IN THE SUPREME COURT
REPUBLIC OF NAURU

Not Restricted

Land Appeal No. 11 of 2010

KINZA CLODUMAR — Appellant

V

THE NAURU LANDS COMMITTEE — Respondent

JUDGE:	Eames, C.J.
WHERE HELD:	Nauru
DATE OF HEARING:	22 March 2011
DATE OF JUDGMENTS:	22 March 2011 (Extempore)
CASE MAY BE CITED AS:	Kinza Clodumar v NLC
MEDIUM NEUTRAL CITATION:	[2011] NRSC 4

Land Appeal - Costs - Nauru Lands Committee makes determination in 2007 which contains errors requiring correction - Committee acknowledges errors but takes no action until 2010 - Whether costs orders not appropriate against Committee

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APPEARANCES:	Counsel
For the Appellant	Mr L Keke
For the Defendant	Mr D Lambourne

CHIEF JUSTICE:

1. The appellant in this case applies for costs against the Nauru Lands Committee. The appellant appealed against a determination of the committee which was made in 2007 concerning the estate of Clodumar Jordan, deceased. The errors were not of a substantive nature and it is accepted on both sides were capable of being corrected by the Committee of its own motion[1].

2. Soon after the determination was made the errors were pointed out to the Committee and it acknowledged the errors, and agreed to correct them. However, it took until June 2010 before a corrective determination was made. In the event, that determination also contained errors and required rectification.

3. No explanation for the delay has been given by the Committee. There was no disagreement among beneficiaries about the error in the 2007 determination.

4. When the 2010 determination was made, again containing errors, the appellant issued a notice of appeal under s.7(1) of the *Nauru Lands Committee Ordinance* 1956-1963. The appeal was conceded by the Committee. On behalf of the appellant, Mr. Keke submits that had the committee acted more speedily in resolving the error by way of making a fresh, correct, determination the proceedings by way of appeal would not have been necessary, and the costs incurred by the appellant would not have been incurred at all.

5. Mr Keke submits that the Committee was empowered to make a correction, and there was no cause for it to delay doing so. Mr Keke acknowledged that orders for costs in appeals were rarely made. He submits, however, that in circumstances such as this so there is no good reason for the delay which occurred in this case costs should be awarded.

6. As I have said, I have no information as to what was the reason for the delay, although I note that it is not unusual for there to be a considerable gap in time in the proceedings of the Nauru Lands Committee between making its determination and having the determination published in the gazette. That no doubt is explained by a wide range of circumstances that can cause delays. I make no criticism of the Committee in that regard, but merely note that delay of itself is not something which is unusual in land committee business.

7. I have some sympathy for the submissions that are made by Mr. Keke with respects to the circumstances in which the appeal was brought, but it is acknowledged on both sides that it is quite unusual for the Supreme Court to make orders of costs in cases involving appeals with respect to the work of the Nauru Lands Committee. That no doubt is a policy decision by the court, recognising the fact that the Lands Committee is performing a public service role, one which is undoubtedly onerous

[1] See *Nauru Lands Committee v Eidawaidi Grundler and Eibaruken & Others*, Case No 2 of 1975, Thompson, CJ, 27 January 1975; [1969-1982] Nauru Law Reports (Part A) 26 NLC Cases.

for its members and demanding. The approach by the court in not ordering cost reflects the fact that the Committee performs a public service and all public services, from time to time mistakes are sometimes made and have to be corrected. If the court was to as a principle to grant costs in all circumstances where an error has been found by the Nauru Lands Committee it might lead to quite unsatisfactory outcomes which I believe the court would have had in mind in displaying its reluctant to make orders for cost.

8. The circumstances here in which the Committee delayed taking corrective actions was unfortunate and the delay was disruptive for the appellant and his family. However, the conduct of the Committee does not seem to me fall in to the category of error amounting to conduct of such seriousness as to justify an order of costs being made, thereby going against the long-standing practice.

9. I recognise that in other civil litigation, the application by Mr. Keke would almost certainly be a successful one. However, I think the Land Committee's work is of a unique character, so an order of costs against it should remain open only in rare and exceptional circumstances. Here the circumstances are not exceptional. I do not consider this application falls in to that category and the application is refused.

Geoffrey M. Eames

Chief Justice

22 March 2011