



IN THE SUPREME COURT
REPUBLIC OF NAURU

Civil Case No. 7/2014

SYLVANIUS KAM & ORS

V

THE NAURU LANDS COMMITTEE

V

ESTATE OF EINGANGA OLSSON

JUDGE: Khan, J.
DATE OF HEARING: 14 December 2015
DATE OF RULING: 16 December 2015

CATCHWORDS: Application for Interlocutory injunction – basis for injunction application was trial has been delayed because of non-availability of pleader for the second respondent.

Appellants cannot put all blame on second respondent – as they filed amended grounds of appeal together with application for interim injunction.

Application refused as it did not meet the criteria for grant of interlocutory injunction.

Counsel for the Appellant: Mr. V Clodumar
Counsel for the 1st Respondent: Mr. J Udit (presence excused)
Counsel for the 2nd Respondent: Mr. L Scotty

RULING

1. This is an application for interlocutory injunction filed on behalf of the appellants by Mr. Vinci Clodumar. He filed an interlocutory summons on 7 December 2015 and filed an affidavit in support of the application on 8 December 2015.
2. The appellants filed an appeal on 27 January 2014 against the decision of the Nauru Lands Committee (1st respondent) in respect of land portion no. 93 and 94 which was determined in favour of the beneficiaries of the estate of Einganga Mary Olsson (2nd Respondent) by Gazette No. 29/2014.
3. The original appeal was filed only in respect of portion numbers 93 and 94.
4. In an amended ground of appeal filed on 7 December 2015, the appellants have included portion 60 which was previously portion 98 and I am told that portion 98 was merged into portion no. 60 by Gazette notice no. 56/1973.
5. It is the appellants' contention that portion 93, 94 and 98 was owned by their mother, and prior to that by the grandmother Einganga Baiwo. It is also their contention that their grandmother executed a lease in favour of British Phosphate Commission, and not the 2nd respondent as was determined by the 1st respondent by Gazette No. 29/2014.
6. The reasons for the appellants to seek an order for interlocutory injunction is set out in the affidavit of Amos Aingimea in paragraphs 7 and 8 which reads as follows:

[7] *"The reason that the appellant have decided to seek an order for interim injunction is due to delay in disposing of the matter by the respondents. The case was instigated in October 2014 and 14 months have passed since the appeal was filed. The reason delays have been due to the unavailability of the Counsel for the 2nd Respondent on 3 occasions to travel on Parliamentary business."*

[8] *"The Appellants believe that placing an interim injunction on the income for the land may bring about the cooperation of the parties to ensure a timely disposal of the case for hereon. Secondly, large part of portion 60 is now being developed to hold new buildings for the RoN Hospital and therefore significant amount to rent will be payable for this site."*

7. The 2nd respondent has filed an affidavit opposing the application for interlocutory injunction. The affidavit was filed by Mrs. Pansy Starr who is the daughter of

Einganga Olsson. In her affidavit, she states that the rent in respect of portion 93 and 94 was received by their late mother, and subsequently upon her death by her and her other siblings. She said that the issue in respect of portion 60 which includes portion 98 is raised for the first time.

8. The usual purpose of granting an interlocutory injunction is to preserve the status quo until the rights of the party has been determined(The Supreme Court Practice 1988)
9. Further in **Castlemaine Tooheys Ltd v South Australia(1986) 67 ALR 553 at 557** it was stated as follows:

“The principles governing the grant or refusal of interlocutory injunctions in private law litigation have been applied in public law cases, including constitutional cases, notwithstanding that different factor arise for consideration. In order to secure such an injunction the plaintiff must show (1) that there is a serious question to be tried or that the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is probability that at the trial of the action the plaintiff will be held entitled to relief; (2) that he will suffer irreparable injury for which damages will not be an adequate compensation unless an injunction is granted; and (3) that the balance of convenience favours the grant of an injunction.”

10. An application for interlocutory injunction should not be used as a means to expediting the trial, if that is allowed then the application would be an abuse of process of court.
11. The summons does not meet the criteria for the grant of interlocutory injunction so therefore the application is refused.
12. I understand that Mr. Clodumar is keen to have an early date for trial. He seems to be blaming Mr Scotty for the delays in hearing of this case. Mr Clodumar has filed amended grounds of appeal on 7 December 2015 and in which he has included portion no. 60, so the trial cannot proceed as of now.
13. Portion 60 was enlarged by inclusion of portion no. 98 by gazette notice no 56 of 1973. I inquired as to whether the appellants will have to seek leave to file an appeal to include portion 60 in the amended ground of appeal. Mr Clodumar felt that there was no need to do so as portion 60 was included in Gazette Notice No. 29/2014. On the other hand, Mr. Scotty feels that an application for leave to file appeal out of

time should be made by the appellants. It is important that this issue should be resolved now rather than it become an issue at the hearing date, which would mean further delays in the trial.

14. I will adjourn this matter before the Registrar and in the mean time I order that both the respondents should file their amended answers. I leave it to the Registrar to make orders as to the time frame within which the amended answers are to be filed, bearing in mind that we are in the Christmas vacation. If the matter is ready for trial then I would be happy to hear it in the January sitting of the Supreme Court.
15. I noticed that the affidavit was filed on behalf of the 2nd respondent by Mrs. Pansy Starr. She is one of the daughters of late Einganga Mary Olsson. This appeal has been filed against the estate of Einganga Mary Olsson. When this matter came before me on the 28 October 2014, I raised with Mr. Clodumar the correctness or otherwise of claiming against the estate of Einganga Mary Olsson. Mr. Clodumar, then advised me that he was going to join all the beneficiaries of the estate as parties to these proceedings, and as a result leave was granted to join all the beneficiaries, but I note that it has not been done to date.
16. I raise this issue as it is important that all the respondents and all the interested parties should be before the Court otherwise they will be denied the due process of natural justice, in which case the court will not be able to make orders against people who are not parties to these proceedings.
17. I order that the cost shall be in the cause.

Dated this day of 16 December 2015



Mohammed Shafiullah Khan
Judge