' complaints. Douglas Audoa produced a sketch showing the defendant having fenced off about 85% of the whole Potion. Yet Douglas and his side of the family own half.

The question I have to answer is whether Mrs. E.E. Dick and her family members had in law an obligation to consult and agree with other land owners before demolishing the building and (apparently) appropriating more than half the Portion to their own use.

No doubt they have acted high handedly in not consulting. They had, I suggest, at least a moral obligation to consult. Courtesy, good manners, sensitivity for the feelings of others demanded it. I have come to that conclusion despite Mr. Nimes' submission that it's not the Nauruan way. I reject Mr. Nimes submission. From my observation of Nauruan people, they as much as any other community practice the courtesies common to all civilized people.

Indeed their institutions (for example Nauruan Lands Committee) assume that disputes should be settled by discussion, conciliation, agreement and good will. The defendant has acted quite to the contrary.

Is that moral obligation also a legal duty? Counsel have not been able to cite any authority. I myself have found none.

The whole ethos of Nauru is toward consideration for the feelings and rights of others. The institutions of the country are based on that ethos. It is more than moral obligation. It should be and is a legal obligation as well.

One may look at in another way. Paul Finch, on behalf of his family, demolished the building which belonged as well to his family as to other people. He interfered with property belonging partly to others. A trespass to property. He acted unlawfully.

The answer to the question I had posed is "Yes". Mrs. Finch and her family had an obligation in law as well as a moral obligation to consult and agree with other land owners before making changes in the use of Portion 107. They did not and are liable to the plaintiffs' for their failure to do so.

I shall hear counsel as to the Orders I shall make.

THE HOX ROBIN MALLHOUSE QC.,